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EUROPEAN UNION GOVERNANCE IN RESPONSE TO CRISES:

WHAT ARE THE CONDITIONS FOR EFFECTIVE AND LEGITIMATE EUROPEAN POLITICAL LEADERSHIP?

#COVID-19
#GOVERNANCE
#DEMOCRACY
#EUROPEFUTUR



« De toutes les nécessités à subir, celle de l'incapacité est la plus insupportable. »
[Of all the necessities to be endured, that of incapacity is the most unbearable.]
Chateaubriand

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ABSTRACT ■

1 ■ Lessons learned from a decade of “sovereignty crises”

After more than ten years of crises, the EU’s current operating structure gives primacy to the European Council. This predominance of national governments and of the diplomatic approach has ambivalent repercussions. It raises a twofold issue of efficacy (leading to complex and slow negotiations, causing uncertainty and preventing the EU from speaking with one voice) and of legitimacy (as the political legitimacy of members within the European Council is conferred on a national level, and not on a European scale).

2 ■ The EU faces the challenge of embodying its capacity for action and decision-making

Admittedly, progress has been made during the COVID-19 crisis regarding the EU’s ability to make key decisions, in particular with the decision to issue a common debt to finance the response to the pandemic and economic recovery. However, the health crisis has underscored structural weaknesses in the EU’s crisis management capacity –in terms of forward-thinking, preparation and decision-making– but also in the actual implementation of the solidarity principle, which must be strengthened and put into greater effect ahead of future crises. European political leadership must absolutely be clarified in terms of the rivalry between institutions and Member States.

3 ■ What can be done? Under which conditions can a European decision-making capacity and political leadership be achieved?

Resolving the EU’s “executive deficit” must entail the fostering of clearer, more legitimate and more responsible political leadership. In the short term, this would involve in particular putting a face on the response to the health crisis –for example by drawing inspiration from the “Barnier method” which highlighted a highly effective coordination between political objectives, technical implementation, the implications for the EU institutions, along with a clear leadership. In the medium to long term, three avenues emerge as key if a more legitimate, more responsible and therefore more efficient political leadership is to be developed: strengthen the “Spitzenkandidaten” system to elect the President of the Commission, reform the electoral system at the European Parliament by creating transnational lists that are likely to contribute towards bolstering the legitimacy of the choice made by EU leaders and subsequently their effectiveness. Lastly, the legitimacy and efficacy of the EU could be usefully reinforced by implementing a contract of mandate between the European Parliament, the Commission and the Council.

INTRODUCTION ■

For the last ten years and up to the current COVID-19 pandemic, crises had all been “sovereignty crises” which pose a challenge in terms of the efficacy and subsequent legitimacy of the European Union’s governance¹. Naturally, decisions have been made on both the national and European levels to mitigate some of these shocks, and the “European project is put to the test when Europe must engage in politics, *i.e.* decision-making”². However, these decisions are made in an emergency situation, which has a significant cost. In a crisis situation, this requires that the European Union and its Member States provide responses to the exceptional circumstances they are experiencing, and Europeans are frustrated to see the limits of EU governance and its “executive deficit”³. The latter refers to a weak European executive power, the stratified nature of EU institutions and the resulting lack of clear political leadership, competition between European institutions and Member States, a slow and unpredictable negotiation process between Member States, etc.

Yet as Tommaso Padoa-Schioppa (former President of the Jacques Delors Institute) wrote in one of his very first papers: “In the European Union as it stands today, and as in each of its States, democracy is suffering the same ill: an increasing difficulty for any power, whether it be central or local to respond to the requirements of the people which it has the obligation to satisfy (...). The hiatus between the requirements of Demos and the modus operandi of Kratos is one of the greatest threats to the survival of democracy as a form of government based on the principles of responsibility, autonomy and equality (...). Democracy has only been achieved in part, not because European Demos is lacking (...) but because there is no Kratos. The ability to take decisions is lacking likewise the means to implement those decisions”⁴.

Against this backdrop, this paper strives to learn from a decade of “sovereignty crises” and its implications for European governance (1.), analyse the need for a clear and responsible European leadership (2.), define the political and institutional avenues likely to foster the emergence of effective and legitimate European capacity for action and decision-making as part of a short-term and medium- to long-term strategy (3.).

1. Chopin, (2011), “Europe and the Need to Decide: Is European Political Leadership possible?”, *Schuman Report on Europe. State of the Union 2011*, Springer, and Chopin, T. (2015), “L’Union européenne en quête d’un véritable pouvoir exécutif”, in *Mélanges en l’honneur du Professeur Henri Oberdorff*, LGDJ.

2. Cohen, E., Robert, R. (2021), *La Valse européenne. Les trois temps de la crise*, Fayard.

3. Véron, N. (2013), “The Political Redefinition of Europe”, Opening Remarks at the Financial Markets Committee (FMK)’s Conference on “The European Parliament and the Financial Market”, Stockholm, June 2012.

