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The management of the COVID Crisis in 2020: a case study on EU governance

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Introduction

The handling of the COVID-19 crisis in 2020 provides valuable insights about how the EU functions and its governance. It is in many ways a textbook example of what the EU can do and how it does it.

In all major crises, the European Council (EUCO) takes centre stage from the start. The reasons for this are simple: the European Council's role as defined in the treaty is to provide overall political direction to the EU, it is composed of the most legitimate representatives of the Member States (and the President of the European Commission (EC)), it is the closest we have in the EU system to a form of collective government, and it is both an EU institution and a club of national leaders, which means that it can discuss issues regardless of whether there is a Community competence or not. This is important because the EU functions according to the principle that sovereignty lies with the Member States. The latter can, however, according to the principle of conferral, transfer competences to the EU level via European treaties, *in toto*, as is the case in the areas of agriculture, trade or the single currency, or in part, which is the case for most EU policies (mixed competences), or not at all. If we take the COVID-19 crisis, the responsibility for health matters stays with the Member States; this explains why Italy, when it was hit by the pandemic in early 2020, took a number of immediate measures to deal with a situation that did not allow for a long process of consultation with Brussels. But the crisis affected many other sectors than health, and a lot of them were partly or even totally within the competence of the EU: the Single market, transport and energy policies, trade and others. Then there are areas like the Common Foreign and Security Policy (CFSP) where the EU can act, but only via intergovernmental cooperation.

The mix or overlay of competences explains why the EU often seems taken by surprise when a crisis erupts and gives the impression that it flounders in its response. This is where the EUCO steps in. To take command, to ask for immediate emergency action where the EU is competent, but also for the coordination of national action. We will examine in detail how this happened in the case of COVID-19. One of the key modes of action of the EUCO is tasking: the EUCO itself has neither the mandate nor the capacity to decide the measures on its own. That is why it requests action from the institutions and the Member States. To understand the EU's functioning, one must be familiar with the interplay between institutions, none of which can function on its own: a point often missed by academic debate focusing on just one institution or on the perceived 'fight' between them. For legislative action, for instance, you need a Commission proposal and an agreement between the Council and the European Parliament. In the executive area, you often need the Commission, but also the Council and, in quite a few areas, voluntary action by the national authorities. We will look at how, in this instance, the tasking to different actors led to action and decisions.

1) The Path towards the July 2020 Agreement

First news about a new virus coming from China emerged at the end of 2019 and spread widely at the beginning of 2020. But it was when the north of Italy was hit by a wave of infection, with the first deaths on 22 February 2020, and its health service came under unprecedented strain, that the EU woke up to the magnitude of the challenge. The President of the European Council (PEC), Charles Michel, decided to call a first videoconference (VTC) on 10 March, quickly followed by a second one a week later, and a third on 26 March. It had become clear by then that the crisis called for a reaction at the highest level. As Ivan Krastev wrote in an excellent and pre-scient article on 18 March[1]: *"The Covid-19 crisis will dramatically reshape the EU's response to all other rises it has faced in the last decade."*

In parallel, various EU actors took immediate action to prevent the crisis from getting out of control. Already on 16 March, the EC issued guidelines on the implementation of *green lanes* to ensure the free flow of goods, as well as on the Schengen Border Code, which allows to temporarily reinstate controls at the internal borders in the event of a serious threat to public policy. On 18 March, the European Central Bank (ECB), adopted a major package of €750 billion for asset-buying, which brought some immediate relief on the markets. On 20 March, the Committee of Permanent Representatives (Coreper) agreed on exceptional measures to ensure the continuation of decision-making in the Council at a time when most physical meetings were impossible. The Croatian Presidency activated the Council's Integrated Policy Crisis Response mechanism (IPCR) allowing for daily monitoring of the situation and rapid information exchanges on the measures taken across Europe[2]. In the same week, the EC adopted a new Temporary Crisis Framework for State aids based on Article 107 (3) (b) TFEU, which allows for more flexibility in the case of a serious disturbance in the economy of a Member State.[3] At the same time, the 'general escape clause' within the Stability and Growth Pact (SGP) was triggered; it authorizes Member States to undertake appropriate budgetary measures in the face of exceptional circumstances.

THE MARCH 10[4], 17[5] AND 26[6] VTCS: EMERGENCY MEASURES AND FRAMING OF THE EU RESPONSE

No written declaration was issued after the first two meetings, but the PEC summed up the key points of agreement in his press conferences. They concerned emergency measures and set out the priorities identified: limiting the spread of the virus by reinforcing the external borders in a coordinated fashion, providing medical equipment, promoting research and developing a vaccine, tackling socioeconomic consequences and helping citizens stranded in third countries. The two VTCs were crucially important to show that there was a pilot in the plane and that urgent measures were decided together, whatever the legal basis.

