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en

voie de redynamisation ?

sous la direction de JOSIANE AUVRET-FINCK

Préface d'ANNA TERRON CUSI

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La Commission européenne en voie de redynamisation ?
sous la direction
de Josiane AUVRET-FINCK

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PRÉFACE

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First of all, I would like to congratulate the organizers of this symposium for looking so deeply and from a variety of points of views – from the legal perspective, the social sciences approach... – into something as relevant today for the functioning of the European Union as the role of the European Commission.

This European Institution, to which many evoke when they speak of ‘Europe’, consciously or not, has been entrusted with the mission to promote the general interest of the Union, ensure the implementation of the Treaties, monitor the implementation of Union law, run the budget and manage programs; in addition to these key responsibilities, it has coordination, implementation and management powers, represents the European Union in the world, and has the right of legislative initiative, not exclusively, but as a general principle. Its capacity to carry out this last function is vital to the proper functioning of the Union.

From the point of view of someone who has worked in and with various European institutions from the active politics, and which today continues to work with them, I would like to thank the possibility given me to write this preface. I will use this opportunity to assess the current situation of the Institution, and moreover make some proposals on how to address the future of the European Commission and the European Union, both inseparably intertwined.

The European Union, in recent years, has moved towards unique achievements in the field of the International organizations, and in fact it is difficult to limit the EU to just another international organization. Powers specific to the States, such as the relationship with its territory and part of the control of its borders, the currency that they use or their budgetary frameworks, have been harmonized in one degree or another, which is the same as to say that part of the Member States management has been entrusted to the European institutions, being the Commission a key actor on that. It is important to remember this because today, due to the multicrisis scenario at European level (i.e. economic, refugee crisis...), we could think that there are more setbacks than progress, and this is not the case, the consolidated acquis is very important.

It is true, however, that getting where we are has required to overcome many resistances. Some of these resistances have been expressed fiercely in extraordinary moments, hiding the depth and visibility of the changes; others have been more discrete but more stubborn, delaying – sometimes infuriating –

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the times of this progressive integration. However it is important to stress that, despite the resistances, the core question of the nature of the integration as defined by article 1 of the Treaty as a journey towards a 'ever closer union among the peoples of Europe' has never been put in question. This idea of building Europe as a process has always guided the actions of the Commission, becoming the guiding motor of the process and also the responsible to consolidate the progress achieved. This idea has also shaped the Commission relations with the rest of the European institutions.

The Commission, whose independence is vital to the fulfilment of its functions, is paradoxically the European institution that depends more on the other institutions, from which it emanates. In spite of the power that treasures and its important structure, the capacity to put policies forwards depends on the confidence given by the rest of the European Institutions, especially the European Parliament, the Council and also the Member States. In this regards, the Commission has suffered in recent years. Each time that the Parliament and the Council wanted to reassert themselves they have fought the Commission but in different ways. The Parliament, willing to demonstrate its increased powers after the Lisbon Treaty, and – in principle – the steps of the Union toward a supranational democracy, i.e. toward a greater political integration. The European Council, trying to put limits on those actions of the Commission and of Parliament, that could overwhelm their ability to control, not only in relation to the legislative activity, in which the Council has co decision powers, but also in the executive powers. We can find some examples of the actions taken to undermine the role of the Commission in various fields: limiting the European funds to national level; the attempt to define operational frameworks in the European refugee crisis i.e. interfering in the right of initiative, directly in the field of justice and home affairs policies, or indirectly calling on the Commission and the European Parliament to legislate in a certain way.

But the worst political attrition has undoubtedly been taken by the Heads of State and Government. Since a few decades, the Heads of State and Government have tried - not always with success- to control the Commission by having one former Head of State or Government as president of the Institution. In their minds, this would grant a Commission more respectful of the opinions of the Council. Unfortunately, this would imply narrowing the scope of the general interest, in which the Commission stands, leaning towards defending national interests. In those cases, when the Commission has confronted the Council, the reaction of the governments has been usually an aggressive attitude toward the institution and toward the European Union itself which often overflows the boundaries of rationality and delves into populist nationalism.

The current Commission, born in the middle of a storm, is led again by a former Head of Government. But unlike its predecessors, the current President Jean-Claude Juncker was appointed by the European Parliament after a political battle amongst the Parliament Political Groups (according to Article 17.6 of the Treaty) limiting the capacity of the Council to appoint whomever they wanted. Among the tasks that this Commission has undertaken I would stress the need to

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deal with the various crises in a manner that is understandable to the citizens, making the European politics closer to them and contributing decisively to give an effective output.