4. Padoa-Schioppa, T. (2010) “Demos et Kratos en Europe”, in *Commentaire*, n°129.

1 ■ LESSONS LEARNED FROM A DECADE OF “SOVEREIGNTY CRISES”

1.1 ■ The ambivalence of the primacy of national governments in the decision-making process. Suboptimal intergovernmental crisis management in terms of efficiency

Under exceptional circumstances, crises can have positive effects for Europe, to the extent that the idea that European construction often advances through crises can be substantiated. We know Jean Monnet’s famous words: “Europe will be forged in crises and will be the sum of the solutions adopted for those crises”⁵. The potentially favourable nature of crises comes from the fact that they give rise to exceptional political impetus, at the highest level within Member States, *i.e.* from national political leaders, who have the ultimate legitimacy to make strategic decisions and find compromises for particularly complex issues and sometimes problems with extraordinary financial repercussions (as in the cases of the euro area crisis and the current COVID-19 crisis). It is also because the emergency requires decisions which would have been more difficult to make under the usual timeframes and procedures, particularly in areas that directly affect Member State sovereignty⁶. After more than ten years of crises, some stakeholders and analysts have theorised, in hindsight, that the key role played by heads of State and government embodies the real decision-making power at the EU level⁷. Only heads of State and government appear to enjoy the ultimate political legitimacy to make strategic decisions to tackle the political challenges posed by these “sovereignty crises”, be this in the fields of budget, migration, borders, war and peace, and healthcare, etc.

However, the primacy of national governments in decision-making processes also has ambivalent implications for European governance in response to crises. Indeed, the importance of the diplomatic approach may result in negative consequences that are even more harmful during a crisis: difficulty for the EU to speak with a single voice (with the exception of Brexit, which strengthened cohesion between the EU-27⁸) and to act efficiently and responsively. This then creates uncertainty which has a political and/or economic cost (as demonstrated by the rising cost of financial assistance to Greece during the Eurozone crisis). Furthermore, there is an increasing gap between the current operating method of the European institutions and the requirements of these crises: while steady, the time involved for diplomatic negotiations within the European Council is too slow and a feeling has been gradually developing that EU is always lagging behind a crisis. Lastly, this operating method, which receives significant media coverage compared to how the rest of the EU operates, tends to cause anxiety and instability (“last-chance summits”): the outcome of negotiations is always uncertain, the positions of the various governments appear to be regularly subject to national electoral timetables (and even regional calendars), decisions made by governments can subsequently be challenged at the national level, particularly in situations whereby many leading coalitions are very politically fragile within their countries. A collective executive power, which in practice is fragmented, is not optimal to achieve efficiency.

5. Monnet, J. (1978), *Memoirs*, Collins; Chopin, T. (2021), “Les crises : moteur ou frein de la construction européenne ? Leçons de dix ans de chocs de souveraineté”, *Les Cahiers français*, « Démocratie : crise ou renouveau ? », n° 420-421, *La Documentation française*, mai 2021.

6. Bertoincini, Y., Chopin, T. (2010), *Politique européenne. Etats, pouvoirs et citoyens de l'Union européenne*, Presses de Sciences Po / Dalloz, coll. “Amphi”, chap. 12.

7. Van Middelaar, L. (2019), *Alarums and Excursions. Improvising politics on the European stage*, Agenda Publishing.

8. Chopin, T., Lequesne, C. (2020), “Disintegration reversed: Brexit and the cohesiveness of the EU27”, *Journal of Contemporary European Studies*, 13 (1).

1.2 ■ A problem of legitimacy and responsibility

The current operating method, which gives primacy in particular to the European Council –bringing together the leaders of the EU’s Member States–, also raises issues of clarity and legitimacy for European citizens. Over the last ten years, the decisions made in response to the crises were only made at the national and European levels in a state of emergency. Here, again, Jean Monnet claimed that “People only accept change when they are faced with necessity, and only recognize necessity when a crisis is upon them”⁹. Yet this constraint and necessity has a significant cost, not only economically, as demonstrated by the euro area crisis, but also politically, as it reduces the scope for political responsibility and choice. When not faced with an emergency situation, the decision-making ability also appears to be extremely reduced: repeatedly conflictual and extended negotiations have underpinned the shortcomings of the intergovernmental model¹⁰ both in terms of efficacy and legitimacy since, in this model, **diplomacy takes precedence over democracy**. More accurately, this means that each Member State exercises its national democratic legitimacy, without a European democratic legitimacy that can resolve conflicts between national democratic mandates, the sum total of which does not necessarily give rise to a European democratic mandate. The latter results in growing frustration which tends to foster Euroscepticism. And, in this vicious circle, such frustration makes it more difficult to achieve the political union that could create the right conditions for a more legitimate and therefore more effective integration.