In view of the seriousness of the crisis, the PEC decided that it was now time to issue a written statement of the EUCO, adopted by consensus. This happened on 26 March, again in a VTC. This time, the European Council went into far more detail under the various priorities it had defined in its first two meetings. The 26 March VTC constituted a major step forward because it reiterated the firm political will to act together and it set the framework for the future work. It expressed agreement on a number of key measures, to be taken or just adopted, based on the preceding VTCs. Importantly, it also did a double tasking: it asked Presidents Michel and von der Leyen to develop a roadmap outlining the path towards exiting confinement and launching the recovery, and it invited the Eurogroup (in inclusive format)[7] to present proposals on the socio-economic aspects within two weeks.

This paragraph led to negative comments by some of the members of the EUCO, like the Italian Prime Minister, who wanted to move (even) faster and who wanted already at this stage to have a commitment for a new financial fund. It is therefore not surprising that press articles highlighted the "profound divisions" among the 27[8], thus casting a shadow on the quite substantial advances overall. This was somewhat disingenuous because there was just no way the EU, in this early phase of the crisis, when future developments were highly uncertain, could have agreed on such a complicated issue as the financing of a future recovery. It was right to mention the preparation for recovery in the text as a longer-term objective, but it was obvious that the road towards that goal would be long and complicated. The priority at this stage was to prevent the EU economy from collapsing, and this is what the EU did.

The perception of EU action improved rapidly in the following weeks: there was a feeling that people had come together and really wanted to manage this crisis, even if there was disagreement on the issue of a future fund. And there was recognition that the EU had taken quick action in a number of key areas. While the EU often seems to flounder initially when hit by an unforeseen event or, as is the case of the pandemic, by a *Black Swan* event[9]; it then gathers together and starts putting in place, slowly but surely, a coherent strategy. The three VTCs of the Heads managed to create a structure for handling the crisis, and a lot was done in a short period of time. The mandates given to the two Presidents and to the Eurogroup helped solidify the framework and pointed towards more action, thus facilitating communication.

THE APRIL 23 VTC[10]: A KEY TASKING

At the April 23 VTC, the leaders once again discussed the pandemic and its effects. The PEC's conclusions put emphasis on the strong political will of all to work together and get the pandemic under control. The heads welcomed the two Presidents' Joint European Roadmaps towards lifting COVID-19 containment measures and charting the way towards recovery. They defined four key areas for action: ensuring a fully functioning Single Market, launching an unprecedented investment effort, adopting an efficient governance system, and acting on the global scene. They endorsed the agreement reached at the 9 Aril meeting of the Eurogroup (in inclusive format) on three important safety nets amounting to a package worth €540 billion, calling for making them operational by 1 June 2020. The three safety nets were: a new mechanism to help the unemployed (SURE), a new EIB (European Investment Bank) window for loans to enterprises, and the possible use of the European Stability Mechanism (ESM) to help Member States faced with budgetary problems. This was all done according to schedule in the following weeks, after a lot of technical work at the level of the Eurogroup (ESM), the EIB Board (for its contribution) and the Council (SURE).

Concerning the financing of the recovery, the leaders agreed to *"work towards establishing a Recovery Fund, which is needed and urgent. This fund shall be of a sufficient magnitude, targeted towards the sectors and geographical parts of Europe most affected, and be dedicated to dealing with this unprecedented crisis. We have therefore tasked the Commission to analyse the exact needs and to urgently come up with a proposal that is commensurate with the challenge we are facing. The Commission proposal should clarify the link with the MFF[11] (Multiannual Financial Framework), which in any event will need to be adjusted to deal with the current crisis and its aftermath."* This was a major breakthrough: the leaders recognised for the first time collectively that such a fund was indeed necessary. From this stage onwards, the question was no longer about the *'whether'* but about the *'how'*. Once that is the case, it is very rare indeed that the EU does not in the end deliver some kind of agreement.

Of course, many complicated questions had to be settled before reaching agreement. They regarded the size (some figures mentioned went to more than a trillion euros), the link to the MFF, the way of raising the funds, and the method of transferring the money to the Member States. Some Member States insisted on grants, arguing that this was necessary to avoid further asymmetry in the EU between those who had low debt levels and a big margin of manoeuvre to grant national State aids, and those who had high debt levels and limited possibilities to do so. Other Member States, mainly net payers in terms of the EU budget, preferred just giving loans; they highlighted the difficulty in legal and conceptual terms of transforming funds raised by borrowing into grants; they also underlined that this would mean adding a new MFF on top of the existing one!

