

REGROUP AND REFORM

IDEAS FOR A MORE RESPONSIVE AND EFFECTIVE EUROPEAN UNION

Report of a CEPS Task Force



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Rapporteurs
Steven Blockmans
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CEPS CENTRE FOR
EUROPEAN
POLICY
STUDIES

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CEPS is an independent policy research institute based in Brussels. Its mission is to produce sound analytical research leading to constructive solutions to the challenges facing Europe today.

This report is based on discussions in the CEPS Task Force on EU Reform. The group met four times between September 2016 and January 2017. Participants included members of the European Parliament, former members of the college of Commissioners, former members of the European Council and Council of Ministers, as well as leading scholars on EU politics and law. A list of members and their organisational affiliation appears in the Annex. Pieter de Gooijer, Permanent Representative of the Kingdom to the Netherlands to the EU, and Pawel Świeboda, Deputy Head of the European Political Strategy Centre of the European Commission acted as observers to the proceedings of the Task Force.

The contents of the report reflect the general tone and direction of the discussions, but its recommendations do not necessarily represent a full common position agreed by all members of the Task Force, nor do they necessarily represent the views of CEPS or the institutions to which the members belong.

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LIST OF ABBREVIATIONS

CEAS	Common European Asylum System
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
EASO	European Asylum Support Office
EBAS	European Border and Asylum System
EBCG	European Border and Coast Guard
ECHR	European Convention of Human Rights
ECI	European Citizens' Initiative
EDIS	European Deposit Insurance Scheme
EDP	Excessive Deficit Procedure
ESM	European Stability Mechanism
FTA	Free Trade Agreement
IBM	Integrated border management
SBC	Schengen Borders Code
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance ('Fiscal Compact')

PREFACE

The last few years have shaken Europe profoundly. These were years of disruption and disaster, of insufficient tolerance of our differences, of a collapse of many cherished principles, and of a new, disgraceful way of doing politics. They have left us with difficult legacies to deal with, and citizens have understandably expressed their anger and helplessness.

With the UK leaving the Union, Europe cannot afford any further disengagement on the part of its member states. The hands of all the twenty-seven are needed on deck, as it is a fact of life that the challenges we face increasingly require European solutions. There must be an immediate return to political cohesion and an end to fragmentation. Even if populism, with its false claims, identity politics, nationalism and racism continue to make unity very hard to sell to citizens for a while, the Union must hold together. We need both vision and pragmatism in our thinking and actions, and we need citizens to get involved. The stability of the EU depends not only on formal laws, institutions, intergovernmental relations and the national capacity to respect European obligations; it also depends, maybe more fundamentally, on people's commitment to the values that inspired the founding generation.

We continue to believe that European democratic principles and institutions are strong enough and cannot be shaken. But the risks are there. Public faith and trust in national and European democratic institutions can be eroded by skilful populists who turn these values into points of political contention. Fortunately, we have 60 years' history of living with a collective, solidarity-based spirit. And we know how terribly dangerous nationalism has always been.

Europe is not perfect – there are dark clouds looming and there are reasons to worry. But future generations will be justified in not forgiving the leaders of today for the missed chances, the high opportunity costs, the backsliding and the damage to key values that have always kept us together. So far Europe has grown through its reforms; reforms signify both urgency and ambition.

A lot can and must be done at the national level. But it is essential to understand that we are strong because we have agreed upon and jointly created a system of European institutions. While we are responsive to ideological preferences at national level, European institutions protect us from the risk of abandoning the core shared values that hold us together. They are the guardians of the interdependence created over decades of integration, which is why they matter. But they also have to progress and deliver in an era of inequality and injustice.

The convergence machinery must gather pace. Country-specific situations must be taken care of, but not at the expense of undermining European capacity, of fragmentation or of discarding the community method of cooperation. A new approach to the working method of the Union should respond to the growing demand for a more transparent and participatory decision-making system. We should continuously seek improvements to the way European institutions work, generously exploiting the potential offered by new technologies.

Most of us agree that many badly needed reforms can be introduced within the existing treaty framework, and we should use this potential. But it is our duty to at least look seriously into those areas where, without treaty change, Europe's capacity to respond to people's legitimate fears, needs and ambitions will remain limited.

CEPS' Task Force on EU reform has looked into constitutional issues and citizens' involvement in politics, migration and asylum, euro area economic governance, and trade policy. These are all areas where the added value of the Union's action is clear and where we still have unfinished business.

We have tried to draw up a list of proposals for actions that are positive and can bring solutions where populist discourse cannot. Our recommendations are achievable, realistic, concrete, based on objective facts and figures, and part of a broader long-term approach. We do not shy away from considering possible treaty change, but focus first on what can be done quickly and easily, if there is a willingness to act.

Now is the time for action; here are our considered suggestions for joint action.

Danuta Hübner, MEP
Brussels, February 2017

NO MORE MUDDLING THROUGH

History has shown that political crisis often follows economic shock. The 1929 Wall Street Crash helped precipitate the descent into fascism in Europe, and it is often argued that current-day ‘illiberalism’ has its origins in the financial crisis of 2007-08, which started in the US but spawned a more protracted and devastating version in Europe. More thoughtful analysis, however, reveals a more complex picture with roots stretching back in time. In his recent article “Is Europe disintegrating?” Timothy Garton Ash argues that the financial crisis ushered in a new era characterised by three bigger crises: of capitalism, democracy, and the European integration project.¹ The combined effect of globalisation, deregulation and (neoliberal) economic transformation has affected communities whose economies did not adapt quickly enough after the industries on which they relied were privatised, closed or moved abroad. Rapid automation and digitalisation further changed the availability and nature of jobs and led to growing inequality and social dislocation. The latter was compounded by the alienation of large swathes of the population, on issues like immigration and a perceived loss of society’s traditional values. Meanwhile, new cohorts of graduates have emigrated to escape mass unemployment. The result has been a backlash – often emanating from poorer and less cosmopolitan communities – led by so-called ‘populists’ who prey on citizens’ desperation and anger to counter the effects of globalisation and social liberalism, and to advance generally unrelated objectives of an increasingly protectionist, nationalist and anti-elite character.²

¹ See T. Garton Ash, “Is Europe Disintegrating”, *New York Review of Books*, 19 January 2017.

² *Ibid*: “Words like ‘neoliberalism’, ‘globalisation’ and ‘populism’ are imperfect shorthand for phenomena with significant national, regional, and cultural variations.” In his seminal book, *What is Populism?* Pennsylvania Press (2016) argues that ‘populism’ is inimical to pluralism. Its target is pluralist, liberal democracy, with those vital constitutional and social

As a tide of popular discontent sweeps the continent, new political battle lines are being drawn. The left-right divide has become less significant, with the real conflict now playing out between those who believe in an open, free and global society, and those who do not. It is this tension that has led to the rise of the self-proclaimed ‘counter-revolutionaries’, who have even changed the way in which EU member states like Hungary and Poland are being governed. It is the same tension, albeit with a much more pronounced anti-EU streak, that is powering the electoral campaigns in the Netherlands, France, Germany and the Czech Republic, to name just a few member states where elections will be held in 2017. The EU has already been weakened by a series of referenda, most recently in Denmark – against closer cooperation with other member states on issues of justice and home affairs; in the Netherlands – against the EU-Ukraine Association Agreement; and most spectacularly in the United Kingdom – against membership full stop. Whereas Eurosceptic parties and anti-EU movements are expected to do well in 2017, it remains uncertain whether their gains will translate into the power of government. Nonetheless, their advances may hamper the European integration process.

Citizens need to be reminded of the enormous benefits that the EU has brought to them. Not only did the European integration project break the endless cycle of war-mongering and vengeance in Europe, as a political project it embodies a community of values, rights, freedom and justice that is the envy of much of the world. Thanks to this founding vision and the untiring commitment of all member states to cooperate and reach agreement, an intricate fabric of socio-economic and cultural ties has been woven over the past six decades, producing so many benefits to citizens, businesses and states

checks and balances that prevent any “tyranny of the majority” from prevailing over individual human rights, safeguards for minorities, independent courts, a strong civil society, and independent, diverse media. Müller rightly rejects the term ‘illiberal democracy’, arguing that it allows people like Viktor Orbán to claim that Hungary just has a different kind of democracy. Garton Ash, *supra*, stresses the need for “a term to describe what happens when a government [like that also of Jarosław Kaczyński in Poland] that emerges from a free and fair election is demolishing the foundations of a liberal democracy but has not yet erected an outright dictatorship – and may not even necessarily intend to.”

alike that it would be counterproductive and extremely costly to unravel it.³ While Brexit shows that even the high economic costs of disintegration are no reason for it not to happen, the political culture and prevailing attitude towards the EU in (many parts of) the UK are distinctly different from those in the rest of Europe.

In the wake of the UK referendum and ahead of the 60th anniversary of the Treaties of Rome, the governments of the other member states have resolved to remain united in diversity. As stated in the Bratislava Roadmap:

The EU is not perfect but it is the best instrument we have for addressing the new challenges we are facing.⁴

The EU is fragile at the moment and should therefore be handled with care. EU27 leaders of all political colours feel the need to protect the unsung rights of citizens and enterprises that were acquired during the European integration process; rights ranging from the free movement of goods, services, capital, students, workers, and pensioners, to higher product and environmental standards, cheaper air travel and lower roaming charges. Securing these and other benefits, and indeed the way of life that Europeans have become accustomed to, requires continued cooperation through the EU institutions.

This is not the time for more muddling through, though. Maintaining the status quo will inevitably lead to regression, not only because of the acute ‘poly-crisis’ affecting the Union,⁵ but also because of the structural weaknesses undermining EU countries’ capacities to perform as member states.⁶ The recent

³ See J. Dunne (ed.), *Mapping the Cost of Non-Europe*, 2014-19, 3rd edition, EPRS, 2015 ([www.europarl.europa.eu/RegData/etudes/STUD/2015/536364/EPRS_STU\(2015\)536364_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536364/EPRS_STU(2015)536364_EN.pdf)).

