

Does the EU Institutional Triangle Have a Future?

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Using geometric figures that refer to rational and structured concepts to describe the functioning of European Union institutions can be a difficult exercise. Yet a balanced model, organised around a triangular relationship between the Council, the Commission and the European Parliament has long characterised the Community system. What remains of this original institutional set-up? What institutional solutions have been adopted by the member states of the Union to respond to the increasing demand for Europe and to collectively manage their sovereign prerogatives?

The "institutional triangle" remains vital for the process of integration, but the institutions that compose it will have to undergo a dual process of reform: reform of their internal functioning and reform of their interaction within the triangle. There are various ways in which the system could be made to work, even in an enlarged Union, and they do not necessarily conflict with one another. But the basic arrangement has to be maintained and developed, rather than replaced with methods and solutions that do not ensure the continuation of the integration process, as they would not provide the mediating mechanisms required to induce states to overcome their instinctive reciprocal mistrust. The problem, then, is to identify the political and institutional solutions that can be adopted to keep the institutional triangle functioning in a Union of ever more variable geometry.

The institutional triangle and the European Union

The so-called institutional triangle, composed of the Council, the Commission and the European Parliament, is the most original element of the European government system.

The Council. The European Council is the highest political authority of the Union, as it "shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof".² Composed of the heads of state and government and the president of the

1 This article reflects the personal views of the author alone.

2 Article 4.1 of the Treaty on European Union. The European Council was only mentioned for the first time in the treaties in 1986 (Article 2 of the Single European Act) and institutionalised in 1992 (Article D of the Treaty of Maastricht).

Commission, it embodies the various trends that characterise the European Union today and which make it so difficult to work out an adequate institutional solution that would allow a Union of 28-30 states to function effectively: the process of gradual and informal transformation of the institutions; the need to ensure a basic homogeneity and to better coordinate an increasingly complex system; the growing politicisation of the Union and the search for a compromise and a balance between the traditional supranational character of the Community system and the growing pressure for intergovernmentalism. At legislative level, the Council of Ministers is at the centre of the decision-making system. With its legislative and executive powers, it controls and cooperates with the Commission during the executive phase by means of the so-called comitology procedure and sees to the administrative execution of Community policies at the national level.

The Commission. The Commission, on the other hand, is charged with promoting the general interest of the Union and has various instruments at its disposal for doing so, the most important of which are the monopoly on legislative initiative, regulatory power, and responsibility for the delegated implementation of Community policies. The Commission plays the roles of promoter of European integration in ensuring full application of the treaties and of mediator among the various states and interests that characterise the Union's political system.

In a Union that is enlarging and in which differences are increasing, the mediating role of the Commission becomes even more crucial for maintaining the overall cohesion of the system and reconciling differences (between large and small states, between net contributors and net beneficiaries of European distributive policies, between cultural or linguistic areas of the Union, and in an increasingly near-term perspective, between western, central and eastern Europe). Greater diversity in the Union will also lead to greater mistrust among the states composing it, and the Commission is the only institution sufficiently impartial and representative of the general interest to be able to carry out the mediation required for the system to function. In fact, the main weakness of the intergovernmental method is the diffidence that the proposal of one state or group of states generates in others in the absence of an "honest broker".

The European Parliament. The European Parliament (EP) is the institution that has most benefited from the institutional changes of the last half century of integration: starting out as a simple assembly, the EP has gradually acquired important budgetary and legislative powers, as well as democratic control over the Commission, making it a unique example of supranational democracy. Now on a par with the Council in the fields where the co-decision procedure applies, the EP has developed a relationship and a dialogue with the Commission that resembles the relationship between the executive and the legislative at national level.

This system did not come into existence with a kind of institutional Big Bang, but was progressively developed, building on the extant, but not replacing it. The steady accumulation that has resulted – inevitable, given the characteristics of the Community system – to some extent explains its complexity. In addition, there are the growing fragmentation of the executive power, the ever increasing difficulties in inter- and intra-institutional coordination and the now evident inability of national governments – in the light of the disappointing results of the Nice conference – to agree on a definitive institutional arrangement for the Union to be able to face enlargement.

The vicissitudes of a triangle in a complex Union

Like all complex systems, the European Union has difficulty in ensuring effective coordination among its various institutions, actors and fields of activity. Complexity and fragmentation are increasingly evident in the relations between the Commission and the Council and between the Council and the EP. Above all, the executive functions of the Commission and the Council must be reorganised, enhancing the synergy between the two institutions and better clarifying their respective roles.