Moreover, once a decision is the result of a negotiation requiring unanimity –during which differing viewpoints are expressed–, it is often only made at the last minute, just before the set deadline. As this decision is not credible, it runs the risk of being called into question with all parties returning to the negotiating table. This gives rise to the feeling of “Russian roulette” or a game of bluff, involving great difficulty to come to a decision as well as a waste of time. This has nothing to do with the system of constitutional democracy which sets out and provides the necessary instruments to make decisions against a backdrop of diverging political preferences: the majority vote together with constitutional rules that protect the minority. Once again, this raises the question in particular of the efficacy and legitimacy of the European Council and its decision-making processes: in reality, this is a European institution for which political consensus may be suspended at the discretion of a small minority and which can make a decision that none of its members can subsequently defend in a situation of complete political irresponsibility¹¹.

9. Monnet, J. (1978), *op. cit.*

10. See Benoît Coeuré (2015), former member of the Executive Board of the ECB: “The raison d’être of [the intergovernmental] approach is, admittedly, to allow each government to sign up to shared decisions. However, experience shows that it does not ensure that governments take ownership of those decisions at national level. What is more, it does not prevent the polarisation of the debate at European level or the temptation to engage in nationalist posturing”, in “Drawing lessons from the crisis for the future of the euro area”, speech at the French Ministry for Foreign Affairs during “Ambassadors Week”, Paris, 27 August 2015. See also Coeuré, B. (2016), “The future of the euro area”, speech given at the Cercle Europartenaire, Paris, 21 March 2016.

11. “Political responsibility” refers to the following requirements: (i) to be able to commit to making decisions on the basis of the mandate received from the people (this is not the case for national governments which have to make compromises on a European level, nor for MEPs who have very limited authority over the budget policy whether it is European – the European Parliament does not have the last word on the revenue section which is the crux of the matter – and especially if it is national); (ii) to be accountable to voters regarding decisions made (which is not the case either, as: a/ national governments can say “it’s not what I wanted” and thereby place the accountability on their partners or on the need to find a compromise in a system governed by unanimity; b/ the Parliament can place the responsibility on the Council when there is no majority common political approach or persuasion).

Ultimately, crises expose the high level of complexity that is a feature of the European political system and its cost in terms of efficacy and legitimacy. The complexity of the EU's structure and the heterogeneity of national preferences and interests make it difficult to make decisions and implement common projects. Up until now, the European Union has proven itself able to abide by rules and is characterised by a difficulty to make discretionary choices, for a variety of different reasons: distrust in European discretionary policies due to the moral hazard¹² or the transfers of political sovereignty that may be related to it, the lack of a genuine European executive power; the stratified structure of EU institutions and, consequently, the lack of clear political leadership; competition between institutions and States; but also Member States' desire for reciprocal control. Above all, the slow negotiation process between Member States appears to affect the efficacy, clarity and legitimacy of the decision-making process in the effort to define crisis management and recovery strategies.

¹². See the approach developed by the seminal article by Kydland, F. and Prescott, E. (1977), "Rules rather than Discretion: The Inconsistency of Optimal Plans", *Journal of Political Economy*.

2 ■ THE EU FACES THE CHALLENGE OF EMBODYING ITS CAPACITY FOR ACTION AND DECISION-MAKING

2.1 ■ Management of the COVID-19 crisis: decisions and divisions

When faced with crises, States always believe themselves to be the custodians of sovereignty and the final arbiters of the decisions to make in response to exceptional circumstances¹³, as demonstrated for instance by the refugee crisis in the fields of migration and asylum policy as well as external and internal border control¹⁴. With the COVID-19 crisis, are there reasons to believe that “it’s different this time”? On the one hand, the European institutions –the European Commission¹⁵, European Central Bank (ECB), European Investment Bank (EIB), the European Parliament– have taken the initiative as part of their respective roles, without waiting for a consensus between Member States, even though some initially appeared to want to block these initiatives, thereby restricting their scope and efficacy. Yet, generally speaking, the European response to the pandemic has been swifter and stronger, and has entailed both a cyclical and structural dimension. The intervention of the European Central Bank (ECB) has successfully ensured the continuity of financing for the economy in the entire euro area in response to market destabilisation and the need for increased funding to get through the pandemic and the ECB continues to provide highly accommodating financing conditions for all economic players. On the other hand, Member States have provided significant short-term budget support, of up to almost 7% of GDP in 2020 in the euro area¹⁶. The most significant breakthrough was the decision to issue a common debt¹⁷ to finance the pandemic response and economic recovery. The European recovery plan (Next Generation EU) goes further, allowing the Commission to borrow an amount of €750 billion (€390 billion in subsidies and €360 billion in loans) on behalf of the EU. Traditionally, the constitution of a loan comes under a political prerogative of sovereignty. From the EU’s standpoint, the agreement on a common debt is a powerful symbol in terms of political unity and a very strong commitment towards the future for its common reimbursement in a spirit of solidarity. This decision lays the foundation for a European Treasury –the European Commission has started to play this role– and the possibility of issuing common sovereign debt will be used as European protection for national debts.

