

# THE SCENT

# OF WILDS



# ANIMALS

Sophie in 't Veld

# The Scent of Wild Animals

*'I really love the scent of wild animals in this building'*

*'Ik hou ontzettend van de wildebeestenlucht  
die hier in dit gebouw hangt.'*

*Hans van Mierlo, Founding father of D66,  
on the Dutch parliament (1977)*

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# The wake up call

Summer 2021 has been the second summer spent in the company of Covid. In summer 2020 Europe was still reeling from the first wave of the pandemic and months of lockdown. A year later things were looking much better and we all hoped to enjoy the holiday season again. Vaccines had been developed at record speed and the vaccination roll out was going smoothly. Almost the whole of Europe was considered a safe 'green' destination. By mid-July no fewer than two hundred million Europeans had been issued with the EU Digital Covid Certificate, the golden ticket to free and safe travel. Excited by the prospect of actually going on summer holidays for a much needed break, Europeans dug out their sunscreen and flip-flops and checked the internet for a last minute beach holiday or city trip. Hoteliers were preparing the rooms, bartenders putting the tables out on the terraces, and souvenir sellers filling their stalls with knick-knacks, all ready for tourists to arrive. Things were looking up.

But then the Delta variant struck. And national governments did what they had done since the start of the pandemic: each taking its own national measures, applying its own national risk criteria and green-yellow-red colour codes, and using its own national experts. Twenty seven governments going it alone, with no European coordination. Once again citizens were left completely lost in a spaghetti of national rules and restrictions, not knowing if and where they could travel freely and safely, and what rules would apply at their holiday destination or upon their return home. National governments were primarily concerned with national politics, not with opening up Europe for its citizens. It was not the virus that led to the mosaic-like map of Europe, it was the total lack of coordinated action by national governments. As if there had never been any European integration, no internal market, no Schengen

area, the map of Europe turned into a chaotic patchwork of national and local measures, without any harmonisation, coordination or interoperability. The chaos left citizens exasperated and disappointed in Europe. However, in reality the problems were not caused by Europe, but by the lack of Europe. By contrast, tangible results had been achieved each time there was joint EU action: the successful EU vaccine procurement strategy, the EU Digital Covid Certificate facilitating travel, and the massive 750 billion euro Covid recovery and resilience facility.

The virus will be defeated eventually, but the Covid crisis has mercilessly exposed the weaknesses in our governance systems, national as well as European. This should be a wake up call. Europe should not hit the snooze button and go back to sleep when the pandemic retreats, but introduce daring reforms and radically improve the EU's ability to act and respond to challenges. The climate crisis that is already on our doorstep, will make the Covid crisis look like a blip. The apocalyptic scenes of fires and floods ravaging parts of Europe this summer, are a harbinger of what is to come, and the UN Climate Panel Report published in August, makes it clear we have no time to lose. The climate emergency will confront us with urgent and profoundly political questions, and with ethical dilemmas. It will force us to answer questions of safety and security, of fundamental rights, of equality and social justice. It will present us with vital questions of access to water, food, shelter and raw materials, of war and peace: literally questions of life and death. It will not tolerate further indecision and inertia with regard to migration, geopolitics or the energy transition. Climate change will not affect all people, regions and countries equally, and it will put solidarity and unity of the European Union severely to the test. The challenges ahead of us require strong political leadership. But the current European governance system is not equipped for challenges of this magnitude. It was designed for the world of the 1950s. For decades Europe advanced in little

steps, incrementally, slowly building consensus in a system of 'intergovernmental' cooperation between governments and trade offs between national interests. This method worked fine for the challenges of the time, and allowed us to pretend that the EU was just a technocratic, apolitical entity, while politics was still firmly the exclusive domain of nation states. But we cannot afford that luxury anymore. The world is a radically different place and today's challenges require powerful political answers and firm action. The old intergovernmental system is a dead-end street. On the surface everything seems to be continuing as before, but look deeper and you will see the sclerosis. Yet, national leaders cling stubbornly to the status quo and claim that everything is fine, 'Europe just needs to deliver'. But the point is: Europe in its current configuration is incapable of delivering. Only a real political union can do that. A powerful political union needs strong democratic foundations. Creating a vibrant parliamentary democracy requires fundamentally changing the power balance between the EU institutions. That will not happen all by itself. Only the European Parliament can, and should, make it happen. The European Parliament should resolutely challenge the status quo. This will meet with fierce resistance, since change inescapably touches vested interests. But this should not hold us back. Political leadership is not for the fainthearted. The European Parliament has to be a true political arena, with the scent of wild animals, blood, sweat and sawdust. The prime battleground for the confrontation of ideas and ideals, for the clash of the political titans and the big beasts. This is the oxygen of democracy.

# Everything must change...

*‘Se vogliamo che tutto rimanga com’è, bisogna che tutto cambi’*

If we want everything to remain as it is, everything must change, says the famous quote from Giuseppe Tomasi di Lampedusa’s novel “The Leopard”. Lampedusa, born in 1896, scion of an old aristocratic family, wrote his famous novel around 1954-56. It offers a striking description of the 19th century social order in Italy in its last death-throes, making futile attempts to ignore and resist change. But while they were busy barricading the doors, the new social order was already unstoppably entering through the windows. Today’s intergovernmental Europe is like Di Lampedusa’s Italy, clinging to the old rituals in a stubborn refusal to accept the new reality. This is not a crisis of the EU, it is the nation state that is in crisis, struggling to find its role in a changing world. What was true for 19th century Italy is true for 21st century Europe: if we want everything to remain as it is, everything must change. Europe cannot continue sleepwalking anymore.

In the past twenty years our cosy sheltered world has been rocked several times by events with a massive and irreversible impact. The shockwave of the 9/11 attacks on the Twin Towers in New York can be felt still today. Europe was not spared and names like Atocha, Utøya, Bataclan or Zaventem have been etched in the mind of every European. The 2008 bankruptcy of Lehman Brothers unleashed a global financial crisis unseen since the nineteen-thirties. In 2015 Europe was confronted with a massive influx of over a million refugees from Syria, for which it was completely unprepared. In recent years, the #MeToo and #BLM movements has shaken the foundations of white patriarchy, while that same white patriarchy was busy ‘restoring the natural order’ through populist leaders like Trump in the US, Orbán in Hungary and Kaczyński in

Poland. The same populist wave delivered the 2016 referendum vote for Brexit, which rocked the EU foundations to the core.

At the same time, in the past decades society has been changed beyond recognition by the digital revolution, in ways that are as alarming as they are exciting. The digital revolution, like the industrial revolution, has led to a massive shift in power, both economic and political. It has unlocked brilliant new opportunities for many, bringing prosperity within reach of the poorest and giving tools to the oppressed to get organised and mobilised. But on the other hand, the use of personal data and artificial intelligence has given both tech giants and governments near unlimited power over individuals and society, making the most powerful alarmingly more powerful. As the digital revolution spread across the globe, we also witnessed tectonic geopolitical shifts. China has rapidly developed from a big but developing country to an economic and political superpower. In Europe's back yard Putin has been playing geopolitical hard ball, invading the Crimea, having his critics silenced, at home as well as on EU soil, and interfering in elections in the EU and the US. The 2010 Arab spring created a sense of hope, in particular among young people, but it tragically fizzled out and descended into chaos and civil war. Meanwhile transatlantic relations changed quietly but profoundly, becoming less exclusive, as the US broadened its focus to include new partnerships. For a long time Europe was in denial, but the Trump presidency brutally dragged us out of our comfort zone. When Donald Trump took office he immediately took a sledge hammer to the multilateralism so dear to Europeans. Four years later Europe sighed in relief when Trump left. Joe Biden took over as President, but the shocking and unprecedented siege of US Congress on January 6th was a reminder that while Trump may be gone, Trumpism is still fermenting below the surface. The most recent shock, the Covid pandemic, forced us to look many uncomfortable truths in the eye. That inequality, social injustice and environmental degradation are not partisan or



activist issues, but a very real and urgent threat to our society. It put the spotlight on the bright as well as the dark sides of globalisation. It showed us how tiny and vulnerable we humans are, but also what we are capable of when we work together.

If these events turned our world upside down, climate change is likely to be infinitely more disruptive, eclipsing all the other crises. For a long time it seemed something abstract, a threat in a distant future. But climate change is here already and it is frightening and deadly. In the summer of 2021 parts of Europe were scorched by temperatures close to fifty degrees, and wildfires raged like an inferno. At the same time in other parts of Europe unprecedented floods made nearly two hundred deadly victims and caused massive material damage. All over Europe thousands of people lost their homes in fires and floods, and the public authorities were visibly unprepared for disasters at this scale. The climate panel of the UN issued a report that left no room for complacency: climate change will hit sooner and harder than we expected, calling for quicker and more decisive action than we thought.

Sometimes we feel the world is spinning so fast we get dizzy and we want to get off. But the world has no pause button. However, crises are also an opportunity for change. As a Dutch saying goes: ‘under pressure, everything becomes fluid’. When things are fluid, we can re-shape them. When they are solid we cannot. Today we have the chance to re-shape our world and make fundamental changes. A strong Europe is our best hope for the future. However, national governments are in denial. They believe the status quo is just fine, maybe just give the whole thing a fresh lick of paint. But running Europe in today’s world with yesterday’s institutional set up is like sending a text message to a fax machine: it does not work. The consequences of the failure to adapt EU governance structures to new circumstances can be seen every day as the list of unresolved or only partly resolved crises is growing.

# How it started....

Let us go back for a moment to the origins of European integration in the early 1950s. Europe lay in ruins after conflict between nation states had plunged the continent into two devastating world wars. The European institutions and procedures set up in the 1951 Treaty of Paris and the 1957 Treaty of Rome were designed for the world as it was then. A world we can barely imagine anymore today, but it is important to be aware of the context in which the European governance arrangements were created, that still exist today.

The world of the Founding Fathers of Europe in those early fifties was ruled by solemn-faced grey-haired men in three piece grey suits. At the very time of that solemn signing ceremony of the Paris Treaty in 1951, married women in most European countries still needed permission of their husbands for simple things like opening a bank account or for long distance travel, and they were sexually subservient to their husbands by law. Europe would have to wait for another 28 years for the first woman government leader (Margaret Thatcher in 1979). Homosexuality was officially considered a mental illness. The Founding Fathers could not have predicted what was ahead of them: the 1967 Summer of Love, the 1968 student protests, Woodstock, the legalisation of contraceptives in the late sixties. Movements like #MeToo, #BLM, or football fans at the 2021 European championship dressing up in rainbow colours all over Europe in support of LGBTI rights, were probably way beyond their imagination. Measles were endemic and lethal until the discovery of a vaccine in 1963. Since the fifties, the world population has tripled, but the share of EU27 dropped from 13% to 5.6%, and it is ageing and shrinking further. The Founding Fathers grew up in a world where the vast majority of people were employed either in agriculture or in industry. Muscle power was worth more

than brain power. Television was a new phenomenon, available only to the happy few. Traffic jams were rare, as most people did not own a car. In that year 1951 Richard Branson was just one year old, and air travel was totally out of reach for the vast majority of people. Steve Jobs had yet to be born. A large part of what is today the European Union, was living under dictatorship. Most of central and Eastern Europe had been brought under the yoke of the Soviet Union, and the 'Cold War' started soon after WWII. The Berlin Wall had yet to be built, never mind being torn down. The Iberian peninsula was run by dictators Franco and Salazar. By and large the signatories of the Paris and Rome Treaties were still colonial powers, and not terribly bothered by it. It was the era of the Marshall Plan, American troops stationed in Europe, and the 'Wirtschaftswunder'.

In this world European integration started. Supranational or 'community' European institutions were created for the six founding countries, following the vision of Robert Schuman and Jean Monnet. But from the early days the two methods -intergovernmental and supranational – have competed. Intergovernmentalism is the stronger current of the two. Even if on paper successive treaty changes have expanded the community method to cover most policy areas, in practice the intergovernmental nature of the European community – later European Union – has been progressively reinforced. This strengthening of intergovernmental Europe culminated in the elevation of the European Council to the status of official EU institution in the Lisbon Treaty, with its own permanent president as the cherry on the cake. Intergovernmental, technocratic cooperation worked fine for relatively straightforward questions regarding coal and steel, and decision making between six governments. But what worked well in the age of the bakelite phones, is wholly unsuitable for the age of the smart phone. Seventy years on, the world is a completely different place, with fundamentally different challenges that require fundamentally

different answers. The European Union of today is an entirely different place from the 1951 'European Coal and Steel Community' founded by six countries. And yet it is still governed with the same old intergovernmental method. National governments are quite happy to keep it that way. The myth of Europe as a technocratic, apolitical entity, best left in the hands of civil servants and national diplomats, is carefully nurtured. However, the intergovernmental method has visibly reached its limits. It leaves Europe paralysed and struggling to keep up with the pace of change in the world. The strange paradox is that as the intergovernmental system is performing less and less, governance of the European Union gets more and more intergovernmental. A bit like someone who finds himself in a dead end street and hits the accelerator instead of changing direction. If we want to preserve our way of life, we will have to change the way we run Europe. The European Union will have to transform from an intergovernmental entity into a fully fledged parliamentary democracy.

# The fiction of Europe the Technocratic Eunuch

The truth is: the European Union is already deeply political. It is addressing political challenges, making political choices, and struggling with political dilemmas. The EU's leaders are politicians and organised in political families, and it has its share of power politics. Technocratic Europe is a myth, but a deeply rooted one and carefully cultivated by those who have an interest in keeping the the status quo. National political leaders repeat ad nauseam the jaded claim, echoed by many others, that Europe is remote for citizens, implying that the EU itself is to blame for that. In his famous 2017 Sorbonne speech French President Macron makes an accurate analysis: *'Because the sad passions of Europe have reared their heads once more and are drawing people in [...] They are lying to the people, but we have let them do it, because we wanted to establish the idea that Europe had become a powerless bureaucracy. Throughout Europe, we explained that when there was a constraint, it was Europe's fault! When powerlessness was at the door, it was not us but Brussels!'*

Language matters. When asked about reform of the EU, national leaders respond with the mantra that 'Europe has to deliver' if it wants to win the hearts and souls of Europeans. They seem to imply Europe has not 'delivered' so far. This is nonsense: much of our quality of life is entirely the result of European integration. But more seriously: it is a trap. 'Delivering' is management language, implying that there are objective, straightforward, and quantifiable material targets. But the European Union is not a factory or a company, that merely needs efficient management. It is a political entity, that needs ideas, vision, inspiration, leadership and strategy. By using the term 'delivering' this way, the European Union

is dismissed as a mere technocratic organisation that does not merit the attention or interest of its citizens. It reduces citizens to consumers and spectators, instead of enabling them to get involved and take ownership.

This has been intensified during the pandemic. Governments got exceptional powers in order to manage the crisis. They relied heavily on experts. Let there be no misunderstanding: listening to the experts and science is the sensible thing to do in a crisis, and I would not want to recommend otherwise. But the – false – impression was created that decisions were apolitical, that politics had been depoliticised and reduced to mere technocratic management on the basis of facts and figures. No need for public debate or parliamentary control.

This may work for immediate and short-term emergencies, but in a prolonged crisis like the Covid pandemic, the apparent disappearance of politics in a prolonged state of emergency is a problem. Calls for national unity, all political forces pulling together behind a single goal, serve a purpose for a short while, but public debate, critical questions, close scrutiny are the oxygen of democracy. And indeed in many countries unease is growing over the impact of the pandemic on democracy. Not just among misguided virus-deniers, anti-vaxxers and populists.

However, this fiction of apolitical technocratic rule is quite similar to the way the European Union has been run for many decades now. The myth of technocratic Europe allows national governments to have unlimited power, to stifle public debate, and to keep citizens out of the game. The European Union is rapidly developing as a mature political entity. Not as a deliberate choice, not as a federalist conspiracy, not because successive Commission presidents solemnly declare their Commission to be ‘political’ or ‘geopolitical’, but as an inevitable consequence of a changing

world. European integration is merely the reaction to events, in much the same way as the creation of nation states or indeed local authorities, has been a response to the challenges of that time. The nature and scale of the challenges we are facing today require different answers from those of seventy years ago, therefore the nature and scale of European integration will change as well. But the government leaders are in denial. The Council seems to be frozen in time, refusing to adjust to circumstances. And what Darwin said about organisms, applies equally to organisations: *'It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change'*. The stubborn refusal of national governments to face reality is impeding the entire European Union from advancing. Whether European integration goes too fast or too slow is not a matter of ideology. It is not something to be measured against the ideals of ardent pro- or anti-Europeans. It can only be judged against the EU's ability to respond to the challenges we are facing, to keep up with the pace of a changing world: to "deliver", in Council terminology. We have to conclude that Europe is too slow. In many areas Europe is trailing, held back by people who are clinging to the past, and dreaming of the glory of days gone by instead of facing the present and the future.

