

CHALLENGE EUROPE

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Improving decision-making in the EU

Fabian Zuleeg

The multiple crises the European Union (EU) has experienced in recent years have fundamentally altered decision-making and, more broadly, governance in the EU. Pre-crisis systems and processes were not adequate to react to such critical and systemic challenges, but the speed of the crisis meant that new governance mechanisms have been superimposed on existing processes and structures rather than seeing a fundamental reform of decision-making. Consequently, not all changes have been fully successful. Given the institutional changes this year and the ongoing development of the EMU governance framework, now presents a good opportunity to reform EU decision-making.

The crisis has shown that decision-making needs to change. In particular, there are five key challenges, which now need to be addressed:

- dealing with crisis and limiting economic and financial risks – this requires speedy decisions that provide flexible but definitive answers from a clearly identified source of authority. When dealing with international financial markets, this is especially crucial as uncertainty will fuel speculation. The difficulty extends to the decision-making on strategic direction, where the EU is encumbered with unanimity and a difficult and cumbersome procedure for amending EU Treaties, including referenda in some Member States;
- providing systemic, cohesive and comprehensive responses to systemic challenges – the key policy challenges that the EU and its members face are cross-cutting and complex. Issues such as dealing with the energy challenge, kick-starting economic growth and employment or improving legitimacy cannot be dealt with in policy 'silos';
- increasing politicisation of decision-making – the EU, and in particular the European Commission, is increasingly engaged in political decisions rather than legal, technocratic or bureaucratic decisions. Making assessments of countries' fiscal policies; finding the appropriate balance between growth and austerity; or dealing with foreign policy crises will be influenced by political preferences;
- fragmentation of decision-making – the new governance arrangements are complex, especially given that different mechanisms apply in different instances. There are unresolved issues of what should be done by Member States and what needs to be done by the institutions. The new governance has increased the distance between euro and non-euro countries, also raising questions on how differentiated integration will function in the future; and
- efficiency and effectiveness of policy-making – with increasing concern over the sheer amount and complexity of European laws and insufficient focus on implementation and impact of the legislative output.

These challenges to the EU decision-making process will not be resolved overnight, especially since a grand reform involving also treaty change seems rather unlikely and any reform is likely to take time. However, there are reforms which could be carried out, or at least started, in the coming years.

Structure of the Commission¹

A long-standing issue, aggravated by the recent enlargements of the EU, is the number of Commissioners. While the EU Treaties have provided for a reduction in the number of Commissioners to enable the Union to cope with successive enlargements, it has proven to be impossible to get the political agreement for countries to give up the principle of one Commissioner at least, per country. Equally, having 'junior' and 'senior' Commissioners in line with similar arrangements in many national governments does not seem to be acceptable to many Member States, with some of the smaller states worried that they would perpetually end up with junior posts.

The number of commissioners had increasingly led to a strong 'silo' mentality, with each member of the college virtually autonomous in their own portfolio's competences, with inter-service consultations and infrequent top-down direction from the Commission President insufficient to break the overall pattern. Eventually this leads to a lack of coherence and focus and in the worst cases can give rise to uncertainty over the overall direction and even create outright contradictions. There is, however, a way of potentially overcoming these difficulties. This would be through building on the existing structure: creating clusters of Commissioners around Vice-Presidents.

In previous publications², we have suggested a possible distribution of priorities of Vice-Presidents and clusters of Commissioners to ensure that the structure of the Commission mirrors the overarching challenges of the EU, with four new Vice-Presidents without specific portfolio covering *growth, single market, well-being, citizenship & mobility, and environment & natural resources*. Reflecting on their special roles, this structure also proposed vice-presidents for the Economic & Financial Affairs and for the Energy portfolios (without other commissioners to coordinate), as well as the High Representative who leads a thematic cluster, but also retains their High Representative role. These Vice-Presidents would need to have a role which goes beyond merely coordinating the activities in each thematic cluster. They would need to have an explicit role in conjunction with the Commission President to make decisions on the strategic direction of policy within their cluster, working with their portfolio Commissioners. This should also be reflected in the administration, for example having a joint strategy unit for each cluster rather than each portfolio.