⁴ European Council, “Bratislava Declaration and Roadmap”, doc. 517/16, 16 September 2016 (www.consilium.europa.eu/press-releases-pdf/2016/9/47244647412_en.pdf).

⁵ Referring to the challenges facing the EU, Commission President Jean-Claude Juncker coined the expression ‘poly-crisis’: instability in the euro area, global economic crisis, irregular migration, external conflicts.

⁶ See C. Dolan, “Crisis? What Crisis?”, *Transparency International*, 25 January 2017 (<http://transparency.eu/cpi16/>): “Slow-burning crises (...) are gradual, complex, intangible, their downsides deferred to an obscure future. The looming pensions crisis springs to mind. As does corruption.” Evidence that the EU is in the midst of a slow-burning corruption crisis

mass protests against corruption in Romania show that such slow-burning crises can become flashpoints. The EU should avoid getting drawn into paralysis: reform should take priority. In the words of the EU27: what is needed is to “broaden EU consensus” and “apply the principles of responsibility and solidarity”.⁷ Admittedly, this sounds like dull bureaucratic euro-speak. One lesson of 2016 was that large numbers of voters were seduced by populist slogans bashing the EU, whereas responsible politicians struggled to come up with convincing counter-proposals that offered an attractive vision of a better functioning and reformed European Union.

This begs the question of whether the EU needs a big, showy initiative to halt its decline. We would argue that it does not. It is easy to romanticise the big ideas of the past, but behind the single market – the EU’s flagship policy of the 1980s – was lots of tedious micro-work. There is no silver bullet to reboot the EU and even if there were one in some politician’s mind, it could still inadvertently hurt the Union.⁸ The EU’s vulnerability is its failure to complete ambitious changes. Twenty-five years ago, the Maastricht Treaty ushered in the euro and greater cooperation between member states on justice, home and foreign affairs. Despite weaving faults into the original designs of the eurozone and the Schengen area, euro-enthusiasm flourished in the 1990s and early 2000s, benefiting as it did from the creation of the single market and the prospect of the reunification of the continent. When the climate in Europe changed in the second half of the previous decade, the weaknesses of political elites has been to push through half-hearted improvements to their faltering European projects, overriding the outcome of several referenda. This can no longer be the way forward. Whereas the message from the (albeit slim) majority of British voters, so brutally expressed in last year’s referendum, was one of ‘taking back control’ – away from the Treaty-based philosophy of “ever closer union”, recent Eurobarometer polls suggest that European citizens trust

is provided by the 2016 edition of Transparency International’s Corruption Perceptions Index (www.transparency.org/news/feature/corruption_perceptions_index_2016).

⁷ See Bratislava Declaration and Roadmap, *supra*.

⁸ See I. Krastev, “The Political Logic of Disintegration”, CEPS Essay, Brussels, September 2012.

the EU more than their national governments: they support the euro, and overwhelmingly want to see a better functioning European Union in core areas such as migration, internal and external security, the environment and public investment.⁹

How the EU responds to these challenges will define the next era of cooperation and integration in Europe. Leaders should support a raft of initiatives to improve the security and livelihoods of citizens across Europe. And rather than ignoring dissent, the EU should be nimble and flexible in its approach to keep its constituents, i.e. the member states *and* the citizens, wedded to the project of European integration.¹⁰ By proposing concrete ideas and recommendations to enhance the prosperity and security of European citizens – in ways beyond what the member states can offer, while restraining the institutions’ unnecessary meddling in national affairs, the EU can show value added and steal the demagogues’ thunder.

The answer to addressing citizens’ concerns lies in developing an agenda for the future that restores a keener sense of internal and external security, as well as socio-economic welfare for European citizens. This requires improved cooperation between services in fighting terrorism; a reinforcement of the EU’s external borders to allow for the internal border-free area to function properly; genuine defence integration; and greater investment, employment, social inclusion, and convergence in the euro area and the EU as a whole.

This CEPS Task Force endorses such a broad agenda and is of the opinion that priority should be given to wrapping up unfinished business. This pertains, in particular, to the security of our borders and to the management of the euro

⁹ See European Commission, “Autumn 2016 Standard Eurobarometer: Immigration and terrorism continue to be seen as the most important issues facing the EU”, Press release IP/16/4493, 22 December 2016; and Special Eurobarometer survey 451, “Future of Europe”, December 2016 (<http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2131>).

¹⁰ The German poet-dissident Wolf Biermann once wrote: “I can only love what I am also free to leave”. See T. Rothschild (ed.), *Wolf Biermann: Liedermacher und Sozialist* (Reinbek: Rowohlt 1976). By following inflexible policies that make the price of exit unbearably high, policymakers increase rather than limit the risk that the popular response to ‘there is no alternative’ can readily become ‘any alternative is better’. Cf. Krastev, *op. cit.*, p. 9.

area. But urgent action should also strengthen both the participation of citizens and their representatives in EU decision-making processes and the supervision and enforcement of the commitments made by their governments at the European level, especially those flirting with ‘illiberalism’. These are the three core areas of concern to the Task Force. As such, this report is complementary to the work and recommendations of the High-level Group on EU Institutional Reform chaired by Danuta Hübner, MEP,¹¹ as well as other CEPS (Task Force) reports that have advocated, inter alia, an integrated European migration and asylum system,¹² more union in European defence,¹³ better financial integration in the EU,¹⁴ and socio-economic stabilisers to the monetary union, such as a European Unemployment Benefits Scheme.¹⁵

The members of the current Task Force are convinced that no effort should be spared to introduce improvements *à droit constant*, i.e. within the context provided by the current treaties. While treaty change remains a moot issue in this decisive electoral year, it is the only way to override the constraints of primary EU law. In any case Brexit will force an amendment to the constituent treaties. Treaty change should therefore not be a taboo subject. In the medium to longer term it is the natural way to equip the European community of law to meet tomorrow’s challenges.

¹¹ See S. Piedrafita and S. Blockmans (rapporteurs), *Shifting EU Institutional Reform into High Gear*, CEPS Task Force Report, Brussels, March 2014.

¹² See the report of the Task Force chaired by Enrico Letta: S. Carrera, et al. (rapporteurs), *The European Border and Coast Guard: Addressing Migration and Asylum Challenges in the Mediterranean?*, CEPS Task Force Report, Brussels, February 2017.

¹³ See the report of the Task Force chaired by Javier Solana: S. Blockmans and G. Faleg (rapporteurs), *More Union in European Defence*, CEPS, Brussels, February 2016.

¹⁴ See, e.g., the report of the European Capital Markets Expert Group chaired by Francesco Papadia: D. Valente (rapporteur), *Europe’s Untapped Capital Market: Rethinking financial integration after the crisis*, CEPS Paperback, Brussels, February; and the report of the Task Force chaired by José Maria Roldán: K. Lannoo (rapporteur), *ECB Banking Supervision and Beyond*, CEPS Task Force Report, Brussels, December 2014.

¹⁵ See, inter alia, M. Beblavý, G. Marconi and I. Maselli, “A European Unemployment Benefits Scheme: The rationale and challenges ahead”, CEPS Special Report No. 19, Brussels, September 2015.

BORDER MANAGEMENT

The refugee and migrant crisis has sorely tested the added value and legitimacy of the European Union, which has clearly struggled to respond over the past two years. Public outcry and the unprecedented political and media attention given to distressing images of asylum-seekers arriving in the EU have put enormous pressure on authorities to show that they can meet the challenge.

A series of initiatives has been heatedly discussed, both internally and with third countries. Numerous extraordinary summits and conferences have produced mixed results about how to proceed and which concrete steps the EU might take. The 2015 Valetta Summit on migration and the controversial EU-Turkey Statement of March 2016 are cases in point.

The deal between the EU and Turkey to send refugees arriving in Greece back to Turkey has caused deep unease in the EU institutions. Together with the closing of the Balkans route and logistical decisions taken in Greece, the EU-Turkey deal may well have served to stop huge numbers of migrants from landing on Europe's shores, but at a heavy cost, not least for the EU's cardinal value of openness. Faced with the refusal of mainly central and eastern European countries to take in refugees and to alleviate the burden on 'front-line' states like Greece and Italy, the EU instead struck a multi-billion euro deal with an increasingly autocratic government in Ankara to support refugee projects in Turkey. *Realpolitik* prevailed over intra-EU solidarity and respect for European values. This has weakened the 'Dublin system'¹⁶ of external border

¹⁶ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, *Official Journal of the EU L 180/31*, 29 June 2013.

management and the ‘plug-in’ refugee relocation scheme,¹⁷ and dealt a heavy blow to the internal area of free movement of persons (Schengen). Meanwhile, the influx of refugees and economic migrants continues, mainly through the central Mediterranean to Italy. The EU’s naval force operation ‘Sophia’, off the coast of Libya, has rescued thousands but has also been criticised for providing a ‘taxi service’ that has emboldened rather than broken the business model of people traffickers.

The general public has shown itself to be profoundly concerned by the handling of the refugee and migrant crisis by EU institutions and member state governments alike. A spate of terrorist attacks has heightened fear among citizens. Anti-immigrant parties and movements have capitalised on this fear to make a connection between uncontrolled immigration and terror attacks to advance their nationalist and anti-EU agenda.

To counter their narrative, the EU must show more effective management of the migration crisis and reassure citizens that they can provide security against terrorism and external threats, while at the same time complying with its founding principles. The only way to return to a sense of normalcy and a system of free movement of persons that is accepted by all Schengen countries is to make sure that the EU is collectively controlling its external borders. In this respect, a key issue that needs to be resolved is how to distinguish refugees from economic migrants. This report thus tackles issues of external border control before discussing the Schengen area.