# The political arena

A people's democracy needs a political arena. 'I love the scent of wild animals in this building', the founding father of my party, Hans van Mierlo, famously said about the Dutch Parliament. He saw politics as an arena, with the smell of blood, sweat, and sawdust, a battleground for the confrontation of ideas and ideals, and for the clash of the political titans. In the arena we smell the fear of our opponent, or we smell victory. We smell mortal fear and blood-thirst. Adrenaline rushes, nostrils flare, all senses are on full alert. The public loves the show, they come and watch the fight of the gladiators and the big beasts. Supporters come to support and cheer their team, their champion. Although actual war has never been any fun for the normal people, throughout history warriors and princes have been gung-ho about fighting, in it for the glory. Knights paraded in shining armour, insignia, colourful banners, and impressive weaponry, accompanied by the sound of bugles and drums. Battles, rather than bureaucracy have made material for epics and blockbusters. Fortunately in the 21st century Europe we settle our political differences in a relatively tidy and civilised way, without bloodshed. Most of the time anyway. But under the veneer of civilisation, we are political animals, driven by instinct. And as Von Clausewitz famously said 'War is the continuation of politics by other means'. The opposite is also true. Politics is battle, just by other means.

Of course ultimately politics must be about substance, about the nitty-gritty of policy making, legislation, and regulation. It is about good governance and serving the citizens. But without the drama, nobody would be interested. The fascination of the public with politics lies firmly in the game and the spectacle of the battle: a gladiator fight behind closed doors is not interesting. The fight must be man to man, in the public arena, where people can smell, hear,



see and feel the excitement and choose sides. It is about power and might, and about victory and defeat, not about technical footnotes and legal subparagraphs. No number of online meetings can ever replace the experience of the political arena. The only things you will probably smell during an online policy debate are the sweaty socks you have been wearing off camera for three days. Without the scent of wild animals, the scent of the arena, politics remain sterile and cold. People will not feel any connection or identification.

That may explain why Europeans are so fascinated by US Presidential elections: the confrontation between the candidates is a sublimated gladiator fight. The candidates not only seek to persuade and convince the audience with their excellent policy proposals, but they want to beat their opponent. Like gladiators in the arena, they move around and seek the weak spots in their opponent's defenses. Although they do not fight physically, the physical dimension is at least as important as the verbal exchange. Remember how during an election debate in 2016 Donald Trump crept up behind Hillary Clinton like a predator, trying to intimidate and unsettle his opponent? If you ask people if they remember the actual topic of that debate, hardly anyone will. But everyone remembers the scene. This is why autocratic leaders try to avoid public confrontation with their opponents. Thus there has not been any serious debate with Viktor Orbán for years, as he is well aware of the risks and avoids political debate like the plague. Authoritarian leaders like to show off their bare-chested virility in front of the camera, in carefully orchestrated press conferences with selected media, but they hide from a real showdown behind their mothers' skirts.

And no, fights and battles are not the exclusive domain of men. Women can be gladiators as well. Sofagate was widely seen as a sexist incident, two alpha males relegating the woman in the room to a lower position. The images of Erdogan and Michel making themselves comfortable in the two top seats, leaving Von der Leyen

no choice but to sit down on the sofa, the seat of lesser honour. But Von der Leyen struck back. Fully aware of the presence of dozens of cameras, her irritated “Ahem...” and hand gesture at the two men, left Michel badly wounded. No amount of explaining could undo the image of his pasha-like behaviour. There was definitely the scent of wild animals in the little scene.

In October 2019 French EU Commissioner-designate Sylvie Goulard had to go through an exceptional second confirmation hearing in the European Parliament, as questions had arisen in view of a court case against her in France. The meeting room was jam-packed, and the media would not miss a second of this battle. When I entered the room at the start of the hearing, I remember vividly being gripped by the strong sensation that I could actually *smell* the political blood-thirst of the EPP. (Later on it turned out that indeed EPP had decided beforehand to eliminate her. The hearing was only meant to extend the agony). The tension was palpable, as it must have been at the start of a gladiator fight.

In the European Union, such moments are rare, and when they occur they are not visible to the general public. The myth of a technocratic entity has been carefully maintained for decades. European politics are seen as technocratic and boring. There are battles all right, but they mostly take pace behind closed doors, with no sensory experience for the citizens. No smell, no blood, no sounds, no cries or growls, no adrenaline. Sterile like an operating room. For the first half century of European integration, the political work was mainly left to diplomats and bureaucrats. The intergovernmental, diplomatic origins of European integration are still visible today. All political choices are carefully disguised as mere technocratic matters, best left to experts. Political fights take place behind closed doors, and only when a compromise has been reached, will it be presented to the public. Even the choice of political leaders of the EU is carefully kept away from the citizens.

The contrast between the election of the political leader of the United States and the political leadership of the European Union could not be greater. The election of the US President is the most visible, mediatised political event in the world, including in Europe. It is a global event, followed closely by billions of people. The primaries, the year before the actual election, serve as a support act to warm up the global audience for the main event: the battle of the gladiators. Come election day, billions of people around the world know the two candidates for the highest office in the US as well as their running mates, they know what is at stake. There is the smell of wild animals, blood and sawdust....The election of the political leader of the European Union is the total opposite. With the exception of 2014, the choice of Commission President has always been the outcome of an opaque process of horse-trading behind closed doors. The process recalls of the election of the Pope in the Vatican, more than a proper election campaign, where the candidates publicly compete, and seek to win the support of the voters. Much like Cardinal electors, government leaders withdraw behind closed doors, and negotiate their choice of candidate, usually as part of a package deal including several European top jobs. When there is white smoke, the doors open and the new leader is shown to the people. This procedure has very little to do with democracy. When the government leaders nominated Ursula von der Leyen as the President of the European Commission, she was completely unknown to virtually everyone outside Germany. She had not been campaigning, indeed she had not even been a candidate. To her credit, President von der Leyen has managed to build something of a public profile. It is probably too much to state that Von der Leyen is now a household name, but the Covid crisis gave her centre stage as a crisis manager and a good dose of media exposure, but only once she was in office.

Ironically, it is not the staunch Europhiles but the anti-EU populists who are turning the EU into a political arena. They do

not follow the delicate diplomatic choreography that has dominated EU politics for so long, but brazenly seek confrontation, leaving traditional pro-Europeans huffing and puffing with indignation, but without a proper answer. Populists do not talk about technical details, but about values. They talk about identity, culture, community, tradition. They do not behave like diplomats or bureaucrats, but they provoke, attack and use diversion tactics, like street-fighters. Remember the scene in the Parliament hemicycle of Nigel Farage hurling insults at a bemused looking Council President Herman van Rompuy: ‘You have the charisma of a damp rag, and the appearance of a low grade bank clerk’. We may disapprove of the use of street language and consider it will undermine the dignity of the democratic institutions. But let’s face it, populists succeed in mobilising people, both for and against their cause. A million-and-a-half Brits took to the streets in the biggest ever pro-Europe demonstration, in response to the populist project, Brexit. The whole of Europe donned in rainbow colours during the European Football championship in the summer of 2021, triggered by the homophobic laws of populist Orbán. Tens of thousands of women protested in the streets of Warsaw against the ban on abortion proposed by the populist government.

Do not be fooled by the populist rhetoric, claiming that mere economic integration is fine, but values, identity and culture are strictly national affairs, and that the EU should not interfere. The populists have fully recognised the EU as a political union where they push their values agenda. The title of a populist manifesto sums up that agenda pretty nicely: ‘restoring the natural order’<sup>1</sup>. It sets out an international strategy on matters like divorce, same sex marriage, the use of contraceptives and abortion. The joint

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1 “Restoring the natural order” by Agenda Europe <https://agendaeurope.files.wordpress.com/2019/05/rtno-2014.pdf>

declaration issued by the sixteen party far-right alliance in July 2021<sup>2</sup> – including the Polish government party Law and Justice, the Italian government party Lega Nord, and Marine Le Pen and her French Rassemblement National – also emphatically refers to the traditional family as basis for the nation, to the judaeo-christian heritage, and to common values. The populists manage to frame the European protection of LGBTI rights and gender equality as an attack on national sovereignty. So they turn a political debate about values into a debate about sovereignty, but at the same time they themselves put the values questions on the European political agenda. Pro-Europeans often fall into the trap of entering into the technical argument about subsidiarity, instead of the political debate on values. But at the same time as the populists loudly claim values are a national matter, they make full use of all the EU structures and instruments at their disposal: they form political groups and foundations with the support of EU funding, they make ample use of ‘European Citizens Initiatives’ (for example against abortion, stem cell research or same sex marriage) and they engage in strategic litigation on matters like LGBTI rights or women’s rights.

Pro-European liberal democrat forces are timid in defending Europe as a community of values, for fear of being accused of attacking the nation state. For decades the pro-European argument has been largely economic: ‘European integration is a good thing, because it brings prosperity’. However, in times of economic crisis, that argument is wearing thin. Besides, it doesn’t really strike a chord with most people. People do not identify with technocratic rules, it does not give them a sense of belonging to a community.

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2 “Orbán, Le Pen, Salvini, Kaczyński join forces to impact on the future of EU” Euractiv, 02/07/2021 <https://www.euractiv.com/section/elections/news/orban-le-pen-salvini-kaczynski-join-forces-to-impact-on-the-future-of-eu/>

When populists claim for example that Europe is destroying family values, cerebral counter-arguments like ‘Sure, but Europe has abolished roaming costs’ or ‘Okay, but the common currency has eliminated conversion costs’ are unlikely to convince. Populists make Europe political. Pro-Europeans should embrace that. They have to realise that the centrist forces do not automatically have the monopoly on defining European values. The answer to populists cannot be found in technocratic in camera negotiations, but in the clash of ideas in the public arena.

The provocations of Viktor Orbán and Orbán copycats in other countries challenge the European Union to give a political response. So far the Commission and the European Council have tried the usual EU approach of smothering any problem in rules and red tape. It has not worked. It failed to stop Orbán and it merely encouraged the would-be Orbáns. Then they tried a diversion strategy by passing on the hot potato of rule of law violations to the European Court of Justice, pretending that there is merely a difference of interpretation of European laws, a legal technicality. But this too is failing miserably, as Europe’s autocrats simply refuse to recognise the authority of the highest European court. This is a headache for Commission and Council. This political problem refuses to be disguised as a technical problem. It simply will not go away. The only answer to autocrats is a political one, but Commission and, particularly, the Council shy away from that, and cling to the myth of technocratic Europe.

The outside world is also holding up a mirror to Europe, obliging it to acknowledge its true political self. Europe finds itself in the arena, challenged by political beasts like Trump, Putin, Erdogan, Xi, Lukashenko or Assad. In this arena, rules and regulations don’t count for much: it is about raw politics. The world has no patience with a European Union struggling with its identity crisis. The world considers Europe to be a geopolitical actor, and

will treat it accordingly, whether we like it or not. We got a little taste of this when the High Representative Josep Borrell visited Moscow, and got a public pummeling by Russian Foreign Minister Lavrov, who humiliated the European Union during a press conference, by calling it ‘an unreliable partner’. Borrell stood next to him, looking like a schoolboy.

Violent conflicts in our neighbourhood put ‘geopolitical Europe’ to the test. Putin invading and annexing Crimea, and taunting the Baltic countries, Belarus hijacking an intra-EU flight, China eliminating democracy in Hong Kong and keeping Uyghurs in concentration camps, the powder keg in the Middle East exploding again in spring 2021, a showdown between Turkey and France in the Mediterranean in autumn 2020, not to mention the ongoing conflicts in Syria and Libya: all have direct implications for Europe, and require a political answer from Europe. For these kinds of situations the usual EU method doesn’t work: throwing rules and regulations at the problem until it goes away. These situations would be delicate and complex enough for any single national government, never mind for the European Union that has to achieve unanimity between twenty-seven. It is not surprising that it usually doesn’t work. National politicians believe that a national veto is power. But they have to realise that vetoes only give power to our adversaries. National vetoes bring only a Pyrrhic victory.

That may have been acceptable when the United States was the policeman of the world, and Europe was only expected to add a touch of soft power from time to time. For decades we bobbed along safely under the umbrella of the Pax Americana. But Europe has to fend for itself now. The United States are, and will remain our closest friend and ally, but our special relationship does not mean the US is our nanny. In his first four months President Biden has put a lot of effort in patching up transatlantic relations after four years of Hurricane Trump, but he also made it crystal clear

Europe has to take care of itself. Trump's 'MAGA' baseball caps may have been shelved, but the 'America First' doctrine has not. Recent revelations of yet another case of the US spying on its European allies, all the way up to the mobile phone of the German Chancellor, are a reminder that the US was never as starry-eyed about the 'special relationship' as Europe was. Europe has to grow up, and grow up fast: we are in the arena and we only have one choice: fight or perish. Or as the saying goes: if you are not at the dinner table, you are on the menu.



# Why leave our comfort zone?

Why does it matter, you may ask? What is wrong with intergovernmental Europe? Why can't we just leave it to the European Council and the government leaders, who are well known to the people, and have popular support. So the argument goes. It matters, though. It matters because it is paralysing the EU, and eroding its ability to act and advance. National representatives do not come to European Council and Council meetings with ambition for Europe, but with a purely national mindset and a briefcase full of 'red lines'. Their first concern is not the common European interest, but narrow national ones. The European Council of government leaders *'shall provide the Union with the necessary impetus'*, so the Treaty says, but in practice it mainly hits the brakes, rarely the accelerator. It will react if forced by circumstances, but a proactive long term strategy is missing. It is often suggested that stagnation can be solved by simply abolishing vetoes but vetoes have already been abolished in nearly all policy areas. The few remaining areas of national veto power are mainly foreign and security policies, and the revenue side of the EU budget. Most other policy areas have been under the ordinary legislative procedure of qualified majority voting since 2009 Lisbon Treaty. But the preferred working method in Council is still decision making 'by consensus', which often comes down to unanimity in practice.

Although it is true that the European Union advances in response to crises, the Council responds so slowly and reluctantly that it turns every crisis into a cliffhanger in slow-motion. In the past year and a half, that led to the embarrassing patchwork approach to the Covid pandemic, public health, fundamental freedoms and borderless travel in Schengen were sacrificed on the altar of petty nationalism. The 2008 financial crisis that plunged Europe into years of economic decline, was an equally disturbing

example of failed crisis management. Where immediate action and a big bazooka were needed to fight the emergency, the European Council response consisted of a Groundhog Day-like string of “emergency summits” each time with minimal results, moving forward only at a snail’s pace and unnecessarily dragging out the crisis and the ensuing damage. When the financial crisis subsided, the sense of urgency disappeared and the construction of the defence wall against the next crisis ran into the sand. To date the European banking union, set up in response to the devastating financial crisis, remains incomplete since member states have not been able to agree on a deposit insurance scheme. The house was on fire, but the governments were fussing mainly over their exclusive national competences. Amidst governments bickering, and North and South throwing caricatures at each other, the much needed big leap ahead was not taken. As a result of intergovernmentalism, the euro is still the only global reserve currency without a government and a real budget, and Europe is hardly any better prepared for a health emergency in summer 2021 than it was in March 2020. Covid and the financial crisis were not the only areas where intergovernmental Europe was unable to give an adequate response.

The failure to agree a common asylum and migration policy that is both effective and humane is probably the most shameful example of intergovernmental sclerosis. The 2015 massive influx of refugees created a strong sense of urgency for common European action. On paper there had been a common asylum and migration policy since 1999, but in reality member states largely ignored it. The European Commission presented a package of proposals for the reform of the common asylum and migration policies with a view to unblocking the situation. However, by summer 2020 the package was still stuck in Council. Officially the Council has to decide with qualified majority voting, but in practice it insists on deciding with unanimity. In autumn 2020 the Commission made another attempt with new proposals. To no avail: to date the matter is still stuck. The

inertia of the Council has done nothing to allay fears of migration, on the contrary it has allowed populists to exploit the theme to the max. The price in terms of human suffering has been intolerably high. Tens of thousands drowned in the Mediterranean. Thousands have ended up starving or tortured in Libyan concentration camps, or even sold on slave markets. And even on EU soil, the most prosperous continent in the world, refugees in the Greek camps are living in appalling conditions. They suffer from squalor, lack of food, health care and safety. Many are depressed and suicidal by the absence of any prospect of a better life. This is the result of six years of bickering between governments. History will judge them.

The inability of national governments to agree is painfully visible in budget talks. The seven-yearly MFF negotiations are not a pretty sight. In summer 2020 government leaders had to adopt the new MFF and the Covid Recovery and Resilience Facility (RRF). Instead of agreeing on common objectives, a vision for the future, and reforms of the archaic budget system, the government leaders fought like cats and dogs over each penny. There was a lot of drama, name calling, slamming of doors, veto threats left, right and centre, and long conciliation sessions on the terrace of the European Council building. They reached an agreement, but the mood was sour and the essential reforms were left out. Some government leaders stated explicitly they were counting on the European Parliament to fix it.