The new structure of the Juncker Commission does partially reflect these suggestions, with seven vice-presidents covering broad thematic areas without a specific portfolio. However, there is one crucial difference: in an attempt to maintain flexibility (and possibly to assuage fears of Member States that this would create 'junior' commissioners), the clusters of Commissioners differ for each broad policy area, with many commissioners contributing to

more than one area. In other words, there is no clear cluster structure, as well as numerous overlaps between Vice-Presidents themselves and Vice-Presidents and Commissioners, both in terms of portfolio content and in terms of the supporting bureaucracy. At the very least, this will require a clear definition of which Commissioner is ultimately responsible for what and who reports to whom at the outset of this Commission but the structure might well prove ineffective without a clear hierarchy.

This new way of working will also require effective coordination between the President and the Vice-Presidents, guided by a common purpose and vision. But this will turn the Commission into a more political instrument, with clear-cut political priorities, and the ability to better deliver and implement them, which raises fear over the politicisation of the Commission as discussed later in this article.

Better regulation

One further innovation of the new Commission is the creation of a First Vice-President for 'better regulation', reflecting the concern in many countries that the EU has a tendency to over-regulate, which potentially imposes costs, especially on businesses at a time when corporates are struggling to remain globally competitive. However, beyond the mere signal of creating such a post, what can this new role achieve, given that an effective better regulation agenda would have to be implemented horizontally, across all portfolios? Better regulation also needs to be built into the earliest stages of decision-making to be effective, for example to stop an idea turning into a legislative proposal. It is hard to see how the First Vice-President can manage such a detailed process apart from issuing general guidance and then checking on its implementation, a role which the Commission President could also have fulfilled.

The new First Vice-President will also have to show how his activities will make a qualitative difference to the 'better regulation' activities, which have, after all, been ongoing for years, including for example the impact assessment system or the activities of the Stoiber Group. The challenge will be to overcome some of the political barriers, which in the most part, lie outside the Commission, including the willingness of Member States to change their priorities to incorporate better regulation principles as well as the willingness of the European Parliament to be bound by any such principles in its legislative deliberations. It should also never be forgotten that the EU system is based on compromise, which might not always be the most effective solution. However, reopening any compromise can lead to further negotiations with an uncertain outcome, potentially increasing the legislative burden.

As a starting point, the new First Vice-President should set out what he understands under the term 'better regulation' or, even better, 'better policy-making'. This should include the focus on *ex ante* vs. *ex post* impact assessment and what future for the impact assessment system; as well as the role of consultation and involvement of stakeholders; what is defined to be an unnecessary legislative burden as opposed to the cost arising from democratically defined policy priorities, in how far we need to focus on the existing stock of legislation vs. the process of making new legislation; what role subsidiarity should play in the decision-making

processes at the EU, etc. By defining what the focus of activity will be, it will not only provide a way of assessing at some point in future how successful this new post has been but it will also provide clear guidance not only to the rest of the Commission but also to the other decision-makers involved in the process.

Executive powers and the politicisation of the Commission

A further governance challenge for the new Commission is not new but is becoming increasingly difficult to handle: the conflict between the political function of the Commission, taking a role in the overall political direction of the EU, and its role as an independent monitoring/assessment agency, regulator and arbitrator in the application of EU law, for example, in areas such as competition policy or in the assessment of Member States' budgetary policies. With an increasingly 'political Commission', potentially further reinforced by the link to the EP elections made in the Lisbon Treaty and with the *Spitzenkandidaten* process, maintaining credibility as an independent and objective arbitrator might be severely challenged in future.

One way to address this would be to outsource some of the functions which call for impartial, legal arbitration, for example, by establishing independent bodies, for example, by creating a separate Competition Authority. Undoubtedly, this would be a longer term process but thinking about a fundamental reform of the Commission along these lines should start now.