THE COMMISSION PROPOSAL ON 27 MAY

The ball was now in the court of the EC, as the sole institution having a legislative right of initiative and the only one capable of working out the details of such a complex package. It was both a challenge and an opportunity to show leadership, and the von der Leyen Commission rose to the occasion. But without the political backing of the EUCO, the Commission would not have been able to credibly propose the major initiative it eventually presented. In this context, the meeting in Meseberg on 18 May between Chancellor Merkel and President Macron was a major staging post: they backed the idea of a Recovery Fund and put forward a figure of €500 billion. This provided welcome support to the Commission and an encouragement to bid for even more.

The EC issued a comprehensive proposal at the end of May, composed of the 2021-2027 MFF and of a Next Generation EU (NGEU) recovery programme. The package fully responded to the tasking and to the expectations of those who wanted to go big. It set the figure for the new Resilience and Recovery Fund (RRF) at €750 billion, to be borrowed by the Commission on behalf of the EU on the financial markets. This required temporarily increasing the ceiling of the EU's own resources[12] by 0.6% of GDP, since the EU budget was to serve as a guarantee for the repayment of the loans. To that end, it would be necessary to amend the Own Resources Decision (ORD), which had then to be ratified in the 27 Member States.[13] The EC proposed a smart way of embedding the new programme into the MFF. The funds were to be transferred to the Member States either as grants (€500 billion) or as loans (€250 billion). They would transit via the RRF, and a second conduit called REACT-EU[14], and top up existing EU programmes and fund new ones.

The attention now turned to the Council side. The tabling of these proposals triggered frantic activity in Coreper and the Council and a flurry of bilateral contacts across Europe. President Michel held lengthy and detailed VTCs with every single of the 27 leaders and worked closely together with the President of the Commission.

The preparatory work was complicated because of the sheer ambition of the package and the novelty of the approach. There were also some apparently simple questions that were anything but straightforward. To give but one example: for the future repartition of the funds between Member States, the Commission had proposed criteria that related to the period before the Covid crisis, for reasons of predictability. This led to accusations of finding an artificial way of transferring funds to countries that had not done the necessary economic reforms in the past and calls for a serious needs assessment. Many delegations wanted a clearer link with Covid and the channeling of the funds to the countries that had suffered most as a result of the Covid crisis.

2) The July Marathon leading to Political Agreement (17-21 July)[15]

The leaders met in Brussels in the morning of 17 July. It was obvious that the only way to clinch a deal was at their level, in an old-fashioned physical marathon (*"Three shirts at least"*, as one of the participants said at the outset). This turned out to be one of the longest and most dramatic meetings of the EUCO ever, only topped (by a few minutes) by the Nice European Council of December 2000. It ended on Tuesday morning 21 July at 05H40, after four days and nights of intense negotiations, with a political agreement on the next MFF 2021-27 and the NGEU programme.

THE VARIOUS STAGES OF THE EUCO NEGOTIATION

People often wonder how the EUCO works. It is therefore interesting to sketch out the key stages of the negotiation, by looking at the succession of meetings in plenary format. Readers must however bear in mind that those are just the tip of the iceberg. Below the surface, there is an endless eddy of confessionals, *bilaterals*, gatherings in smaller groupings, phone, and video calls. It is not as though nothing happens when the leaders are out of the meeting room, quite the contrary.

17/7 PLENARY 10H30-17H45: the opening plenary started at 10H30, after the traditional brief encounter with the President of the European Parliament who presented the views of his institution; President Sassoli pointed to the historic moment and called for ambition. He duly insisted on associating the EP to the proceedings as much as possible. The atmosphere was relaxed and friendly at this stage; President Michel addressed birthday greetings to Chancellor Merkel and Prime Minister Costa and thanked Prime Minister Frederiksen, who had advanced her wedding because of this special EUCO. Before moving to the core theme, the PEC passed the floor to the Lithuanian PM who had asked to talk about Russia's rewriting of history. He also allowed the Cyprus President and the Greek Prime Minister to raise relations with Turkey. This was not unusual; leaders like to use EUCO meetings to flag issues that are of major concern to them, even if they are not on the agenda.

The President then referred to the *negobox*[16] sent to delegations on 10 July and asked to focus the interventions on three major issues: the size and balance of the NGEU, the governance of the RRF, and the rebates or corrections under the MFF. As the formal author of the proposal, the first one to intervene was President von der Leyen who set the stage for the discussions and gave explanations on issues that required clarification. The discussions lasted for over seven hours, including a working lunch. In a full tour de table, all leaders intervened to set out their views and red lines. Though there were already some exchanges on particular issues between the participants, leaders did not yet enter a real negotiation. They first needed to get a better sense of what was feasible or not feasible and where compromises were necessary.