When it comes to actual foreign policies, it is even more apparent that the intergovernmental method and unanimity requirement are an anachronism. Europe has plenty of clout as an economic power house, but it is fairly lost in the testosterone zone of geopolitics. In particular as we are surrounded by conflicts and potential conflicts. Putin is provoking and creating unrest in the neighbourhood, on the doorstep of EU member states like the Baltic States, Poland and Romania. Europe has no idea how to respond to

this. It is virtually absent in any international efforts to secure peace between Israel and the Palestinians or in Syria. In Libya the position of Europe is even more absurd, as until recently Italy was giving military support to one of the warring factions, and France to the other, so that effectively two EU member states were on opposite sides of a civil war. China is flexing its muscle in the 'Indo-Pacific' area. The US want to show China who is the boss. Europe is wary of the confrontational approach of the US, but it offers no alternative. Soft power doesn't cut it with the Chinese, but the Europeans shy away from hard power.

The list of failures is long. Member states have been unable to agree on making tech giants pay meaningful taxes, as common fiscal policies remain anathema for the member states. LuxLeaks and the Panama Papers did cause a crack in the taboo, and some legislation has been passed to plug the hole, but it is very modest and a far cry from the measures envisaged by Commission and Parliament. Even in the area of security, there is no real progress. There has been a lot of legislative activity, but twenty years after 9/11 intel agencies still work together mainly on a bilateral and case by case basis. Mutual distrust and inter-agency jealousy has turned out to be stronger than any fear of attacks. The European Security Union is still a giant on clay feet. The single market is a success story, but far from complete, in particular in the digital area. Europe has a wealth of talent and there is plenty of capital available for investment, but despite that, only a tiny number of global tech giants have their cradle in Europe. European high-tech start ups prefer to be bought by US or Chinese firms, rather than scale up and get lost in the Byzantine web of national regulatory and fiscal barriers. Digital interoperability, compatibility, and European standards are slowly improving, but really only at a snail's pace and many of the laws regulating the digital market come with a raft of exemptions. Geoblocking for example, is now banned in Europe, but not in the areas of audiovisual services, payment services, public

transports, health care and many others. Abolition of roaming charges, strongly supported by the Commission and Parliament, was blocked for many years by national governments. Member states' stubborn nationalism does not benefit Europeans, but mainly non-Europeans.

Of course there has been action and progress, and crises have eventually been addressed. But mostly too slowly, incompletely and at a very high price. Often it has been up to the Commission, Parliament, the ECB, or the European Court of Justice to come up with solutions and to do 'whatever it takes', to fill the vacuum left by the member states. Even if national governments do finally manage to find agreement, they introduce endless national emergency brakes, exemptions, and escape clauses, and tie the hands of the EU bodies that have been created to carry out their policies. Decentralised supervision and enforcement further weaken the effectiveness of European policies. In finance: the European Banking Authority was wholly ineffective in the fight against money laundering, as it did not have the power to hold national authorities to account. The result was a string of massive money laundering scandals, among others at Danske Bank and ING. In security: the European Border and Coast Guard 'Frontex' is the biggest EU agency, with up to ten thousand armed and uniformed officers. It often operates in extremely dangerous and difficult circumstances, but the national authorities still have the final say over the operations. This lack of clarity in the chain of command has led to massive controversy over 'pushbacks' of refugees. In digital: Europe's General Data Protection Regulation best known by its pet name 'GDPR' is the best privacy law in the world, but its enforcement is left to national data protection authorities. In practice this decentralised system has resulted in erratic and weak enforcement. The majority of tech giants, including Facebook, are based in Ireland, so that the Irish data protection authority is effectively the European oversight body for all the US tech giants

in Europe. Chinese TikTok entered Europe a couple of years ago and it has access to the personal data of over a hundred million – mainly very young – users in Europe. The US government considered TikTok a security threat and it has been considering a ban. However, in the EU it took two years to determine which of the national data protection supervisors was responsible for oversight of the company, never mind take action to enforce the law. The ‘Dieselgate’ emissions scandal is another typical example of good EU laws and inadequate enforcement by national authorities.

One of the most dramatic failures of intergovernmental Europe is its failure, and even refusal, to uphold European values. This is not just an example of a policy failure, but it actually eats away at the very institutional foundations of the EU. The loud indignation of government leaders in summer 2021 against Orban’s latest homophobic law, cannot hide the fact that since Viktor Orbán took power in 2010, and the Polish Law & Justice Party in 2015, the European Council has essentially avoided the issue of rule of law violations, and it actively sought to shield fellow national governments from European sanctions. The Council concocted a legalistic interpretation of the ‘Article 7’ sanctions procedure that allowed it to avoid taking a decision to impose sanctions on the Hungarian and Polish governments. For nearly two years it even managed to keep the matter off the agenda altogether. Rule of law violations in countries other than Poland and Hungary were not even deemed to merit a serious debate or action by the European Council, even when in those countries journalists investigating corruption and crime in government circles ended up being murdered. In December 2020 a new law was adopted tying EU funds to respect for the rule of law (the ‘Rule of Law Conditionality Regulation’). But this law was immediately neutered by the Council, as it issued instructions to the Commission to defer application of the law until a later stage. The dynamics within the Council remind me of the US Republican Party, and the way it torpedoed

an impeachment procedure against President Trump, and later on opposed an investigation into the siege of US Congress in January 2021. Both bodies may be deeply annoyed with corrupt autocrats in their midst (Orbán in Europe, Trump in the US), but they prefer to close ranks. Not because they approve of corrupted autocrats, but in cynical calculation of electoral and business interests. As Mitch McConnell was the enabler of Trump, the German government was the enabler of Orbán. Angela Merkel may personally find Orbán's brand of populism abhorrent, but she calculated that the fall-out of a head-on confrontation would be higher. In addition, the German car industry wanted to protect its important business interests in Hungary<sup>3</sup>.

The refusal of the Council to tackle such violations has enabled deep erosion of the rule of law, and of fundamental rights in the member states. This is already having a tangible effect on the principle of 'mutual trust', underpinning all common European action, for example in the area of police and justice cooperation. Drawing up EU laws is also increasingly difficult, as many policy areas require a minimum of shared values. I can feel this in Parliament in my daily legislative work, for example in migration or digital policies. For example, when we are drafting laws on detention of asylum seekers, on removal of harmful content online or retention of personal data for law enforcement purposes, we are acutely aware they are likely to be abused by corrupt autocrats against their opponents, and other political targets. If we cannot be sure that we are all adhering to the same basic values, we will be inclined to make excessively detailed rules, to exclude any possible abuse.

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3 Described in detail in "How Orbán played Germany, Europe's great power", Panyi Szabolcs, 18.09.2020, Direkt36.hu  
<https://www.direkt36.hu/en/a-magyar-nemet-kapcsolatok-rejtett-tortenete/>

The rule of law crisis is also affecting directly the integrity of the EU institutions themselves. The European Council is getting more powerful, and more corrupted at the same time. EU democratic institutions are no more immune to erosion, to attacks from the inside, than the American ones. We have seen how in the US a democratically elected President could take a mature democracy to the brink, inciting his supporters to resort to violence and even the siege of US Congress. It is an illusion to think this cannot happen to the EU. On the contrary, it is already happening. Several members of the European Council, arguably the most powerful EU governing body at this moment, are tainted in one way or another. Corruption, crime, authoritarianism, human rights violations: all are present in that same European Council, which is co-governing Europe and not subject to scrutiny or accountability. Council and Commission for many years ignored the attacks on democracy, the rule of law and fundamental rights, assuming they would just blow over with time, and that in any case it would stay limited to Hungary and Poland. But add to that the Prime Minister of Slovenia aping the methods of Orbán, attacking the media and independent prosecutors. In Malta and Slovakia we find former government leaders, who were shockingly close to criminal networks, and even murder cases. The Prime Ministers of Czechia and Austria, and the previous Bulgarian Prime Minister, are under investigation for various allegations of corruption or conflicts of interest. Government leaders of Greece, Croatia and Denmark, are accused of violating the human rights of refugees. Moreover, in several of these countries critical journalists, independent judges, NGOs and academics are under heavy pressure by those same government leaders. If populists like Marine Le Pen in France or Giorgia Meloni in Italy were to become government leaders, populists would become a mighty force in the European Council. The European Council has proven to be powerless against anti-democratic forces within. And make no mistake about it: if the Commission is already hesitating to tackle rule of law violations in countries like Hungary and Poland, it will never dare to take action



against a government of a country like France or Italy (Some are more equal than others: when asked why the Commission turned a blind eye to France's violation of the EU rules on fiscal discipline, former Commission President Juncker famously answered 'Parce que c'est la France', 'because it is France'). The rule of law backsliding at national level affects the entire European Union as a community of law. If the judiciary in a member state is no longer independent, the whole EU judicial and law enforcement system, which is based on common standards and mutual trust, breaks down. The fact that the EU governance structures are not strongly centralised, provides some protection against an outright power grab by authoritarian forces. But on the other hand, Europe is more vulnerable since many people do not consider its democracy a 'real' democracy, but a technocratic entity, not in need of defence. Many citizens are critical of democratic backsliding in EU member states, but they do not see how it affects the EU as well. Corruption and autocracy are creeping into the governance bodies of the European Union. The weakness of the intergovernmental method is becoming a threat to the European Union itself.

# Fortwursteln doesn't cut it

The intergovernmental method has achieved results over the decades, but it is reaching its limits. My favourite author on all matters European, the brilliant Caroline de Gruyter, wrote a must-read book 'Beter wordt het niet'<sup>4</sup> ('This is as good as it gets') comparing the Habsburg empire to the European Union. She finds obvious differences but also more similarities than you might expect. Both are heterogenous and composite entities, that have carefully to balance central and regional powers, conflicting interests and cultural diversity, while being surrounded by big imperial powers and facing big challenges. De Gruyter is intrigued by the governance method of 'Fortwursteln', used by both the Habsburg empire and the European Union. It means something like 'muddle along', combining complex compromises, pragmatism and improvisation. You might also call it 'fudge'. Not sexy, not heroic, but it works. It allows a highly complex and heterogenous entity to keep all component parts together and remain internally stable. Not in giant leaps, nor as result of a clear vision or strategy, but steadily and incrementally going forward, keeping everyone on board. A faint echo of this was in the 1950 Schuman Declaration: *'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.'*

De Gruyter likes to point out that the death knell has sounded many times for the European Union, but that each time it was false alarm and the Union miraculously survived. De Gruyter thinks that we tend to overdramatise in Europe. What we call an 'existential crisis' is simply called 'policy' in most other countries. Gideon Rachman wrote something similar in his piece 'The EU's stability

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4 Beter wordt het niet, Caroline de Gruyter, 2021 ....

will again confound its critics' in the Financial Times<sup>5</sup>. *'Every time a crisis hits Europe — whether it is debt, refugees or Covid-19 — the prophets of doom predict the worst for the EU [...] The mistake is to believe that the EU's unique and often baffling political structures make it particularly vulnerable to collapse. In reality, the EU is a careful and evolving balance between national and supranational power, and between technocracy and democracy. That is a source of stability and strength, not of weakness or frailty.'*

However, the method has its limits. I agree that it is premature to announce the end of the European Union at every bump in the road. But the 'Fortwursteln' method has become wholly unsuitable to respond to the challenges of today. The metal fatigue is not visible from the outside, but it is eating away the European Union from the inside. The machine is slowly grinding to a halt, 'Fortwursteln' has been replaced by 'kicking the can down the road' or even downright paralysis. The Council is sclerotic and unable to take any real decisions anymore. The European Union will not collapse or disintegrate over night. It will just become more and more inert and implode. Like the proverbial old soldier, it will never die, but just fade away.

Fortwursteln works well for straightforward matters that can be negotiated, where a trade-off between particular interests can keep everybody happy and also deliver a result for the common good. Intergovernmental and technocratic Europe worked fine on the basis of Fortwursteln in the early stages of European integration. Negotiating about coal and steel, tariffs, quota and market regulations are matters that can be settled that way. But common migration policies, the digital revolution, geopolitics,

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5 "The EU's stability will again confound its critics", Financial Times 12/04/2021 by Gideon Rachman

security, the rule of law, the Covid pandemic, or climate change: these are all areas where a trade-off between national interests is difficult or even impossible. Each of these topics is fundamentally values-based, and requires ethical and political choices. Digital policies require a fundamental debate about privacy, freedom of speech, and democratic rights. Migration policies come with difficult and ideologically charged questions relating to reception conditions, detention, border controls and pushbacks. Trade policies are inextricably linked to views on human rights, social justice and sustainability. Climate policies and public health policies make ethical questions relating to scarcity, human rights, dignity, the right to basic health and safety, fairness and equality, unavoidable. Fortwursteln is not an adequate response to rising populism, extremism, authoritarianism, in short: to illiberal democracy. These questions require public debate, democratic legitimacy and clear choices.

I always thought it was ironic that hard-core Brexiteers suspected the EU of a 'conspiracy' against the UK during the negotiations over the post-Brexit relationship. It shows how little they understood how the EU works: intergovernmental Europe is not capable of conspiracy, even if it wanted it. There is no single political leadership. Any policy position is no more than the bare minimum on which agreement could be found, certainly not a strategy, let alone a conspiracy. But even if the Brexiteers were mistaken, they touched upon a core issue. What Europe needs is a political vision and strategy. It needs political leadership that will put a dot on the horizon, a common long term perspective. The European Council by its very nature is unable to provide such leadership, vision or strategy. 'Strategy' and 'Fortwursteln' are mutually exclusive.

# New challenges, new powers

Sure enough, in response to external challenges, steps have been, and are being taken to adapt and make the EU more able to act. Financial crisis, Covid, Brexit, climate change, terrorist threats, Trump, Putin, China, Facebook, migration flows: each event or crisis leads to new EU policy actions.

In some areas the Union has recently acquired important new powers. The financial package adopted in December 2020 constitutes a massive qualitative leap, described as Europe's Hamiltonian moment by some. This is not so much because of its size (at less than 2% of GDP it is still tiny compared to national budgets), but because it will prove to be a mighty policy tool for achieving common European policy goals, rather than just a redistribution mechanism for the member states. It also allows the Commission to borrow on the financial markets, which comes very close to the Eurobonds that were anathema to several governments for many years. Tellingly, the possibility basically already existed under the 1951 Paris Agreement, which allowed the High Authority, the precursor of the European Commission, to levy European taxes up to 1% and borrow money on the markets, but it took seventy years to become reality.

The vaccine purchase strategy of the European Commission is another example of a major development, the significance of which cannot be overestimated. Until the Commission decided to step in, it was basically each member state for itself. Despite some initial hurdles and set backs, it is clear to all that without the leadership of the Commission, vaccination in Europe would have ended in chaos and the disintegration of the single market. It made the Commission a key global actor and gave it a lot of visibility with European citizens.

The introduction in January 2021 of ‘Rule of law conditionality’ in the EU budget too, is – potentially – a big hammer in the toolkit for upholding European values. At the time of writing, it is not certain when and how it will be applied by the Commission, which is frantically trying to wriggle out of its role as guardian of the Treaties, but it certainly will be. It is a matter of when, not if. Member states are still trying to obstruct the application of the Rule of Law Conditionality Regulation, but this is futile. Europe has inexorably started down the road towards a political union and a community of values.

The significance of the European Green Deal for empowering the European Union can also not be overestimated. Laying down common European long-term goals will determine the direction of European policies – and member state policies – for decades to come. It is not just a technical tool against climate change. It carries with it fundamental political choices, shaping our daily lives, society, and economy.

These steps, which will make Europe stronger and better able to act, are welcome and indeed necessary. But on the back of a more powerful European Union comes the need for a more robust parliamentary democracy. The European Union is built on two pillars: states and people. Over time the intergovernmental pillar has steadily grown stronger, whereas the democratic pillar has been unable to keep up. Europe is increasingly lopsided and limping. The European Council is a dysfunctional and unaccountable body, but at the same time it is becoming the leading force in the EU. With each crisis, the European Council grabs more power, and with each crisis its inability to act becomes more visible. Emergency summits give the impression that the government leaders are in control, but in reality the European Council is paralysed and crippled, and increasingly so by the presence of corrupt autocrats and populists throwing sand in the gears. Europe urgently needs

political leadership, strategy and vision. It needs a common political narrative, to inspire and motivate people. But the European Council, and more generally intergovernmental Europe, is unable to provide any of this.