Ultimately, the EU level needs to gain more executive powers, especially to be able to react swiftly to any emerging crisis. But currently, many Member State governments are unwilling to relinquish control over executive powers in politically highly sensitive areas to the Commission, insisting that the national level or, at the very least, the Council needs to retain the final decision-making power. There is no effective way in which two bodies can share this kind of executive power; while co-legislation can work due to its sequential nature and the absence of acute time pressure, co-executive power shared by Council and Commission is likely to create uncertainty and delay that can be very costly in a crisis. The only way out is to vest powers in a supranational body, whether this is the Commission or another construction. Further far-reaching steps seem highly unlikely at the moment.

In addition, an effective system also needs to have accountability mechanisms. In national systems, this is usually performed by the legislative. But with co-legislators, the Council cannot hold itself to account if it also has an executive role. There is also now a greater role for national parliaments, which can create additional uncertainty: who, in the end, holds the executive to account: the Council, the EP, national parliaments or a combination of these?

The limitations of rules-based systems

A further challenge to the absence of effective executive power at EU level comes from the limitations of the rules-based system, which includes questions about how to pick

appropriate rules/targets, the perennial question of enforcement mechanisms, whether a country's failure to meet a target is down to willingness or capacity to deliver and under what circumstances there needs to be flexibility, and who decides.

The available instruments, both old and new ones, are too complex and therefore difficult to understand for policy-makers that need to quickly apply and comply with the rules. Complexity is another factor that leads to low automaticity, obstructing the necessary degree of *ex ante* support for the prevention of new economic and financial crises. Rules also suffer from low anticipatory powers: they often address past crises rather than the coming ones. To deal with emerging risks, it is necessary to have significant instruments that can be employed quickly (or even automatically) rather than having a set of inflexible rules.

Another key challenge is to ensure compliance with the rules by both small and big countries to safeguard the long-term credibility of the new governance system. In light of the discussions over sticking to the 3% deficit limit and the reactions in Germany regarding the investigations of its export surplus (fully in line with the governance instruments that have just been created), there are at least some doubts whether bigger and more powerful countries feel that the rules apply to them equally, and in how far the Commission can enforce such rules in these circumstances. This is further complicated by the need to interpret rules which always opens up potential disagreement. While the system offers the opportunity of taking the legal enforcement route, this requires political will to take countries to Court, as well as patience as rulings take time to be delivered. In addition, it can be questioned whether a Court with legal rather than economic competence is well placed to rule on matters of economic governance.

In addition, in times of crisis any rules-based system must have flexibility built-in. This, however, raises the question of who makes the decision whether rules can be suspended or eased in such an instance. In the case of fiscal governance, any such decision (or the decision to enforce the rules) by the Commission is likely to be challenged, especially by the bigger countries. However, if it is down to the Council, it is difficult to see heads of state and government holding their peers to account strictly.

The difficulties with a rules-based, legalistic system go further than this. In policy areas which are close to the heart of national decision-making systems and that the EU now needs to cover, the reliance on a rules-based approach is unlikely to function well. While at times adhering to European rules in politically sensitive areas can be politically useful to shift responsibility for unpopular measures, at other times the political cost of compliance will outweigh the consequences of breaking the rules, especially for more powerful countries.

Given the difficulties in changing the EU's strategic direction, it is also very challenging to change any of the rules that have been written into the EU Treaties. Furthermore, it is nearly impossible to take into account country-specific conditions and circumstances, or changes in the broader macro-environment. This raises a number of crucial questions: Is the same inflation target still appropriate, in a situation where deflation might be

threatening? Is it right to focus strongly on public debt? Is a deficit target of 3% the right one for all countries, given divergent growth performances and debt financing costs? Again, if for any of these rules there is a need to consider more flexibility, who is empowered to make such a decision?

Pooling of sovereignty?

Underlying these discussions on flexibility is a much deeper challenge to how the EU works. For some countries, it seems that the main objection is that the European level attempts to impose rules, rather than the content of the rules itself or how flexibly they are applied. In essence, under the disguise of flexibility, countries might aim for a repatriation of fiscal powers, which would undermine effective fiscal coordination at euro zone level, as well as undermining the underlying political bargain: debt financing support only with attached conditionality.

In addition, there is a widespread feeling at Member State level that we have had enough 'more Europe' due to the crisis and that it is now time for 'less Europe'. In many countries, there is also a sign of the 'British disease', namely that any further integration is seen as undesirable and that further integration steps are blocked with the argument that this might raise strong objections by the electorate.