The financial crisis, the economic crisis and the subsequent political crises that have followed, such as the crisis of the European asylum system or the Brexit, in an international turmoil, have revealed the weaknesses of the Union, as a result of an incomplete integration. Problems on the design of the integration process of the EU and some mistakes in its implementation have deepened even more the existing weaknesses. A situation such as the current one, which involves great risks, requires both a quick reaction to manage the present, and a long term vision on what way to go. In a context of extreme difficulties, it is questionable whether the conditions existing have allowed the Commission to carry out these tasks properly.

In recent years we have witnessed other revealing episodes of a depletion of the commitment of Member States with the institutions and the community method. The economic crisis and the following political crises have placed under the spotlight two specific areas of the EU integration, the Economic and Monetary Union and the Area of freedom, security and justice, showing the weaknesses they both have in their design, and in their implementation. Because of the overriding need to provide answers, the Council has embarked upon the path of intergovernmental cooperation to complete the Economic and Monetary Union, and as well to manage the refugee crisis undermining one of the most important pillars of the Union: the freedom of movement.

In relation to the area of freedom, security and justice, there is not even a consensus on the need to complete the area, as it was foreseen in the Treaties; the Commission, in May 2015, just before the worst summer on our borders, proposed the most comprehensive plan on mobility and migration management ever. However, it was the European Council who finally took control of the European asylum system crisis, agreeing to a series of measures that should be implemented later on by the Commission. Again, the role of the Commission was reduced to an executive secretariat following the dictates of the Heads of State and Government. Such an attitude of the Council could have made sense if it had meant a wide political agreement to address the crisis jointly quickly, at the highest level as a first step, becoming later one in a comprehensive agenda on mobility, migration and asylum. Unfortunately, neither the first wide political agreement nor the implementation of the comprehensive agenda have happened.

The decisions taken at European level have not been defended by the Head of State or Government at the national level, even in some cases they have been openly criticized, for example in the debate on the allocation of quotas for the protection of asylum seekers. The national leaders have used certain attitudes of rejection towards the policies adopted in Brussels expressed by their citizens, to criticize the measures feeding a vicious circle. However, in the majority of cases the citizens received from their leaders misleading information using patriotic rhetoric – as we have seen in the British or Hungarian cases –. The European asylum system is broken, the human costs of this crisis are unacceptable, and the internal borders have been reintroduced in Europe.

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The Commission makes balances to give an appearance of legality to a situation that goes against the Treaties and clearly regressive in terms of integration, and to address a crisis that is still there.

The referendum on the permanence of Great Britain in the European Union is the most recent political crisis the Union and its institutions must face. The conditions posed by the British Prime Minister to its European partners to ask the UK citizens to vote for a yes in the referendum on the permanence of the United Kingdom in the European Union, included something unheard of until that moment: the explicit rejection by one of the member states to move forward in the process of integration, commitment that is included in the Treaty. After the victory of the NO, the agreement does not stand anymore, but has opened a question about the future since the acceptance of these conditions will have consequences in the rest of MS but also in the Commission. The concessions made by the MS to his British colleague opened the door for the first time not only to the Europe of different speeds, intended for those who are willing to move forward quickly to be able to do it, but to a Europe of different levels; different speeds imply agreement on the path to follow, different levels implies disagreement precisely on this point. It is true that no Government has openly talked in those terms yet, but it is also true that in recent years there have been major changes of attitude on the process of European construction. Today it has become a common place, even in the more pro-european circles, to agree about the inconvenience in a near future to open the debate about the revision of the fundamentals texts of the Union adopted seven years ago, which goes against the temporary nature that the signatories wanted to give the Treaty when they claimed that this was 'a stage in the process of creating an ever closer union of the peoples of Europe'.

At this point, whether all Member States, despite the multiple resistances and beyond the problems, remain committed to go together in the process of European construction, and are willing to respect, even with all the reluctance demonstrated, the role of the Commission, or whether, for the first time, what is at stake is the central goal of the Union to move toward a greater and better integration, is a question that we must now make us.

The fact that we cannot answer this questions makes it very difficult for the Commission to work with the necessary vision of the future. The path marked out by the political context and by the actions of the Council has been narrowing the Commission's space. But aside of the difficulties that have been listed here there has also been some interesting progress during the recent crisis. This Commission is now better prepared and organized to continue fulfilling the tasks entrusted to them, including the implementation of the Treaties and the promotion of the general interest, which must remain its first goal. It could seem little ambitious, but in the current context, it is not.