In an enlarged Union, in which the Commission's monopoly on legislative initiative will become even more important, this body should make a special planning effort to determine the real political priorities requiring legislation. A special creative effort is also needed to identify the sectors in which new synergies and forms of horizontal coordination could increase the effectiveness of the various political and administrative actors. Moreover, cooperation between the European Parliament and the Council must be developed not only in the legislative field, but also as concerns the debate on the general orientation of the Union. The Council and the EP should reflect on new ways of carrying out the regulatory or re-regulatory activities within the Community system, perhaps by reviewing or expanding the legislative and regulatory proxy to the Commission, or by combining it with new forms of political control. The third leg of the triangle is cause for less concern, given that, especially since Romano Prodi was nominated Commission president, relations between the Commission and the EP have been developing towards greater cooperation and growing politicisation. Stronger inter-institutional cooperation and coordination are essential to stop or at least counterbalance the dangerous trend towards fragmentation, complexity and, ultimately, a weakening of the Union under way.

Indeed, there is a growing tendency among member states to exercise practically all national executive functions collectively at the European level. However, they show a certain reluctance towards the Community system, which is actually more effective and democratic. In the 50 years of Community history, this system has produced far more impressive results than those achieved with the intergovernmental method.

When the exercise of such functions is transferred to Brussels, the various particles of executive power are distributed among the European Council, the Council of Ministers, the Council Secretariat, the Commission and a number of agencies. In recent years, new forms of intergovernmental cooperation have emerged, but they are often no more than palliatives when one thinks of the urgent need for action. Misgivings about the Community method are the main reason behind the inconsistencies and inefficacy of Union action in managing economics, foreign relations and justice and police affairs, and have repercussions, above all, on relations between the Council and the Commission. The most significant example was the assignment of the role of High Representative for the Union's Common Foreign and Security Policy (CFSP), decided upon at the Amsterdam summit, to the secretary general of the Council rather than to a commissioner, thereby stressing the bipolarisation of the Union's external action, artificially distancing classic diplomatic action, among the High Representative's responsibilities, from initiatives in trade, development cooperation and humanitarian action, which fall in the remit of the Commission. Fragmentation and lack of consistency are also evident in the economic field, in particular as concerns the absence of political backing for the actions of the European Central Bank and the reluctance to attribute the external representation of Economic and Monetary Union (EMU) to the Commission, despite its role in the management of the single market and common policies.³ At a different level, the complex and non-transparent comitology procedures are also the result and the cause of the Council's reluctance to allow the Commission to carry out its executive functions more rapidly and effectively and should be reviewed with an

eye to the Union's further enlargement.

The current fragmentation of the executive power is the weapon some hope to use not only to weaken the Commission and transform it into a simple administrative authority, but also to limit the political role and powers of control of the European Parliament. In fact, who would still be interested in controlling the Commission if it were to become a kind of "secretariat of the Council", while the executive activities, in the fields of foreign policy, defence, economics and internal affairs, were carried out by typically intergovernmental methods and organs that escape the control of both national parliaments and the European Parliament?

Among the attempts to weaken the Commission is the strategy currently pursued by some forces in Parliament. Recalling the glorious defeat inflicted upon the Santer Commission in 1999, these forces would like to use the powers of control over the Commission (for example, the power over the implementation of the Community budget) to bridle it. Some pursue this strategy in order to weaken the Community system *tout court*, others because they mistakenly think that by weakening the Commission they will increase the power of Parliament. In reality, it is with the Council that the EP should enter into a frank and direct debate to seek ways to promote a clearer distribution of powers and functions and greater integration of the various "parallel policies" developed in the Union.

More generally, as concerns relations between the Parliament and the Council, there are two major questions to address. First of all, the Community legislative process must be made more political and less bureaucratic. The EP has a specific interest in distinguishing between the legislative activity required to introduce a new common policy, and activity which is formally considered legislative but is basically purely administrative and should be limited and delegated to the Commission whenever possible. In fact, it is hard to understand why a legislative authority like the EP, which embodies the legitimacy and democracy of the system, should dedicate the same time and attention to the safety of two- or three-wheeled vehicles or to the rules concerning the special measures for peas, field beans and sweet lupins as it does to the creation of a common area of freedom, security and justice. Furthermore, both the EP and the Council often press for the introduction of new pieces of legislation when it is neither required nor the most effective course of action for solving a problem.

Finally, the Council must act consistently and draw the consequences of the choices taken in Maastricht and Amsterdam. The full – albeit shared – legislative powers assigned to the European Parliament should favour the emergence of a new political relationship between the two institutions, involving greater transparency and a clarification of the functions and powers of the Council. It is, in fact, difficult to envisage the functioning in the long run of a system in which the two legislative authorities do not operate cooperatively and at parity – a system in which the Council not only continues to combine legislative and executive powers but, as already mentioned, establishes new executive organs and forms of cooperation that are outside the institutional triangle and thus beyond the democratic control of Parliament.