13. Cf. the famous definition by Carl Schmitt which opens his *Political Theology* (1922): “Sovereign is he who decides on the exception” (“Souverän ist, wer über den Ausnahmezustand entscheidet”).

14. Pascouau, Y. (2021), “Circulation et contrôle : la fin de la complémentarité ?”, to be published; and from the same author (2020), “L’Europe de l’asile, une politique à l’abandon ?”, in *20ème état de lieux de l’asile en France et en Europe, Forum Réfugié-COSI*, 2020; (2016), “Crise des réfugiés et contrôles aux frontières intérieures de l’espace Schengen : quand les faits invitent à une relecture du droit”, *Revue Europe* n° 3.

15. The Commission suspended the rules of the Stability Pact and relaxed competition rules (in particular those which govern State assistance). In addition, it proposed a solidarity instrument (SURE) for short-time work arrangements.

16. It is lower than the US effort (around 10% in 2020) but the European measures concerned to a greater extent job preservation rather than revenues (the USA does not have the same job protection provisions). Moreover, the envelope allocated to the measures which aimed to provide liquid funds for companies (for example as a loan guarantee) was broader in the euro area than in the USA (17% against 5.7% of GDP).

17. The issuing of common debt has financed the European Temporary Support to mitigate Unemployment Risks in an Emergency instrument (SURE) which was very useful in the short term and mobilised €100 billion made available to Member States as loans to mitigate the socio-economic repercussions of the pandemic. The most fragile economies of the euro area were therefore able to enjoy more favourable financing conditions to protect jobs.

Nevertheless, is this decision temporary and exceptional in relation to the current health crisis? Or will the decision be made to establish such a fundamental commitment over the long term? Even if it is temporary, we must be able to expect such a common effort and response to future crises of this kind; moreover, if economic and financial tensions were to re-emerge due to successive waves of coronavirus, a strengthening of the instruments adopted following the first waves should not be ruled out. Above all, during this crisis, the EU-27 have once again exposed their national divisions regarding the health responses to the crisis. Against this backdrop, the European Council has emerged as the sounding board of some national divisions, with in particular the resurgence of the North-South divide as was the case during the Greek crisis. However, the two situations are in fact very different: in 2010, the crisis highlighted the default of some Member States and it was an asymmetrical crisis. In 2020, no Member State is responsible for this global health pandemic that affects everyone. The oppositions between States and public opinions which demand solidarity and those which reject it have had very adverse repercussions, particularly the deterioration of relations between heads of State and government that can only lead to resentment and rancour: *“The climate between heads of state and government and the lack of European solidarity pose a mortal danger to the European Union. The germ is back”*, warned Jacques Delors at the end of March 2020. Furthermore, while progress was made during this crisis regarding the ability to make a major decision during the European Council meeting in July 2020, the problem is that the EU always gets stuck on actual implementation: the recovery plan has not yet been rolled out¹⁸ and, as can be seen, there are delays in the vaccination strategy concerning production capacity¹⁹.

This type of crisis management generates uncertainty and distrust among citizens and enables criticism from other powers (China and Russia for example) of the supposed inefficacy of European responses. The shortcomings of European governance revealed by the crises in recent years must call for an analysis of the conditions for a real executive power –to be understood as a genuine decision-making and crisis management capacity in response to exceptional circumstances– on a European scale.

2.2 ■ Clarifying European political leadership: “Who decides?”

European political leadership must absolutely be clarified to tackle the rivalry between institutions and Member States in the “post-Lisbon” stratified governance, a prerequisite for an efficient and legitimate decision-making capacity. Under “normal” circumstances, in theory, identification of the EU’s executive power may seem easy, yet in practice, the European governance model is already highly complex²⁰. Let us remember the spirit of the Treaty of Lisbon: the President of the Commission, supported by the European Parliament, must show political leadership with regards to the EU’s internal policies and enjoys a monopoly of initiative. The European Council has a role of political impetus as it aims to define the EU’s major strategic axes. Its President facilitates the consensus between heads of State and government, working towards the coordination of national policies guided by community objectives and the holding of important international meetings²¹.

¹⁸. To be eligible for the Recovery and Resilience Facility, EU Member States must present national plans defining their reform and investment programmes until 2026 in six areas (the green transition, digital transformation, smart, sustainable and inclusive growth and jobs, social and territorial cohesion, health and resilience and policies for the next generation, including education and skills). At this stage, 18 Member States have ratified the decision on the necessary own resources to implement the recovery plan.

