

ELECTING THE PRESIDENT OF EUROPE



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CONTRIBUTIONS

Twelve points on effectiveness and legitimacy of the European Union

1. The management of the euro crisis, and the new treaties emerged from it, show an intergovernmental EU cannot satisfy the basic requirements of effectiveness and legitimacy. How could these requirements be satisfied? The first perspective is to extend the supranational logic to intergovernmental domains, remaining within the Lisbon Treaty's legal and political order. The second perspective is to recognize that there are already *more than one Union*, thus operating for extending the supranational logic to the treaties approved by the euro-zone member states. In both perspectives the question is: **what kind of supranational logic fits better the Union's needs?**

2. Two different strategies might be pursued to do that. One traditional strategy has argued that it is necessary to 'parliamentarise' the EU. **The Commission should be brought back to the center of the EU system** (from which it has been excluded during the euro crisis) and, along with it, the role of the European Parliament should be strengthened as the one institution that confers political legitimacy (through its power to approve or dismiss the Commission) to the Union's executive. The main political parties should propose, on the occasion of the next elections of the European Parliament in 2014, their respective candidate for President of the Commission, transforming those elections into the arena for politicising the policies of the EU. At that point, the task of the European Council and its President would simply be to formalize a decision made by voters and institutionalized by their parliamentary representatives. The EU would have its government (the Commission), capable of acting effectively. At the same time, being the expression of parliamentary

elections, the Commission and its President would have the legitimacy to act on behalf of the majority of European voters.

3. Although this strategy is clear and familiar, is it also plausible? My answer is negative, empirically and normatively. Empirically, at least since the Maastricht Treaty, the Union has gone in a direction incongruent with the parliamentary model. The European Parliament has strengthened itself as institution, but such reinforcement has not implied a parliamentarization of the Union. The more the European Parliament has increased its powers, the stronger has become the European Council. Although the Lisbon Treaty gives the European Parliament the right to elect the Commission's president, in reality it is the European Council that selects the candidate for the office, leaving the European Parliament the choice but to approve him/her. Is it reasonable to assume that the European Council will give up to its selecting role? I doubt.

4. Normatively, the Union has difficulty to become of a federal parliamentary system because it is based on states (and their citizens) that are asymmetrically correlated. The normative puzzle the EU has to resolve (in order to survive and consolidate itself) is as follows: **How to keep together in a single political system member states with millions of inhabitants and member states with a few hundred thousands of inhabitants.** Turning the EU into a parliamentary system means transforming the European Parliament into the institution with the exclusive prerogative 'to form a government'. But if that is so, then the voters of the larger member states will have a much greater weight in determining the outcome than the voters of the smaller member states. Unless, of course, the elections are run on a transnational basis which would require (first) that the main divisions within all member states are between the same parties and (second) that those divisions are politically homogeneous. But this is not the case, nor could it be. In a Union of states, in addition to partisan cleavages, the divisions between member states and regional areas are quite significant as shown by the euro-crisis (which pitted northern against southern member states). Furthermore, the different historical national experiences make it improbable that right and left mean the same thing in all the member states, especially when dealing with the constitutive issues of the process of integration.

5. But if this is so, is there an alternative paradigm for making the supranational EU more effective and legitimate? My answer is positive. The supranational EU has become de facto a system of separation of powers because the latter is much more congruent with the need to accommodate the asymmetries and differences between its member states. The asymmetries in capabilities and population combined with the differences in culture and language have encouraged in the supranational Union the institutionalization of a decision-making system that diffuses the exercise of decision-making power amongst institutions rather than concentrating it in only one institution (the European Parliament). Certainly, institutional ambiguities have been preserved, rendering in some respects the separation between executive and legislative institutions opaque. Notwithstanding these ambiguities,



the supranational EU has institutionalized a bicameral legislature (constituted by the Council and the European Parliament) and actual executive (constituted by the European Council and the Commission) with the two respective presidents representing a two-faced Janus.

6. The institutionalization, with the Lisbon Treaty, of the European Council has been a key condition to advance the integration process in sensitive policies. With the election of the permanent president of the European Council, the latter has irreversibly been transformed into a decision-making institution. The euro crisis has thus accelerated the transformation of the European Council into an executive institution. However, the euro crisis has also shown that the president of the European Council is exposed to pressure by the heads of state and governments of the larger member states. How can one neutralize that pressure?