Positions were entrenched on the size and balance of the package. The *frugals*[17] offered little leeway throughout the negotiations, stating that €350 billion in grants was their absolute maximum. On the other side of the argument, around 20 Leaders said that €400 billion in grants was their absolute minimum. On governance, which was about the way the future national programmes were to be approved, there was an understanding among the Member States that the Council should have the final say rather than just the Commission, but there was disagreement about the voting pattern; Prime Minister Rutte – in a lonely and untenable negotiating position imposed by his Parliament - wanted unanimity for each decision. The allocation criteria were criticised by some (especially by the cohesion countries, but not exclusively) as being de-linked from the coronavirus crisis. To resolve this issue, the PEC had proposed in his negobox to distribute 70% of the funds as suggested by the Commission, and 30% based on GDP developments because of the COVID-19 crisis.

Though not mentioned among the three points for discussion at this stage by the PEC, the difficult issue of the rule of law came up as well in this first round. Here the discussion was between a large majority of the leaders and the Polish and Hungarian Prime Ministers, Mateusz Morawiecki and Viktor Orbán. The latter argued that in order to improve financial discipline, the EU needed to strengthen financial surveillance, rather than create a new mechanism linking the disbursement of money with "politics". Most of the other leaders intervened to point out that the rule of law was one of Europe's fundamental values. They also warned that the EP saw agreement on such a mechanism as a *conditio sine qua non* for giving its consent to the MFF regulation, as President Sassoli had made clear at the outset of the meeting.

17/7 DINNER 21H20-23H40: the PEC distributed *meeting documents* on two issues, the governance of the RRF and the 70/30 split of disbursements under RRF. The atmosphere immediately became tense; people knew that the real business started now, even though it was not yet the time to make major concessions. They exchanged more detailed arguments and questioned each other's assumptions. Many heads again came back to the rule of law question.

18/7 PLENARY 11H15-13H00: the President presented the revised *negobox* (REV 1) that had been issued two hours before. He distributed a working paper summing up the main changes, such as a new balance between grants and loans (60-40%); modifications to the rebates and corrections; an 'emergency break' (the possibility for a delegation that would be on the point of being outvoted to appeal to the EUCO) for the governance issue; and new language on the rule of law. After a few questions and some initial reactions, the meeting adjourned at 13H, as leaders moved to many hours of meetings in different formats.

18/7 DINNER 21H05-23H10: the PEC assessed the situation as difficult, despite the many meetings he had held all through the day. He said he wanted to look again in more detail at the balance between grants and loans, the governance and the rule of law, the objective being to be able to produce a new *negobox* during the night. The discussion remained controversial on all three points. The PEC made clear that he was not ready to take the responsibility of stopping negotiations and giving up. The reference to a failure was of course a way of raising the pressure and appealing to the sense of responsibility of the leaders.

19/07 DINNER 19H20-23H20: it had initially been planned to start the plenary at 11H in the morning, but it was repeatedly postponed to leave more time for working behind the scenes. The PEC said that the 70-30 proposal on the criteria was agreed. He was also pleased to announce that some progress had been made on governance. The Dutch knew that they would not get unanimity and were beginning to settle for an emergency clause. He mentioned that the core MFF, in view of the massive injection of funds via the NGEU package in the years 2021-23, could be slightly reduced.

The situation continued to be blocked on the balance between grants and loans. The PEC hinted that the percentage of grants could be further reduced, but that there were two camps with absolute red lines: the *frugals* saw €350 billion in grants as the upper limit, while for many other delegations €400 was the absolute minimum. The President pushed for being reasonable; setting red lines at this stage was not acceptable. Risking failure on what was in the end a relatively small difference would not be understood. Bluff is part of the toolbox in such circumstances; he therefore asked whether both sides had said their last word and whether everybody should return home and leave it at that. After an awkward silence, the Swedish Prime Minister, Stefan Löfven, took the floor and said: *"Charles, I think we should continue."* And so they did. In the end they settled for €390 in grants and €360 in loans. On the rule of law, the Latvian Prime Minister, Krišjānis Kariņš, who had volunteered, on Chancellor Merkel's invitation, to have a closer look at the details during the night, with the Council Legal Service, surprised the audience by saying that the wording of the proposal was too vague. He asked for more work on a revised text.

20/07 PLENARY 05H45-05H52: this was a very short meeting to allow the PEC to announce a new *negobox* (REV 2) in the day. It was finally issued at 19H10 in the evening. The plenary was repeatedly postponed and turned into a dinner.

20/07 DINNER 21H30-23H00: things were moving, compromises were being accepted. There was a new discussion on the rule of law, based on a revised text. Several smaller issues for delegations were still to be sorted out, but this is usual at the end of an MFF negotiation. A third and final *negobox* (REV 3) appeared at 04H40 in the morning.