¹⁹. The European Commission has come under fire for the slow vaccine roll-out. However, while the Commission has made some mistakes (slow negotiation process with pharmaceutical companies, maximum sharing of legal responsibilities with them in the event of side effects, pressure on vaccine prices, insufficient attention paid to industrial production capacities), the responsibility of States should also be considered; and, once again, the Commission finds itself an “easy scapegoat for the collective failures of Member States”; see Platon, S. (2021), “Crise du Covid-19 : cessons de blâmer l’Union européenne”, *Les Échos*, 12 March 2021.

²⁰. To our knowledge, there are no other examples of executive power shared between several institutions on different levels of government, not even in federations. This places the European Union’s operating method on a par with that of traditional international organisations.

²¹. Lamassoure, A. (2008) “L’Europe peut-elle fonctionner sans leader ?”, in Gnesotto, N., Rocard, M. (dir.), *Notre Europe*, Robert Laffont, 224-235.

Yet, the crises which have affected the European Union, its Member States and its citizens for more than ten years have strengthened the role of the European Council²² with major political, legal and institutional consequences, to the extent that it has become the main political decision-maker within the EU, now enjoying *de facto* legislative competences that are not authorised by the treaty²³, calling into question the EU's institutional architecture which appears untenable²⁴. It is in this perspective that the EU's political system is now characterised by a form of "new intergovernmentalism"²⁵. The problem is that, as stated recently by Alain Lamassoure, "the President of the Council does not embody the Union any more than the President of the Commission exercises European power. The former is the Secretary-General of Olympus, more than its Jupiter. And despite her exceptional qualities, for the citizens of Europe Ursula von der Leyen remains a top international civil servant, but she is not their leader: they did not elect her. Custodians of national sovereignty, the heads of State and government are confiscating "European sovereignty" as European power for the benefit of their collective club. And the Union finds itself headless for too many crowns"²⁶.

As regards the exercise of executive power, differences may be harmful in general, but particularly so in such exceptional circumstances. While conflicts could favour a considered choice within a legislative body by encouraging deliberation and analysis of arguments and positions, they may cause negative effects in the exercise of executive power²⁷, particularly when decisions must be made during a crisis. From this point of view, a fragmented executive power is not optimal²⁸ and, when applied to the case of the EU, the European Council, sometimes considered to be a "collective executive power" cannot in practice exercise a decision-making power effectively. Furthermore, a democratic system supposes an answer to the question "who does what?", a prerequisite for leaders' political responsibility. Yet, the fragmentation of powers on a European level can only lead to a dilution of political responsibility which must now be clarified. In this regard, it is striking to remember the terms under which the Founding Fathers of the US Confederation already expressed this risk. They stressed that, not only could a plural executive power not act or decide effectively, but in addition it hinders the efficacy of responsibility mechanisms: "one of the weightiest objections to a plurality in the Executive (...) is, that it tends to conceal faults and destroy responsibility"²⁹. In this respect, resolving the EU's "executive deficit" must entail the fostering of clearer, more legitimate and more responsible political leadership.

22. Wessels, W. (2015), *The European Council*, Basingstoke, Palgrave Macmillan.

23. Pascouau, Y. (2017), "The European Council and the drift of power", *European Migration Law*, 27/11/2017. <http://www.europeanmigrationlaw.eu/en/articles/points-of-view/the-european-council-and-the-drift-of-power.html>

24. Fayette, J. (2021), "UE : Le Parlement, le Conseil et l'état de droit", *Telos*, 26 January. <https://www.telos-eu.com/fr/politique-francaise-et-internationale/ue-le-parlement-le-conseil-et-letat-de-droit.html>

25. Bickerton, C.J., Hodson, D, Puetter, U. (eds.) (2015), *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*, Oxford U.P.

26. Lamassoure, A. (2020), "Too many sovereigns, not enough leaders!", foreword to the article by Giraud, J.-G., "The European Council: a self-proclaimed "sovereign" off the rails", *European Issue* n°574, Robert Schuman Foundation.

27. Mansfield, H. C. Jr (1989), *Taming the Prince. The Ambivalence of Modern Executive Power*, Harvard U.P., chap. 10.

28. Hamilton claims that we are "not to be enamoured of plurality in the Executive" and that "the ingredients which constitute energy in the Executive are, first, unity", because it settles matters in the "most critical emergencies of the state" when a decision is a "most important measure", in (1787-1788), *The Federalist Papers*, n°70.

29. *Ibid.*

3 ■ WHAT CAN BE DONE? UNDER WHICH CONDITIONS CAN A EUROPEAN DECISION-MAKING CAPACITY AND POLITICAL LEADERSHIP BE ACHIEVED?

In this general context, resolving the EU's "executive deficit" must entail the fostering of clearer, more legitimate and more responsible political leadership. Here, we should break this down into two levels on which such a strategy could be developed: short-term responses against the current backdrop of present-day crisis management, and medium to long-term responses which are informed by ten years of "sovereignty shocks" –during which the issue of solidarity was blatantly raised each time– in order to prepare the post-crisis period. The following proposals may be considered as a contribution to discussions which have just been opened as part of the Conference on the Future of Europe.