3 The question of external representation of the euro is, for the time being, regulated by the Conclusions of the Vienna European Council of 11/12 December 1998. Representation is carried out by the Council, at the ministerial level, with the participation of the European Central Bank. The Commission is associated to the external representation and provides the president of the Ecofin Council (or, sometimes, the president of the euro zone) with technical assistance at the G-7/8 meetings.

Lack of cooperation among the vertices of the Triangle and attempts at recomposition

Fragmentation not only affects the system as a whole, but also the internal functioning of the institutions, in particular that of the Commission and the Council.

The Commission

As concerns the Commission, fragmentation poses a problem of political direction and coordination among Commissioners. The Commission functions in a very different way from national governments, for various reasons: commissioners are not chosen on the basis of a common political programme and can be subject to various kinds of pressure from the states and the political forces to which they belong, as well as from various interest groups.⁴ In addition, the different national sensitivities of the commissioners can affect their views on political priorities and the management of the directorates general. This aspect has been exacerbated by the Union's previous enlargements and will become a fundamental problem in an even larger Commission.

The increase in the activities carried out by the Commission in recent years has not always been rational, and day-to-day management exceeds by far the activity of planning, proposing and animating the system for which the Commission was initially conceived. Internal decision-making procedures often require that the commissioners decide on administrative or financial questions which should best be delegated to the administration.

At the administrative level, there is a need for greater coordination of the activity of the various directorates general. Indeed, they often work "vertically", without giving enough importance to the horizontal aspects of some policies, which would call for coordination among various services. A fundamental problem is the excessive centralisation of management and control activities, which has a negative impact on the effectiveness and timeliness of administrative activity.

The process of internal reform of the Commission practically began with the nomination of Romano Prodi and has been proceeding on the basis of the White Paper on Reform adopted on 1 March 2000. The objective is to ensure that the Commission has the instruments needed to carry out its institutional role as the Union's political "locomotive". According to the Commission, this objective can be achieved by giving priority to policy-making by means of strategic planning which, from the beginning, directly links political priorities with budget resources. Decisions have also been taken to strengthen the coordinating role of the General Secretariat under the president, to simplify the decision-making process, to introduce internal procedures that facilitate the activity of the college and shift responsibility to the upper levels of the administration, to decentralise management activity, to outsource some of the Commission's activities and to improve capabilities for the activities managed at Community level.

The Council of Ministers

A problem of coordination has also become evident within the Council of Ministers. The General Affairs Council, composed of foreign affairs ministers, is coming up against considerable difficulties in coordinating the activity – often very technical – of the various specialised Councils, the number of

⁴ J. Richardson, *European Union – Power and policy-making* (London: Routledge, 1998).

which has increased through the years. The same difficulties are being encountered by the Committee of Permanent Representatives (Coreper), composed of ambassadors. In addition, the whole system is slowed down by the six-monthly rotation of the presidency and subject to the substantial differences in the quality of the presidents succeeding one another.⁵ As a consequence, the Council has also undertaken an important process of internal reform, parallel to that of the Commission.

According to the Helsinki European Council, “reforming the functioning of the Council is an important component of the broader institutional reform process to prepare the Union for enlargement”.⁶ In order to improve internal coordination, the General Affairs Council will have to be strengthened. Moreover, to avoid further fragmentation of Union activity, the number of specialised Councils has already been limited to 15.

At the administrative level, various measures have been taken to strengthen the coordinating capacity of the Coreper, which has seen its role weakened by the growing specialisation of the Council’s activities and the Union’s fragmented pillar structure. In that regard, it will be interesting to see what kind of relation will emerge, in practice, between the Coreper and the Political and Security Committee (COPS) as regards not only defence, but also, more generally, common foreign and security policy. Finally, the number of working groups of the Council must be reduced by merging some and eliminating others.

Possible options for reshaping the system

In addition to the problems mentioned above, the institutional triangle is also called upon to deal with pressure both from outside and from within. From the outside, the pressure of enlargement on the system is such that, in the absence of a courageous reform (which was not decided upon at Nice), the integration process might not survive. From within, the European institutions will have to deal with a growing demand for Europe in the fields of defence, immigration, health, security and economy on the part of citizens who at the same time show increasing disappointment with the Union, much of which is directed at the Commission, which has always been the Union’s “undeclared” scapegoat, shouldering, in the eyes of the public, the responsibility for decisions taken elsewhere.