# The twig and the trunk

Democracy is not an institution, but a system. A parliamentary democracy is a complete and coherent democratic system, built on a careful inter-institutional balance. At its core are checks and balances, the separation of powers, accountability, and government rule on the basis of a mandate of the people. It is more than a single institution, or elections. North Korea and Russia have elections and a parliament, but this does not make them a democracy. The European Union has a parliament and it has elections, but it is not a mature and complete democracy. It is an intergovernmental system with elements of parliamentary democracy, grafted onto it, like a twig grafted onto the trunk of an intergovernmental tree. As the intergovernmental trunk grows bigger, the system becomes increasingly skewed. The addition in 1979 of the directly elected European Parliament to the profoundly intergovernmental system, has not fundamentally changed the actual *nature* of the system. The European Union is tilting heavily towards intergovernmentalism and executive powers go largely unchecked, whereas the democratic, parliamentary dimension has become dangerously weak. The traditional alliance between the two supranational 'community' bodies, Commission and Parliament, has all but disappeared. It has been replaced by an intergovernmental alliance between Commission and Council. President Von der Leyen gravitates towards power, and she found a natural ally in the European Council.

None of this would be problematic if European integration were limited to mere technical cooperation. But the EU is a political union, taking deeply political decisions that directly and profoundly affect peoples' lives. It shapes and determines our day to day living environment, our society, just as much as national or local government do. It is irresponsible, dangerous, to govern Europe



with an incomplete and imbalanced democratic system. Europe needs a mature, robust, and resilient democracy.

The old saying remains true: power corrupts, absolute power corrupts absolutely. Any new powers must come with countervailing powers and strengthened scrutiny. But the European Parliament has not kept up with the rapid political evolution of the EU. The European Parliament is an excellent legislator, processing an impressive body of high quality legislation. However, it should also be a parliamentary watchdog, willing to bite when necessary. Parliament should be exercising tough democratic scrutiny. Scrutiny and critical questions are not anti-European. On the contrary: they will boost public trust in the European Union and give it more robust legitimacy.

As Parliament allows itself to be sidelined and weakened, as I will demonstrate further down, European democracy becomes endangered. In any healthy democracy, the parliament has to be the countervailing power to the executive, not an extension of it. But increasingly the European Parliament seems to be just echoing the position of the national governments and the Commission, rather than providing the necessary counterweight to Commission and Council and holding them to account. An assertive European Parliament is crucial for the future of Europe. It must play its full role as parliamentary watchdog, using all the tools in the toolkit and fully exercising its powers. The European Parliament will have to play a pivotal role in transforming the EU into a full blown parliamentary democracy. Not just by calling for new powers for itself, but by changing the balance *between* the institutions. Parliament is pretty good when it comes to *policies*, but it has to become much better in doing politics. The one is about contents, the other about power. Parliament can achieve substantial change by better using its powers. But ultimately a new balance within the institutional framework requires Treaty change. It is alarming

that the majority of member state governments denies the need for change, even categorically rejects Treaty change. Their haughty dismissal of Treaty change is intended to hide the fact they have a vested interest in the current institutional set up, which serves national governments over the citizens.

# Hot stuff: institutional reforms

Starting a conversation about institutional reforms of the European Union, a.k.a. ‘Treaty change’, is a guaranteed killjoy. It is considered the most boring of topics, fascinating only to euronerds. That is intriguing. In most countries, institutional reforms are considered to be among the most important matters of state and part of the cultural identity of the nation. In every country in Europe children learn about the constitution, about democracy, the history of the nation, and the democratic institutions. Institutional reforms are not simply matter for dry academic discussions, but for real and urgent debates about how we organise democracy and the state. In essence these discussions are about power. In every country debates on various aspects of constitutional reform are a vital part of political discourse, and as often as not, subject to heated debate, political campaigns and sometimes even leading to violent clashes. Debates on the internal organisation of the state may be held with gravitas or passion or both, but they are never considered ‘boring’.

In Italy the government resigned over a lost referendum on constitutional reforms, that would have downsized the Senate and curtailed its powers, in order to make Italy literally less unruly. In my own country, the Netherlands, emotions run high over the question of introducing a binding referendum into our democratic system. The debate is about fairness and the ability of each citizen to participate in the democratic process, with the referendum presented as the instrument for ‘the people’ and parliamentary democracy for ‘the elites’. In the UK fairness and making every vote count is at the heart of the debate on proportional representation, and it is no coincidence that the parties that were able to get into power without an overall majority are quite keen to hang on to it. In the US it takes the shape of a heated controversy over postal voting in the US, gerrymandering, voter suppression and the number of

available ballot stations. The criteria of citizenship, residence, or age are also much-used – and therefore much-debated – instruments for broadening or reducing the voter base, with immigrants, nationals in the diaspora, national minorities with dual citizenship or young voters. Rules for campaigning are continually being discussed and challenged, in particular during the pandemic, as changes in turnout or campaigning opportunities may give unfair advantages or disadvantages to certain parties. Relations between central government and regions is also a hot ‘institutional’ topic, most obviously in Scotland and Catalunya. In trilingual Belgium the Covid pandemic triggered a debate on the devolved and fragmented governance structures (some four prime ministers and nine health ministers had to agree the emergency measures) that left the country barely able to cope with the crisis. What is euphemistically labelled ‘judicial reform’ in Poland and Hungary, in reality is about weakening the separation of powers. The Hungarian and Polish people do not think it is “boring”, but a matter of life and death, sometimes literally.

It is not by chance that those who claim that institutional reforms are not necessary, or even boring, are usually those who have an interest in keeping the status quo. Attempts to dismiss or even ridicule the debate on institutional reforms in the EU, are disingenuous and profoundly anti-democratic. Ultimately, they are preventing citizens from having a real debate, hearing all the arguments and deciding for themselves. National political leaders often invoke the notion of ‘subsidiarity’ as a way to stifle all reflection on the governance of the European Union. A debate about subsidiarity narrows down the issue to the mere division of power between the national and European level, a matter to be settled between politicians. With this simplification, citizens are purposefully kept out of the debate.

The media (and many national politicians) tend to refer to an amorphous 'Europe' and 'Brussels' when reporting about European politics, failing to distinguish between Commission, Council, Parliament or even the ECJ. In a national debate most people will be able to distinguish at least the constitutional basics like the difference between government, parliament, or the judiciary. Most people are familiar with national institutions like the tax authorities, social security agencies, or the police. Elementary information about the institutional set-up of the national democracy is taught in school, but much less is taught about the institutional set up of the European democracy. National politicians are in no hurry to properly inform and educate citizens about Europe. They prefer to keep the myth of remote, technocratic and weak Europe alive. The lack of knowledge allows them to hide the failure of intergovernmental Europe from sight, and to put the blame on an abstract 'Brussels' or 'Europe'. But the institutional set up of the European Union matters. It determines if the EU can meet the expectations of its citizens and if it has democratic legitimacy.

It is high time to turn this debate around. Institutional reforms are not boring, but urgent. They are a crucial part of any healthy democracy and in particular for the fledgling parliamentary democracy of the EU. It is about how we organise democracy, about the contract between the citizens and the state. Institutions that are static, unable to adapt to changing circumstances, will perish.

# European Trias Politica

Art. 10.1 of the Treaty on the European Union reads: *‘The functioning of the Union shall be founded on representative democracy’*. In the best EU tradition of fudge it is left a bit unclear what that means exactly, but one can assume it refers to the EU institutional set-up itself. As argued above, the EU is far from being a mature and complete parliamentary democracy. A coherent and integrated vision is needed to achieve a new balance between the institutions, based on the separation of powers, accountability, checks and balances and a mandate from citizens for the political leadership and its programme.

There are too many ambiguous and hybrid elements in the Treaties. These are the result of compromises, and deliberately vague formulations that have often helped to find agreement. But fudge can only patch over fundamental differences for so long. Sooner or later choices have to be made. The EU governance structures have a high degree of elasticity but at some point it gets overstretched. The EU may be a ‘sui generis’, hybrid entity with both intergovernmental and community elements, but a modern democracy requires a clear allocation of powers and the accountability that comes with it.

The ambiguity has enabled the creeping erosion of democracy. However, it is not always visible to the naked eye that the trias politica is under threat. The lack of public awareness and the absence of a serious and well-informed public debate on institutional matters, leave a vacuum in which European democracy is slowly hollowed out.

# European Council: Unidentified Governing Object

In this context, clarification of the role of the European Council and its reform should be high on the agenda. There is a paradox in the inverse correlation between the ongoing strengthening and deepening of intergovernmental Europe and the myth of an ever more powerful supranational Europe dominating the member states. The claims of the anti-EU forces that the EU is 'a superstate', 'dictatorship' or 'EUSSR', where member states have supposedly been reduced to mere provinces of an all-powerful imperialist European Union are totally grotesque. The opposite is true: over the decades, member states have tightened their grip on the EU. This has made Europe neither more effective, nor more democratic. The European Council has arguably become the most powerful institution but it is not anchored in a democratic arrangement. It is a kind of UGO: an 'Unidentified Governing Object'. Its nature, role and mandate are unclear and ambiguous: executive or legislator? Governmental or parliamentary body? It is extremely powerful, and yet not accountable to anyone. The argument that its members, the government leaders are accountable to their own voters is moot, because the European Council as a body cannot be held to account even though it takes decisions that affect all European citizens. (A small illustration of this is that a written parliamentary question by me to the President of the Council was deemed 'inadmissible', since the inter-institutional agreement between Parliament and European Council did not provide for such questions). Some of the members of the European Council – the government leaders – have a dubious reputation, to say the least. But members of this European governance body cannot be made to resign. Besides, few Europeans will be conscious of the fact that when they cast their

vote in the national elections, they are voting for a member of an EU body as well.

Given that national governments and national parliaments are part of the EU governance structures, any national election is decisive for the political composition of the leadership of Europe. In a system of intergovernmental decision-making by consensus, or even by unanimity, each national election can tip the scale. This is true of the larger member states as well as the smaller ones. Of course, it matters for Europe who is in the Bundeskanzleramt and in the Élysée. But it matters just as much who is in “het Torentje”, “Grasalkovičov palác”, “Stenbocki maja”, “Auberge de Castille”, “Μέγαρο Μαξίμου” or “Roinn an Taoisigh”. Each of these offices has a say in European politics, each of them can bring a majority or block a decision. It can be compared to the German Bundesrat or the US Senate. Ironically whereas many Europeans know the ins and outs of the wafer-thin majority of the Biden administration in the US Senate, but they are mostly clueless as to the majorities in the Council in the EU.

The fact that the EU is a hybrid ‘sui generis’ entity, is really no excuse for not respecting the basic elements of democracy and applying them equally to the European Council. Undefined and unchecked powers have no place in a democracy. In my view the European Council is a democratic anomaly. But it exists and at the very least the Treaties should clarify the nature of the European Council: executive or legislative? Whom are they accountable to, and who gives them a mandate?

The increasingly blurred lines between the European Council (government leaders) and the Council (ministers) as a legislator is highly problematic from a democratic point of view. The Treaties provide that if the Council (ministers) is unable to find agreement, the issue will be escalated to the European Council (Government



leaders). However, this rule, intended for exceptional situations, risks becoming a more regular practice. In times of crisis the European Council steps in, entering the area of both the executive and legislative powers. The Covid pandemic has intensified this, as the position of the Permanent Representatives, who are naturally more close to the government leaders, has become more prominent in the absence of physical meetings of the ministers. The Council has become a kind of sub-committee of the European Council, at the expense of its own role as independent legislator. A Chinese wall has urgently to be created between the Council in its legislative capacity, and the European Council. Their powers and duties must be very narrowly defined and delineated. At the very least, when the European Council intervenes in the legislative process, its actions must be subject to exactly the same standards of transparency and accountability as that of the Council or the European Parliament. Even better would be for the Council and the European Parliament to become two chambers of a bicameral parliamentary system on an equal footing. These chambers should be subject to the same rules of transparency, so that all meetings of the Council as well as the preparatory debates in Coreper, should be web-streamed, all documents made public and all votes registered. The Council should be seated in a hemicycle, rather than at a round table, to underline that it is a legislative, not an executive body. It could even be envisaged for each member state to have more than one delegate, as is the case for example in the German Bundesrat.

The European Council is increasingly grabbing the monopoly on political agenda setting, and thus competing with the right to legislative initiative of the Commission. Although the tensions between Mrs von der Leyen and Mr Michel are legendary, when it comes to its exclusive right of initiative, the Commission seems to accept the European Council trespassing on its prerogative rather passively. Granting the right of initiative to the European Parliament might go some way towards curbing the growing

dominance of the European Council. The formal, enforceable right of legislative initiative should be given to the European Parliament at the next Treaty change. However, until then, Parliament will have to maximise its existing options. In the summer of 2019 Mrs von der Leyen, then nominee for the presidency of the European Commission, made an election promise to Parliament: that she would treat legislative proposals from the European Parliament as if it had the full right of initiative. Parliament has made little use of this opportunity. Instead of repetitive and frustrated resolutions calling on the Commission to put forward legislative proposals, Parliament should put forward its own legislative proposals.

The European Council has to report to Parliament regularly, but it certainly does not feel answerable to Parliament in any way. Parliament should push back against the expansionism of the European Council. For starters, Parliament should re-instate the monthly strategy debates with government leaders on the shape and direction of the European Union. In addition, Parliament can modify the arrangements for the regular report by the President of the European Council and turn it in to a proper Question Hour rather than just a podium for a speech by the European Council President.

# European Parliament: watchdog or lapdog?

Building a parliamentary democracy should start from a strong European Parliament, but Parliament has been struggling lately. Admittedly, leading the European Parliament in times of Covid is a daunting task. The leadership has succeeded in keeping Parliament up and running, and that is no small feat. The legislative work has continued, albeit in a much reduced form. In addition, Parliament had to regroup after Brexit. However, in spite of these circumstances, or maybe especially in these circumstances, Parliament should have a vision for renewing EU parliamentary democracy, not just in terms of tweaking the Treaties, but in bringing about a real transformation of the old intergovernmental, paralysed, technocratic Europe, into a new, political, vibrant, parliamentary Europe. How do we bring about the shift in the power balance between the institutions? How do we give citizens a real say over the shape, direction and leadership of the European Union? How do we achieve a fully fledged European parliamentary democracy, based on the trias politica with the separation of powers? How should the European Parliament operate to achieve that goal and what tools does it have?

Parliament has an extensive arsenal: it has legislative powers, budgetary powers and elective powers. It has to vote the Commission into power, has to hold the Commission to account, and it can even adopt a motion of censure. It does not have formal powers to make an individual Commissioner resign, but Commissioners have to appear regularly before parliamentary committees, and Parliament can of course request the resignation of a Commissioner. There is a range of dedicated scrutiny arrangements that gives Parliament huge influence, for example

on Europol, Schengen, or the Recovery and Resilience Facility. As one leg of the budget authority it has the power of the purse, and it can decide to withhold budget discharge. Many EU bodies and agencies have to report to Parliament, and Parliament has to agree to, or even decide their work programmes and appointments to the management of the agency. Other scrutiny tools include parliamentary questions, parliamentary inquiries and access to information requests. Some instruments only give limited legislative powers to Parliament, like delegated acts or the consent requirement for international agreements. But any instrument that requires Parliament's consent can become a real big bazooka if used in a strategic and assertive manner.

Parliament should be giving full effect to Article 17.8 TFEU and hold the Commission to account in a meaningful way. It is not optional but an obligation under the Treaties. It should start by re-introducing a proper Question Hour with the Commission President, at least twice a month. This should be materially different from the current practice of the Commission President giving a speech in the plenary session, followed by a long series of MEPs reading out one-minute statements. It needs to be based on actual questions and answers, and tough scrutiny, leaving no wriggle room for the Commission. This will create a political arena.....and the scent of wild animals. Currently Parliament is treating the Commission with velvet gloves. The Commission knows it has nothing to fear from Parliament. Once the hurdle of the confirmation vote has been cleared, the Commission can pretty much do as it pleases for five years. The bar for resignation of Commissioners and the College as a whole is much higher than it is for national governments and government ministers. This has to change. Not only the Commission President, but also the Commissioners should be subject to regular and rigorous scrutiny. The current scrutiny arrangements for Commissioners hardly deserve the name. The seating arrangements during scrutiny

sessions in Parliament are illustrative of the power relations. Commissioners get to sit on the podium, next to the committee chair, literally looking down on the MEPs. Some Commissioners turn up regularly at EP committee meetings, as required by the inter-institutional working arrangements, but others don't bother. Parliament occasionally grumbles, but it has not called for any political heads. The European Parliament currently cannot officially make individual Commissioners resign. (this power should be one of the priorities for Treaty change). However, if Parliament were to call for the resignation of a Commissioner in the case of grave transgressions, errors or failure to act, it would be very hard for the Commission President to ignore that political message. Parliament does have the option to issue a motion of censure on the whole Commission, but this is the nuclear option and it has been used only once. Or rather: Parliament threatened to use it in March 1999, but the Santer Commission stepped down before the motion was actually voted on. The reasons for the resignation of the Santer Commission (irregularities in the management of EU funds and blatant nepotism of Commissioner Cresson who hired a friend, who was a dentist, as political advisor) seem rather petty compared to failures by subsequent Commissions. It seems that triggering the nuclear option once, actually raises the bar for doing so a second time. If breaking the Covid social distancing rules by attending a party is considered grave enough to demand the resignation of a Commissioner (as in the case of Commissioner Hogan), then the persistent and deliberate failure of the Commission to act against the deep and protracted rule of law crisis in Europe should be serious enough for the European Parliament to consider withdrawing its support for the Commission. As the EU becomes more powerful, the Commission should be held to higher standards. A motion of censure to vote the Commission out of office is the biggest bazooka of all, and one that should not be triggered frivolously, but be reserved only for the gravest failures of the Commission. But a bazooka will only work as a deterrent

if we are willing to use it. The resignation of an executive body is not the end of the world, and even a normal element of democratic accountability. National governments are regularly sent packing by their parliament, even in times of crisis. Yet, the sun still rises the next day.

