

Extract from:

Yves Bertoncini, "European Steering Committee 2011 of Notre Europe - Key elements", Notre Europe, December 2011.

2. "Institutions and people"

Moderated by Gaëtane Ricard-Nihoul, the session on political and institutional debates included speeches by Niels Ersbøll and Josep Borrell Fontelles, and comments and questions from other participants. The session as a whole led to the identification of the following main points for present analysis and future direction².

2.1. The governance of the EMU: "necessity knows no law"?

The current crisis is placing the governance of the EMU under stress and triggering political debates both on the allocation of powers and on the fundamental solutions.

2. The views expressed here are not necessarily those of *Notre Europe*.

2.1.1. Power issues: a bonus for the intergovernmental approach?

- the economic and financial crisis has had an even greater political and institutional impact than the Lisbon Treaty: it is fairly logical that this crisis should have afforded pride of place to the heads of state and government in the European Council;
- the bonus for the “intergovernmental” method also echoes a fundamental dilemma for Germany, which is rather favourable to increased coordination of national budgetary and economic policies, yet it is hostile to the transfer of competences, also in view of the position adopted by the Constitutional Court in Karlsruhe;
- the present system can be fine for handling an exceptional situation, but it cannot be the right way to run the EU in the longer term, especially when the bonus for the intergovernmental method has effectively turned into a Franco-German duopoly: the situation needs to be redressed.

2.1.2. Substantive issues: what remedies for the EMU crisis?

- we should remember that the sovereign debt crisis would not have reached this magnitude if the stability pact had been complied with, whatever its shortcomings, because the political consequences of failure to comply with it are far from negligible (lack of confidence);
- several problems that are glaringly apparent today were identified both when the Maastricht Treaty was negotiated and during the Convention: the fact that there can be no single currency without the coordination of economic policies, the need for European solidarity in the event of an asymmetric crisis and so forth. These problems were not addressed on account of political disagreements among the member states, and the basic underlying reasons behind those disagreements are still there;

- one of the major issues lies in properly identifying the causes of the EU's problems: in economic terms, by focusing on the private debt problem as much as on the problem of public deficits; and in political terms, by highlighting the fact that the EU is often slow to act and then does so insufficiently on account of national leaders' difficulty in speaking openly to their public opinion at least as much as on account of its institutional cumbersomeness.

2.2. Issues of method

A fresh boost to the debate on the "Community method" must lead to a clear analysis of the main underlying political issues.

2.2.1. Clarifying the way in which three crucial political issues are addressed

- 1st question: who proposes the decisions? No one really disputes the Commission's role in this connection, even though the Commission does not necessarily exercise that role sufficiently, and even though it might have difficulty playing that role in connection with decisions regarding the euro zone alone;
- 2nd question: who makes the decisions? The role of the European Council and of the Council of Ministers (in conjunction with the European Parliament) is fairly clear in this connection. The fact that the EU is not a federation along US lines naturally requires a collective management system allowing member states to play an important role;
- 3rd question: who implements the decisions? In this regard the EU suffers from a lack of transparency, of effectiveness, and thus of crucial credibility in the handling of the crisis: its decisions are implemented slowly and belatedly (for instance, the EFSF) and, even more deplorably, it is not clear whose job it is either to implement them or to follow up on them.

2.2.2. *Emerging from the current confusion*

- the management of this crisis appears to have fostered a trend towards a pooling of proposal, decision-making and implementation functions in the hands of the European Council, which is primarily a deliberating, decision-making assembly devoid of the powerful services able to exercise functions of proposal and implementation;
- debates on the reform of decision-making methods occasionally focus on the presidency of meetings or summits (euro zone) when in fact it is not essential – the only significant issue is the presidency of the institutions;
- the crucial thing is to comply with one of the fundamental aspects of the Community method, which provides for the institution tasked with making proposals also being responsible for implementing the decisions reached, thus ensuring that there is a clear chain of command;
- it is not a matter of regarding the “Community method” as sacred, which is no longer fully applied today anyway in connection with the coordination of economic policies or of the CFSP, due to considerations of legitimacy.

2.3. The predominance of the legitimacy issue

The current crisis has often led to priority being given to the concept of effectiveness, but that cannot be allowed permanently to overshadow the primacy of legitimacy.

2.3.1. *Balances between member countries*

- it is not possible for European countries to be governed by other EU member states – which explains why there is such widespread rejection of the “Merkozy” system;

- one of the key issues in European governance is to ensure that member states are on an equal footing, and that can only be guaranteed by independent institutions along the lines of the Commission (which includes a national from each member state);
- the rotating presidency of the European Council was useful to boost the profile of all of the member states, as well as the grasp of European issues in each state – but the formation of a 27-strong EU made major inroads into those positive effects even before the Lisbon Treaty set up the stable presidency.