¹⁷ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, *Official Journal of the EU L 248/80*, 24 September 2015. The Council passed the decision by a rare qualified majority vote, bypassing Slovakia, Hungary, Romania and the Czech Republic. Poland’s previous government, which had been opposed to the quotas, ultimately sided with the majority. Slovakia and Hungary have challenged the Council Decision before the Court of Justice of the EU (cf. cases C-643/15 and C-647/15). In October 2016, Prime Minister Orbán claimed victory in a referendum on the mandatory EU migrant quotas, despite a low turnout that rendered it invalid. In November 2016, the Hungarian parliament rejected Orbán’s proposed constitutional amendment aimed at blocking the settlement of new refugees in the country.

External border control

The Dublin system emerged as a complement to the internal borders-free Schengen area almost 30 years ago. At the time it seemed natural to assign responsibility for assessing asylum seekers' claims for international protection to the member state where they first entered the Schengen space, given that member states remain solely responsible for managing their external borders. The refugee and migrant crisis has shown that this model of attributing responsibility leads to a systemic asymmetry in the EU, characterised by an unfair sharing of responsibilities internally and a disregard by frontline states of their obligations under the Dublin Regulation.

The humanitarian crisis in the Mediterranean has led to three main EU policy initiatives:

- i) the reinforcement of the Frontex Agency's competences, presented under the headline 'European Border and Coast Guard' (EBCG);
- ii) a set of legislative proposals aimed at reforming (but not abandoning) the Dublin system; and
- iii) a proposal to strengthen the European Asylum Support Office (EASO) into a European Union Agency on Asylum.

A CEPS Task Force chaired by Enrico Letta has examined the main legal, political and ethical challenges of the EU's border and asylum policies, as well as the growing gap between what EU law and policy say, and what actually happens on the ground.¹⁸ It finds that while the EU talks about a 'common' European policy on borders and asylum, the new measures do not fundamentally address the Dublin system's asymmetries and capacity burdens to ensure a fair sharing of responsibilities, nor do they establish an integrated system of governance with sufficient competences to respond to border and asylum challenges. The system is still too dependent on the member states. In order to overcome these obstacles, a new political compromise at EU level is called for. The current Task Force echoes this call.

¹⁸ The text in the following sub-section is an abridged version of that presented in the 'Letta' report. Cf. Carrera, et al., *op. cit.*

Towards a European Border and Asylum System

What is needed is a more ambitious overhaul of the current system. The EU should create a truly common European Border and Asylum System (EBAS), with a particular focus on the management of the EU's maritime borders, since they represent entirely different challenges from land and air borders. The goal should be to devise the right institutional architecture and progressively establish a common border guard and an EU Asylum Agency as part of an integrated civil service. This would entail the establishment of a body of EU officials not dependent on member states' contributions to ensure the highest level of professional skills and standards in light of EU law and fundamental rights. Officials serving the EBAS would be permanently deployed on the ground in regional task forces and have the competence to make decisions on border control and asylum centrally, in cooperation with relevant member state authorities, international organisations and NGOs.

EBCG Agency and member states: shared legal responsibility

The management of the common EU external borders has been recognised as a "shared legal responsibility" between the newly established EBCG Agency and member states' authorities in the implementation of integrated border management (IBM).¹⁹ This should be the generally applicable principle. Asylum is an area where more competences have been already transferred to the EU level as part of the Common European Asylum System (CEAS) and the Treaty of

¹⁹ Article 4 of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, *Official Journal of the EU*, L 251/1, 16 September 2016 for the first time defines what "integrated border management" consists of: "a. border control, including measures to facilitate legitimate border crossings and measures related to the prevention and detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, where appropriate, and measures related to the referral of persons who are in need of, or wish to apply for, international protection; b. search and rescue operations for persons in distress at sea in accordance with Regulation (EU) No 656/2014 and with international law, taking place in situations which may arise during border surveillance operations at sea; and c. analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders."

Lisbon acknowledges that the EU should adopt any measure necessary for the gradual establishment of an IBM system.

Allocation of asylum seekers

The previous decision to relocate those asylum seekers who arrived in 2015 and early 2016 should be dropped in favour of the Dublin system, under which those people rescued by EBCG operations at sea would be assigned to all member states according to the reference key proposed by the Commission in its recast of the Dublin Regulation.²⁰ This would mean de-linking the ‘search and rescue’ obligations laid down in international law²¹ and the Dublin system of responsibility sharing for asylum seekers. In this way, every person disembarked by a EBCG Operation or by any other actor involved in these countries would fall directly under the scope of application of the ‘corrective solidarity mechanism’, irrespective of their nationality, and still enjoy the rights under the relevant international conventions.

The EU Agency for Asylum should take the lead in this task and have enough staff to coordinate the running of the corrective solidarity mechanism. It should take EU-wide decisions on asylum applications, which would also incorporate a ‘free choice’ approach in cooperation with UNHCR and relevant domestic asylum authorities and civil society actors. The tasks of the EBCG and the future EU Asylum Agency should be developed to expand the reach of their competences in sharing the responsibility with national authorities.²² Concretely, the roles of the EBCG and the EU Agency for Asylum should be fine-tuned and enlarged to effectively support frontline states in handling the disembarkation of new arrivals, making the distinction between economic migrants and asylum seekers, the examination of international protection

²⁰ Cf. Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Brussels, 4.5.2016 COM(2016) 270 final.

²¹ See, in particular, the UN Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR).

²² Within the remit spelled out in S. Carrera, et al., *op. cit.*

applications, and proper and effective first-line reception conditions and asylum systems. As an aside, the idea of off-shoring responsibility for refugees by setting up EU centres in third countries to process asylum applications, with entry only taking place after a positive asylum decision, is fraught with moral, legal and practical problems and should therefore be treated with the utmost caution.²³ As underlined by the September 2016 UN New York Declaration on Migration and Refugees, there is a need to expand the number and range of legal pathways for refugees to be admitted and resettled.²⁴

The financial costs of accepting asylum seekers picked up by a common EBCG sea operation should logically be borne by the common budget. One way of doing this would be for each member state accepting an applicant resulting from a common search and rescue operation to be directly compensated by the EU budget with a fixed lump sum that is high enough to defray the costs.²⁵ The cost for the EU budget would not represent an additional burden but merely be a reimbursement to member states for expenditures they incur in the name of the EU.

Moving forward in the establishment of a truly European migration policy on the basis of Article 79 TFEU, a codification of all the existing rules and pieces of secondary legislation (which are currently dispersed and fragmented) could be a good way forward. The setting up of such an EBAS could be formalised in a future Treaty revision.²⁶

²³ For an overview of the obstacles, see S. Carrera and E. Guild, “The Processing of Asylum Applications Offshore: Out of sight, out of mind?”, CEPS Commentary, Brussels, 27 January 2017.

²⁴ See para. 77 of the Declaration: www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1.

²⁵ A sum between €6 and €10 thousand per applicant would result in a total expenditure for the EU budget of between €1.5 and €2.5 billion per annum if the numbers picked up were to stay at 250,000.

²⁶ While encompassing both the ‘border’ and ‘asylum’ angles, the EBAS should ensure a clear division between border and asylum policies which lies at the heart of EU and national constitutional legal systems across the EU.

Economic migration

In view of the ongoing discussions about the member states' right to determine the volumes of admission of third-country nationals for (self-) employment purposes (Article 79(5) TFEU), it is worth considering recent data from Eurostat that prove certain media and politicians wrong when they present the integration of migrants as huge or even insurmountable challenges to societies in the EU:

In fact, if educational attainment and employment are important indicators of integration, second generation migrants are better integrated into our societies than the native born with a native background.²⁷

There are of course outliers that prove the exception (e.g. Belgium). But the figures also show common fallacies in the discussions about migration in the EU, for instance that Central and Eastern European member states are the most reluctant to receive migrants. With regard to Poland, the evidence is to the contrary, with the highest number of first-residence permits for 'employment purposes' of all member states awarded to Ukrainian nationals, notwithstanding the Polish government's references to them as 'refugees'. In this context, it is worth noting that the abovementioned UN Declaration on Migration and Refugees also calls for more and improved channels for economic migration – at all skill levels.²⁸ The Commission is currently studying the possibility of establishing an EU "pre-screening mechanism enabling the

²⁷ See Eurostat, "EU Member States issued a record number of 2.6 million first residence permits in 2015", News Releases 211/2016, 27 October 2016 (<http://ec.europa.eu/eurostat/documents/2995521/7715617/3-27102016-BP-EN.pdf/ca706fa0-14fc-4b71-a2e2-46b2b933f8f8>). For an analysis, see E. Guild, S. Carrera and N. Luk, "The Integration of Immigrants and Legal Paths to Mobility to the EU: Some surprising (and encouraging) facts", CEPS Commentary, Brussels, 25 January 2017.

²⁸ According to para. 57 of the Declaration "We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people."

creation of a pool of candidates accessible to Member States and employers in the EU”.²⁹ Such a demand-driven, match-making system would be followed by actual admission procedures. It is to be hoped that such an initiative will prove a trailblazer for the development of additional legal pathways for economic migration, in full complementarity with external actions in trade, development aid and environmental cooperation.

Internal border control

Borderless, passport-free travel and a common visa policy are the hallmarks of the Schengen area, which was created in 1985 and now extends to 22 EU member states and four other European countries, both on and off the continent. The recent arrival of refugees in larger numbers than anticipated and the perception of unreasonable pressures on the intra-Schengen borders have led a handful of member states to temporarily reintroduce internal borders. The justifications given by some of the member states that continue with the internal border checks have been woefully inadequate, driven as they are by irrational, fear-mongering political games.³⁰ Some of the controls are disproportionate and go beyond what is necessary, given the predominantly asylum-based nature of the crisis.