3.1 ■ In the short term: the urgency of the political embodiment for European responses to the health crisis

The health crisis has underscored structural institutional weaknesses concerning the EU's crisis management capacity –in terms of forward-thinking, preparation and decision-making– but also in the actual implementation of the solidarity principle, which must be strengthened and put into greater effect ahead of future crises. On this level, two key elements are important. Firstly, establishing a figurehead for the common fight who would offset the lack of leadership and embodiment with regards to crisis management. Secondly, embodying and presenting the various forms of solidarity that exist in Europe, in particular by activating the solidarity clause that enables the EU and Member States to act jointly and use the instruments at their disposal to provide assistance to those populations which are struggling the most.

■ Establish a figurehead for the common fight against crises

Public opinion needs to put a political face to the crisis response³⁰. The pandemic naturally places national leaders on the front line, particularly in several countries where heads of State must warn, protect and reassure the population. On a European level, the President of the Commission, Ursula von der Leyen, Commissioners such as Thierry Breton for the French public and the President of the ECB, Christine Lagarde, are present in the media and explain their actions to tackle COVID-19. However, the current crisis highlights the stratified nature of European institutions which are in competition with one another. Nobody speaks "on behalf of the EU" as a single body. **European solidarity therefore requires a common reference figurehead that would embody common political actions** for solidarity on an EU level, for instance Michel Barnier had embodied, in terms of public opinion, cohesion between the EU-27 during the Brexit negotiations. Like Michel Barnier, **a figure connected to the Commission but mandated by the EU-27 and reporting to the European Parliament is needed**. Once again, such a political embodiment is essential.

³⁰. See Chopin, T., Koenig, N., Maillard, S. (2020), "The EU facing the coronavirus, a political urgency to embody European solidarity", *Policy paper* n°250, Jacques Delors Institute, April 2020 – <https://institutdelors.eu/wp-content/uploads/2020/08/PP250-ChopinMaillardKoenig-EN-1.pdf>

The example of the “Barnier Method”³¹ highlights the conditions for effective and legitimate governance in response to crises: executive delegation of the Council, a mandate defined by Member States on the basis of which the chief negotiator for the EU Commission was able to defend a unified position in the name of Europeans’ common interest. It should also be stressed that the “Barnier Method” has underscored a very effective link between the political objectives defined by the Council, the embodiment of clear political leadership by Michel Barnier, who was able to rely on the technical roll-out of an ad hoc task force to coordinate negotiations in close cooperation with the Secretariat-General, all Commission departments as well as the European External Action Service. It would appear that this model works better than others and allows for an endorsement, and even a “form of collective discipline”, by Member States. Such a method could be applied to other crises than Brexit, in response to current and future crises.

■ The urgency to politically embody European solidarity within and also outside of the EU

It is also essential to embody and present the different forms of solidarity that exist in Europe, in particular by activating the “**solidarity clause**” (article 222 of the TFEU) which allows the EU and its Member States to “act jointly in a spirit of solidarity” and to use the instruments at their disposal to prevent a terrorist threat in the territory of one of the EU Member States or to assist an EU countries in the event of a natural or man-made disaster. This clause was introduced in European treaties following its early implementation after the Madrid terror attacks in March 2004. It can be triggered when a Member State, having exhausted all other means, is faced with a “situation (that) obviously exceeds the reaction capacities at its disposal.” After the terrorist attacks on its territory on 13 November 2015, France triggered another clause, the so-called “mutual defence” clause, which was also introduced by the Lisbon Treaty in response to cases of armed aggression and inspired by the one already in force within NATO (Article 5 on mutual defence). Hitherto unused, this provision allowed Paris to receive assistance from its European partners in its fight against Daesh.

The current global pandemic should meet the disaster criterion in the solidarity clause. On 23 March 2020, the German Foreign Minister, Heiko Maas, suggested³² that the clause should be activated to facilitate the sending of material and teams to the areas in the EU in the most urgent need. The implementation of this clause implies in particular that the Member State concerned submits its request to the Commission, which assesses the requirements together with the High Representative for Foreign Affairs, and where necessary, submits operational proposals to the Council. This clause was integrated to assist one State which triggers it. In the current situation of a pandemic affecting all twenty-seven EU Member States, albeit in an unequal and constantly evolving manner, a unanimous triggering of the clause by the Council would, at this advanced stage of the health crisis, mean that the EU-27 would undertake to act “jointly in a spirit of solidarity”. The latter would render this solidarity politically official. Its triggering would not at all deprive the Commission of what it has already initiated, but rather would provide it with a political support for its initiatives. Above all, such a decision would constitute a break from the “beauty contest” between European institutions each pushing their own initiatives taken separately, together with divergences between States, as the shambolic vaccine strategy has demonstrated.