Defending the existing treaties and its development would, on the one hand, avoid steps backwards in the institutional sphere and in the union governance. This would improve the response capacity of the Union to the global challenges and could help to design public policies to address the inequalities, generate

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dynamism and better protect those suffering situations of greatest difficulty. Many of the challenges that we have raised have their answers in the Treaties. The Commission should resume the political initiative in some critical areas, developing for example the Title V, moving ahead in the policies of justice and internal affairs beyond the short term, as the Commission has been proposing for a long time. For instance, this could help to have more stable solutions to issues such as the asylum system, the management of borders etc. The Commission can and should continue to move in this direction.

These would be preconditions to maintain the vital link between the European policy and its citizens improving their participation. This is the last of the questions that I would like to address. Can the Commission have a critical role in this regard? My answer is clear: can only do it in a very limited way. The Articles I and X of the Treaty call for the decisions to be taken as close as possible to the citizens, and this obliges all the institutions, and also to the Council and the European Parliament. Articles X and XI asks the institutions to involve citizens in these decisions, stating that the functioning of the Union is based on participatory democracy (I stress the word participatory) including the responsibility of the Council members before their national parliaments and citizens.

Under the current political conditions, the Commission's role is not an easy one. Many things must change so that it will be possible to address the current crisis, stabilizing the situation, solve the weaknesses, and develop the "acquis" in the medium term, all at once. The Commission has made (some) of the internal reforms that can help in this direction. But the most important changes to return to the path of defense of the general interest, before the nationalist interest should be done in the Council and in each of the Member States. The Council and the Member States must decide, without shrillness, on their commitment to the process of European construction, and if the answer is in the affirmative, to act accordingly in the political arena, both at European and national level. Despite the reforms, there is no institutional framework that resists the bad faith of a majority of the members inside the institutional framework. Also, bad faith in the legal sense of the term: to go against the own acts.

In conclusion, the Commission must continue to open its doors and establishing participative working methods, but must be the Parliament and its members, the European Council, the Council of Ministers and the representatives of the Member States and national parliaments who channel the democratic life of the Union and the participation of citizens. The implementation of this part of the Treaties should be invoked with the same strength that Member State invoke others. Along with the ability to give answers to the various crises, the legitimacy of the Union is played between more and better European democracy or greater national withdrawal. In other words, more and better democracy in Europe is a prerequisite for better integration, and the implementation of the mechanisms provided for in the Treaty to achieve it, including the requirement of good faith, must also be monitored. More than endless information campaigns, this would make a crucial contribution to zoom out some ghosts that are very present in the continent. It is possible.

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epuis la fin du mandat de la seconde Commission Delors, la conscience de la Communauté/Union européenne a connu un déclin inexorable. La marginalisation de cette institution est la résultante de facteurs endogènes et exogènes qui ne relèvent qu'accessoirement du droit.

La mise en place de la Commission Juncker et ses réalisations à mi-mandat semblent annoncer une redynamisation de l'Institution. Sa légitimité démocratique a été confortée grâce au Parlement européen qui a su imposer avec beaucoup de détermination sa version concernant le choix du président de la Commission. Dans la foulée, celle-ci a lancé des initiatives prenant dûment en compte les aspirations des citoyens de l'Union. C'est le cas, par exemple, du plan d'investissement de 315 milliards d'euros dont l'objectif est de relancer l'offre pour stimuler les embauches et la consommation. Moins d'austérité et plus de croissance : la Commission a changé de logiciel économique, consciente que l'accroissement des inégalités a atteint le seuil de tolérance dans la population et entrave la reprise.

La Commission s'affirme non seulement dans le système institutionnel et dans ses relations avec les Etats membres mais semble aussi vouloir changer de méthode. L'aspiration à troquer l'habit d'un secrétariat bureaucratique d'une organisation internationale contre la posture d'une autorité politique, « plus ambitieuse pour les grands enjeux, plus modeste pour les petits dossiers », est manifeste. L'approche technocratique est appelée à céder le pas à une vision partagée de l'intérêt général. L'amélioration de la réglementation, les politiques migratoire et climatique, l'énergie, la lutte contre l'évasion fiscale et la place de l'Europe sur la scène internationale en constituent les premiers champs d'expérimentation.

Ces frémissements sont-ils annonciateurs d'un véritable renouveau institutionnel qui profiterait à l'Union dans son ensemble ? Différents paramètres sont à considérer parmi lesquels le renforcement de la légitimité et de l'indépendance de la Commission, l'utilisation optimale de ses prérogatives, l'ajustement des politiques aux aspirations des citoyens et sa contribution à une action extérieure commune. Ce sont les principaux axes de ce colloque, organisé conjointement par le CEDORE/LADIE/CEJM de l'Université Nice Sophia Antipolis et le CEJM de l'Université Grenoble Alpes. L'analyse s'inscrit dans la pluridisciplinarité en empruntant au droit, aux sciences politiques et économiques ainsi qu'aux relations internationales.



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