Minor improvements to the Schengen Borders Code

The Schengen Borders Code (SBC)³¹ may be used to regulate the movement of third-country nationals but should not be applied to refugees. The classification of refugees as irregular migrants to justify borders controls or police checks in

²⁹ European Commission, “Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe”, COM(2016) 197, final, 6 April 2016, p. 19.

³⁰ Acceptable grounds and justifications are laid down in Articles 26–29 SBC.

³¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), *Official Journal of the EU*, L 105/1, 13 April 2006, as subsequently amended. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Al14514>.

border areas is problematic,³² inter alia because asylum seekers crossing internal borders can be detained on the basis of regular migration rules, disregarding applicable EU laws on the reception of asylum seekers and the duty under Article 31 of the 1951 UN Refugee Convention not to commence criminal proceedings or apply other penalties to refugees for irregular entry onto their territory, including entry as a result of intra-Schengen movement. Where member states invoke ‘secondary movements’ of asylum seekers within the Schengen area or the threat of terrorism as a reason to reintroduce intra-Schengen border controls, compelling arguments and sufficient detail as to the existence and nature of the threat must be provided to the EU institutions.

Despite the irregularities and subsequent suggestions that the end of Schengen is nigh, serious research demonstrates that the Schengen system is alive and well and that the member states that reintroduced internal border controls have by and large complied with the legal framework.³³ The system was reformed in 2013 and the new Schengen rules have only been implemented since 2015. Generally speaking, the system is fit for purpose and recent developments do not justify leaving Schengen or overhauling it.³⁴ Small

³² Cf. Articles 22-23 and recital 26 SBC: “migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security”. According to Article 23 SBC, the exercise of police powers and checks at the internal borders may not have the objective (or be equivalent to) border controls and must be based on general police information and experience “regarding possible threats to public security and aim, in particular, to combat cross-border crime”. Also, they must be devised and executed in a manner clearly distinct from systematic checks on persons at the external borders (and be carried out on the basis of ‘spot checks’).

³³ E. Guild et al., “Internal Borders in the Schengen Area: is Schengen crisis-proof?”, Study for the LIBE committee, Policy Department C: Citizens’ Rights and Constitutional Affairs, European Parliament, 2016.

³⁴ The economic cost of countries leaving the Schengen area and the reintroduction of border controls has been estimated by RAND Europe to range between €2 to 3 billion in annual operating costs plus fixed one-off costs anywhere between 0.1 and 19 billion euros. To this, one should add the political and social costs, which would be very high. See M. Hafner et al., “A Research Paper on the Costs of Non-Schengen from a Civil Liberties and Home Affairs Perspective”, annexed to W. van Ballegooij, “The Cost of Non-Schengen: Civil Liberties, Justice and Home Affairs Aspects”, Cost of Non-Europe Report PE 581.387, EPRS, September 2016, pp. 36-146.

amendments to the Schengen Borders Code that bring about significant practical improvements are of course most welcome. A case in point concerns the reinforcement of checks against relevant databases at external borders.³⁵ A further improvement would be the application of the mechanism foreseen in Article 29 SBC, which currently undermines the EU principles of solidarity between member states and adherence to the Schengen *acquis* by only punishing member states that are unable or unwilling to cope with large numbers of asylum seekers and allowing others to close their internal borders without due foundation. It should instead ensure that the latter assist the border member states in dealing with and receiving asylum seekers and migrants.

More vigilant institutions

In view of the above, it is clear that each EU institutional actor should play a more effective role in the evaluation of member states' compliance with the SBC and the lawfulness of internal border checks. Contrary to what governments in some EU countries have claimed, the idea is not for the European Commission to patronise member states, let alone to undermine counter-terrorist activities. Neither should the Commission be expected to act as a mediator between member states; this is a role for the Council to play. Rather, the Commission should receive the necessary evidence to be able to conduct a comprehensive proportionality assessment and ensure that the SBC is correctly applied.³⁶ The proportionality assessment should centre on the impact of the abolition of intra-Schengen state border controls on the

³⁵ See Council Press Release 731/16, 7 December 2016.

³⁶ While the 2013 Schengen governance reform allowed the Commission to conduct on-site evaluations of internal police checks practices, the effectiveness of this scrutiny is largely undermined by a high degree of legal uncertainty and lack of transparency of member state law enforcement authorities' actions when checking people on the move. A key weakness in the current Schengen evaluation and monitoring mechanism, and the evaluations performed by the Commission, is the lack of on-the-ground and objective knowledge of the actual challenges faced in the practical delivery of EU Schengen and asylum standards by member states. Civil society organisations should be better utilised to ensure a more independent and substantiated assessment of national authorities' actions.

movement of persons and the internal market. The Commission should also prepare, in consultation with the office of the UN High Commissioner for Refugees, guidelines for the member states on the correct application of Article 31 of the Refugee Convention in the Schengen area. Where there is evidence that EU countries are starting criminal proceedings against refugees for irregular entry onto their territory, either from outside the Schengen area or within it, the Commission should commence infringement proceedings for failure to apply the CEAS correctly. Subsequently, the European Parliament and national parliaments should be more accurately informed of the state of play with respect to infringement procedures initiated by the Commission against member states. This information should include the content of the letter of formal notice and reasoned opinion of the Commission and the subsequent answers of the member states.

To assist it in its tasks and to de-politicise the evaluation process, the Commission should equip itself with an 'asylum evaluation mechanism' similar to the one in Schengen, based on Article 70 TFEU. In future it should be up to the EU Agency for Asylum to run this mechanism. To enhance democratic accountability, the European Parliament should support the setting up of a 'shadow evaluation mechanism', focused on member states' compliance with Schengen and CEAS rules. This should be further developed by civil society organisations, in close cooperation with the EU Agency for Fundamental Rights. This mechanism would ensure an independent assessment of the effective implementation of Schengen and asylum rules at the domestic level. Specific procedures should be developed for the ways in which the Commission classifies and sends information resulting from its evaluations to the Parliament.

Recommendations

External border control

1. A new political compromise at EU level is needed to create a truly common European Border and Asylum System, with a focus on the management of the EU's maritime borders.
2. Recognise as a generally applicable principle that the management of the common external borders is a "shared legal responsibility" between the European Border and Coast Guard Agency and member states' authorities in the implementation of integrated border management.
3. De-couple 'search and rescue' obligations laid down in international law from the Dublin system of responsibility sharing for asylum seekers. Every person disembarked should fall directly within the scope of application of the 'corrective solidarity mechanism', irrespective of their nationality, and still enjoy the rights under the relevant international conventions.
4. Develop a wider range of legal pathways for migration that provides access to international protection and opportunities for refugees and allows for economic migration at all skill levels.

Internal border control

5. The Schengen Borders Code (SBC) should not be used to circumvent unlawful border controls and police checks. Amend the Code to facilitate more solidarity between the member states.
6. The institutions should play a greater role in evaluating member states' compliance with the SBC and the lawfulness of internal border checks, and initiate infringement procedures if needed.

SOCIO-ECONOMIC AND MONETARY INTEGRATION

Euro area management

Although the euro was intended to foster European unity, the national policies underpinning it have created divisions, embittered relations between Greece and Germany and caused widespread resentment in both debtor and creditor states. Some would argue that pursuing the current policies will at best result in Southern Europe limping along for years to come, with low growth, high unemployment and mounting support for anti-euro parties. But this picture of a euro area riven by a generalised conflict between an austerity-obsessed Germany and a virtually bankrupt South is a caricature based on a mistaken analysis of the fundamental problems, and which is anyway becoming less and less apt as a description of reality.

The key question is whether the continuing economic under-performance in some member states is really due to the 'straitjacket' imposed by the euro. The cases of Ireland and Spain suggest that a sustainable recovery is possible within the euro area. Seen through this prism, the main problem of the euro is a political one: in countries with economic problems and a persistent lack of growth, like Italy and Greece, the euro and its rules make an ideal scapegoat to mask the inability of the national political and social structures to solve deep-seated domestic problems.

This tendency to make the euro responsible for weak economic performance is likely to intensify over the medium term. The overall potential growth rate of the euro area is just above 1%.³⁷ Among other factors, such a low level is due to a shrinking working age population, a process that is

³⁷ European Commission, Ameco database.

expected to continue in the next few decades at a pace of almost half a percent per annum. It is thus likely that the medium-term future of the euro area will resemble the recent past of Japan, whose headline growth rate has been very low and whose current account is in surplus. Demographic trends and similarities with Japan are thus likely to reinforce the negative picture, which builds on the flaws of the original EMU design and the excessive austerity imposed by Germany. These arguments are the basis of much of the doomsday narrative.³⁸

A more optimistic outlook might be found in the idea that the future will be different from the recent past: the crisis has been beaten by a combination of adjustment and a stabilisation of the financial system.³⁹ The euro area is continuing a slow but steady expansion that has already brought the average employment rate back to the pre-crisis level. The banking union is likely to protect the euro area against the repetition of large financial shocks while the remaining disequilibria in competitiveness are gradually worked out via the normal functioning of the labour markets, with wages rising faster in Germany than in the rest of the euro area. This perspective evokes the experience of Germany, which not too long ago was considered the ‘sick man of Europe’ because it entered the euro area with excessively high wages. The ‘austerity doomsday’ view of the euro might thus be simply too coloured by recent events.

Nevertheless, widespread consensus remains that profound reforms are needed for the euro area. But apart from the general refrain that ‘something needs to be done’ there is no agreement on what could and should be done. No major initiatives are in the pipeline that could resolve the two key problems, namely the debt overhang in parts of the euro area and the restoration of competitiveness. Governments are wary of scaring financial markets – and

³⁸ See, e.g., C. Offe, *Europe Entrapped*, Cambridge: Polity Press, 2015; J.E. Stiglitz, *The Euro: How a Common Currency Threatens the Future of Europe*, W.W. Norton & Co., 2016; and H.-W. Sinn, *The Euro Trap: On Bursting Bubbles, Budgets, and Beliefs*, Oxford: Oxford University Press, 2014.