31. See Fabry, E. (2021), “Using the ‘Barnier Method’ to deal with China”, *Blog Post*, Jacques Delors Institute, 15 February 2021 – https://institutdelors.eu/wp-content/uploads/2021/02/BP_210215_MethodeBarnierFacealaChine_Fabry_EN.pdf

32. <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/maas-aussenrat-coronavirus-/2327894>

3.2 ■ In the medium to long term: responding to the double deficit of political leadership and democratic legitimacy

Beyond this, a medium to long-term institutional reform is necessary in order to foster the development of a genuine political leadership that is democratically accountable on a European level. Many recommendations could be developed here, but we will focus on three key proposals³³ for the beginning of the Conference on the Future of Europe.

■ Consolidate the “Spitzenkandidaten” system to elect the President of the Commission

In this respect, the first proposal concerns the need to consolidate the “Spitzenkandidaten” system to elect the President of the Commission, as the method of appointment for this role needs at the very least to be clarified and settled. The President is intended to be the leader of a parliamentary majority and the (previously appointed) representative of the political group having won the largest number of seats in the European Parliament during the European elections. It can be considered that this observation results from an offensive interpretation of article 17.7 of the Treaty of the European Union, which appears to have been the case with the election of Jean-Claude Juncker in 2014 but which was called into question by the European Council following the 2019 European elections. It is essential to emphasize that this simple practice is preferable in terms of both legitimacy and efficacy for at least two reasons. Firstly, the implementation of the “Spitzenkandidaten” system and the improvement of its implementation methods, with a view to fostering its endorsement by European voters, is a key point for any agenda aiming to rebalance the “diplomatic” and civic approaches for the choice of Commission President. Yet firmly rooting the “Spitzenkandidaten” system in the EU’s political reality is also important to enhance efficacy, following the difficulties which arose after Ursula von der Leyen’s surprise election: it is because her successor will have taken up office after having campaigned amongst Europeans and having obtained a double majority in the European Council and Parliament that he/she will enjoy the necessary political strength to preside the Commission and energize the EU.

The objections to the “Spitzenkandidaten” from certain heads of State and government or by observers are doubly surprising. Firstly, because this system does not automatically guarantee that the Presidency of the Commission is assigned to the EPP: the EPP’s coming out on top is not a foregone conclusion, but simply reflects a preference expressed by voters, which may disappear in the short or medium term, and which otherwise must be acknowledged democratically. Secondly, and above all, because the “Spitzenkandidaten” system only provides that the leader of the party which comes out first is tasked with attempting to form a majority coalition likely to invest he or she with the role of Commission President, then to invest the members of his/her College. As in any parliamentary system, there is nothing stopping the political groups who come second, third and fourth from refusing to agree to a coalition with the person who has come out on top and to subsequently attempt to form an alternative majority: in the event of an initial failure, it is up to the leader of the political group that comes in second to then try to form such a majority coalition, etc. It is therefore to be hoped for that the European Council will no longer contest the very existence of the “Spitzenkandidaten” system, and that its members will take the practice seriously in 2024.

³³ Some of the following developments were initially presented in Bertoncini, Y., Chopin, T. (2019), “Le choix des gouvernants de l’Union. Pour un meilleur équilibre entre démocratie et *diplocratie*”, *Le Grand continent*, November 2019. <https://legrandcontinent.eu/fr/2019/11/20/le-choix-des-gouvernants-de-lunion-pour-un-meilleur-equilibre-entre-democratie-et-diplocratie/>; see also Bertoncini, Y. (2019), “The EU on our behalf. How to reinforce EU democracy”, Report, Terra Nova and Chopin, T., Macek, L. (2016), “Réformer l’Union européenne : un impératif politique”, in Zarka, Y.-C., Perrineau, P., Laquière (dir.), *L’Union européenne entre implosion et refondation*, Editions Mimesis, 57-69.

■ Reform the electoral system for the European Parliament election: introduce a “dose” of transnational MEPs in the European Parliament

This is probably the most difficult measure to adopt, as it would require the unanimity of Member States (and a majority in the Parliament). We will not spend too much time expanding on this point. However, to reinforce the drive to politicise the European Union, a voting procedure that strengthens majority rule is required (while preserving the European Parliament’s strong level of representation –the avenue most likely to be explored being that of a “majority bonus” to the winning political group). This would make possible, and even foster the development of transnational lists.