An initial response to the need for greater consistency and coordination of the executive activity of the Community system was provided by the Lisbon European Council of 24/25 March 2000, which introduced a “new open method of coordination”. As concerns employment, economic reform and social cohesion, the Lisbon European Council established strategic objectives to be reached within the next decade by means of coordination at all levels: Community, national, regional and local. In particular, the Commission and the Council of Ministers are called upon to intensify their cooperation to favour the progressive convergence of national policies by means of such flexible instruments as comparative analysis (benchmarking), the diffusion of best practices, the exchange of information among national administrations and the publication of communications that indicate possible ways of reform.

5 “Operation of the Commission with an Enlarged Union in prospect”, report by the working party set up by the Secretary General of the Council, SN 2139/99 of 10 March 1999, called the Trumpf/Piris Report. See also the report by the Independent Commission for the Reform of the Institutions and Procedures of the Union – ICRI, *Advancing the Union* (London: ICRI, 1999), also called the Andriessen Report.

6 Helsinki European Council, Conclusions of the Presidency, Annex III, 10/11 December 1999, SN 300/99.

This is a new way of formulating the so-called soft law, more attentive to the need to respect proportionality and subsidiarity, above all in the functional sense, and to the requirements of economic and social actors. It would be wrong, however, to think – especially in light of enlargement to countries that are, despite rapid progress, still far from the economic and social standards of Union members – that this system can be an alternative to the Community system and that it will radically change relations between the Council and the Commission. On the contrary, it is a complementary method with respect to the classic Community method and does not eliminate the need to legislate in specific sectors and to come up with new forms of binding regulation. Of course, the administrative networks and the opening up to civil society that are to be favoured will facilitate the specific legislative proposals of the Commission as well.

The Lisbon method must be linked to the rethinking of the entire system of Community governance undertaken by the Commission, which should lead to greater involvement of national governments and parliaments, of regional and local administrations and of civil society in formulating and implementing Community policies.⁷ In particular, a solution must be found to the fragmentation of executive activities by inventing new methods of cooperation among the various administrative and political levels of the Union, simplifying its regulatory activity and improving the process of preparation and implementation of Community rules and policies. New regulatory and, where possible and effective, self-regulatory methods should be considered in respect of the requirements linked to the functional and horizontal aspects of the principle of subsidiarity.

The institutional triangle must be opened up to new actors to increase legitimacy and effectiveness. In parallel, this kind of opening must be accompanied by a clearer division of responsibilities within the institutional triangle, but also among legislative powers and national executives.

The method of coordination between the Commission, the European Council and the European Parliament requires review.

- The European Council should dampen its current propensity to centralise, evident proof of which are the increasingly loaded agendas that do not allow the heads of state and government to concentrate on the essential.
- The Commission should favour greater politicisation of debate inside Parliament by presenting clear political options and pursuing a more structured dialogue with civil society during the formulation of legislative and political proposals.
- Finally, the Parliament and the Council of Ministers should overcome the current separation of Community policies and decisions and develop a more horizontal approach concentrated on the problems to be solved rather than on the sectors of intervention.

As concerns relations between the Council of Ministers and the Commission, the best solution would be to assign definitively to the Commission the executive power, envisaging special procedures and measures for sensitive matters such as law enforcement and defence. In this case, the Council would evolve into a legislative chamber, in a two chamber system: Council and Parliament. This would also imply a deep revision of its current functioning and procedures, which should

⁷ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – Strategic Objectives 2000-2005 “Shaping the new Europe”, COM (2000) 154 of 9 February 2000.

become more similar to those of a legislative assembly, especially in view of the enlargement. Should the Council insist on maintaining certain executive functions, efforts should be made to achieve greater harmonisation, structural as well, between the Council and the Commission and, in particular, between the specialised Councils and the directorates general.

Finally, mechanisms for evaluating the impact of Community legislation are needed. Perhaps relations between the Community administration and national administrations could be conceived in new ways that would allow, among other things, for a simplification of comitology procedures. More direct participation in the discussion of legislative proposals by the administrations later called upon to implement them would increase confidence in Community decision-making mechanisms. Interactions between the Community and the national level could also lead to the networking of the various national authorities and agencies charged with implementing, under Commission supervision, specific regulatory activities in certain sectors.