³⁹ As also stated by Jeroen Dijsselbloem in his remarks following the Eurogroup meeting on 26 January 2017 (www.consilium.europa.eu/en/press/press-releases/2017/01/26-eurogroup-jd-remarks/).

voters. Finance minister meetings produce an unedifying succession of stalemates. Southern states want more pooled sovereignty, and economic and fiscal strength to insulate their vulnerable economies. Northerners demur, until their balance-sheet risk is reduced. As long as these two views dominate the debate⁴⁰ little progress will be made.

An official roadmap to deepen the Economic and Monetary Union does exist: the Five Presidents' report.⁴¹ Officially, the first steps outlined in this report have already been taken: there is a euro area Fiscal Board (which advises the Commission on fiscal matters), and national productivity boards (to monitor the competitiveness performance and policies in each member state) are being created. However, the nature of these bodies is purely consultative and, while useful, these two steps are unlikely to have a significant impact on the true deepening of the EMU. In order to render the EMU governance framework and the EU's economic and financial performance more resilient and effective, this Task Force recommends stronger fiscal cooperation among euro countries. Acknowledging that the euro area countries possess very diverse tax-raising and public-spending cultures, which translate into significant differences in terms of tolerance towards deficits and resistance to share fiscal responsibilities, this Task Force nevertheless considers that stronger centralised fiscal policies are necessary to strengthen the economic governance framework.

Deviating from the 'Verhofstadt'⁴² report of the European Parliament, this Task Force does not support the idea of creating an EP subgroup made up of euro area countries. Bearing in mind that without the UK Denmark will be the only remaining member state with an opt-out of the euro area (all other member states are obliged to introduce the euro), a euro area parliament does not seem the right measure to address the EMU's weaknesses. It might set a dangerous precedent in dividing the EU and cement a two-tier approach. The

⁴⁰ See, e.g., M. Brunnermeier, H. James and J. Landau, *The Euro and the Battle of Ideas*, Princeton: Princeton University Press, 2016.

⁴¹ See https://ec.europa.eu/priorities/sites/beta-political/files/5-presidents-report_en.pdf.

⁴² "Possible evolutions of and adjustments to the current institutional set-up of the European Union", 2014/2248(INI).

euro is the currency of the EU as a whole and the assembly as a whole should therefore be responsible for the democratic oversight and legislation of the euro area.

Enhancing compliance: incentive-based enforcement

The euro cannot remain stable unless euro area public finances are sound and the public debt-to-GDP ratio is stable. The main insight of the Stability and Growth Pact (SGP) is that member states keep deficits under 3%. Over time, this rule was considered as too simplistic and to some extent misleading. It has since been refined in many ways to take into account the business cycle, the medium-term evolution of expenditure and various exceptional circumstances, to name a few of the changes. The Fiscal Compact (officially: the Treaty on Stability, Coordination and Governance (TSCG)) has added two provisos: a lower limit of the structural deficit of 0.5% of GDP⁴³ and a commitment of the countries to ensure rapid convergence towards their respective medium-term objective.⁴⁴

The main responsibility for enforcing limits on deficit and public debt falls to the Commission. If the Commission sees a violation of the deficit limit, it recommends that the ECOFIN Council launch the Excessive Deficit Procedure (EDP) against the member state concerned. Hence, it is the Council that ultimately decides on sanctions. Even under the new reversed qualified majority system, sanctions have never been imposed: the Commission's warnings have been disregarded or withdrawn; the Council has launched the EDP several times, but the procedure was always discontinued – officially due to the respective member state's economic difficulties. However, member states seem to be reluctant to impose sanctions, as the judges of today might be the defendants of tomorrow.

⁴³ Article 3(d) TSCG: "Where the ratio of the general government debt to gross domestic product at market prices is significantly below 60 % and where risks in terms of long-term sustainability of public finances are low, the lower limit of the medium-term objective specified under point (b) can reach a structural deficit of at most 1.0% of the gross domestic product at market prices".

⁴⁴ Article 3b TSCG: the reference to the medium-term objectives implies the commitment to adjust debt-to-GDP patterns to a sustainable trajectory as defined in the SGP.

A member state's political unwillingness is not always the reason for its non-compliance with the rules. When the economic cycle is experiencing a downturn or the economy is affected by exceptional circumstances, making the fiscal efforts required by the rules is not necessarily a wise decision because of their counterproductive effects. A member state's lack of administrative and financial abilities (i.e. non-voluntary reasons) can also be the reason for non-compliance. Imposing sanctions on states that are unable to comply with the rules is therefore meaningless. In these cases, obsessive enforcement will not result in better compliance. Instead, administrative cooperation and assistance programmes could be set up and made available to member states even before a threat to financial stability materialises. Furthermore, an incentive-based enforcement mechanism building on the precautionary financial assistance foreseen under the Treaty establishing the European Stability Mechanism (ESM) could be envisaged so that access to such a mechanism, which rewards compliance rather than punishing non-compliance, could be granted even before financial stability is threatened. Such an incentive-based enforcement mechanism could form the nucleus of a future fiscal capacity for the euro area. Rules should be set that are realistic and which incentivise and empower member states to respect them. Taking Article 13 of the TSCG as a legal starting point, country-specific recommendations should be drafted that include the opinion of the European Parliament.⁴⁵ Proactive and constructive involvement by national parliaments may further enhance compliance.

Completing the Banking Union: deposit insurance scheme

All member states have deposit guarantee schemes at national level to build trust among depositors regarding the safety of their deposits in banks and ultimately to facilitate financial stability and banking stability. The Commission also aims to establish such an insurance system at EU level, as a necessary step to completing the Banking Union.

⁴⁵ See C. Alcidi, A. Giovannini and S. Piedrafita (2014), "Enhancing the legitimacy of the EMU", Study commissioned by the European Parliament (www.europarl.europa.eu/RegData/etudes/STUD/2014/536312/IPOL_STU%282014%29536312_EN.pdf).

An integrated European banking system would allow for the centralised supervision and resolution of banks in the euro area, and would break the dangerous interdependence between national sovereigns and their domestic banks. The Banking Union was called for by the European Council in June 2012 and designed according to a Commission roadmap. Based on a common set of rules for banks in all 28 member states, the ‘single rulebook’ is composed of a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM) for banks. Both are mandatory for euro area members and open to all other EU countries. As a result of these innovations, the European Central Bank has become the main prudential supervisor of financial institutions in the euro area. The SSM is supposed to reduce the risk of bank failures. If they occur anyway, the SRM comes into play, which covers all banks overseen by the SSM/ECB and became operational in 2016. It is made up of the Single Resolution Board (SRB) and the Single Resolution Fund (SRF).⁴⁶ Its purpose is to ensure an orderly resolution of failing banks with minimal costs to the real economy and taxpayers.

The SSM and SRM are important steps in the right direction. But the Banking Union needs to be complemented by an EU-wide deposit guarantee scheme. Only such a mechanism would decouple banks and national sovereigns and set conditions for financial stability. Like the authority for banking supervision and resolution, the deposit guarantee scheme should be located at the supranational level. In 2015 the Commission proposed such a euro- area-wide deposit insurance scheme (EDIS) for bank deposits.⁴⁷ EDIS implies a degree of risk-sharing among countries participating in the scheme, which is considered unacceptable by some countries, at least until existing weaknesses – in some member states – are dealt with first (risk reduction). Well aware of the strong resistance within the Council, the Task Force has called on member states to reach political consensus and to set up this much-needed insurance scheme. Certainly, there is a trade-off that needs to be recognised and

⁴⁶ A common backstop to the SRF should be created by the end of the 8-year transition during which funds are paid in by banks. The ESM is likely to play this role but there is no formal agreement.

⁴⁷ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%253A52015PC0586>.

addressed: if national banks have a high concentration of national assets, then there is a distortion of national risks that will make it difficult to advance towards mutualisation and risk sharing. Limits on assets concentration for the national public debt in the respective bank systems should therefore be introduced.⁴⁸

Euro area ‘finance minister’ and fiscal capacity

As a consequence of the marked shift towards intergovernmental governance in the course of the financial crisis, a need for supranational mechanisms emerged. In particular, the idea to create a position of EU ‘finance minister’ deserves implementation. Similar to the High Representative/Vice-President for Foreign Affairs and Security Policy, the new finance position would be ‘multi-hatted’ and comprise simultaneously the posts of Commissioner for Economic and Monetary Affairs and Vice-President of the Commission; President of the Eurogroup (who is also the chair of the board of governors of the ESM); and President of the ECOFIN Council, which should, when the next treaty occurs, be transferred to the EU treaties.⁴⁹

The figure of a multi-hatted high representative for economic policy and finance would facilitate the adequate enforcement of existing rules and safeguard the economic and fiscal interests of the euro area and the EU as a whole, as s/he would serve the interests of both the member states and the common European good. This would help to reduce uncertainty, improve resilience and create a rapid reaction capacity to emergency situations. S/he would be equipped with sufficient political authority to coordinate fiscal and economic policies and to enforce rules in the event of non-compliance.

⁴⁸ See W.P. de Groen, “The ECB’s QE: Time to break the doom loop between banks and their governments”, CEPS Policy Brief No. 328, Brussels, March 2015.

⁴⁹ See C. Alcidi, D. Gros, J. Núñez Ferrer and D. Rinaldi, “The Instruments Providing Financial Support to EU Member States”, In-Depth Analysis for the European Parliament, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, PE 572.709, 12 January 2017 (https://polcms.secure.europarl.europa.eu/cmsdata/upload/6e5bcdb6-8f36-46e0-862b-d1bbbab05b34/20170119_support%20to%20MS.pdf).