21/07 PLENARY 5h25-5h40: the deal was done, to the relief of all around, and the mood turned festive, even a bit euphoric. President Michel warmly thanked all the participants for having worked in good faith towards an agreement that represented a major achievement for Europe and its future. The magic of the EU was that it found unity even in the most difficult circumstances. He recalled that he had said happy birthday to Angela Merkel and Antonio Costa at the outset of the negotiations. Now he offered his birthday wishes to Stefan Löfven. And all of this on the National Day of Belgium! Prime Minister Rutte intervened to say that at five minutes past six *"we would have been the longest summit in the history of the EU. But Nice is still beating us". "It is your fault,* quipped Chancellor Merkel, *you and Giuseppe (Conte) agreed on governance far too quickly!"*

THE MAIN STUMBLING BLOCKS

The deal was only possible by finding the right political equation reconciling the interests of all the camps: for the South, an ambitious recovery programme as close as possible to the Commission proposal, for the North, a relatively low MFF and the maintenance of the rebates, and for the East, the preservation of their cohesion money.

It may be worthwhile at this stage to briefly recapitulate the main themes or stumbling blocks of the negotiation. As we have seen, there were three major ones, all interrelated:

The size and architecture of the NGEU: for some delegations, the architecture including the balance between the grants and loans was exactly right, and the figure of EUR 750 billion was a minimum. They pointed to investment losses in the wake of the Covid crisis that amounted to at least the double of this figure, not to talk about the massive equity losses. The camp of the *frugals* considered the architecture problematic, the grants a 'heresy', and the figures far too high.

The governance issue: this apparently technical issue was in fact a deeply political one. It concerned the way in which the national plans presented by the Member States to benefit from the RRF were to be endorsed and the money released. The Commission had proposed a scheme whereby it would itself adopt the implementing decisions with a comitology procedure (a procedure whereby the Member States are merely consulted). That gave too much power to the Commission, in the view of many delegations, and President Michel suggested that the implementing decisions be taken by qualified majority in the Council on a proposal by the Commission. This was largely supported, but Prime Minister Rutte insisted on the decisions in the Council being taken by unanimity, including for payments. This was politically unacceptable for the main beneficiaries of the RRF money and legally more than problematic, not to say impossible. President von der Leyen was firm on this point, saying that she saw this insistence on unanimity as an expression of mistrust against the Commission. The European Council decided on majority voting, but with a mechanism that would allow a delegation about to be outvoted to raise the point at the European Council; in that case, the latter would then exhaustively discuss the matter. 'Exhaustively' sounds a bit strange, but it was definitely better than "decisively" which had been floated in the course of the discussion; the latter would have implied that the final decision would be taken by the European Council, hence by consensus.

The rebates (called 'corrections' in the budgetary jargon): they go back to Mrs Thatcher's *"I want my money back"* in the 80s. The problem at the time was that the British benefitted far less from the EU expenditures than others because their agricultural sector was small, and at the time the CAP accounted for over 70% of the EU budget! At the European Council in Fontainebleau in 1984, this quarrel was solved with the introduction of a rebate for Britain. Unfortunately, the negotiators forgot to insert an end date into the agreement, which meant that in the future, whenever the rebate was contested, the UK just blocked any proposal to do away with its rebate. Worse, from the point of view of 'orthodox Europeans', in the course of the following decades some other delegations negotiated a "rebate on the rebate", and some new rebates were introduced. Presently, there are five countries benefiting from a correction, Austria, Denmark, Germany, The Netherlands, and Sweden. At the beginning of the negotiation, there were many calls to profit from the exit of the UK to abolish all rebates. That was always wishful thinking, and the fall-back position was to make the rebates degressive, phasing them out over time. But with the addition of the recovery part linked to the budget, even this hope was quickly dashed. The *frugals* plus Germany made it very clear that they would not sign up to the new deal without preserving and even slightly increasing their rebates.

Once positions had evolved on these key points, it was reasonable to predict a positive outcome. That does not mean that it was easy to solve another set of difficult questions set out below.

The level of the MMF: there were complaints in the camp of the net receivers and on the part of the EP about some cuts made in the course of the Council negotiation in some future-oriented programmes like HORIZON 2021-27 and Erasmus+. But these were cuts to the increases proposed by the Commission, not cuts compared to the preceding MMF figures; the final amounts were still much higher than during 2014-20. And then of course there were the significant additions in the years 2021-23 via the NGEU.