The debate over what to do with the seats vacated by British MEPs opens up an interesting perspective in this regard. Indeed, since the latter has resulted in the availability of the 73 seats of MEPs hitherto allocated to the United Kingdom, Brexit has renewed discussions on the possible election of a fraction of MEPs on the basis of transnational lists³⁴. The creation of such lists could be a useful contribution towards a more European debate and electoral campaign and might help to round off the aggregation of national visions that often predominate. It could even play a role in consolidating the selection process for Commission President. The leaders of these transnational lists would indeed be natural candidates for the Presidency of the College in Brussels, as these lists would be subject to the votes of all EU citizens, and not only to national fractions of them. It would therefore be possible to establish a more direct link between the nomination of “Spitzenkandidaten” and voters’ choices, by defusing the objection that leader candidates are barely known beyond their country’s borders under the current electoral system.

For this innovation to be acceptable and legitimate, all votes for the lists supported by the main European parties must naturally be taken into account, whether they support its 27 national lists or its transnational list. Transnational lists would only bring together a more limited number of elected representatives, unless the national or local rooting of the current MEPs is eliminated –which would be regressive in terms of their civic attachment– or their number is doubled –which would be problematic for the functioning of the European Parliament.

The implementation of transnational lists will only be conceivable for all EU countries if the rules guarantee the presence of a minimum number of nationalities, with a view to avoiding the overrepresentation of candidates from the countries with the highest populations. If the plan for a transnational list made up of 27 candidates for example were to be adopted, it would also be necessary to include at least one representative of each of the 27 Member States. Failing this, at least half of Member States would be represented by their nationals, according to an alternating system that would prevent those from the most populous nations always being in the eligible positions at the top of the list.

If these conditions are met, the creation of transnational lists could be adopted ahead of the European elections in the Spring of 2024, which would also contribute towards strengthening the legitimacy of the EU representatives selected and therefore their efficacy as well.

³⁴. See for example Chopin, T., and Macek, L. (2018) “Pour l’introduction de listes transnationales aux élections européennes sous la forme d’une prime de majorité”, *Telas*, 21 February 2018.

■ Govern the EU via a European mandate agreement

Finally, the legitimacy of Commission members and the EU's efficacy could be usefully reinforced by the introduction of a legislative agreement³⁵ between these two institutions, but also and above all on the basis of a mandate agreement between the European Parliament, the Commission and the European Council.

The premises of such a mandate agreement already existed in 2014: the introduction of the “Spitzenkandidaten” system led the majority political groups in the European Parliament to link the nomination of Commission President to an agreement between these two institutions concerning the main political priorities to implement by 2019 (including the so-called “Juncker Plan” for investment). The “political guidelines” adopted by the European Council in June 2014 were also a form of inter-institutional agreement between this institution and the President of the Commission whom it appointed³⁶. Similarly, the summer of 2019 once again resulted in the adoption of two parallel programmes of action: the strategic agenda 2019-2024³⁷ defined by the European Council in June 2019, and the programme made official by Ursula von der Leyen's inauguration address³⁸ before the European Parliament.

The negotiation and publication of these programme agreements are very much preferable to the prevalence of opaque dealings regarding the casting of top jobs between the main European parties. The same also applies to the expression of purely institutional power struggles between the European Council and the European Parliament, concerning the primacy of their legitimacy as “kingmakers”. The aim here is therefore to ensure the long-term continuation of these programme agreements, but also to promote the adoption of a genuine mandate contract between the European Commission, the Parliament and the Council, which clears up the confusion resulting from the co-existence of two agreements negotiated in parallel. Such an inter-institutional mandate contract would provide clearer political direction and operational content for EU citizens and would be drawn up on the basis of the power balance defined by voters during the summer preceding the Commission's inauguration.



³⁵. See Lamy, L. Pons, G., Verger, C. (2019) “European elections: promoting a coalition agreement between four political families”, *Policy paper* n°240, Jacques Delors Institute, 6 June 2019.

³⁶. For further information, see “Pour un quinquennat européen”, *Report*, Terra Nova, 2017.

³⁷. See “A new strategic agenda 2019-2024”, European Council, June 2019: <https://www.consilium.europa.eu/media/39914/a-new-strategic-agenda-2019-2024.pdf>

³⁸. See “A Union that strives for more – Political guidelines for the next European Commission 2019-2024”, July 2019. https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf

CONCLUSION

Crises are a major political challenge for the EU. In the short term, European leaders must agree on progress that is practical enough to develop a real European capacity for crisis management –in terms of forward-thinking, risk identification, preparation, decision-making and the implementation of the decisions made– in response to the criticism relating to its executive deficit, as well as to show that the EU is capable of dealing with unexpected circumstances. In the medium term, a political strategy that aims to foster the development and reinforcement of a clear and responsible political leadership on an EU level is also essential. For the governance system to function, it requires a combination of political leadership, decision-making capacity and democratic accountability. Failing this, Euroscepticism would grow as the EU will not enjoy sufficient decision-making capacity to tackle crises. As a result, many Europeans would risk withdrawing into their sense of national belonging, feeling as though the national level alone guarantees their political rights and restores a sovereign decision-making capacity to deal with exceptional circumstances. ■



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