

European Ideas Network

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TF 4 European Governance and Democracy

- KAS (*co-lead organisation*)
- Walter Eucken Institute (*co-lead organisation*)
- FAES
- Free Europe Centre
- József Antall Foundation
- Austrian Institute for European Security Policy
- Political Academy of ÖVP
- Nova Res Publica
- SPK-Europe
- Robert Schuman Foundation

Introduction

After the historical enlargement of the EU by ten new Member States in May 2004, the present structures of European governance no longer seem appropriate to deliver good results regarding three goals of a “magic triangle”: (a) further integration, (b) further enlargement and (c) sustained, perchance increased, governability. With “governability” we mean not only policy-making procedures that efficiently deliver results (output-perspective) but also procedures that effectively ensure democratic participation, accountability and transparency (input-perspective).

Democracy and Legitimacy

A vital European democracy presumes that EU citizens identify themselves with European institutions and legitimise the European project – not only by electing a European Parliament, but also through open and informed discourse on European politics. EU institutions constrain and replace national legislation in a growing number of policy fields. But citizens and even national parliamentarians are hardly aware of this fact. There is an urgent need for democratic procedures – both at the national and Union levels – that increase citizens’ awareness of and participation in European decision-making. Otherwise, citizens’ growing impression of “Brussels” as a remote and intransparent centre of power that they neither understand nor control, may prove to seriously undermine the European project.

Workability

Enlargement has added significantly to the heterogeneity of EU membership. Against this background, the essential question is: *How can a more flexible, economically efficient and politically workable mode of integration be put into operation that is compatible with the heterogeneity of economic structures as well as political, social and cultural preferences throughout the EU?* Historically, institutional variety has been a predominant source of Europe’s cultural richness and progress. Also economically, heterogeneity is a great source of wealth, since within a greater market it allows for a more efficient use of comparative advantages. Politically, however, heterogeneity makes it much more difficult and costly to develop policies aimed at specific common policy purposes. The growing heterogeneity not only with respect to economic structure and performance but also with respect to political objectives, social needs, cultural preferences and financial constraints and the fact that the willingness and capacity of individual EU Member States to participate in accomplishing integration varies greatly, causes more flexible integration to be almost unavoidable.

I. Practical Proposals to Improve Democratic Accountability within the EU

A larger role for national parliaments¹. In order to guarantee greater transparency and to bring European law making closer to the citizens, national parliaments should play a much stronger role in European decision making. It would be against the sovereignty of the legislatures to impose common obligatory scrutiny mechanisms on them, but they should be encouraged to devise effective control mechanisms at the national scene in order to have a stronger voice in European affairs and better instruct governments on how to negotiate in Brussels.

In particular, the EU's national parliaments should make more efforts to discuss EU draft laws before the Council of Ministers votes on them. Also European Commissioners should come talk to parliamentarians in various Member States at least once a year to keep them informed and involve them better in the EU decision-making process.

Extended use of the “yellow card” system (“early warning system”). According to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty, any draft European legislative act can be scrutinised with regard to subsidiarity. This instrument is already in use; but in order to raise the influence of national parliaments, it may be extended also to other fields. Consequentially, legislatures would be entitled to scrutinise any draft European legislative act in line with their own national rules and issue a reasoned opinion on them. This reasoned opinion could 1) be supportive to the original draft 2) be supportive with conditions 3) refuse the original draft. Using the same voting system as described in the Protocol on subsidiarity, if at least one third of all the votes is cast refusing the draft, the draft should be reviewed. After such review, similarly to the subsidiarity control procedure, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft European legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons should be given for this decision.

A more extended use of the ‘yellow card system’ would not introduce new players in the already complicated decision making system of the European Union and would respect each member States’ own procedures. However, it would definitely guarantee a much wider room of

¹ See Robert Schuman Publications – Note N°34 – Hubert Haenel “National Parliaments, a bulwark for Europe” Paris –June 2006 – <http://www.robert-schuman.org/gb/notes/note34an.htm>

manoeuvre for the legislatures, and by this, would entail higher legitimacy and increased accountability in EU matters.

Publicity and transparency of the meetings in the European Council when acting as co-legislator. In the European Council, a more commonly applied transparency rule for all meetings when acting as co-legislator, as decided at the European Council of Seville in 2002, should be enforced. By guaranteeing the publicity of the main propositions, votes and explanations, this rule corresponds with the demand of accountability by the citizens, allows them to better understand the decisions made, to perceive the stakes of collegiality imposed by the functioning of the Council and finally, avoid the risk of double language by the governments on the national scene and on the European one.

Adopting the Citizens' initiative. EU governments and institutions should agree to implement the citizens' initiative on legislative proposals, as intended in the Constitutional Treaty. This would allow not less than one million citizens who are nationals of a significant number of Member States to take the initiative of inviting the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required. This can constitute an important lever to alleviate the legitimacy deficit the European Governance suffers from.