It will be an important test for the separation of powers and the role of Parliament as watchdog, whether Parliament in 2021 will actually take the European Commission to court for ‘failure to act’ in response to the non-application of the Regulation on Rule of Law conditionality in the EU Budget. The Regulation was adopted by the legislators – Parliament and Council – in December 2020. This means that it is law and has to be applied. However, the European Council in its summit conclusions, added conditions for the application of the Regulation, notably the drafting of ‘implementation guidelines’, a requirement invented on the spot by the European Council, without any legal basis. Council also stated that the Regulation should only be fully applied after the European Court of Justice had ruled on its legality. This refers to a legal challenge to the Regulation brought by Hungary and Poland, the two worst rule-of-law offenders that would be the first to be hit by the new conditionality rule. The European Council considered that such a legal challenge would have an automatic suspensive effect on the application of the Regulation. The Commission followed the interpretation of the European Council. However, there is no rule that such legal challenges have a suspensive effect; it is another fantasy rule invented by the European Council. Although European Council Conclusions are not legally binding, the Commission chose to follow them, in blatant violation of the Treaty rule that the European Commission is not allowed to take instructions from any government or body. President von der Leyen clearly chose to ignore the Treaties, and to serve the European Council and the national governments instead. Von der Leyen probably did not want to cross Orbán, and risk his veto

against the decision on Own Resources for the EU Budget. An understandable political calculation perhaps. But it is not at the discretion of the European Commission whether or not to apply the law. If the Commission, the guardian of the Treaties, fails to uphold those Treaties, Parliament has a duty to take the Commission to court. Parliament is angry and frustrated about the refusal of the Commission to apply the Regulation, but it is hesitating to act. Sometimes Parliament seems to be afraid of its own shadow. It adopted a resolution at the end of March 2021, giving the Commission another two months to start applying the Regulation, or else Parliament would take the Commission to court, but the wording was vague enough to make the resolution little more than a political warning shot, rather than the start of legal proceedings. Early in June 2021 Parliament voted another resolution, this time announcing legal proceedings against the Commission for “failure to act”. But again it was worded in such a way to allow the reluctant EPP group to interpret it as just another warning shot. Nevertheless, at the end of June President Sassoli did indeed send formal notice to the Commission, with a two month deadline to act. At the time of writing, it is not known if the Commission will act within the deadline. In July 2021 the Commission delayed the approval of the Hungarian share of seven billion euros from the EU Recovery Fund. Although the Commission did not explicitly refer to the Rule of Law Conditionality Regulation, the move has been interpreted by some as a reaction to Orbán’s anti-LGBTI laws.

The power of the purse is one of the key powers of a parliament. Although the European Parliament does not have full budget powers, it should use the powers it has more strategically and assertively. Within certain limits the European Parliament can shape and modify the annual budget. But it also has the power to block the adoption of the annual budget, to put money in the reserve, to withhold discharge, and to demand access to information. To begin with, Parliament should exercise the toughest

possible scrutiny over the way EU money is spent. The bulk of the EU budget is spent by the member states, under the aegis of the Commission. That arrangement makes it difficult to verify if money is spent correctly and efficiently. This is all the more worrying as member states are notoriously sloppy when spending EU money. The level of irregularities – errors as well as fraud – is such, that the European Court of Auditors (ECA) has not once been able to give a positive “statement of assurance”, certifying that EU money has been spent correctly. Against this backdrop it is amazing that Parliament continues to duly sign off the budget each year. The Budget Control Committee of the European Parliament tends to exercise rigid scrutiny. But other parliamentary committees too, could exercise tougher scrutiny over expenditure in their own policy area. The Civil Liberties, Justice, and Home Affairs Committee (‘LIBE’) should use its scrutiny powers to get more leverage over policy areas like migration and security. In my experience, the Commission (and member states) are extremely reluctant to provide full insight into the way money is spent in these areas. In March of 2020 the European Commission pledged seven-hundred million euro in emergency aid to Greece, for the reception of refugees. One-and-a-half year later, the reception conditions of refugees seem to have improved marginally at best. There are more showers and toilets in the refugees camps, but refugees are still living in leaky tents, and reception centres have become detention centres in all but name. But despite repeated requests from the European Parliament ‘LIBE’ committee, the Commission has hardly provided any meaningful information on how the seven-hundred million euros had been spent and why the situation hadn’t improved. When it comes to internal security, in the past twenty years a raft of new legislative tools for law enforcement and security have been created, such as for the processing of citizens’ travel data, communications data, or bank data, for the automatic exchange of information between national authorities, and for automated searches in data bases. The budget for the EU security agenda got a massive



boost as well, sometimes indirectly, for example by funding the development of surveillance technologies through the EU research budget. Despite the growing activity of the EU in the area of internal security, it is difficult for Parliament to exercise democratic oversight, as much of the EU security agenda is implemented by national authorities. The Commission denies responsibility, and usually fails to give serious answers to parliamentary questions on the matter. However, national parliaments have no means and no interest in exercising parliamentary scrutiny either. This leads to a gap in parliamentary oversight in areas that affect citizens' rights. The European Parliament should close this gap by investing substantially in expertise and capacity for its parliamentary committees, and boost their scrutiny power. The Covid Recovery and Resilience Fund is not part of the regular EU Budget. In principle, the fund's regulation provides for scrutiny of the national recovery plans by the European Parliament, to make sure EU money is spent in line with the agreed priorities and criteria. However, Parliament's scrutiny powers are not very strong in practice. The very first time this procedure was used, in the spring of 2021, Parliament and Commission clashed over the latter's reluctance to provide all relevant information. Despite the fact that the obligation to fully inform Parliament had been laid down in great detail in an inter-institutional agreement, the old reflex of secrecy in the Commission was strong as ever.

The European Parliament should use the power of the purse to revisit the 'inter-institutional agreements' with the Commission and the Council, governing the practical cooperation arrangements between the institutions. Transparency and access to information must become an absolute precondition for cooperation in the budget procedure. For the long term, it is crystal clear that far-reaching reforms are necessary. The European Parliament should get full powers in all areas of the budget, including the revenue side. In addition, the multi-annual budget cycle should be replaced by

a regular annual budget. The current European Union seven year multi-annual budget (also known by its pet name MFF or Multi-annual Financial Framework) is an anachronism. In today's world seven years is an eternity. In comparison: the average life span of an iPhone is four years and three months. With a seven year budget it is impossible to react adequately to unforeseen events like a sudden influx of refugees or a pandemic. Even the Communists limited their planning to a modest five years. Formally the EU MFF cycle has to be "at least" five years, but in practice this has been raised to the maximum of seven years by the member states. This means it does not coincide with the five-year term of the European Parliament, thus reducing parliamentary influence. During the 2014-2019 Parliament no MFF was adopted.

For the European Parliament acquiring the full right of inquiry will be as important as the right to initiate legislation. Currently Parliament does not have the power to summon witnesses or hear them under oath. Notwithstanding, Parliament has conducted a number of very successful parliamentary inquiries, for example into CIA extraordinary renditions and abductions, the spying scandals of Echelon and Prism, the LuxLeaks and Panama Papers tax evasion scandals, and the Dieselgate emissions scandal. But Parliament is becoming the victim of its own success. It has acquired a reputation of being a tough interrogator, and witnesses are reluctant to show up at hearings. The British intelligence service GCHQ refused to be present at the 2014 EP inquiry into its hack of Belgian telecom provider Belgacom which serves the EU institutions and other Brussels-based international bodies. In spring 2021 the Slovenian Prime Minister and Culture Minister walked out of a hearing of the EP Rule of Law Monitoring Group, when the chair (myself) did not agree to the immediate screening of a propaganda video on the Parliament official website. They also refused to answer subsequent written questions about attacks on media freedom and independence of the judiciary in Slovenia. The Polish government

refused to turn up to a hearing of Parliament's Civil Liberties, Justice and Home Affairs Committee ('LIBE') to answer questions about the democratic backsliding in their country. Facebook CEO Mark Zuckerberg was extremely reluctant to appear before Parliament to answer questions about the abuse of personal data by Cambridge Analytica of 87 million Facebook users, and only agreed to appear before the Conference of Presidents instead of the mighty LIBE committee, where he expected to get much tougher grilling (He was right: the one-hour live-streamed hearing in the Conference of Presidents was a walk in the park for Mark). When the Parliamentary committee for public health (ENVI) called in the CEOs of pharmaceutical giants to question them about the delivery issues with the Covid vaccines in early 2021, it took considerable arm-twisting to make them come to Parliament. Parliament has no formal means to summon witnesses. However, it should check what other tools it has that might add some pressure. For example, it could consider including an obligation in the lobby register for businesses and organisations to cooperate fully with Parliamentary inquiries, monitoring, and scrutiny exercises as a condition for getting an accreditation. Should they refuse to turn up or answer questions, the accreditation should be withdrawn. It is slightly more complicated with governments and government agencies. Member states are constituent parts of the EU, so they cannot be totally banned, but there should be consequences if they refuse parliamentary scrutiny. Parliament should flex its muscle a bit more and up the pressure on national authorities to cooperate. And finally, Parliament should not be shy in its conclusions. A parliamentary inquiry is only a useful tool for accountability if the findings come with political consequences.

In a mature parliamentary democracy transparency and accountability go hand in hand. But intergovernmentalism and transparency are mutually exclusive. Commission and Council have a strong instinct for secrecy. This is a relic from the times when

Europe was run by diplomats, and discretion and secrecy were the norm. Of course national governments are no more keen on transparency nowadays and they do not volunteer information to their citizens any more than Council and Commission do. However, they are used to being under closer scrutiny by parliaments, media and citizens. The resistance of Commission and Council against more transparency and access to information is also about power. They cynically calculate that under the current rules, it suffices for them to simply refuse access to information, even if that refusal is not legally justified. An applicant only has one way to challenge a refusal: in court. Court challenges are lengthy and cumbersome, and by the time there is a court decision, the information may no longer be relevant. 'Private enforcement' by individual citizens and civil society has created important case law relating to transparency obligations of the institutions, notably the 'Turco ruling' (on access to opinions of the legal service), the 'In 't Veld ruling' (on transparency of negotiations on international agreements), the 'AccessInfo ruling' (on transparency of Council minutes) and the 'De Capitani ruling' (on access to the four-column document for legislative 'Trilogue' negotiations). But the Commission and the Council try and apply case law in the narrowest possible way. In the AccessInfo case, the practice of the Council to redact the minutes of the meetings in such a way that names of individual countries were blacked out, so that it was not visible what position each country had taken. The 'AccessInfo ruling' banned this practice. But instead of no longer redacting the minutes, the Council then simply left out the names of the member states altogether, thus complying with the letter of the ruling, but ignoring its spirit. Moreover, applicants run a financial risk. An NGO which challenged in court the refusal of its request to Frontex for access to documents, lost the case. Frontex then made the unusual move of making the NGO pay not just the costs of the court case, but also Frontex's own the legal costs, amounting to a total of 24.000 euro. In the end Frontex agreed to reduce the amount, but such a move will

deter any civil society organisation, journalist, or citizen who is looking for information. Even for MEPs it is difficult to get access to information. The Commission can afford to ignore requests or take forever to reply. The transparency rules must be reviewed as a matter of urgency. A proposal for a new transparency regulation has been stuck in Council and Commission since 2011, as neither body has much appetite for a better transparency law. There should be an explicit and enforceable right to information for all citizens. But in the absence of a new law, Parliament should use its weight as an institution, demand more transparency as an institution, and take Commission or Council to court in the case of refusal.

Written Parliamentary Questions are a simple but important tool for holding an institution to account. MEPs make ample use of the tool, but the quality of the replies is downright insulting, to Parliament and to the citizens. Most of the replies by the European Commission make a complete mockery of accountability. Of course the quality of the questions occasionally also leaves to be desired. The European Parliament has self-imposed restrictions on parliamentary questions, such as a maximum number of questions and limits to the topics. But it has not taken any action to oblige the Commission to change its practice of rubbish replies.

Despite the visible weakening of parliamentary democracy, there seems to be little inspiration for radical change within the European Parliament itself. Internal initiatives like surveys and working groups discussing reforms are mainly about internal procedures, such as the arrangements for speaking time in plenary. Some of the reforms are interesting, but they hardly count as fundamental renewal. It is not just the internal working methods that will make Parliament a vibrant political arena and powerful democratic institution. It is its position among the EU institutions. The current Parliament leadership seems less combative, have less 'Wille zur Macht', than some of their predecessors, with regard to claiming a

key role for the European Parliament. In an interview <sup>6</sup> President Sassoli says on the role of Parliament and intergovernmentalism: *‘This leads me to mention the sometimes-difficult relationship between the “community” and governmental bodies. I know that young people hope that the community bodies prevail (which is also my preference). I am also convinced that we are heading in that direction for the future. But today we must approach this future a bit more pragmatically. At this time, it is impossible to envision that one body can dominate another because, above all, we need to reestablish a balance. This is a task which will allow us to affirm Europe’s relevance. And so, when we are ready, I think that the community body will prevail. Until then, we must always keep our opportunities in mind, both in regard to the European Union and our democratic systems’.* European democracy needs more drive and ambition. Ambition is not about waiting for change to happen by itself, but actively making it happen. All the powers that the European Parliament has today have been hard won; they were not handed on a silver platter. It took the strong leadership of visionary and determined members of the House, who were not afraid of confrontation when it was needed. Their legacy is under threat. Parliament sometimes seems afraid of its own shadow, afraid to use its powers, afraid of confrontation with the other institutions. At the same time, many of the new MEPs do have the fighting spirit, they are brimming with energy, talent and idealism, but in the current vacuum too much of this evaporates for want of direction and guidance.

There are of course objective external factors too that have weakened Parliament in this term. The pandemic obviously created huge operational difficulties, impeding direct interaction and

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6 <https://geopolitique.eu/en/2021/05/17/we-want-to-involve-citizens-to-build-the-future-of-europe-a-conversation-with-david-sassoli/>

cooperation between members in a newly elected Parliament. The impact of this is felt more strongly in view of the unprecedented turnover at the 2019 elections, that brought in some 60% first-time MEPs. Early in 2020, just as they were getting ready for the real job, after spending the first half year after the elections constituting the parliamentary bodies and vetting the new European Commission, Covid put a spanner in the works. Forced to work from home, behind their computer screens, the new members were deprived of the opportunity to learn the routine of parliamentary work and to build up a network of contacts. More importantly maybe, they had no chance to get know each other and bond, and the political groups had difficulty creating group cohesion. This was a challenge in particular for groups with a high number of first time MEPs (ID: 81%, Renew 69%), less so for the well established groups EPP and S&D with a lower turn-over (41% and 51% respectively). The impact of Brexit on the parliamentary culture in the European Parliament is not to be underestimated either. When the British MEPs left they took with them their strong parliamentary traditions and lively debating culture.

The European Parliament is not the only parliament struggling to exercise meaningful parliamentary scrutiny in times of Covid. Parliaments all over the world are facing practical, legal and political restrictions as a result of the emergency situation. Covid rules most often do not allow for the full physical presence of members of parliament, or travel between their constituencies and parliament. Whereas governments got exceptional powers to tackle the crisis, parliamentary scrutiny was restricted by law during times of emergency. Parliaments, including the opposition parties, are more timid in times of crisis as all political forces are expected to unite uncritically behind the leadership and not get in the way of crisis management. Covid has struck a serious blow to parliamentary democracy.

