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"Is the Council taking over?"

*Remarks during the institutions workshop of the CEPS Ideas Lab
3-4 April 2014, Brussels*

The crisis has dramatically transformed the Union. Within the span of a brief few years, we have witnessed unprecedented shifts in economic governance, financial sector reforms, in fiscal consolidation measures and a gradual transition towards growth friendly policies.

The changes motivated by the crisis themselves created a duo of challenges for the Union.

Firstly, the broad range of reforms in economic governance and financial sector matters generated a need for accompanying mechanisms of democratic legitimacy.

The crisis episode added a range of new competences to the portfolio of European Institutions. We saw this particularly in the case of the European Commission and of the European Council. We have also seen that crisis driven reforms have not been accompanied by adequate mechanisms of democratic legitimacy. The cooperation between the European Parliament and national parliaments remains deficient. While the Lisbon Treaty had come with strong promises that the Union would be equipped with an enhanced dose of legitimacy, this failed to materialize. Slowly, a severe democratic deficit emerged.

At the heart of the new challenges related to democratic legitimacy, triggered by the crisis, lies the need to look at the institutional balance.

The European Council has clearly taken on new powers over recent years. These need accompanying measures of legitimacy, which thus far have remained only weak. Looking at the European Parliament, in spite of the changes brought about by the Treaty of Lisbon, the legal basis available to the European Parliament remained

weak. Far too often, the European Parliament was only involved in the legislative process via the "consent" or "consultation" procedures. Treaty limitations led to the reaching out to unprecedented legal procedures. For instance, when the single supervisor, the first pillar of the European Banking Union, was set up, the Commission brought out two sets of legislations, one on the supervisor and another on the revision of the EBA regulation. While only the EBA regulation was under the co-decision umbrella, the European Parliament sought an agreement with the Council to treat the two as a package, regarding the supervision regulation as falling under co-decision. Parliament tried to remain at the heart of the reforms being implemented, via a range of economic dialogues introduced in the context of the new measures of economic governance. The President of the European Council also reports to the Parliament after summits.

The weakness of the existing legal basis, coupled with the so-called "British factor" (the fear that the UK may be against and block certain Union wide measures) also led to a reaching out to intergovernmental agreements, with the European Council at the heart of the initiative and the European Parliament often side-lined from the debate.

Staying with the institutional balance, we have also witnessed an unprecedented gain in powers and influence of the ECB. The Bank went beyond its traditional mandate of maintaining price stability and promised to do whatever it took to keep the euro area together.

And finally, we have also seen the German Constitutional Tribunal acquiring unforeseen powers. Inevitably, questions about the European democratic legitimacy of this institution arise, particularly when we think that its decisions have a binding power on the Deutsche Bundesbank, which in turn is a member of the ECB.

Secondly, the crisis also generated novel layers of differentiation in the Union. The bulk of crisis driven reforms targeted the common currency area. Non-euro area members aspiring to join the euro were not always taken on board in the reforms on an equal footing with their euro counterparts. Moreover, different appetites for union

reforms were also displayed both within the euro and non-euro group of member states. These trends exposed the difficulty the EU faces in dealing with its heterogeneity. It also called into question the cohesion, solidarity and integrity of the Union.

Allow me to say a few words on the European Council before I go on to discuss how the two challenges identified previously apply to the European Council and how we might be able to respond to them.

The European Council did not only see its role strengthened following the adoption of the Treaty of Lisbon, which effectively gave it the status of an institution, assigned it a full-time president and reinforced its role in establishing the general political direction and priorities of the EU. Already the Maastricht Treaty paved the way for an expansion of EC activity and thus led to an increase in the European Council's competences. Further competences were then added by the Amsterdam Treaty.

The European Council has certainly also acquired an even more substantial role along with the onset of the post-crisis reforms. It had already developed and defined its own mandate before the crisis (for instance by creating the informal Eurogroup back in 1997). Along with the crisis however, its prominence grew dramatically and the European Council gave itself a key role in the context of the Stability and Growth Pact.

While in the past, the European Council used to meet around three times per year and deal mostly with long-term Union issues, today it meets seven or more times and makes important decisions on specific concerns, as well as on day-to-day business on core policy areas. It has taken over functions exercised by the Global Affairs Council (GAC). European Councils have effectively become routine in EU politics. Statistics clearly reflect the growing prevalence of the European Council. Over the past two decades, after the adoption of the Maastricht Treaty, 65% of European Council agenda items concern debates related to the new areas of EU activity based on policy coordination (as opposed to the Community method). Slowly, the European Council acquired strong competences not only in what regards

economic governance, but also foreign affairs, including security and defence policy.

What is interesting to observe is that the new form of intergovernmentalism did not coexist with an integration fatigue. It merely signalled a desire to move forwards not necessarily within the community method. Such an approach inevitably led to a preference for policy coordination over plain legislative decision-making and to the birth of the so-called "Union method".

Probably the most succinct definition of the latter was provided by Mrs. Merkel during her renowned 2010 speech in Bruges.