The merger of the Commissioner's position, of the Eurogroup presidency and the chair of the ESM Board of Governors could already be achieved under the existing rules. The merger with the role of the president of the ECOFIN Council would, however, require a revision of the existing EU treaties since the current rules require that all Council configurations (except for foreign affairs) be presided over by member state representatives. Furthermore, the shift of competences from the Council (which currently has the core role in EU economic governance) to the Commission would also require treaty change.

Although in part legally possible, the establishment of such a post is politically only convincing if linked to the existence of fiscal capacity in the form of a euro area budget. After all, the multi-hatted representative would only be meaningful and credible if s/he could manage a budget, rather than only being the executor of austerity measures. The euro area budget could be established as a complementary part of the EU budget, financed through a newly introduced own resource raised with euro area member states and earmarked for the exclusive use of the euro area fiscal capacity. Such assigned revenue would fall outside the ceilings of the multi-annual financial framework and this budget would thus complement, not replace, the general EU budget. Arguably, this would require willingness on the part of the euro countries to pay up.

As a member of the Commission, the multi-hatted Finance Minister would be held democratically accountable by the European Parliament through the normal procedures of appointment and dismissal. Further control by the European Parliament would relate to the budgetary responsibilities vested in this position. Finally, indirect democratic legitimacy would stem from the national parliaments of those euro area countries whose ministerial representatives are held to account for their actions in the Eurogroup.

As a first step, the fiscal capacity could be constituted of the abovementioned incentive-based enforcement mechanism to achieve progress in convergence and sustainable structural reforms, which provides for financial support in return for policy reforms.⁵⁰ As a second step, the incentive-based enforcement mechanism could be complemented by a mechanism absorbing asymmetric shocks such as a rainy-day fund reinsuring national unemployment

⁵⁰ Cf. the idea of contractual agreements that was put forward in 2013.

benefit schemes or as a genuine European Unemployment Benefit Scheme (see next section).⁵¹ Finally, the fiscal capacity could be expanded to a mechanism absorbing symmetric shocks.

Deepening the EMU is not only about enhancing compliance, improving the Banking Union, introducing a finance minister and fiscal capacity but also about upward the convergence of social standards on the basis of common goals, a well-designed investment strategy, and a comprehensive trade strategy, which all go beyond the euro area proper. The key elements of these complementary instruments are discussed below.

Social dimension of European economic policy

Europe is experiencing a fragile but relatively resilient and job-intensive recovery. Its GDP is now higher than before the crisis. Unemployment is decreasing and investment is growing again. However, [s]ome of the tailwinds that have supported the recovery so far are fading. The legacies of the crisis, notably the social impact, high levels of public and private debt, and the share of non-performing loans, are still far-reaching.⁵²

Further efforts are therefore needed to multiply and channel investment, improve social stabilisation mechanisms and recalibrate EU trade policy.

Multiplying and channelling investment

Launched at the end of 2014, the European Commission's 'Investment Plan' is a commendable initiative developed under the auspices of President Juncker that

⁵¹ For a detailed analysis of the possible design of a European Unemployment Benefit Scheme and its added value see M. Beblavý, G. Marconi and I. Maselli, "A European Unemployment Benefits Scheme: The rationale and challenges ahead", CEPS Special Report No. 19, Brussels, September 2015. See also C. Alcidi, M. Barslund, M. Busse and F. Nicoli, "Will a European unemployment benefits scheme affect labour mobility?", CEPS Special Report No. 152, Brussels, December 2016.

⁵² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Investment Plan for Europe: evaluations give evidence to support its reinforcement", 29 November 2016, p. 2 (https://ec.europa.eu/priorities/publications/investment-plan-europe-evaluations-give-evidence-support-its-reinforcement_en).

aims to mobilise public and private investments of at least €315 billion by the end of this year, to support investment in the real economy and create an investment-friendly environment. It does so by removing obstacles to investment, providing visibility and technical assistance to investment projects and making smarter use of new and existing financial resources. Going by the findings of the European Investment Bank's and two independent interim evaluations, the Investment Plan has proven useful in encouraging a sustainable increase in investment in member states, benefiting hundreds of thousands of small and medium-sized enterprises.⁵³ Given the encouraging results of the well-functioning European Fund for Strategic Investments (EFSI),⁵⁴ the Commission has proposed to extend the duration of the Fund until the end of 2020 and to increase the total investment target to at least half a trillion euro.⁵⁵ It is up to the European Parliament and the Council as co-legislators to reach a rapid agreement to extend the EFSI. The Task Force underlines the need for member states to also step up their efforts to implement the necessary reforms to remove obstacles to investment, and set up planning and coordination structures across all administrative levels and funding sources.

Improving social stabilisers

In the case of high (youth) unemployment, the activation of stabilisers is a matter of concern for all member states. The establishment of a European Unemployment Benefit Scheme, as suggested in the previous section, can help

⁵³ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Investment Plan for Europe: evaluations give evidence to support its reinforcement", 29 November 2016 (https://ec.europa.eu/priorities/publications/investment-plan-europe-evaluations-give-evidence-support-its-reinforcement_en).

⁵⁴ Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments, *Official Journal of the EU* L 169/1, 1 July 2015.

⁵⁵ COM(2016)597 final.

to mitigate the social costs of asymmetric economic shocks in a monetary union and contribute to a strengthening of the social dimension of the EMU. Having studied the feasibility and added value of such automatic stabilisers, it is worth stressing two elements that should be included to minimise the ‘moral hazard’ linked to such risk-sharing at European level (i.e. greater risk-taking by one member state at the expense of others sharing the costs of that risk); organising support among member states; and maximising the coverage of unemployment benefits:

First, such a scheme should incorporate financial mechanisms to avoid permanent transfers and minimise the possibility for any country to be, on average, a net beneficiary of the scheme. Second, in addition to such financial mechanisms, member states should comply with minimum requirements with regard to both the ‘activation quality’ and the ‘stabilisation quality’ of their national unemployment benefit system.⁵⁶

As with the ‘quality assurance’ provided by the European Youth Guarantee, minimum requirements would push up the convergence of some basic qualities of the national unemployment schemes on which EU social *acquis* can be built. In this respect, the Task Force strongly supports the launch by the Commission of the ‘European Pillar of Social Rights’.⁵⁷ Not only could the Pillar serve as a compass for renewed convergence within the euro area, it could also broaden that approach and become a reference framework to screen employment and social performance of all member states and drive reforms at national level through concrete and specific tools (legislation, policymaking mechanisms and financial instruments).⁵⁸ By raising governments’ capacities to deliver on

⁵⁶ See F. Vandenbroucke, “Automatic Stabilisers and the European Pillar of Social Rights: Challenges and Opportunities”, speech delivered at the high-level seminar on A Euro for Convergence and Prosperity, organised by the Portuguese government, Lisbon, 24 January 2017 (www.frankvandenbroucke.uva.nl/wp-content/uploads/2017/01/Vandenbroucke_speech_Lisbon_24.1.2017_Automatic-Stabilizers-and-the-European-Pillar-of-Social-Rights_challenges-and-opportunities.pdf).

⁵⁷ For more information, see <http://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

competitiveness and sound public finances, mutual trust between participating member states would increase, as would labour market robustness and flexibility and – ultimately – European citizens' support for the European Union.

While the EU could help modernise and bolster European social security systems to be more compatible with the tectonic changes in employment and jobs, EU institutions should be wary of over-promising what 'Brussels' can do. After all, redistributive social policy remains a national competence and the EU has few instruments to ensure income equality and education. Similarly, its efforts to fight tax evasion and welfare fraud have inherent limits.⁵⁹

Recalibrating EU trade policy

As the world's largest trading bloc, the EU has so far maintained its position on international markets, despite shifts in trade flows meaning that 90% of global growth is generated outside the EU, mainly in Asia.⁶⁰ But the fact remains that China and other economic powerhouses will still want to export to the EU. The EU will remain very open to trade – even more so at 27. As a percentage of GDP, trade features higher in the European economic mix than for the US. EUROSTAT figures show that EU exports grow at the same pace as before, at around 12%. Moreover, the EU has actually maintained its share in global exports of manufactures whereas that of the US has declined. This shows that European companies remain competitive in world markets. Thus, the European Union's trade and investment policies continue to play an important role in shaping the global trading system. With 30 million jobs depending on exports outside the EU, however, and the economic centre of the world shifting from

⁵⁸ See European Parliament, Committee on Employment and Social Affairs, Report by Maria-Joao Rodrigues on a European Pillar of Social Rights (2016/2095(INI)), 20 December 2016 (www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0391+0+DOC+XML+V0//EN).

⁵⁹ See, e.g., Article 35 of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, *Official Journal of the EU*, L 158/77, 30 April 2004, which allows for measures restricting the free movement in order to fight fraud.

⁶⁰ According to the Commission's 'Trade for All' strategy, October 2015 (http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf).

Europe towards Asia, EU trade policy has come to a crossroads. The year 2016 was critical for the EU's common commercial policy, with long and laborious negotiations with a number of international partners over the harmonisation of regulatory standards, and because of fierce opposition from a growing and increasingly vocal group of European citizens against the EU's new generation of deep and comprehensive free trade agreements.