Nice and the search for new geometries

The orientations of a new kind of Community governance, as just described, could contribute substantially to simplifying and legitimating the Union system, which is, however, in need of much broader institutional revision. On this point, the recent Nice Treaty has satisfied neither the expectations nor the need for reform. If one thinks that the fundamental problem at Nice was to ensure rapid and effective decision-making in an enlarged Union, guaranteeing that the majority of weighted votes corresponds to an abundant majority of the population, the new treaty is hardly reassuring. In fact, rather than simplifying things, the treaty raises the minimum percentage of votes required for a decision to pass.⁸ And as for the extension of qualified majority voting, alongside various sectors of minor importance, the only immediate extension made has been to trade policy – and here, too, with exceptions.

Of great importance, especially in an enlarged Union, is the decision to nominate the president of the Commission by qualified majority vote. The new treaty also considerably increases the president's power, accentuating the presidential nature already taken on by the Commission following the assignment to its president of the power of general political orientation in the Amsterdam Treaty. In the future, a logical and desirable development of this trend should be the direct election by the citizens of the president of the Commission.

A final solution to the question of the number of commissioners has been laid off till later, when the Union will have 27 members. How many commissioners will there be? It is difficult to answer. In view of the considerations made earlier, it would be appropriate to shift from the principle of one commissioner per member state to one commissioner per three member states. In that way, a Union of 30 members would have a Commission with ten commissioners, streamlined, effective and legitimate, especially if the politicisation of its relations with the Council and Parliament continues and if the democratic evolution aimed at setting up a two-chamber relation between the Council and Parliament

⁸ The threshold has been fixed for the 15-strong Union at 169 votes out of 237 (i.e. a threshold of 71.31 percent, slightly above the current percentage of 71.26 percent). The threshold will change depending on the pace of accession, from a percentage lower than the current percentage (71.26 percent) to a maximum of 73.4 percent. In the Union of 27 member states, the qualified majority threshold will rise to 73.91 percent of the votes.

– an expression of the Union of states and peoples – is completed.

As concerns the European Parliament, even though it ensures a more balanced representation of the various European political forces, the decision to increase the number of its members in the enlarged Union could affect the functioning of the institution. On the other hand, the extension of the co-decision procedure and the requirement of the assent of the EP for establishing a closer cooperation strengthens the Assembly in Strasbourg.

The Commission, and to a lesser degree the EP, have come out of Nice stronger but they both have to operate in a system even more vulnerable to paralysis than before. The pressure is such that unless the entire European political and institutional system undergoes an overhaul, not only will all further development be blocked, but even what has been achieved in a half century of integration could well be threatened.

This is why the new clause of the Nice Treaty on enhanced cooperation, which allows a group of countries, with the participation of Community institutions, to cooperate more closely to achieve an objective set down by the treaties, is essential. Certainly, there already are various forms of flexibility in the European Union. Suffice it to think of Economic and Monetary Union, the exceptions accorded Denmark and the United Kingdom, the Schengen Agreement and the general principle of flexibility introduced by the Amsterdam Treaty. Nevertheless, the possibility of resorting to closer cooperation with a minimum of eight states, the role assigned to the Commission and the EP in deciding upon and managing it, and the elimination of veto power may constitute the most enlightened parts of the Nice Treaty and could turn out to be decisive for continuing down the road to integration in an enlarged Union. Greater differentiation is already needed today, in a Union of 15, and will be even more important in a Union of 27 or 30 members. In the enlarged Union, the institutional triangle seems destined to operate in a system of variable geometries.

Conclusion

Often, when there is talk of Europe and its institutions, one has the feeling of being immersed in an institutional alchemy reserved for a small group of specialists, distant from the daily needs of millions of European citizens. This article is probably open to the same kind of criticism. Yet, in Europe even more than elsewhere, the institutional configuration is decisive not only in order to be able to respond to the expectations of European citizens, but above all to allow the Union to organise and make permanent certain decisions and actions that would otherwise be dictated by urgency and would not be sufficiently structured to have a lasting impact. This is how the existence and good functioning of a triangle become important for millions of people.

Today, the trend towards institutional fragmentation emerging in the Community system weakens the Union in those very sectors that are at the centre of citizens' concerns: employment, security, immigration, foreign policy, to mention just a few.

The triangular relation of the Council, the Commission and the European Parliament has allowed for remarkable achievements that have made Europe a unique model of integration. Just think of the single market and monetary union. Far from being superseded by events, that model is still modern today and of even greater importance in a Union that is to enlarge to extend its political and economic benefits of integration to numerous European countries. The problem is not to replace the Community model, but to work out methods of cooperation and coordination among the various actors – Community and national, public and private – that can complete, strengthen and develop it.

Of course, an enlarged Union is also a more complex and variable geometric figure, involving

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concentric circles. But at its centre, the triangular equilibrium remains indispensable for maintaining the achievements of half a century of integration and continuing the European construction on a continental scale.