2.3.2. The incarnation principle

- the end of the rotating presidency of the European Council and of the Foreign Affairs Council has weakened numerous member states' ability and will to incarnate the EU, to the advantage of two presidents whose appointment was shrouded in fairly murky circumstances;
- at the same time, the current coexistence of several different “presidents” (Commission, European Council, Council of Ministers, High Representative, European Parliament and so forth) makes it more difficult to identify those really in charge in Europe;
- the trend towards a merger of the presidencies now under way in the foreign affairs sphere would therefore deserve to be addressed in greater depth also in the economic and financial fields (with the presidency of the Council, or even of the Eurogroup, being assigned to the vice-president of the Commission);
- in the end, it would seem appropriate to merge the posts of Commission president and stable European Council president, particularly since this would make it possible to put paid to the current imbalance (H. van Rompuy is often forced into the limelight yet he has no administration and is not monitored by the European Parliament, while the opposite situation applies in the case of J.M. Barroso).

2.3.3. Democracy

- the more powerful role conferred on national parliaments entails both a strengthening of the intergovernmental approach and a boost for democracy;
- the establishment of a “parliament of the euro” cannot be based exclusively on the participation of national deputies, unless we wish to reduce the European Parliament to the role of a “parliament of the internal market”: priority should be assigned in the future to dialogue between national parliaments and the European Parliament;
- the strengthening of the EU’s powers in the economic and budgetary spheres has naturally imparted a fresh thrust to the debate on “political union” (particularly in Germany) and on the European institutions’ democratic basis: the EP’s representativeness, the allocation of powers within the ECB’s executive board, the possibility of the president of the Commission being directly elected, and so forth.

2.3.4. “Technocracy”

- the important role played by unelected institutions can foster legitimate criticism, but that criticism must be tempered by clear explanations;
- the Commission’s legitimacy is rooted in its independence – the independence of a body that is neither judge nor party, unlike the member states – but so is its effectiveness: it has to maintain that independence in order to establish its credibility and to guarantee the implementation of decisions reached by others;
- the same is true of the ECB: it is precisely because it is independent that it can act in a credible and lasting manner, sheltered from the pressure of member states and of electoral cycles.

2.4. Proposals for a revision of the treaties

The proposals for a revision of the treaties or for a new treaty raise numerous uncertainties of both a political and a legal nature.

2.4.1. Using the “tool-box” provided by the Lisbon Treaty

- intervention which the treaties neither formally anticipated nor yet formally ruled out has been seen in the addressing of this crisis; that includes rescue plans for countries in difficulty, extraordinary activism on the ECB’s part, and so forth;
- it has also been possible to reform the stability pact (“six pack”) and to establish a European semester without changing the treaty – these reforms are due to be put in place both in the very near future and within the current legal framework;
- the short-term responses to the crisis will necessarily have to be implemented outside of the new treaty because it is going to take several quarters for it to come into force, and that will trigger a period of political uncertainty and tension which it would probably be preferable to avoid;
- finally, the launch of a revision of the treaty could be necessary if it constitutes a political signal contributing to other interventions in the short run (ECB, etc.).

2.4.2. Arbitrating between several different legal paths

- the potential of Articles 42 and 46 in the Lisbon Treaty regarding structured cooperation could be put to better use in the service of the euro zone, even if those articles were originally devised for defense issues;
- article 136 in the Lisbon Treaty could also be used, on condition that the revision does not include any major issues (examples include changes to the weight carried by member states in the ECB, or the monitoring of economic policies by the Court of Justice) because otherwise it could not be called a “simplified revision”;

- a choice also needs to be made between a revision of the Lisbon Treaty and/or the signing of an intergovernmental treaty.

2.4.3. A 17-strong EU versus a 27-strong EU?

- the euro zone is a “core business” in the construction of Europe, after the CAP and trade policy in the early days, followed by the internal market and structural funds in the 1980s and 1990s: its development concerns the EU as a whole, and thus also the treaties governing the EU;
- membership of the euro zone is not the result of an enhanced cooperation but a prospect for all of the EU’s member states (save for the two which have negotiated an “opt-out clause”): the debate on the reform of the EMU must therefore take place at the level of the 27-strong EU;
- it is important to begin negotiations with all 27 member states involved, even if those negotiations will not necessarily be concluded in that format, especially if the government of the United Kingdom wants to use the negotiations to take back certain powers to the national level.

2.4.4. Addressing several practical issues

- the timetable issue: it is unlikely to be possible to finalise negotiations on the European treaties before the French presidential election;
- the content issue: for instance, is it necessary to include the creation of “stability bonds” as proposed by the Commission, or the modification of the weight carried by member states in the ECB as Germany has suggested?
- the method issue: should an Intergovernmental Conference be convened, or should a Convention be formed as the European Parliament would prefer?