These factors were clearly force majeure. But since the 2019 elections Parliament itself has missed many opportunities and it has weakened its own hand unnecessarily. The power balance is tilting strongly towards the intergovernmental powers, at the expense of a more democratic EU. After decades of steadily growing parliamentary power, consolidated particularly in the Lisbon Treaty, now for the first time Parliament seems to be losing ground. In October 2020 The Economist's Charlemagne dedicated a brilliant column to the European Parliament<sup>7</sup>. *'MEPs have plenty of clout, but no idea how to use it. Killing a king is a good way of showing who is boss. In the 17th century, English parliamentarians put Charles I on trial for treason after a civil war. He was found guilty and swiftly executed. French lawmakers did something similar in the 18th century. Their 21st-century peers must rely on less bloody methods. The European Parliament is, in its own way, as mighty as its regicidal forebears. It has plenty of weapons at its disposal. It can block trade deals and veto the eu's budget. It has as much say on European legislation as ministers from national capitals. And the European Commission, the closest thing the eu has to a government, can be dismissed—although not put to death—at parliament's will. Yet for all these threats, meps are not always treated with much respect. With negotiations ongoing over eu funding of €1.8trn (\$2.1trn) between the European Parliament and the Council, which represents national governments, veto-wielding meps should be at the apex of their powers. Yet the eu aristocracy do not seem to fear a bout of revolutionary fervour among meps. When cornered by German mps about the European Parliament's demands in the latest round of talks, Angela Merkel's main Europe adviser declared: "In the end, none of that is relevant." David Sassoli, the parliament's president, reiterated its demands for an extra €39bn for the eu budget at a*

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7 <https://www.economist.com/europe/2020/10/22/the-european-parliament-powerful-yet-puny>



*summit meeting of the eu's national leaders and was politely told to get lost. The European Parliament may have dangerous weapons. But it has little idea where to aim them or when to use them'.* The piece is a good read, but bad news for European citizens if their Parliament is weak.

Over the years Parliament has managed to strengthen its position, notably by assertively using its elective powers. In 1999 it made the Commission Santer resign over a corruption scandal. In 2004 Parliament for the first time rejected a candidate commissioner, Italian Rocco Buttiglione, deeming him unsuitable as Commissioner for Fundamental Rights following his homophobic and sexist statements. This episode established the tradition of tough confirmation hearings, where each term at least one candidate for commissioners will fail the test. In 2014 Parliament even managed to force the hand of the Council and get its own candidate, the so called "Spitzenkandidat", Jean-Claude Juncker, nominated President of the European Commission. That could have been a real game changer, intensifying the connection between the EP elections and the nomination of the President of the Commission.

But in the current term, Parliament has voluntarily given up many of its powers. In 2019 the newly elected Parliament abandoned its own candidates, and accepted that the choice of the Commission President, the most powerful EU institution, became the outcome of a Council deal on top jobs made behind closed doors, as it had been the case for decades. Parliament did a bit of grandstanding and chest-beating, but ultimately it meekly signed on the dotted line. The deal between the government leaders included not just the the Presidency of the Commission, but also of the European Council, of the ECB, of the European Parliament, and of the Conference for the Future of Europe, as well as the post of foreign policy 'High Representative'. Parliament had little say in any of this.

Government leaders made a deal and presented it to Parliament as a fait accompli.

Parliament thus accepted that even the choice of its own president was not made by Parliament itself, but it was part of the backroom deal by the Council. That Council deal originally included an S&D member from one of the Eastern European countries for the post of EP president. The name of Sergei Stanishev, a Bulgarian candidate was floated, but domestic Bulgarian issues got in the way so in the end he was not nominated. The S&D group instead, late on Tuesday night in Strasburg, put forward the name of Italian David Sassoli, who was immediately elected the following morning, just hours after his surprise nomination. Most MEPs, being new, did not know him. There had been no presentation of the candidate or his plans. MEPs just voted at the instruction of their group leadership, who in turn were simply implementing the deal concluded in the European Council. The election of Sassoli, effectively eliminated Stanishev, who was the Council's original choice and was assumed necessary for the East-West balance. The news site Euractiv wrote: *'The Parliament move might augur that MEPs could put at risk the entire package, agreed at the summit by the EU heads of state and government'*. This sums it up well: Parliament was expected to simply carry out what had been agreed by the Council, despite government leaders vigorously declaring that 'Parliament will elect its own leader independently'. An autonomous decision by Parliament would have 'put at risk' the package deal.

The assignment of portfolios is the direct responsibility of the Commission President. Von der Leyen gave the portfolio of the 'Protection of the European Way of Life' to the Vice President who was also in charge of migration. That was not an innocent choice, but a deeply political and ideological one. Parliament recognised it for what it was, and rightfully bristled. But in the end Parliament

agreed to the cosmetic change of the title of the portfolio to 'Promotion of the European Way of Life'.

Parliament passively accepted the predominance of the Commission and the member states on other occasions as well. It is the prerogative of Parliament, after hearing the individual candidates, to vote the Commission as a whole into office. Parliament does not have the power to make individual Commissioners resign. However, in the past resignations of EU Commissioners would as a matter of course lead to questions and debate in the European Parliament. In the summer of 2020 the Irish government called for the resignation of Irish EU Commissioner Phil Hogan, as he had violated the Irish Covid self-isolation rules. President von der Leyen very swiftly responded to the calls of the Irish government, and made Hogan resign without going through the regular procedure including a hearing with the ethics committee and a formal Commission decision. It is telling that Von der Leyen chose to humour the government of a member state, and it is alarming that the European Parliament remained silent. There were no questions, no hearing, no debate: nothing. In the case of Hogan's resignation, Parliament once again failed to assert itself. Regardless of what one's views may be on Hogan's conduct and whether resignation was proportionate, the matter had inter-institutional implications which Parliament does not seem to have fully grasped.

Part of the top jobs deal by the government leaders, was the leadership of COFEU, the Conference of the Future of Europe. COFEU was created as a consolation prize for the European Parliament, after its Spitzenkandidat had been eliminated by the European Council. In the package deal, the presidency of COFEU would fall to the European Parliament, and more specifically to the Renew group. The job was supposed to be assigned to Guy Verhofstadt. But the European Council refused to live up to the deal,

and blocked Verhofstadt's appointment as many government leaders are suspicious of his outspoken euro-federalism. The European Council floated the names of other candidates, from outside the European Parliament, but Parliament refused. Finally the dispute was resolved by replacing the top job of COFEU president by a collective presidency. The solution allowed Parliament to save face (barely), but it could not conceal the fact that – once again – Parliament had conceded, and once again had lost political clout.

Parliament occasionally seems to forget its own role as parliamentary watchdog, and the principle of separation of powers. Good cooperation between democratic institutions is of course a prerequisite of a well functioning EU. But too cosy a relationship will get in the way of effective scrutiny and accountability. The European Commission is accountable to the European Parliament as per Art. 17.8 TEU. Accountability is not a formality, a tick-box exercise, but a core element of a healthy democracy. It is alarming that the 'Conference of Presidents' – the body made up of the EP President and political group leaders – is holding frequent in camera meetings, for example with the President of the Commission or the President of the Council, instead of using the unique political arena of the plenary of Parliament. The Conference of Presidents should not become a surrogate for Parliament plenary. A disturbing example of this was the wholly inappropriate closed meeting of the EP Conference of Presidents with President von der Leyen, after the "Sofagate" fiasco, before her public appearance in the plenary session in Parliament. The same goes for the "Vaccine contact group" set up following the storm of criticism over the contract with Astra Zeneca which failed to deliver the expected doses of Covid vaccine in early 2021. In the Vaccine Contact Group the Commission regularly updates MEPs on the vaccine strategy. That is fine in itself, but there is no reason why that should not take place in public (judging by the minutes of those meetings, nothing is discussed that has not already been in the media), and the fact

that MEPs and Commissioners are sitting on the same body, blurs the lines between the executive and the very body that is supposed to scrutinise that executive. It is easy to see how this would become problematic if the vaccine purchase strategy were to be the topic of a parliamentary inquiry, as has been proposed by some. It is telling that some Commissioners are more keen to turn up at the in camera sessions of the Vaccine Contact Group, than to a public session of a parliamentary committee.

The separation of powers is further hampered by the fact that the vast majority of MEPs depend on their national party for re-election. This makes it difficult for MEPs to be entirely independent. Just under 60% of MEPs belongs to a government party (this may fluctuate during the parliamentary term as national governments change) and national political considerations tend to steer their behaviour. The same applies to MEPs who belong to an opposition party. Very few MEPs will be completely independent from their national party, or even vote against their party line. Political groups in the European Parliament on the whole have a coherent European profile, but nearly all the groups are organised in 'national delegations'. This has implications for the separation of powers and for the legislative process. A large number of members of one legislator (the European Parliament) are dependent on the members of the other legislator (Council) for their political career. This means that there is an inherent inequality between the two legislators. This is becoming problematic, as the European Council increasingly takes over the legislative role of the Council. The EU electoral system has to change urgently.

The political groups themselves are sometimes guilty of not taking Art. 17.8 TEU seriously. In particular the so-called 'Von der Leyen coalition' referring to EPP, S&D and Renew (loosely, as a number of MEPs from those parties voted against Von der Leyen, whereas several MEPs of other groups voted in favour) from time

to time loses sight of the separation of powers. Close cooperation within a political family, aligned on substance and shared values is of course fine in a democracy. However, a monistic view of politics frustrates adequate parliamentary scrutiny and too often makes Parliamentary groups behave as part of the executive instead of its watchdog. Partisan discipline is sometimes interpreted as automatic support from MEPs for the Commissioner from the same political family, or the VDL Commission as a whole. Inversely, critical questions are seen as an attack on 'one of our own'. Paradoxically, the political groups in the European Parliament do not expect the same partisan loyalty in return from 'their' Commissioners or from governments in the same political family. Indeed, Commission and Council frequently defend positions or make proposals that are contrary to the stance of their political family in the European Parliament. That is quite healthy, but the parliamentary groups should equally maintain some distance.

It is often argued that the weaknesses of this Parliament and of EU parliamentary democracy will be addressed at the Conference on the Future of Europe. COFEU will undoubtedly be a fruitful exercise in citizens participation and public debate, and that is valuable in itself. However, it is unlikely to bring about the much needed shift in the balance of power between the institutions. It is more likely to be the expression, and even the consolidation of the existing power relations. And that may well turn out to be to the disadvantage of parliamentary democracy. Clearly COFEU was not set up because member states have a burning desire for further democratisation of the EU, rather the opposite. The member states have not the slightest appetite for any reform that might make the EU less intergovernmental. Twelve member states

were quick to submit a joint contribution<sup>8</sup> to COFEU that makes it clear they believe it is enough for the EU to just try a bit harder: *‘We are determined to use the Conference to promote an **effective and rules-based EU** that delivers real, tangible solutions to the challenges that the EU is facing. This entails a focus on real policies and specific results – on the basis of the priorities already agreed to in the **Strategic Agenda** of the European Council. The Union framework offers potential to allow priorities to be addressed in an effective manner<sup>1</sup>. The Conference’s structure should be lean, streamlined and avoid any unnecessary bureaucracy. It should not create legal obligations, nor should it duplicate or unduly interfere with the established legislative processes’*. In a footnote they explicitly and categorically reject Treaty change. The European Parliament may probably be grateful for Viktor Orbán’s recent call to curtail its powers<sup>9</sup>, because the other government leaders probably dislike Orbán even more than they do the European Parliament, and they would rather hold their noses and defend the Parliament, than be seen to be on his side. If anything, governments who have got used to the exceptional powers they enjoyed during the Covid crisis now find parliamentary democracy – national or European – a nuisance.

A quote by an anonymous official of the Portuguese EU Presidency illustrates this very nicely. In May 2021 negotiations on the ‘Covid19 Certificate’ between Parliament and Council were stuck, and the deadline was nearing. One of the main sticking points was that Parliament was calling for harmonisation of Covid measures and an end to the chaotic patchwork of national measures.

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8 ‘Non-paper on the Conference on the Future of Europe’, Common approach amongst Austria, Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Slovakia and Sweden’, 24-03-2021

9 “Orbán’s Europe vision: dismantle European Parliament”, Euractiv 21/06/2021 [https://www.euractiv.com/section/politics/short\\_news/orbans-europe-vision-dismantle-eu-parliament/](https://www.euractiv.com/section/politics/short_news/orbans-europe-vision-dismantle-eu-parliament/)

The Council flatly refused to consider this, arguing that it was an exclusive national competence. When asked by a journalist from Politico what would happen if no agreement were to be found, the official answered coldly that *'Leaders will take over and this will be passed as a Council recommendation'*. In other words: we are not really negotiating, and we just expect Parliament to sign on the dotted line. Of course the quote was partly meant to put pressure on the negotiations, and the "recommendations" avenue would lack any legal basis, but it was an unprecedented move and highly revealing of the arrogance of power in the Council (and illustrative of how the European Council enters into the legislative territory of the Council). Parliament and Council finally agreed on the EU Covid Digital Certificate, but without the meaningful harmonisation called for by Parliament. However, two weeks later, Council agreed a "Recommendation" on exactly the harmonisation called for by Parliament. This move was as if to say "We weren't bluffing, we don't need Parliament". This is illustrative of the mindset in Council, and in most national capitals, both in governments and parliaments.

A weak European Parliament with few allies among governments and national parliaments, will be in no position to negotiate a further expansion of its powers. The high turn out at the 2019 elections gave Parliament a strong mandate. And the Lisbon Treaty gave the European Parliament more powers in order to strengthen the democratic legitimacy of the Union. But here the old adage applies: "use it or you lose it". If Parliament shies away from using its powers, it will end up losing them. It must make the fullest possible use of its existing powers today. It will have to prove its worth when history comes knocking on its door. It cannot afford to miss an opportunity.



# Commission: citizens first or governments first?

Art. 13.2 TEU reads: ‘The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the member states...’. The Treaty explicitly mentions the interests of the EU, the citizens and the member states, in that order.

The Commission speaks warm words about ‘the citizens’ and ‘a citizens’ Europe’, but in practice the Commission considers its real job is to serve the member states’ governments over citizens. Or rather: it feels it can serve citizens only through the governments, not directly. This attitude has very tangible consequences in practice, and explains why the Commission is often seen as aloof and remote. The Commission is responsible for the enforcement of EU laws and case law. If a member state fails to comply, the Commission can start an infringement procedure. However, increasingly the Commission refrains from taking action if it feels it might upset a member state government.

A clear illustration of the attitude of the Commission can be found in its reply<sup>10</sup> to a query from a citizen who asked why the Commission did not act when a member state refused to apply a ruling by the ECJ. It concerned the 2018 Coman ruling, a case brought by Romanian citizen Adrian Coman. Coman and his American husband Clai Hamilton got married in Belgium. But when they wanted to move to Romania, the Romanian state refused to recognise their marriage and the rights that come with it, notably

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10 Ares(2021)1398714 Reply to query by Professor Robert Wintemute

the right to family reunification. In 2018 the ECJ ruled that the rights granted to spouses under the Freedom of Movement Directive apply to all spouses, including those in same sex married couples. However, three years later, Coman and Hamilton, and many others in the same situation, are still being denied their rights by the Romanian state. The Commission denies any responsibility. When asked why the Commission did not act to ensure full compliance with the ECJ ruling by the member states, it replied (text underlined by me):

*[...] I wish to give a better insight in what the Commission can and cannot do, based on legal and practical considerations.*

*[...] The EU cannot achieve its policy goals if EU law is not effectively applied on the ground in the Member States. Therefore the Treaty divides responsibilities clearly: Member States are responsible for the correct application of the body of EU law, and the Commission has the responsibility for monitoring Member States' efforts and ensuring they comply with EU law.*

*The Commission can decide to bring proceedings against a Member State that failed to apply EU law properly [...].*

*As explained in the Commission's Communication on "Better results through better application" C(2016)8600,<sup>2</sup> **the primary purpose of infringement procedures** is to ensure that the Member States give effect to EU law in the general interest, **not to provide individual redress**. The Commission has no legal powers – and no means – to establish the factual situation on the ground. This can only be done by national courts. National courts play the key role in securing rights of individuals. **National courts are competent to uphold actions by individuals seeking redress for acts or omissions by national authorities** or financial compensation for the damage caused by such acts or omissions [...]*

*The primary responsibility of respecting judgments lies with the Member States [...]*

The Commission clearly does not feel it has a duty of enforcement to the citizens. It considers governments rather than citizens to be its only legitimate interlocutors. Yet, at the same time it refuses to monitor the full and correct implementation of laws and case law by the member states. Worse: in many cases the Commission knows full well that national authorities are refusing (or failing) to apply EU law and case law. Thus it has replaced the 'presumption of compliance' with the 'pretence of compliance'. The Commission explicitly counts on 'private enforcement' by individual citizens going to court, instead of public enforcement by the Commission itself. But litigation is cumbersome, expensive, time-consuming and out of reach for most normal citizens. Moreover, in practice legal redress in the case of laws relating to internal security is fairly meaningless. Private enforcement basically means that citizens or organisations are filling the void left by the Commission, in those areas where it fails or refuses to enforce EU law. The case law triggered by courageous and determined citizens and organisations constitutes a massive contribution to the development and integration of Europe. In taking their cases to court, they have contributed substantially to the development of the European Union. Adrian Coman has achieved more for LGBTI people in Europe, than the Commission has. Mid-July 2021 the Commission did eventually launch infringement procedures against the LGBTI free zones in Poland and the anti-LGBTI law in Hungary. That is a welcome move, but it came only after the European Council had, for the very first time ever, condemned a homophobic law by an EU member state (the Hungarian law), thus seemingly giving the Commission the green light to move against a member state for violating LGBTI rights. It is a first step, but a very timid one.