There was also a debate about a possible last-minute increase in the last year of the 2014-2020 MFF; the Commission proposed another EUR 11 billion. This was rejected, but the European Council decided on some retroactivity for the funding under RRF and REACT- EU: thus, relevant actions that had started as from 1 February 2020 and pursued the objectives set out in the new funds would be eligible for financing under those two funds.

Climate change: after some discussion, the EUCO accepted to raise the overall target for climate-related action to 30% of MMF and Recovery expenditure. This was a recognition of the fact that the fight against climate change could not be sacrificed on the altar of 'recovery'. This was a major boost for a transition towards a carbon-free Europe.

The RRF criteria: as we have seen, the Commission had proposed to base the distribution among Member States on economic and unemployment criteria relating to the period 2015-2019. This was rather strange for a fund created because of the COVID-19 crisis. The Commission argued that those factors, above all the unemployment rate, gave a truthful picture of the relative resilience of the Member States. President Michel decided, for reasons of predictability, not to touch the distribution on this basis for 70% of the money, but to base the distribution of the remaining 30% on the loss in real GDP observed over 2020 and on the cumulative loss over 2020-21. This was finally accepted by all.

The rule of law: there had been an ongoing debate in the Union on the respect of the rule of law. The Lisbon Treaty introduced Article 7 of the TEU which allowed to address a risk of a serious breach by a Member State of the values referred to in Article 2 TEU. The Commission had put forward in 2018 a legislative proposal on a mechanism linking the budget and the respect of the rule of law, with the strong support of most Member States. The Council Legal Service however pointed out that in the presence of Article 7 TEU (primary law) to enforce the respect rule of law, it was not possible to create a different mechanism by secondary legislation. The only way around this problem was to adopt a regulation whose primary aim was the protection of the financial interests of the EU, and to link that to the respect of the rule of law by Member States. This was initially opposed by Poland and Hungary who deemed the definitions used too vague, hence liable to be politically interpreted against them. They considered that the Article 7 hearings initiated against them were unfair and singled them out for political reasons. The solution found by the Heads was to underline the importance of both the protection of the Union's financial interests and the respect of the rule of law, and to adopt a regime of conditionality to protect the budget. The details of this were not agreed in July but during the final stage of the negotiations in December 2020.

Right at the very end of the July marathon, one small issue remained: the distribution of gifts to individual delegations to solve specific situations, to sweeten one or the other pill, or sometimes simply because national leaders asked for it at the right moment. This has always been the case in MFF negotiations. Those who are interested can look at paragraphs 67 and 94 of the final EUCO conclusions. Purists will not like this, but it is part of European life!

3) The Finalisation of the Political Agreement: Second Semester 2020

Nothing is ever easy or straightforward in the Union. The European Council achieved a (potentially) historic agreement on 21 July. But it was not the end of the story. Now the Council entered a gruelling clinch with the EP, played out in 13 political trilateral meetings and countless technical ones. The July agreement was a political agreement that had still to be transposed into actual legal texts. This was quite a complex task and required intense negotiations in the Council and between the Council and the EP. The MMF is in fact composed of three elements with three different procedures:

The Own Resources Decision (ORD), which decides on the way the EU budget is funded. As we have seen, the decision is taken, in accordance with a special legislative initiative, by the Council acting unanimously, after consultation of the EP. The decision must then be ratified in all 27 Member States.

The MFF Regulation proper, which fixes the overall level of expenditure, the repartition among the various headings and the annual ceilings, requires unanimity in the Council and the EP's consent.

The various regulations (more than 30) that serve as the legal basis for spending the money are adopted according to the ordinary legislative procedure (Article 294 TFEU), requiring a proposal by the Commission and agreement between the Council and the EP.

As to the new Resilience and Recovery Fund, it was based on Article 122 TFEU, which foresees a proposal by the Commission and a decision by the Council, without a role for the EP.

The problem with the negotiation was that it took place under slightly false premises. The EP believed, or pretended to believe, that after the agreement at the level of EUCO a completely new negotiation would start between the Council and the EP. This was of course not the case, because of the legal realities set out above. The EP tried to lump all these elements of the package together and to have them treated as if co-decision was the default procedure. This was not possible; but, on the other hand, the EP had the power to refuse its consent to the MFF Regulation and to block the specific regulations that are necessary for the disbursement of the sums foreseen in the budget. It would only deliver its part if the Council accepted to take into account, at least to some extent, the EP position on all the files.

On the RRF (Article 122) and the handling of external assigned revenue, the Council accepted that in view of the imbrication with the MFF it made sense to give a role to the budgetary authority (i.e., EP and Council) in the procedure; this was done in the Interinstitutional Agreement that traditionally goes with the MFF package.

On Own Resources, the Council accepted to adopt a common roadmap for the handling of this sensitive file in the future. Since this was not really in line with the respective competencies, it insisted that this roadmap could only be a political commitment, and not be legally binding.