Pushed by NGOs and rights groups unhappy about the alleged absence of environmental and social protection standards in the EU's classic FTAs, the European Commission used its new (supposedly) exclusive competences under the Lisbon Treaty to negotiate broader agreements with countries such as South Korea, Singapore, Canada and the US. Governments pressured by popular disenchantment with the 'opaque and undemocratic' character of the trade negotiations persuaded the Commission to take the unprecedented steps of opening up and even declaring such agreements mixed. This not only weakened the bargaining power of the Commission vis-à-vis third states but the Dutch and Walloon hold-outs on approving agreements with Ukraine and Canada respectively also exposed the difficulties for the EU in striking up ambitious trade and investment agreements with third countries.⁶¹ They signal a more widespread dissatisfaction among European citizens with their leaders' intentions and ways of providing security, jobs and growth, especially for young people. Opposition stems from a mainly neoliberal narrative, which focuses on big corporations rather than citizens, and from the perceived lack of control over economic governance. As a result, the drive to 'modernise' EU trade policy risks coming full circle. Depending on the Court's judgments in disputes over the nature of competences (exclusive or mixed) on portfolio investment and Investor to State Dispute Settlement, the EU institutions may in future choose to define the scope of the EU's trade agreements in a narrower sense, i.e. within the limits of their exclusive powers.⁶²

⁶¹ It is to be anticipated that similar difficulties will be encountered in securing ratification of any trade and investment agreement that may be reached with the UK as a non-member of the EU.

⁶² An indication of this trend can be found in the opinion of Advocate General Sharpton in the proceedings of Opinion 2/15 on the legality of the EU's FTA negotiated with Singapore, which - according to the AG - can only be concluded by the EU and the member states

The Task Force believes that the institutions should resist this temptation. There is no way back to negotiating classical FTAs. Exporting companies face increasingly similar challenges in meeting different countries' rules and regulations, and common standards and business rules are created across borders. Mutual recognition of conformity decisions, which were the gist of the agreements with Canada and the US, no longer suffices. The approximation – even harmonisation – of methods, norms and standards should be the core of the new generation of FTAs and should be continuously improved to adapt to the future demands of societies and international trade.

The most important lesson of the recent trade deal negotiations is the importance of obtaining the general public's backing for how they are conducted and for what purpose. The immense public interest in these negotiations revealed the need to rethink the common practice of these negotiations and to design the process in a more open and comprehensible manner for the public. But the generation of more transparency has been slow and half-hearted. It was only after harsh criticism and direct activism that the current Commission changed its working method and involved and empowered citizens, the European Parliament and – to some extent – national parliaments. Arguably, concerns expressed by society need to be addressed directly and much more quickly. Future trade negotiations could be further legitimised through proper public consultations by the Commission, which are publicly notified at an early stage and with an expression of intent – i.e. with whom to negotiate, to what end and how closely the European Parliament and national parliaments should be involved.

The European Parliament should be included in the process of defining the negotiation mandate for the European Commission. While currently only the Council adopts the mandate, including the European Parliament early on in trade negotiations by means of an inter-institutional agreement would not only increase the procedural legitimacy of trade agreements, but would also bring

transparency to trade negotiations, the lack of which is currently one reason for public criticism.

National parliaments should be involved more constructively to avoid politicking and confusion over the mixed or exclusive character of the envisaged EU trade agreement. The process of regular public consultations in the form of online questionnaires can be improved and topical public stakeholder sessions should be organised before negotiating rounds so that stakeholders can voice their needs in advance.

Improvements should not and need not be merely procedural but also substantial. In order to achieve much-needed democratic legitimation and to counteract protest voters, it is also crucial to demonstrate the added value of these trade agreements. This has to go beyond the current rational and fact-based narrative of the EU as a global actor and more explicitly underline society's gain. Who is profiting, and how? The institutions have to demonstrate and communicate in clear and simple terms that regulatory approximation and harmonisation not only serves big corporations but also SMEs and the European public at large. Any such moves will also have to show that deep and comprehensive FTAs with third countries prevent intra-EU social dumping, adhere to (high) European standards of social and environmental protection, and include enforceable human rights and anti-tax avoidance provisions. The legitimacy of EU trade policy would be further improved by actively pushing the global regulatory framework forward. Arguably, this is a tall order,⁶³ which will require renewed consensus among the member states on the rationale and objectives of EU trade policy in general.

⁶³ According to D. Rodrik, *The Globalization Paradox. Democracy and the Future of the World Economy*, New York: Norton, 2012, adhering to high (protection) standards, liberalisation and democratic involvement are even mutually exclusive.

Recommendations

Euro area management

1. Set up administrative cooperation and assistance programmes as well as an incentive-based enforcement mechanism in order to enable states to comply with EU rules, instead of plain rule enforcement.
2. Set up a deposit insurance scheme to complete the Banking Union to break dangerous ties between banks and national sovereigns and facilitate financial stability in the euro area.
3. Create the post of an EU ‘finance minister’ and a euro area financial capacity to facilitate adequate coordination and enforcement of fiscal and economic policies and bridge between the common European, as well as member states’ interests.

Social dimension of European economic policy

4. Encourage the Council and the European Parliament to approve the Commission’s proposal for the extended duration of the European Fund for Strategic Investments, which functions well.
5. Support the Commission’s ‘European Pillar of Social Rights’ to monitor member states’ social and employment performance. The pillar could underpin the convergence of basic qualities of national unemployment schemes on which EU social *acquis* can be built.
6. Legitimatised the new generation of EU trade agreements by demonstrating their added value and stronger involvement of the public, national parliaments and the European Parliament.

A CITIZENS' UNION

Undeniably, the European Union has a longstanding problem with democratic legitimacy. 'Brussels' is perceived to be an elite-driven project that is too remote from ordinary citizens. The feeling that the EU works for and with European citizens needs to be reinforced.

One way of creating a more fully fledged citizens' union is to introduce direct democratic elements at the European level. The most prominent recent development in this regard is the European Citizens' Initiative (ECI). This transnational instrument allows for the direct participation of citizens in the development of EU policies and aims for greater public involvement in European affairs.⁶⁴ Yet the impact of this new instrument has been minor so far. Since the ECI's launch in 2012, only three initiatives were successful; 29 others did not garner the required number of signatures or were withdrawn by the organisers. In only one case did the Commission decide to act, albeit not by way of the adoption of a legislative measure.⁶⁵ Irrespective of the notion that the success and effectiveness of this instrument should not only be measured in terms of legislative output but also by the EU-wide debate on certain policies that it stimulates,⁶⁶ the ECI is hampered by its poor reputation. Critical voices

⁶⁴ One million citizens from at least one quarter of the member states (currently 7) can submit an initiative to the Commission asking for legislative processing. If the required number of signatures has been gathered within a timeframe of 1 year, then the Commission will consider the proposal but it is not obliged to initiate new legislation. See Art. 7 of Regulation (EU) No 211/2011 of 16 February 2011 on the citizens' initiative, Official Journal of the EU, L 65/1, February 2011.

⁶⁵ Not considering the four initiatives that are currently open for collection of statements of support.

⁶⁶ This has been deemed successful by J. Greenwood and K. Tuokko in "The European Citizens' Initiative: The territorial extension of a European political public sphere?", *European Politics and Society*, 2015.

highlight the non-binding character of the instrument and the Commission's lack of responsiveness. Numerous administrative hurdles and technical shortcomings render the initiative very cumbersome.⁶⁷ The European Parliament has made an effort to address some of the ECI's shortcomings.⁶⁸ But the Commission has been reluctant to follow through.⁶⁹ Overall, the view of this Task Force is that the ECI is an instrument that raises false hopes. Although the ECI has great potential, due to weaknesses in its design and implementation its aims are frustrated.

Referenda, as another instrument of direct democracy, have been held either on individual EU policies or on membership as such. So far, these referenda have only been organised at the national level, in individual member states. There have been calls, however, to introduce EU-wide referenda.⁷⁰ The Task Force does not support this idea. While referenda have traditionally been seen as an important tool to increase democratic involvement and legitimacy, recent experience with national referenda in the Netherlands, the United Kingdom, Italy and Hungary has underlined how controversial these instruments are. Whether or not a simple yes/no question can provide the full answer to complex EU policy issues, referenda are often abused by political players as an excuse to avoid difficult or painful decisions. Due to the current perceived and actual distance between the EU and the citizens, direct democratic elements are susceptible to exploitation by populist tendencies and misinformation campaigns. They risk being obstructed or polluted, drowning out nuanced, well-intentioned and informed debates, even if sufficient

⁶⁷ Such as such as redesigning the online signature collection test and simplifying and harmonising personal data rules. See A. Lamassoure, "Perspectives From Inside EU Institutions and National Authorities: Revising the ECI Regulation", in C. Berg and J. Tomson (eds), *An ECI That Works! Learning from the first two years of the European Citizens' Initiative*, Freiburg: ECI Campaign, 2014.

⁶⁸ European Parliament Resolution of 28 October 2015 on the European Citizens' Initiative (2014/2257(INI)).

⁶⁹ See www.euractiv.com/section/eu-priorities-2020/opinion/commission-ignoring-the-eci-positive-potential-for-democracy/.

⁷⁰ Such as on a roadmap for the future EU27: www.euractiv.com/section/euro-finance/news/emmanuel-macron-calls-for-an-eu-wide-referendum-on-europe/.

resources were to be mobilised for public education and fact-based media coverage in all official languages. That said, the Task Force encourages the development of a European public sphere alongside better-suited instruments for democratic participation.

The second path towards a more legitimate EU is of a representative nature and leads through the parliaments. In the EU, democratic control and legitimation takes place at both the national and supranational level. It is in this vein that the Task Force actively supports the following reform ideas, which aim to strengthen either the legitimacy of the European Parliament and to strengthen the parliaments at national level.

National parliaments

Facilitate constructive involvement

National parliaments are multi-arena players and as such be can simultaneously active in European, and national arena. At the EU level, they can act collectively with other national parliaments. Under the Early Warning System introduced by the Treaty of Lisbon they can issue ‘yellow’ and ‘orange’ cards to flag up the alleged violation of the subsidiarity principle if certain thresholds are met.⁷¹

Beyond that, the Union should refrain from introducing measures that could create gridlock, such as the ‘red card’ agreed to by the EU27 in February 2016 as part of a renegotiated settlement on the UK’s relationship within the European Union,⁷² which would allow a majority of national parliaments to force the European Commission to drop a legislative initiative.