Strengthening the relationship between national and European political parties.

A better politization of the European stakes at a national level by supporting closer and clearer links between the two levels of policy decision should be promoted. In this regard, the relationship between the political parties in the European Parliament and their national affiliates belonging to it should be enhanced, to ensure a better understanding and raise the interest of the citizens.

In order to show the proximity between sister parties in the EPP in the next European elections, each list could contain one representative of another political party from another European country belonging to the same political family. The creation of such an informal rule could play an active role both to deepen the exchanges between national parties within European ones, and to raise the curiosity of the voters for the candidate, its country and the EPP in general.

Only few citizens realise that when they join a national political party, they indirectly support a greater political family on the European level, simply by electing deputies who are joining

European Groups. A way to bring the attention of the citizen to this supranational level of power would be to automatically issue a membership card of the European party at the same time as the card of the national party.

MEPs of each State should be allowed to participate as observers in the meetings of the different parliamentary commissions of their national parliaments. The objective is twofold: 1) to bring MEPs near their national realities and 2) strengthen the relations between the European Parliament and the national parliaments.

Double symbol on the EP electoral ballot. Starting from 2009 EP elections, national political parties belonging to a European party (defined as such according to the Regulation entered into force in 2004) should use, along with their own logo, their European party logo for any political activity of the EP electoral campaign and even on the ballot.

Transparent lobbying in the EU. Following the end of consultation (August 31st) on the Green Paper on the European Transparency Initiative, it is time to define lobbying as a legitimate part of the democratic system. Appropriate rules of the game should reduce the risk of lobbying practices which are considered to go beyond legitimate representation of interests: not only unlawful practices (fraud and corruption) but also other methods which abuse the EU institutions' policy of openness or are plainly misleading.

First of all, there should be a unique Lobbyists' Register for both the EP and the Commission. The two institutions can share the same information on lobbyists' objectives, financial situation, interests they represent and, *ex post*, their behaviour.

By registering, lobbyists a) are accredited to the EP and can access the premises, and b) can submit comments of a policy proposal by the Commission. Secondly, there should be clear sanctions. Apart from voluntary codes of conduct for lobbyists, which have internal sanction mechanisms ranging from a reprimand to expulsion (although up to now no case of misdemeanour has been reported), the EP and the Commission should strengthen their controls by sharing information and resources as well as impose formal sanctions on any lobbyist breaking the code of conduct signed when registered.

Transparent use of EU funds and finances. The current attempts of the Commission to urge Member States to disclose the recipients of EU transfers deserve support. The European citizen-taxpayer ought to have a right to know how his or her money that goes via "Brussels" is being used. This also applies to transfers within the CAP where many Member States still aim to

conceal “who gets what and how”. Privacy should not serve as an excuse to conceal the use of public money. If the Commission or the EP become aware of money not to being spent in accordance with EU priorities, they should be able to have public opinion on their side, once the public has access to the relevant information. Thus, transparency can create a closer link between EU institutions and the public. The EU could even come to be seen as a model in terms of transparency if it adopts disclosure rules that so far are not the standard in many Member States.

II. Practical Proposals to Improve Workability and Flexibility within the EU

Develop “enhanced cooperation” instead of “concentric circles”. “Enhanced cooperation” is already a legal part of the present-day integration strategy as well as a mode of future integration as it was intended by the Treaty establishing a Constitution for Europe. It would allow different intensities of membership in the EU, but, in contrast to concentric circles, it would be *functional* rather than geographical. The concentric circle approach is much more rigid and exclusive since it allows flexibility only through negative choices by a system of derogations and opt-outs. The enhanced cooperation approach would be more flexible by giving Member States freedom to create new forms of cooperation or deepen existing ones as they (and their constituents) wish – thus also providing a safeguard against citizens’ disenchantment with demands from “Brussels” that overtax their ability to comply and/or disregard their unwillingness to give up sovereignty. Moreover, it treats member countries as members of different voluntary “clubs” rather than as one single club with different classes.

Use enhanced cooperation to demonstrate “legitimacy through performance”. Enhanced cooperation caters both to the legitimately different needs of individual Member State and to the disparities of economic and political endowments in a heterogeneous group of 25 and more countries. Every country would be allowed to choose which parts of the integration process it would like participate in; thus, voluntary choice instead of bargaining power would become the key principle of enhanced participation in the Union. At the same time, previous experiences with flexibility (e.g. Schengen, EMU) have been quite successful and in many cases have had centripetal effects. Thus, flexibility is not the end stage but often a stepping stone towards further integration of all Member States – if the political experiments of “enhanced cooperation” also demonstrate that they can yield enhanced results! Some policies may prove to be inefficient – but pursued in a system of enhanced cooperation of the willing and capable, the risks of failure are already reduced – compared to the obligation of the unwilling or incapable to join (lured by side-payments in other policy areas). If enhanced cooperation produces great benefits to its members,

it will in due time be able to attract other members to join, thus providing a “legitimacy by performance and by voluntary accession” in specific policy areas!