Concerning the MFF, it was clear from the start, as happened in previous MFF negotiations, that the EP, before giving its consent, needed some concessions, real or sometimes optical. That is why already during the discussions within in the Council, the Presidency would regularly exchange views with the EP to sound out its views. That meant that on quite a few issues the EP position was already to some extent reflected in the Council text. But when the EP started off the discussions by requesting increases for 15 programmes amounting to more than a hundred and twenty billion euros, this was of course a no-go area after the EUCO had given its clear guidelines to the Council. In the end, the two sides settled for an increase of under €20 billion.

Then there was the difficult issue of the protection of the financial interests of the EU and the rule of law. Here, the legal basis was co-decision, and the EP had every right to fight for its views. The negotiations in the end were more constructive and business-like as expected, and a compromise was found thanks to the very hard work of the German Council presidency. After some drama and continued resistance in the Council to the draft deal, the regulation on conditionality was agreed, and this led to the final unblocking of the overall package in December 2020.

Conclusive Words

ASSESSMENT OF THE DEAL: A HISTORIC MOMENT?

History will decide in the end, but the deal reached certainly has the potential to be seen as historic, for the following reasons:

The package agreed amounts to EUR 1.07 trillion under the MFF (for the years 2021-7) and €750 billion under NGEU (for the years 2021-2023). With the €540 billion for the three safety nets (for workers, Member States, and companies) adopted in June 2020, one arrives at the staggering figure of EUR 2.36 trillion, without taking account of the actions of the ECB.

The architecture of the recovery part is innovative and gives the EU a new dimension. The Commission will, on behalf of the EU, borrow €750 billion on the financial markets and that money will then be used for loans to the Member States (€360 billion) and, in a revolutionary movement, also for grants (€390 billion). This means that the EU will become a major player on the bond markets, which in turn will enhance the status of the euro as a reserve currency. To be sure, the NGEU is meant as a one-off instrument, linked to the Covid-19 crisis; the *frugals* strongly insisted on this not being a precedent. But this is probably wishful thinking. A recipe that works in one extreme situation will inevitably come up again at the next extreme occasion. We have recent proof of this. At the time of the writing of this article, the EU is debating about a possible new investment fund to counter the effects of Russia's war against Ukraine. And the success of the joint procurement for vaccines in 2020 led, in 2022, to the setting up of a platform for joint buying of energy supplies in 2022[18].

The money borrowed by the EU will have to be repaid, and the EU budget is the ultimate guarantee for doing so. The exact details of this are not yet entirely clear. But we do know that there are only three ways to ensure the necessary funds to repay the grants part: increase the contributions of the Member States, reduce EU expenditure, or create new EU own resources. The latter would of course be the most rational course. The creation of new own resources has been a long-running theme in EU discussions. While the European Council, at this stage, only decided on one new, relatively modest, own resource linked to the use of non-recycled plastic, it did invite the Commission already in 2021 to come up with proposals for a carbon border adjustment mechanism and on a digital levy, and later a revised ETS scheme and a financial transaction tax. The need for repayment will, for sure, create a new context and heighten the chance of agreement on future new own resources. That would represent another qualitative jump for the EU.

The leaders agreed, despite or maybe because of the present crisis, to increase the amount of the funds both under the MMF and the RRF for the purpose of fighting climate change to at least 30%, which represents an enormous amount. This will allow the EU to retain its leading role in the protection of the environment and to use the climate challenge as a lever for a strong and competitive economy.

The final point relates to geopolitics. The Union has shown resilience and given the lie to the regular announcements of its imminent demise. In a world of brutes, this matters.

A FINAL WORD ON COMMUNICATION

All through the process, there was a lot of talk about division, about a lack of unity, about dithering. All of this was true, but it was entirely natural, too. Agreeing on such major issues requires hard work, patience, and time.[19] What counts is the final outcome, not the process. The press bases their writing on the communication coming from the participants in the meeting. But it is also true that journalists like to focus more on drama and failure than on explaining the niceties of the EU's functioning. *Pro domo* communication by institutions, each portraying itself as the decisive player, combined to the jockeying for influence by the Member States, and the way the press works, all combine to creating an impression of disunity and even chaos. On 26 March 2020, when the EUCO adopted its first written statement on the COVID-19 crisis, the whole attention seemed to be on one paragraph (out of 22), the one that related to the future financing of the recovery. The citizen can therefore be forgiven for failing to see the importance of the message and of the tasking of the Eurogroup to work on the issue at hand; this in fact launched the process that, a mere four months later, led to a major and potentially historic breakthrough. The EU has an uncanny talent for snatching defeat from the jaws of victory in terms of communication. Tocqueville once remarked that the Americans indulged in *"the constant utterance of self-applause"*. We Europeans tend to do the opposite and to belittle our achievements. Some scepticism is healthy; systematic scepticism is damaging.