This will be a significant challenge for the EU. There are already a number of areas where a process of 'inverse subsidiarity' can be observed, i.e. areas where Member States want to retain control but EU solutions are now needed as it is no longer possible to deal effectively with the issue at national level, for example, related to energy security or migration. In addition, further integration is also becoming necessary for the euro zone due to a process of 'spill-in', i.e. further integration within a policy area with the aim of avoiding negative consequences, here driven by the necessity to correct the flaws of EMU (as opposed to positive reasons for integration such as a wish to move towards a federal Europe or the pull of positive spill-over effects). Increasingly, we will see that what is politically possible diverges further and further from what is required to effectively deal with the challenges the EU faces. Clearly, to have effective decision-making, there first needs to be agreement on what the EU should be doing and at the moment we are nowhere near such an agreement.

Moving forward or backward?

In the end, there are two separate directions in which the system could be developed: either trying to turn the clock back by attempting to set up the Commission as the independent, bureaucratic, apolitical arbitrator which it (arguably) once was or to accept that the circumstances have changed with the need for more executive powers at EU level and an increased politicisation of the system.

Even if it were desirable, it seems unlikely that we can go back to a 'golden age' where the Commission does not get involved in politics. The Commission is already highly politicised

and increasingly the EU needs a Commission which will be able to make executive decisions that can be implemented across the Union. This implies a move from governance to government, from a rules-based legalistic system to one driven by political preferences, underpinned by mechanisms of legitimacy and direct accountability. However, this will increase concerns that the EU is moving from a supranational arbitrator to a political actor in its own right.

Politicisation should not be seen as a negative process. For a long time, many convinced Europeans have lamented that the EU is remote from its citizens, that democracy is not functioning as it should at EU level and that there is no engagement with EU policy debates. While current governance/political developments certainly don't answer all the questions posed for EU democracy, at least it is a starting point to get citizens more interested in EU policy decisions.

But to do this, democracy at EU level also needs to be developed further to facilitate engagement. In addition to the existing mechanisms of representative democracy, which are still struggling with low engagement and participation, there is a need to develop a more accessible, informed participatory democracy, by utilising new technologies and building bespoke mechanisms for citizens to input in EU decision-making, such as developing an EU version of 'liquid democracy', where citizens can be involved directly in EU policy. In addition, there needs to be a clear mechanism to hold the Commission to account for its executive/political decisions, a role the EP could increasingly play.

As a starting point, the new Commission's hearings in the EP should be treated as a political process. Commission President-elect Juncker has set out his political programme "An Agenda for Jobs, Growth, Fairness and Democratic Change". All proposed Commissioners should be tested against what their policies are going to deliver from this Agenda, including three crucial questions:

- Given its importance for growth and jobs, in what way are actions in this portfolio going to increase public, private or social investment?
- In how far are actions in this portfolio going to increase protection of citizens from internal and external threats, including in terms of the crisis in the East?
- In how far are actions in this portfolio going to facilitate the engagement of EU citizens with EU policy making?

By-and-large, the EU could start to introduce the kind of changes proposed here in the near future, without major changes to the institutions or the EU Treaties. However, the elephant in the room is the question what Member States want the EU to do and in how far they are willing to make the changes necessary, especially if it requires further pooling of sovereignty in some areas. This will also require finding a solution to the differences between Member States, especially the euro *ins* and *outs*, with a need to find a way of re-invigorating differentiated integration.

While progress is certainly possible, in the end decision-making at EU level will only be as effective as Member States allow it to be.

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Endnotes

- 1 This section draws from F. Zuleeg 'A more effective structure for the Commission' EPC Commentary, 7 March 2014
http://www.epc.eu/pub_details.php?cat_id=4&pub_id=4230
- 2 See F. Zuleeg 'A more effective structure for the Commission' EPC Commentary, 7 March 2014 & F. Zuleeg 'Beyond individuals: a more effective structure for the Commission' EPC Commentary, 9 September 2014
http://www.epc.eu/pub_details.php?cat_id=4&pub_id=4735