The German Chancellor challenged the divide between the European Parliament and Commission seen as champions of the community method and the 'intergovernmental side', constituted by the European Council, the Council and member states. She went on to argue that the Council plays a key role in negotiating Union legislation, that the European Council is also a Union institution, and that ultimately member states are not adversaries of the Union but key components of it. Mrs Merkel moreover pointed out the legitimate concern that the community method could only be applied in the areas in which the Union had competences and that certain situations inevitably led to the reaching out to non-Treaty based solutions. Given this, she stressed that a coordinated European position can be arrived at not just by applying the community method, but also by applying the intergovernmental one. She stressed that the EU should set common goals and adopt common strategies, aiming at "coordinated action in a spirit of solidarity." And this she defined as the "Union method."

With the overwhelming change in the role and tasks of the European Council we have witnessed up to now, we seem to forget at times that, according to the Treaty, the European Council does not have a legislative function. Article 15(1) of the Treaty clearly states that the European Council "shall not exercise legislative functions."

Having said that, reality paints a very different picture. On the one hand, the European Council has a decisive say when it comes to the negotiating mandate on

the most important issues with which Council comes to trilogue discussions. Moreover, the European Council was also at the heart of the setting up of important intergovernmental agreements, such as the fiscal compact or the European Stability Mechanism. The European Council is set to play a key role also in the context of the Banking Union, and, more specifically, concerning the setup of the Single Resolution Mechanism. Moreover, the European Council is also expected to play a strong role in the setup of the new competitiveness and convergence instrument (an idea floated in 2013, which involves the setup of contractual arrangements, underpinned by financial support, between the EU and member states, in the context of the European Semester).

Given the strong role acquired over recent years, the European Council is certainly at the core of the duo of crisis related challenges identified earlier: legitimacy and flexibility.

Firstly, let me discuss democratic legitimacy. While the Union method certainly serves a useful purpose when Treaty limitations deadlock important and urgent decisions, this does not mean that we should readily embrace it. A healthy dose of caution is warranted. We are all aware of the fact that there is a risk that the Union method has in the past materialized in a series of Franco-German summits and communiqués which set the agenda of European Council meetings. This state of affairs cannot replace the democratic control exercised by the only democratically elected body of the Union, the European Parliament. And this latter body has unfortunately often been side-lined in key Union decision-making situations.

To enhance the democratic accountability of the European Council through the European Parliament, a number of measures can be envisaged. Having the President of the European Council address the European Parliament after summits is certainly a welcome initiative. We could go further however also in the framework of the so-called 'economic dialogues.' Here, the possibility of inviting the President of the European Council to report and explain his/her decisions on reinforced budgetary surveillance, the coordination of economic policies, the excessive deficit and macroeconomic imbalances procedures, can be promoted. In the context of the

upcoming convergence and competitiveness instrument (if and when a decision is reached on it), an adequate involvement of the European and national parliaments should be envisaged.

Further filling in the existing democratic deficit, a framework agreement could be concluded between the European Parliament and the Council. Such an agreement already exists in the context of the Parliament-Commission relation and sets some useful parameters for a sound inter-institutional cooperation. The model could be modified and also applied in the context of relations with Council.

Finally, we also need to remember that the acquisition of new powers by the European Council did not only lead to a loss in powers for the European Parliament, but also for the General Affairs Council. This should be addressed. Looking at changes that could be implemented in the future, one idea would be to have GAC meetings chaired by the Prime Minister of the country holding the rotating Presidency.

Secondly, the recent evolution of the European Council's role also brings along serious flexibility worries. We already have so-called "euro summits", set up in the context of the Fiscal Compact. We also have a permanent financial assistance mechanism devoted to the euro area member states only (the European Stability Mechanism). Both the Compact as well as the Mechanism have been set up in the context of European Council meetings. These developments raise the question of whether the interests of the single market as a whole are adequately served by the European Council.

When adopting future EMU related decisions, the European Council should bear in mind the risks that come along with further promoting differentiation in the Union and should make it possible for non-euro member states, which one day wish to join the euro area, to be part of the on-going EMU reforms. The fact that non-euro members do not have access to the ESM creates serious problems in the context of the banking union (while euro members can ultimately use the ESM as a fiscal backstop, non-euro opt-ins cannot), bringing to the fore the interconnectedness of policy

decisions and the need to anticipate and limit negative spillovers.

How might we address these concerns? A preference for the community method and the reaching out to the option for enhanced cooperation offered by the Treaty could provide an optimal solution for aspiring euro area member states, while staying within current Treaties.

As we enter the new parliamentary and Commission terms later this year, we will certainly still face some tumultuous waters. With the right leaders taking charge however, we will have better chances of weathering the storm.

Before I give the floor to my fellow panellist, let me thus also say a few words on the issue of personalities, which falls under the scope of this session of the lab.

Personality certainly matters in the context of the European Council. Even if the practices concerning the preparatory phase of the European Council meetings would remain more or less the same as it is today, I hope that the new personality elected to head the European Council will bring new energy and a new vision for the next generation of European institutions.

Leadership and personalities will be key for all institutions of the Union, not just for the European Council. We need strong, charismatic and open-minded leaders which understand the challenges we are faced with today and stand ready to tackle them with flexibility.