The handling of the COVID-19 crisis is a perfect case to study why the EU matters and how it functions. It is also testimony to the EU's ultimate capacity in delivering when it matters.

Endnotes

1 https://www.ecfr.eu/article/commentary_seven_early_lessons_from_the_coronavirus

2 The IPCR had first been used extensively during the 2015 migration crisis.

3 Under this framework a staggering EUR 1.3 trillion would be authorized over the next months.

4 https://www.consilium.europa.eu/en/press/press-releases/2020/03/10/statement-by-the-president-of-the-european-council-following-the-video-conference-on-covid-19/

5 https://www.consilium.europa.eu/en/meetings/european-council/2020/03/17/

6 https://www.consilium.europa.eu/en/press/press-releases/2020/03/26/joint-statement-of-the-members-of-the-european-council-26-march-2020/

7 The Eurogroup is composed of the Finance Ministers of the Member States that share the euro as their currency. (19 in 2020; 20 since the joining of Croatia at the beginning of 2023). It happens quite frequently, however, that the Ministers of the non-euro Member States are invited to the meetings because the issues discussed concern all members of the EU.

8 See for instance the headline in Le Soir of 27 March 2023, which referred to the "profound divisions among the 27."

9 "Black Swans" are momentous occurrences of unforeseen and unpredictable events, with significant consequences, often shaping the history of mankind. (See Nassim Nicholas Taleb, *The Black Swan (The Impact of the highly Improbable)*, Penguin Books 2007. Some people contest the use of the term 'black swan' in this instance because there had been prior warnings with the appearance of H1N1 and SARS viruses.

10 https://www.consilium.europa.eu/en/press/press-releases/2020/04/23/conclusions-by-president-charles-michel-following-the-video-conference-with-members-of-the-european-council-on-23-april-2020/

11 Since 1988, the EU regularly adopts financial frameworks that plan ahead for a period of 7 years: they fix the way the EU finances itself (in the Own Resources Decision), set the overall expenditures for the period and the ceilings for each year as well as the repartition between the various Headings (in the MFF regulation), and lay the groundwork for the adoption of the specific policy regulations that allow for the actual financial disbursements (adopted by co-decision). The latest MFF covers the period 2021-2027.

12 The EU budget represents (only) around 1% of EU GNI (Gross national Income). There are four types of own resources: the customs duties on imports to the EU, a percentage of each country's harmonised VAT (value-added tax), a resource based GNI (by far the largest source of revenue) and, from 1 January 2021, a contribution from EU Member States on the quantity of non-recycled plastic packaging waste.

13 According to Article 311 TFEU, the Council "acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, adopt a decision laying down the provisions relating to the system of own resources of the Union. … This decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements." This happened in a record time; the procedure of ratifications was competed on 31 May 2021, and the ORD entered into force on 1 June 2021.

14 The Recovery assistance for cohesion and the territories of Europa (REACT-EU) is not in itself a new funding source, but a top-up to the 2014-20 European Regional Development Fund and the European Social Fund allocations, which could be used until the end of 2023.

15 For this section, see the final result of the negotiations at https://www.consilium.europa.eu/en/press/press-releases/2020/07/21/european-council-conclusions-17-21-july-2020/

16 This is a term normally used in the context of MFF negotiations; it refers to the detailed draft conclusions the leaders negotiate on and will eventually adopt.

17 This term designates a group of countries that are net payers and worry about having to pay too much if expenditure is high: Austria, Denmark, the Netherlands, and Sweden. Finland often supports the same views, as does Germany. However, Merkel kept her distance this time, knowing she would be the determining mediator in the debate, and mindful of Germany's duties of neutrality holding the Presidency of the Council.

18 It exists but has not yet been used in practice.

19 For more details on the overall process, see "The European Council and Council of the EU: What lessons from Covid-19 decision-making?" by Paul Culley, Dirk Oldenburg, and Sophie Vanhoonacker (CEPS POLICY INSIGHTS, n°2022-21, June 2022. See also Wolfgang Wessels, Lucas Schramm and Tobias Kunstein: *The European Council as a Crisis Manager. The EU`s Fiscal Response to the COVID-19 Pandemic*. In: Studies on the European Union, Volume 19. (Nomos Verlagsgesellschaft, Baden-Baden, Germany 2022).

For anyone following the European Council, I recommend Peter Ludlow's excellent and invaluable debriefings and comments on and around the European Council meetings (EUROCOMMENT); https://www.eurocomment.eu/

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