Not only does the Commission increasingly fail to enforce the law, it sometimes passes laws and international agreements that are in blatant violation of EU laws. This is particularly true in the case of data protection laws. The list of acts that were pushed by the Commission but subsequently thrown out by the ECJ is long: the directive for retention of telecoms data, the arrangements for transatlantic data transfers Safe Harbour, and its successor Privacy Shield, mass collection and storage of 'PNR' passenger data, or the 'UK adequacy decision' meant to guarantee adequate data protection for data transfers from EU to UK. In each of these cases the Commission was fully aware that they were in breach of EU law, but in every case it chose to ignore all expert opinions, including the European Data Protection Supervisor (EDPS) and calls from the European Parliament and pushed the files through regardless. The point here is that whereas citizens and civil society are very attached to the GDPR, and count on it to protect their rights, the member state governments are not. They feel data protection rules are an obstacle to their own policy plans. In private, governments quite like the idea of having unfettered access to the private data of their subjects. And our transatlantic ally, the US, is openly hostile to GDPR. So even though the Commission itself was the prime architect of GDPR, it is now unashamedly complicit with member state governments in stripping GDPR of its meaning.

One valiant knight riding to the rescue of the protection of our privacy and personal data is Austrian citizen Max Schrems. As a student, he challenged the transfer of personal data to the US, notably by Facebook under the so-called 'Safe Harbour' scheme. He also took aim at the Irish data protection commissioner, responsible on behalf of the whole EU for overseeing the tech giants based in Ireland, for being too lax in enforcing EU data protection law. The European Parliament had called repeatedly for the repeal of Safe Harbour, not least because an external evaluation (which has been suppressed by the Commission, that was clearly unhappy with the

findings) had shown it was not compliant with EU law, but the Commission refused. It was therefore no surprise that Safe Harbour was struck down by the ECJ in 2015, in the so called “Schrems I” ruling. It was subsequently replaced by Privacy Shield, a new arrangement negotiated by the Commission with the US authorities. Like its predecessor, Privacy Shield was legally unsound, as all the experts and the European Parliament pointed out. However, the Commission kept repeating like a broken record that everything was hunky dory, until 2020, when the ECJ invalidated Privacy Shield as well in the “Schrems II” ruling. Following that ruling, the Commission is now negotiating a new arrangement with the US. However, the obstacle did not lie in the transatlantic agreements, but in US laws for mass surveillance. So unless the US are willing to adjust their laws, no transatlantic data transfer arrangement can ever be ‘Schremsproof’. That is the bind the Commission is in: will it put EU laws and the rights of citizens first and dare to stare down the US, or will it defer to the US (with the backing of the EU member states) and conclude another agreement that will, in time, be invalidated by the ECJ in ‘Schrems III’?

In September 2015 the ‘Dieselgate’ scandal erupted. German car makers had been tampering with the system for emissions testing of diesel cars. It turned out that emissions were up to forty times higher than the car manufacturers had claimed. The scandal led to millions of cars being called back to the factory, high costs for car owners and a serious impact on public health. Of course the Commission cannot be held responsible for fraud committed by a private company. However, the Commission had been warned as early as the late nineties, and again in 2013 by its own Joint Research Centre that the emissions testing results were unreliable, but it chose to ignore the warnings. After the whole thing had come to light, and the European Parliament demanded stricter rules and more effective controls, the Commission put forward new rules, but only halfheartedly and after much insistence from Parliament.

The Commission was particularly reluctant to cross the German government, which is protective of its car industry.

The same interests of the German car industry turned out to be a major obstacle to tackling the dramatic demolition of democracy and the rule of law in Hungary<sup>11</sup>. For over a decade the German government, seeking to protect the German car factories in Hungary, made sure Viktor Orbán would not be bothered by the European Commission as he was taking a sledgehammer to democracy, the rule of law, and fundamental rights. The Commission felt deeply uneasy about the situation, but even more uneasy about rubbing up the German government the wrong way. Systematically the Commission gives priority to its relations with member state governments, the US administration, or big industry, over the interests of EU citizens. ‘Intergovernmentalism’ sounds like a rather abstract notion to most people, but it has real consequences in practice. It makes all the difference whether the Commission feels that its duty is to serve the member states, or European citizens and the law.

All the talk about an emerging ‘European Super State’ sounds frightening, but the reality is that the power of supranational Europe is slowly being hollowed out by intergovernmental Europe. This leads to the paradox that although the EU is legislating in more areas, the actual application of its laws is weakening. With the possible exception of the area of competition law, enforcement of EU laws by the Commission has been dropping for years. The European Commission has near-unlimited discretion to decide whether or not to open (or close) infringement proceedings, and to set the timeframe. Indeed some infringement proceedings drag on for so many years they have lost all meaning. Interesting research by

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11 <https://www.direkt36.hu/en/a-magyar-nemet-kapcsolatok-rejtett-tortenete/>

Professor Daniel Kelemen shows the increasingly hands off attitude of the Commission is real: *“This paper reveals a puzzling decline in the Commission’s exercise of its infringement power since 2004 [...] we demonstrate that the decline in infringements cannot be explained by improved state compliance, increased enforcement by national judiciaries, or a decrease in EU legislative output”*<sup>12</sup>. As Kelemen has found, the Commission decided at some point to resort to ‘dialogue’ instead of infringement proceedings, hoping that a carrot would be more effective than a stick to nudge member states to comply with EU law. But after a while it concluded that dialogue did not yield much better results, and abandoned the dialogue approach as well. Andreas Hofmann observes the same trend<sup>13</sup>: *‘On the one hand, the Commission is increasingly withdrawing from centralised rights enforcement, initiating less and less infringement proceedings and shifting the bulk of its work towards more informal compliance management tools. At the same time, private, de-centralised rights enforcement is becoming more prominent, at least as measured by the amount of preliminary references submitted to the CJEU. The Commission actively supports this trend, and in effect outsources its own enforcement work to private actors, both individual and collective’*. Kelemen believes this is due to the fact that Commissioners increasingly are ‘political appointees’. However, Commissioners have been political appointees from the beginning of European integration. The real difference is the steadily growing power of the European Council, and its ever tighter grip on the Commission, as well as on the Council (in its legislative role).

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12 <https://jura.ku.dk/icourts/calendar/2021/eupolex-seminar-with-tommaso-pavone-and-daniel-kelemen/>

13 <https://www.tandfonline.com/doi/full/10.1080/07036337.2018.1501368> “Is the Commission levelling the playing field? Rights enforcement in the European Union” Andreas Hofmann, 12/12/2018

The lax enforcement of EU rules means de facto impunity for governments and leaving citizens out in the cold. The list of examples is endless: the neglect of rights of EU citizens in the UK (and vice versa) after Brexit, intimidation and harassment of judges in Poland and Hungary, the abortion ban in Poland, pushbacks and violence against refugees by Greece or Croatia, disproportionate restrictions for Roma people during the pandemic, anti-LGBTI laws in Hungary or Lithuania, unlawful use of facial recognition methods by the police, rampant corruption by public authorities in several countries, and much more. The most disgraceful example is the refusal of the Commission to fully apply the “Rule of law conditionality” Regulation to EU funds. The governments who loudly state that ‘Europe just has to deliver’, are themselves sabotaging that very delivery.

This clearly demonstrates why the independence of the Commission from national governments must be urgently secured, and inversely the bond between the Commission and citizens must be reinforced. Two steps are key. Firstly reducing the number of Commissioners, as originally foreseen by the Lisbon Treaty. Technically this can be achieved by a decision of the European Council. Politically it is clearly a lot more difficult to achieve. But reducing the number of Commissioners may well be the most important step in transforming the EU from an intergovernmental entity into a parliamentary democracy and securing the full separation of powers. It will release the stranglehold of governments over the Commission and it will radically strengthen the connection between the European elections, the nomination of the Commission President, and the composition of the Commission.

Secondly, political leadership must be derived from an electoral mandate, direct or indirect, not from horse-trading behind closed doors. A system that elevates a completely unknown person to the status of highest political leader is fundamentally undemocratic.



Personally I am not really in favour of a presidential system of directly electing the Commission President, but in any case all candidates for the job should be expected, if not obliged, to campaign and secure public support. As in most mature democracies the largest parliamentary group after the elections may propose a candidate to be President of the Commission. That candidate can then take the initiative to form a new Commission that commands a majority in Parliament.

# The forgotten third leg of the Trias Politica

It is often overlooked, but the judiciary is the third leg of the Trias Politica, and an essential part of the democratic system. So far the European Court of Justice in Luxembourg (ECJ) has been fiercely independent, and the closest ally of European citizens, upholding their rights. Member states usually do not interfere with the independence of the ECJ and its judges and they recognise its authority as the highest court in the EU. However, there are some developments that should set off alarm bells. In 2014 the ECJ requested the insertion of twelve additional posts for judges in the budget, as it was unable to cope with the growing workload. However, the member states decided to create twenty-eight new posts, equal to the number of member states at the time, as they were unable to agree on a lesser number. That episode showed clearly the risk of member states seeing the ECJ judges as representing their member states. The risk is not imaginary, as may be demonstrated by the recent appointment of a new Hungarian judge to the ECJ. The candidate Zoltán Csehi was hand-picked by the Hungarian justice minister Varga, and he used to be a lawyer in the law firm of former justice minister Trócsányi (who was also a candidate to be EU Commissioner, but was rejected by the European Parliament because of a conflict of interest), a fact not mentioned in his CV. This says nothing about the professional qualities of Judge Csehi, but the political context casts a shadow when the ECJ should be completely free of shadows. Very relevant in this respect: the actual appointment is made by the Council 'in common accord between the member states'. The tacit intergovernmental agreement not to interfere in 'national' affairs may become a risk to the EU legal order if member states politicise the nomination of judges to the ECJ. National political interference

in the judiciary must be strictly banned. The same applies to the prosecutors in EPPO, the European Public Prosecutors Office. In at least four nomination procedures – by Portugal, Belgium, Bulgaria and Slovenia – there has been controversy over government interference. In the case of Bulgaria several nominees were rejected. The Belgian and Portuguese nominations have been challenged in court, and the Slovenian Minister of Justice resigned in protest over the interference of the Prime Minister in the nomination process.

More recently, the authority of the ECJ has been directly attacked and its authority called into question, not least by the Polish and Hungarian governments who flatly refuse to recognise and carry out ECJ rulings and who actually forbid national courts from submitting prejudicial questions to the ECJ. The Polish Constitutional Court, captured by the Polish government and instrumentalised for its political agenda, has openly challenged the principle of supremacy of EU law and of the ECJ. The German Constitutional Court in Karlsruhe has also repeatedly challenged the primacy of EU law and the authority of the ECJ. This has led the European Commission in June 2021 to start infringement proceedings against the German government, aiming to assert the primacy of EU law. The difference with the Polish case is that the German government on the whole supports the primacy of EU law. More worrying is a case brought before the French Conseil d'État, challenging the French surveillance law. Plaintiff La Quadrature du Net, a privacy NGO, argues that the law is contrary to ECJ case law banning indiscriminate data retention. However, the French minister defended the law and argued that ECJ case law may be ignored in the area of national security. The Conseil d'État issued a ruling that more or less avoided the issue but it did not unambiguously defend the primacy of EU law. In the same week the Belgian Constitutional court ruled on the same issue, but it fully acknowledged the primacy of EU law and the authority of the ECJ. Of course a degree of tension between national and European

authorities is part of a healthy and lively democracy, but we must remain extremely vigilant to ensure that the independence and authority of the ECJ are not undermined.

Enforcement of EU laws is to a large extent also in the hands of the national judiciary. This makes national courts a part of the EU judiciary co-responsible for upholding EU law, and it is why independence of the national judiciary is very much an EU matter. Citizens must be able to rely on the full and even application of EU law throughout the territory of the EU. Judicial and law enforcement cooperation is built entirely on the principle of mutual trust and the presumption of compliance with common European standards. Therefore the 'state capture' of large parts of the judiciary by the Polish and Hungarian governments affect the EU as a whole.

As one leg of the trias politica the judiciary is of course also part of the democratic process. As I have noted above, the European Commission is rolling back its enforcement activity. However, in some cases it is actually outsourcing thorny political issues to the ECJ, rather than taking decisions itself that would affect national governments. The Commission has used this manoeuvre in particular to try and counter the democratic backsliding in Poland and Hungary. In the course of the decades litigation by companies, citizens and civil society has resulted in an impressive body of case law that has contributed greatly to European integration. The Commission although increasingly counting on 'private enforcement' of EU law, it is not terribly keen on strategic litigation, designed to elicit case law on a specific topic. There has been much strategic litigation in the area of gender equality, LGBTI rights, transparency and access to documents, and lately in the area of climate policies, forcing governments to meet climate targets. The European Parliament – at my initiative – introduced into the budget a 'litigation fund', meant to support strategic litigation by citizens and civil society organisations, but for several years the

Commission refused to carry out the decision of Parliament and eventually did so only in a watered down version. The unofficial argument was that the Commission did not feel it was right to support litigation against member states. The intergovernmental reflex runs deep.

# The political landscape

Stability is a good thing, but too much of it will lead to stagnation, and the arrogance of power is never far off. Upsetting the status quo is never pretty or painless, but it is the only way of achieving change. You will not find renewal inside your comfort zone. But the occasional shake-up of the party landscape is healthy for democracy.

Indeed the political landscape in the EU has undergone fundamental changes over the years, following the trend of fragmentation we observe in national politics as well. (In my own country the 150 seat Lower House now counts no fewer than nineteen groups). The share of Eurosceptic and anti-EU parties has grown substantially, ironically making the European Parliament more representative of the electorate. They are rattling the cage of the established parties. However, despite all the changes, the 'Grand Coalition' of social-democrats and Christian-democrats managed to hold absolute power for many decades. Until 1999 the social-democrats were the largest party, and the Grand Coalition held up to 70% of the seats. Twenty years on, after the 2019 elections, for the first time ever the Grand Coalition lost its overall majority in Parliament, dropping to 46%. A third party was needed for a majority. But old habits die hard, and the 'GroKo' – the pet name of the Grand Coalition Germany – pretty much carries on as before, showing slight irritation when they find they need an 'intruder' to make a majority. The 'we-run-this-town' syndrome is hard to cure and so far their hegemony has not been challenged seriously, despite the loss of their overall majority.

In most member states the traditional parties have lost a lot of ground, and a range of new parties has entered the scene. Some are far-right or far-left anti-establishment parties, but in some cases new

centrist parties emerged but they are struggling in countries that are used to a polarised left-right two-party landscape. We witness the emergence of new, progressive, pro-European and anti-corruption parties in several post-2004 member states. In many countries we see a new brand of slightly left-of-centre, progressive, liberal, green and pro-European parties, with a young, urban and highly educated electorate, in many ways the exact opposite of far-right populists. They are on the rise, and even form the biggest political force in the big cities, but at national level they still lack critical mass, except in Germany. Meanwhile ultra-conservative, populist, far-right and far-left parties find fertile ground in the country-side and old industrial areas that often suffer from population decline. The lines that divide the electorate are generation, level of education, and town vs countryside. Fringe parties on the left and the right look down on compromise and consensus, considering it a weakness or even betrayal. But combining strong and clear views with the ability to make compromises with others, is the strength of democracy. A robust democracy can handle a very broad spectrum of political parties, but it needs a strong and stable centre. The political centre in Europe has been weakened dramatically in the past twenty years. Building back the political centre must be one of the key priorities for political parties in the years to come. This will require a reshuffle of political forces in the European Parliament. The possible introduction of transnational lists may well speed up the process of regrouping (which might explain the strong opposition from established parties) and the formation of truly European parties. The existing European parties are umbrella organisations rather than real political entities, and in some cases they do not even correspond to the groups in Parliament. National parties do not feel Europe is their core business: which national party will have the courage to campaign under the flag of their European political family? Ironically, nationalists like Le Pen, Wilders, or Salvini like to be seen as part of an international family, when pro-Europeans are more shy. Unlike the nationalists, they fail to grasp that public opinion is

already transnational. If we want to renew Europe, political parties too will have to be renewed. They will have to come out of their comfort zone and create new pan-European political formations with a clear profile. Moreover, building back the political centre will require that parties overcome their reluctance to join forces with parties that may be their opponents at national level. Currently, relations between national parties are the main obstacle to the formation of a strong centre in the European Parliament. It is time the European political families focus on European politics instead of national politics. Pro-European politicians have a moral obligation to rebuild the political centre. Transnational lists will be an essential element of a new European democracy, and give completely different dynamics to the election campaign. In my view, finding agreement on this, should be a key priority for the leadership of Parliament and the parliamentary groups in the months to come. This is infinitely more important for the future of Europe than the mid-term D'Hondt re-shuffle of parliamentary jobs.