7. If one recognizes that the European Council has come to embody the political head of the Union, then, rather than trying to hide or hinder such evolution, it might be more rational to reform the process of selection of its president so as to make its role more effective and legitimate. The effectiveness of the European Council's president would have been stronger (compared to that demonstrated during the euro crisis), if he had benefited from greater decision autonomy with respect to the heads of state and government (especially of Germany and France) who make up the European Council. At the same time, the Commission and its president could have exercised a greater influence if their institutional role would have been connected to the president of the European Council. To control the Commission through the elections of the European Parliament is like to close a stable with the horse gone.

8. Here the proposal. **The heads of state or government of the European Council would select two candidates for the position of the institution's president, on the basis of both national and partisan evaluations. The two candidates would then be subject to the vote of presidential electors organized into national electoral colleges. Such presidential electors would be voted either directly by national voters or by the members of the national parliaments. The number of presidential electors for each individual member state would be equal to the MEPS assigned to that member state (through the criteria of digressive proportionality that over-represents small member states). The two candidates will carry out their electoral campaigns presenting their programs to the national electorates and parliaments of the member states.** The candidate elected president of the European Council will be the one receiving a majority (inevitably absolute in this case) of the 750 votes of the presidential electors in the various national electoral colleges. In a union of asymmetrical states, it would be unacceptable to promote the direct election of the president by the European voters, for the same reason that it would be unacceptable to give the European Parliament the power 'to form the government'. Any direct election would favor the larger member states to the detriment of the smaller ones.

9. In this way, the European Council maintains its selection power, but loses its election power. The European Parliament should not play any role in the process because of the need to preserve the institutional separation of powers between executive and legislative institutions at the EU level. Indeed, the European Parliament should be the most powerful check on the European Council. The European Council would continue to meet periodically, as prescribed under the Lisbon Treaty, with the purpose of discussing the policy strategies defined by the president. It would also be necessary that the European Council would be renamed European Presidency, thus avoiding misunderstanding with the Council (legislative body) and at the same time underlying its institutional function (executive body).

10. The operational link between the president of the European Council and the European Commission and its president should be strengthened, transforming the latter into the true operational branch of the former. It would be the Commission's duty, rather than the General Secretary of the Council's, to prepare the periodical meetings of the European Council and to structure its deliberations. The General Secretary of the Council would support the activities of the member state holding the rotating presidency and more in general the legislative activity of the Council. The procedure for the nomination and formation of the Commission's president and commissioners should remain the same, with the European Council's president proposing (with the consent of the majority of the latter's members) the candidates for those roles and the European Parliament to give its 'advice and consent'. Moreover, the Council might also be included in this process (i.e. regarding the approval of commissioners proposed for foreign and security policy or financial policy), once the need to make it a properly legislative institution, thus separated from the European Council, is duly recognized. The role of the Commission should remain what it is: a powerful civil service organization operating in the European interest. The Commission should use its prerogative of legislative initiative with the consent of the European Council's president, although also the European Parliament and the Council should have the power to introduce law proposals in the co-decisional legislative process.

11. Thus, in order to avoid the *directoires* emerged in the euro-crisis, it would be necessary, firstly, to enlarge the election base of the president of the European Council and, secondly, to turn the European Commission into the true support structure of the European Council (instead of the Secretary General of the Council). In a dual executive, the logic of competition and the logic of cooperation may find an equilibrium point. At the same time, in order to resolve the legitimacy's gap emerged during the euro-crisis, the European Parliament should become a stronger legislative institution, running a budget independent from the member states and with the institutional resources for checking and balancing the dual executive.

12. Thanks to the separation between legislative and executive institutions, the activity of the bicameral legislature will not be constrained by the need to guarantee its political



support to the 'government'. Indeed, legislatures are much more powerful in systems of separation rather than fusion of powers. An executive organizationally structured by the Commission and politically directed by the president of the European Council would be more effective and legitimate. However, this strengthening of the executive power would require an adequate supervision and balancing action from the legislative power. In sum, the effectiveness and legitimacy of the European Union can be approached through innovative and realistic strategies, not through the repetition at the European level of the experience of the Union member states.

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- *Compound Democracies: Why the United States and Europe Are Becoming Similar, Oxford, New York, Y., Oxford University Press, paperback, 2010, revised and updated edition.*
- *El ascenso del Principe democratico. Quién gobierna y como se gobiernan las democracias, Buenos Aires, Fonde de Cultura Economica, 2009.*