Use enhanced cooperation to increase workability and acceptability. By permitting the formation of enhanced cooperation networks, the costs of future integration and enlargement can be reduced in the following dimensions²:

- Decision-making costs (costs of finding consensus) will decrease due to the voluntary cooperation of those members who genuinely agree that further integration is in their own interest.
- For the same reasons, external costs [the costs of being forced to accept common policies that do not meet member states’ preferences and capabilities] would be reduced significantly. Enhanced cooperation of the willing and capable (implying more homogeneous political preferences) would lower external costs because countries can search for cooperation in those functions in which they have a real demand for cooperation, and they are not forced into cooperation with respect to functions on which they want to stand alone.
- The risk of blackmailing by veto-players and the necessity for mutual haggling over privileges via log-rolling against the common interests of citizens would be reduced as well as the threat of inefficient package deals and discriminatory rules benefiting some and harming others.

The Union must have and defend an obligatory core common to all members. However, this core should not be a group of countries pretending to agree about everything, rather it should consist of issues on which all members genuinely agree, above all: the need to preserve and extend the Internal Market. Apart from this core (which might also include more than is the common core today: migration, police, defence ought to be included), there should be room for voluntary choice. However, we do not want this choice to be restricted to country by country in an all-or-nothing way, but differentiated issue by issue, according to national preferences and capabilities.

² For a more detailed analysis of flexible cooperation based on a constitutional economics yardstick of minimising decision-making and external costs, see Wohlgemuth/Brandt (2006). These authors also advocate a more radical form of flexible integration (and enlargement) based on a “hard core” *acquis* which would be obligatory for the whole Union (and which would be partly be less comprehensive and partly more comprehensive than the existing *acquis*). The resulting policies would be subject to enhanced cooperation of the willing and capable, based on a “clubs-within-the-club” structure). The paper can be downloaded at: www.eucken.de/publikationen/diskussionspapiere.htm

Enhance “enhanced cooperation”. If, as is the growing consensus, more flexibility is inescapable, then it is preferable to attain flexibility according to a conscious and transparent strategy instead of accepting it as an unintended consequence arising out of an accumulation of pressures within the Union. The crucial issue is to provide flexibility without ad-hoc arrangements and without creating so many exceptions and special cases that ultimately it distorts and discredits the whole Union. The existing provisions for “enhanced cooperation” as established by the present treaties and as proposed (in more detail) by the Constitutional Treaty are a good starting point for a rules-based flexibility. However, in some respects they seem too restrictive to realize the forms of flexible integration that Europe may have to provide in the future – especially if the “absorption capacity” of the EU may turn out to be already heavily overtaxed by the latest enlargement and if it can be expected to be certainly even more strained if new members (Romania, Bulgaria, Croatia, Turkey) join. In the present form, “enhanced cooperation” is apt to preclude far too many imaginable and perchance successful forms of closer cooperation³:

- “Enhanced cooperation” remains an exception because it can merely be used as “a means of last resort”. Such a requirement, if it has more than declaratory character, should be abolished.
- Even if the last-resort-requirement would be met, the use of “enhanced cooperation” is restricted to the creation of relatively large cooperation clubs because it has to involve one third of all EU Member States. This restriction ought to be abolished.
- The current requirements for “enhanced cooperation”, for example that it has to respect “social and territorial cohesion”, must be modified, or at least clarified, since they could easily be construed as a barrier to starting “enhanced cooperation” should a sufficient number of Member States, the Commission or the Parliament so choose.
- While the initial decision to launch “enhanced cooperation” can be essentially taken by those willing to cooperate, consequent policy decisions of the “cooperation club” are contingent on the relevant provisions of EC law, which in turn implies that there still exists a right to veto in those realms in which the Treaties dictate unanimity. This legal uncertainty should be resolved. EU institutions should have the right to protect the “acquis communautaire” (above all, the rights of all European citizens to make use of their basic freedoms within the Internal Market); but they should not be free to veto

³ See Wohlge-muth/Brandt (2006) for a more detailed assessment of „enhanced cooperation“, mainly based on Art.I 43 and III 322-329.

policies within an “enhanced cooperation club” without being a member of that very club.

In sum, it ought to be considered to clarify and simplify the rules for “enhanced cooperation” in order to achieve more flexibility. “Enhanced cooperation” should be allowed in any policy field without the possibility of individual outsider countries to veto. Admitting numerous enhanced cooperation arrangements among subsets of countries or even sub-national units (regions, communes) by easing the conditions required for such cooperation could make flexible forms of integration possible and help overcome the challenges a larger and more diverse Union poses.