For the 2024 elections it is crucial that all European political families put a coherent political proposition to the voters, including candidates for the top jobs. No matter how important the legislative work of the European Parliament is for people's daily lives, it lacks the scent of wild animals. Elections will be much more exciting if they are not just about electing the members of Parliament, but also bringing about a change of power, of the highest political leadership and political direction of the European Union. For some the word 'Spitzenkandidat' has become toxic. So let's find another word, that is not the issue. But it is crucial that the choice of the highest political office is linked to the European elections, not to in camera negotiations of government leaders.

A campaign needs "faces", and those faces should be diverse. One thing has unfortunately not changed since those men with solemn faces signed the Treaty of Paris seventy years ago. In



seventy years only three women have ever led one of the major EU institutions: Simone Veil (1979-1982) and Nicole Fontaine (1999-2002) as Presidents of the European Parliament, and Ursula von der Leyen as President of the European Commission. Only four times in the history of the European Parliament have the main political groups had a woman Leader, three times in the social democrat group: Käte Strobbe (1964-1967), Pauline Green (1994-1999) and Iratxe Garcia Perez (2019 -), and once in the liberal group: Simone Veil (1982-1984). The political leadership of Europe is still predominantly male, middle-aged and white. 2024 is the opportunity for political families to ensure the political leadership of all institutions really represents all Europeans.

We have an opportunity to make the 2024 European elections a super exciting event (and eclipse the US elections that same year). Do we have the courage to put our money where our mouth is and take big steps?

# The European demos

A democracy needs a demos. For many this is the ultimate argument against the European Union as a political entity: the EU is made up of twenty-seven member states who are culturally, historically, and linguistically very different, and therefore there cannot possibly ever be a European demos, a European people and European public opinion. But if you look a little bit closer, you quickly see that the notion of monolithic nation states that exist since the beginning of times is pure fiction. Virtually none of the EU member states is internally homogenous, not even the smallest ones. Most of today's European states have been created in the past two centuries or so, and many of today's national borders have shifted countless times in those centuries, even up to the past decades. Many of today's nation states are the result of war, conquest, annexation and secession, not exactly of peaceful and voluntary bottom up citizen driven nation building. National identity is largely a top-down political construct, imposed more often than not by force and violence and by establishing uniformity at the expense of, or even suppressing cultural diversity. New states have used a range of tools to harness national unity and national identity. Linguistic diversity has been replaced by a single, dominant language of the public administration, judiciary, army and education system. It is good to realise there is no such thing as minority languages: they are all languages, they just happen not to be the language of the dominant party. Language is very much a tool for power. The linguistic map of Europe does not remotely coincide with the official map of states and the number of languages spoken in Europe. Even the notion of 'nation state' is not accurate, since states are home to several nations, and inversely nations are spread out over several states. The same goes for religion, which is not bound by national borders. People living in big cities tend to have more in common with city dwellers in other countries, than

with their compatriots living in the countryside, and vice versa. New states have forged a common national identity by creating common national symbols, epics and myths, heroes and foes, rituals and ceremonies. Historiography has been used to legitimise the new state and point at the common (and usually glorious) origins of the people. National public institutions like social security and public health institutions, the education system, the fiscal authorities, the army, have further bound people to the state and its institutions, and enhanced national identity. Contrary to the popular myth of the European Union as a threat to national cultural identity, as a bogeyman 'super-state' squeezing all people into a single uniform mould, in reality the European Union is the guarantor of cultural diversity and minority rights. The EU Treaties have officially tasked the EU with protecting and promoting diversity and minority rights and its motto is "united in diversity". The internal heterogeneity of member states has not prevented them from developing a national identity and strong sense of community. Even – maybe especially – states that have embraced linguistic and cultural diversity and national minorities and accommodated them in their administrative and political structures are very strong and successful. There is irony in the fact that in the US Czechs, Poles, Germans, Irish, Swedes and Italians have formed a nation. They seem to have integrated into a single community more easily than they have done on the old continent.

Another myth that needs to be dispelled is that of the gap between East and West in Europe. In particular in Western European countries people hold caricatures of central and eastern Europe as massively autocratic and homophobic, B-category democracies. Those caricatures are fed mainly by leaders like Orbán or his Polish, Bulgarian or Slovenian counterparts. However, look closer and the image is an entirely different one. Firstly we should not forget it was the people of those countries themselves, not the Western EU, that threw off the yoke of communist dictatorship.

They brought down the Berlin Wall and the iron curtain. They made the transformation to democracy and the market economy. It was the people of central and eastern Europe that paid the price for accession to the European Union. Secondly, as much as the populist government leaders like to pretend they speak on behalf of “the people”, they are not their country. There are millions of Poles, Hungarians, Bulgarians, Slovenians and other people that fundamentally disagree with the corrupt, reactionary, and autocratic course of their governments. Indeed in the so called V4 or Visegrad countries – Hungary, Poland, the Czech Republic and Slovakia – the capital cities are run by progressive liberal mayors. Thirdly, the same corrupt, reactionary, autocratic forces exist in most western European countries. They just happen to not be in government (yet), although some are in regional government or have obtained some power by supporting minority governments. Western Europe should not believe it is immune to anti-democratic forces. You don’t need to go back far in history to know that. The best illustration that it is not an exclusively eastern European phenomenon, not even an exclusively European phenomenon, was the election of Donald Trump in the US. His former advisor, Steve Bannon, is also one of the ring-leaders of the European populist movement.

In practice Europe as a political community is emerging, slowly but steadily. Ironically it is anti-EU, nationalist populists who may be more advanced in making the EU a political community, albeit by instigating culture wars at the European level. In July 2021 sixteen far-right parties, including Italian Lega Nord, the French Rassemblement National, the Polish Law & Justice Party and the Hungarian Fidesz party, issued a common contribution to the Conference on the Future of Europe. This is not a mere technical cooperation between national parties, but a pan-European movement pushing a common values agenda, and very explicitly opposing progressive European values: *‘The EU is becoming*

*more and more a tool of radical forces that would like to carry out a cultural, religious transformation and ultimately a nationless construction of Europe, aiming to create of a European Superstate, destruct or cancel European tradition, transform our basic social institutions and moral principles.*

*The use of political structures and law to create a European superstate and new forms of social structure is a manifestation of the dangerous and invasive social engineering of the past, which must prompt legitimate resistance. The moralistic overactivity which we have seen in recent years in the EU institutions has resulted in a dangerous tendency to impose an ideological monopoly.*

*We are convinced that the cooperation of European nations should be based on tradition, respect for the culture and history of European states, respect for Europe's Judaeo-Christian heritage and the common values that unite our nations, and not their destruction. We reaffirm our belief that the family is the basic unit of our nations. In a time where Europe is facing a serious demographic crisis with low birth rates and ageing population, pro-family policy making should be an answer instead of mass immigration'. There is an intriguing contradiction in the claim that values are something strictly national and yet universal. They reject European integration as undue interference with national values, but at the same time they have built an extensive (and lavishly funded<sup>14</sup>) global network of organisations aiming to 'restore the natural order'<sup>15</sup> and to rebuild patriarchy.*

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14 See also 'Tip of the Iceberg: Religious extremist - Funders against Human Rights for Sexuality & Reproductive Health in Europe' Intelligence brief by the European Parliamentary Forum 15/06/2021

15 See also 'Restoring the Natural Order': The religious extremists' vision to mobilize European societies against human rights on sexuality and reproduction' Intelligence brief by the European Parliamentary Forum 19/04/2018

Of course there are plenty of progressive, pro-European organisations pursuing an agenda of shared values at European level, but rather more timidly, and their campaigns tend to address the converted rather than the general public. Many pro-European political parties are still in the habit of promoting European integration in terms of economic benefits rather than values. We tend to see economic prosperity as the main result of European integration, whereas democracy, the rule of law, and fundamental rights are supposedly national achievements. We are mistaken. Gender equality, LGBTI rights, workers rights and health and safety in the work place, privacy and data protection, the rights of cultural minorities, rights of asylum seekers, freedom of assembly – to name but a few – are achievements of European integration, just as much as the single market.

Democracy needs public debate and public opinion. Sceptics argue that a European public opinion is impossible, because of cultural differences and language barriers. Again pro-Europeans seem to be more timid and pessimistic. Populists have long understood the opportunities of reaching a large international audience via social media, so much so that we now consider populist fake news and online messages of hate a threat to democracy. Sure, many people still rely on national or local newspapers and radio and television for their information, but traditional and off-line media are rapidly losing ground to digital platforms and social media, among young people in particular. And although there is certainly a risk of echo chambers and filter bubbles, young people have access to information from pretty much all around the globe, much more so than their parents and grand-parents did. This gives them an international outlook and it does create cross-border public opinion. Most recently tech giants like Facebook ran a global campaign against misinformation on Covid and on vaccination, together with the World Health Organisation. Inversely, the anti-vax movement is also global, and spreading through the same platforms. In 2018

the 'school strike for climate' became a world wide movement, and Greta Thunberg an international leader. In the summer of 2021 a wave of rainbow flags rolled out over Europe, as millions of Europeans united in protest against the homophobic law adopted by the Hungarian government. After the death of George Floyd in 2020, the Black Lives Matter debate reached Europe, and triggered demonstrations, a feverish public debate, and political initiatives. The #MeToo movement was also not a national but a deeply international debate, reaching even the most misogynist corners of the globe. Climate and the environment, gender equality, racism and LGBTI rights have firmly become part of an international political agenda. But there have been other, earlier examples as well. In the first months of 2003 an estimated 36 million people worldwide took part in protest marches against the Iraq war. In 2011, at the height of the financial crisis, a global protest movement emerged, denouncing social and economic inequality. It was called 'Occupy (Wall Street)' or 'Indignados', depending on the region, and physical protests intertwined with online activism, also connected with the hackers collective 'Anonymous', well known for its Guy Fawkes masks and logo. The publication of cartoons making fun of Muhammad by the Danish Newspaper Jyllands Posten in 2005, and by French satirical magazine Charlie Hebdo in 2011, were followed by riots and the terrorist attack on the latter's offices, killing twelve. But it also led to a Europe-wide debate on freedom of speech and demonstrations using the international rally cry 'Je suis Charlie'. My mailbox can also testify to the emergence of a cross-border public space and public opinion. Occasionally, when Parliament will be voting on a controversial file – on matters ranging from the use of pesticides, animal welfare, to human rights in Myanmar – my mailbox is flooded with thousands of e-mail petitions, sent to me from all corners of Europe. Social media platforms give civil society organisations a global outreach, and some platforms like Avaaz even specialise in facilitating cross-border public opinion and political mobilisation. Traditional media too are going increasingly

international. In recent years several consortia of newspapers and journalists have cooperated on big projects, for example LuxLeaks or the Panama Papers, and more recently the Pegasus Project, and they published simultaneously in national newspapers around Europe. The Conference on the Future of Europe aims to offer a platform for pan-European debate as well. At this stage it is too soon to say if it will succeed, but it is a very worthwhile initiative.

The European demos will develop organically, but of course the EU can support and facilitate the growing sense of community and shared destiny. The funding culture and education is not a cost, but an investment in our own future. Every young person in Europe should have the opportunity to acquire language skills, and should be entitled to an EU-funded six-month stay in another EU country as a student, volunteer, or trainee. Few other experiences contribute to broadening horizons and creating bonds between young people across borders as a stay in another country. Common European civic education and learning about the history of our continent and the European Union should also be part of the curriculum of all students in all European schools.

We Europeans are a community of people with shared values and shared interests. We have a great deal of common history, but more importantly, we have chosen to have a common future, a 'common destiny' in the words of the Founding Fathers. We can very well form a political union and have a common political identity, without having a uniform, homogeneous cultural identity. Identity does not imply we need to be 'identical'. We can be diverse, and yet take decisions together and shape our continent together.



# Epilogue

As the saying goes: ‘the only person welcoming a change is a wet baby’. We humans don’t like change, and in particular in uncertain times we prefer to withdraw deep into our comfort zones. That is an understandable reflex. But these turbulent times offer a golden opportunity to build a brighter future if we dare to explore new, uncharted waters, if we dare to disrupt the status quo, and to renew and reshape Europe. In the early fifties, on the ruins of two world wars, after three decades of atrocities and devastation, Europeans had little reason for confidence in the future, or for trust in each other. And yet they had the courage to reach out, join hands and chose a common road into the future. After the fall of the Berlin Wall, Europeans again showed the world what they are capable of when they unite. Today we still have the same ability to achieve great things as we did back then. The challenges are huge and sometimes scary. But we are stronger than we realise. We should not fear our diversity but embrace it. It is what makes us Europeans creative, innovative, and dynamic. It is the source of our power and energy. Europe can become the world leader in democracy, human rights, freedom, solidarity, social justice and equality. Europe can become the world’s shining example of combining an innovative and competitive economy with a clean and healthy environment that protects the planet and people. It may sound like Utopia, but it can be reality. In the 1950s the Europeans had not only the courage to embark on a wholly new and unknown road, but – maybe even more importantly – they had the power of imagination. They were able to imagine a different future, they had a vision and they managed to inspire others with their vision. It was their vision that laid the foundations of the safe, free and prosperous Europe we know today. Let us not forget that, with all its problems and shortcomings, Europe is still the best place in the world to live and

we built it. We have reasons to be self-confident. We Europeans can do it. We can be the four-hundred-and-fifty million founding fathers of future Europe. There was never a better time than now.

Gent, 13 August 2021

# Glossary

## **European Council (Article 15 Treaty on the European Union)**

The European Council is made up of the government leaders (currently twenty-seven), the President of the European Council and the President of the European Commission. The main task of the European Council is to ‘provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof’. The Treaties emphatically state that the European Council ‘shall not exercise legislative functions’. However, under the ‘emergency break’ procedure (see below), sensitive legislative files may be escalated from the Council to the European Council. The European Council also proposes a candidate for President of the European Commission. The President of the European Council is required to report to the European Parliament after each European Council meeting.

The European Council was convened first in 1961, at the initiative of French President De Gaulle, in order to provide counterweight to the supranational institutions. It was formalised in the period 1974-1988, under the leadership of French President Valérie Giscard d’Estaing. It was first mentioned in the 1987 European Single Act, and subsequently in the 1992 Maastricht Treaty. The European Council was made an official EU institution with its own permanent president, by the Lisbon Treaty in 2009.

## **The Council of the EU (Article 16 Treaty on the European Union)**

The Council of the EU (from here on ‘The Council’) is composed of one representative per member state, at ministerial level. Its tasks are to ‘jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties’. The Council meets in different thematic formations. The Council acts

by qualified majority in nearly all policy areas. On votes pertaining to particularly sensitive topics within the fields of foreign affairs and security, the criminal justice system and social security a member state may call upon an ‘emergency brake’. Decision-making procedures are then suspended and the proposal is escalated to the European Council. The Council is chaired by the rotating EU presidency.

### **Intergovernmental(ism)**

For the purpose of this book, I use the term ‘intergovernmental’ more in a practical political sense, than in a strictly legal or academic one. I have used it mainly to refer to the actors (member states, European Council and Council) and the method of decision making (by formal or informal unanimity, and on the basis of negotiations rather than debates). References to the intergovernmental nature of the European Union refer to the dominance of the European Council, the Council and the member states in setting the agenda and taking decisions.

### **Conference of Presidents (CoP)**

Political body in the European Parliament made up of the President of Parliament, the leaders of the political groups, and one representative of the non-aligned members. The latter has no voting rights. The CoP decides a.o. on the organisation of Parliament’s legislative work, in particular the agenda of the plenary sessions. It is also responsible for relations with other EU institutions, the national parliaments and non-EU countries. It generally meets twice a month, in camera.

### **Conference on the Future of Europe**

Conference led jointly by the European Parliament, the European Commission and the Council, involving citizens and civil society. The Conference will debate several topics, generate ideas and formulate recommendations for the future of Europe. By spring

2022, the Conference is expected to reach conclusions and provide guidance on the future of Europe.

**Political groups in the European Parliament:**

EPP (European People's Party)

S&D (Socialists and Democrats)

Renew Europe

Greens/EFA (European Free Alliance)

ID (Identity and democracy)

ECR (European Conservatives and Reformists)

The Left

NA (Non aligned members)



# THE SCENT OF WILD ANIMALS

The Covid crisis has mercilessly exposed the weaknesses in European governance. The climate crisis will prove to be an even bigger test. In today's rapidly changing world, Europe is confronted with profoundly political and ethical questions of safety and security, equality and justice.

The technocratic intergovernmental governance method, designed for the world of the 1950s, is wholly outdated and unable to respond adequately. Yet, resistance to change is fierce, as old structures die hard. These turbulent times however, offer a great opportunity for change and renewal. Sophie in 't Veld argues that Europe will be able to provide the political answers, the vision and the leadership needed in the world of today, when it becomes a truly political union. The European Parliament as its political arena must play a pivotal role in the transformation of Europe into a vibrant parliamentary democracy.



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