On the other hand, a constructive legislative contribution by a majority of national parliaments in the form of a ‘green card’ procedure should be facilitated.⁷³ As long as this ‘green card’ does not frustrate the exclusive right of

⁷¹ Cf. Piedrafita and Blockmans, *op. cit.*, pp. 6-7.

⁷² S. Weiss and S. Blockmans, “The EU Deal to Avoid Brexit: Take it or leave”, CEPS Special Report No. 131, Brussels, February 2016.

⁷³ See COSAC, already in 2015: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015XP1016\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015XP1016(01)). In 2016, the House of Lords led the first-ever proposal supported by 15 (later +2) other national parliaments (re: reduction of food waste).

initiative of the European Commission and the institutional balance foreseen in the treaties, the proposal would require no change to EU primary law. Then again, the salience of the 'green card' procedure also underlines the need to endow the European Parliament with its own right of initiative in order to avoid granting the national parliaments more legislative powers than their European counterpart (see below).

Improve scrutiny measures

One of the main tasks of national parliaments is to hold their own government ministers accountable for their performances in the Council, not to actively shape EU legislation. To strengthen the role of national parliaments, the scrutiny measures at national level should be streamlined and strengthened. National parliaments have tools at their disposal to control the executive in EU affairs but these instruments do not always seem to be used and indeed not all parliaments have the same mechanisms in place. So far, only a minority of member states have a mechanism in place that allows parliament to scrutinise government action at the EU level *ex ante*. While this is clearly going beyond the scope of possible action for EU actors, as it pertains to a constitutional choice of the member states, this Task Force calls upon national governments and parliaments to streamline their scrutiny measures. A mandate and powers of these national scrutiny measures should cover all relevant policy areas. While such systems should not extend to a wholesale denial of governmental representatives' room to negotiate with their peers in the EU, a timelier and hands-on involvement of national parliaments in EU affairs should be supported and enabled. When it comes to parliamentary control of EU affairs, the exchange of best practices is also crucial. Structured dialogues and COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) meetings can support this enterprise.

By the same token, this Task Force rejects ideas that envisage the integration of national parliaments into the institutional architecture of the Union, for instance by way of a new advisory body, a third legislative institution, or a second chamber of the European Parliament or the Council.

European Parliament

Strengthen electoral processes

The European Parliament, unlike national parliaments, has a formal role as co-legislator and is mandated to create a coherent European regime, holding the common European good at the core of its actions. As such, the European Parliament is the main source of direct democratic legitimacy and accountability in the EU. When strengthening the Union's electoral-representative components, emphasis should therefore be placed on reinforcing the European Parliament. As a result of a series of treaty revision rounds, the EP has made major progress in improving its position in the EU's institutional framework and its role in the policymaking-process. This has led to a gradual reduction of the democratic deficit from which the EU has long suffered. Beyond the gradual expansion of legislative competences of the EP, one key element remains subject to reform: the election process. This pertains to both the future harmonisation of electoral rules for EP elections across the member states, as well as the improvement of the so-called lead-candidate ('*Spitzenkandidaten*') system which was pioneered in the wake of the most recent elections.

The 2014 European Parliament elections were the first to be held under the rules of the Lisbon Treaty, which linked the outcome of the elections to the appointment of the next Commission President (Article 17(7) TEU). Forces within the EP acted upon this provision to introduce the lead-candidate system. The aim was to increase the legitimacy of both the Parliament, by personalising the election campaign in the hope of counteracting the downward trend of voter turnout, and the legitimacy of the Commission, by giving the electorate not only a say over whom should be its President, but also over the political programme of the Commission. The system was touted as establishing a much-needed link between 'Brussels' and the European citizens. This process triggered a debate that forced all stakeholders to focus on specific policy issues and to communicate their policy plans. It triggered press coverage and debates via social media and underlined the political role of the European Parliament, also vis-à-vis the other institutions. The Task Force considers that the system is a step in the right direction but insufficient as it stands. The political families should organise more robust 'European' campaigns in which they raise awareness of EP elections, for instance by pushing for public broadcasts of the

political debates. In this vein, parties should also all prepare and disseminate political programmes which clearly outline their ideals and respective visions for the EU. It is only thanks to sufficient public outreach that citizens can be actively involved in an EU-wide debate. It is only then that the lead-candidate system can truly contribute to a more democratic election of the European Parliament and Commission President. After all, the missing link between the EU and its citizens cannot be established by just modifying the election procedure. It needs to be supported by a robust and genuine outreach to European citizens.

More importantly, elections for the European Parliament are not conducted according to a uniform, EU-wide electoral procedure. Rather, EP elections are governed by national rules that lack common standards for nomination procedures and diminish the potential of European momentum. A reform of the European electoral law would provide more electoral equality among the citizens of the Union and increase the democratic dimension of the EP elections.

The European Parliament itself has repeatedly proposed reforms in this respect, most recently in November 2015.⁷⁴ The most prominent aspects concern:

1. Visibility of European political parties: ballot papers used in the EP elections should give equal visibility to the names and logos of national parties and the European political parties to which they belong;
2. Harmonisation by introducing a deadline of 12 weeks before the elections for the nomination of candidates/establishment of lists at national level;
3. Introduction of a mandatory threshold for bigger EU countries, ranging between 3% and 5% for the allocation of seats in single-constituency member states and constituencies comprising more than 26 seats;
4. Introduction of a right to vote in EP elections for all European citizens living outside the EU. To avoid double-voting (also by people with more

⁷⁴ “Reform on the European Electoral Law” of 11 November 2015, see www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0395+0+DOC+XML+V0//EN.

than one citizenship), member states should coordinate their administrative systems better. Campaigns should be organised with formally endorsed, EU-wide lead candidates for the Commission presidency;

5. Grant the right to the European Parliament to fix the electoral period for the elections, after consulting the Council.

The implementation of this proposal does not require treaty change, only the amendment of secondary legislation.⁷⁵ While respecting the fact that electoral laws belong to the constitutional traditions of the member states, this Task Force calls upon the Council⁷⁶ to reach agreement on the proposed amendments to EU electoral law. Harmonisation of the EP elections is a necessary step to create a true European political space for debate and to transform transnational and ‘first-order’ elections.

Going beyond the EP proposal, another crucial step towards a more European election process is the introduction of a transnational list. This pan-European list would contain candidates to be elected in a single constituency formed of the whole territory of the European Union. This would facilitate voting for candidates across member states and give citizens two votes: one for their national or regional constituency, and the other for the EU writ large. This would trigger a European debate among candidates and would inform and empower the EU public in a way that the present system does not. The introduction of such a list would be an important step towards truly European elections and a better legitimised European Parliament.

Right of initiative

Finally, as alluded to in the discussion on the introduction of a ‘green card’ procedure, the European Parliament ought to be given its own right to initiate

⁷⁵ Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, Official Journal of the EC, L 278/1, 8 October 1976.

⁷⁶ According to Article 223(1) TFEU the European Parliament has the duty to initiate a reform of the European electoral law by formulating proposals, which the Council will have to decide upon by unanimity. Then, the amendments to the European Electoral Act are submitted for ratification to the Member States according to their constitutional requirements.

legislative action. According to the treaties, the right to initiate legislative proposals lies almost entirely with the European Commission. Special rights of initiative for other institutions apply only in certain specific cases.⁷⁷ The Parliament has an 'indirect right of initiative', with the right to invite the Commission to propose legislation, which, however, does not create the obligation on the Commission to do so. At the national level, both governments and parliaments are authorised to propose legislation. Introducing a right of initiative for the European Parliament would emancipate the EP in the EU institutional framework, strengthen the service provided by the institutions to the general European interest, and turn the EP into an assembly with powers equal to those held at national level throughout and beyond the EU.

It has been argued that the Commission's monopoly on the right of initiative was rooted in the mistrust of the political process in post-war Europe.⁷⁸ Therefore, the Commission, as a technocratic authority, was entrusted with this privilege. Its decisions were considered legitimate due to its policy expertise. Following that argument and in light of a more political Commission nowadays, there are grounds to argue for the introduction of a parallel right of initiative for the European Parliament. Furthermore, it has been argued that the expansion of the Ordinary Legislative Procedure has effectively led to an erosion of the Commission's right of initiative and that it remains only as a formality.⁷⁹ Hence, it seems meaningful to also formally grant the EP the right of initiative, especially seeing that both the citizens themselves – through the ECI – and potentially the national parliaments – through the 'green card' have a right to call on the Commission to initiate a proposal.

⁷⁷ Mainly pertaining to the EP's own organisation, functions and the way in which European elections are run, see above.

⁷⁸ See [www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI\(2013\)130619_REV2_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI(2013)130619_REV2_EN.pdf).

⁷⁹ See www.institutdelors.eu/media/commission_power_of_initiative_ne_feb2012_01.pdf?pdf=ok.

Compliance with EU commitments

In their Joint Declaration laying down the legislative priorities for 2017, the Presidents of the European Parliament, the Council and the European Commission declared that their continuous commitment to promoting the proper implementation and enforcement of existing legislation. This statement pays lip service to each institution's formal adherence to the Treaty-based principle of sincere cooperation but masks a malpractice which has become more prominent of late: governmental representatives of member states openly reject the implementation of decisions – whether legal or political – which have been adopted by consensus or qualified majority vote in the Council. Furthermore, self-styled 'counter-revolutionary' governments backed by parliamentary majorities roll back the core values upon which (their membership in) the European Union is built. Such practices should be denied, not only because they are contrary to the spirit, rules and functioning of the EU, but also because they undermine the Union's credibility as a community of law vis-à-vis its own citizens, as indeed towards candidate countries and other neighbouring states which are required to harmonise their systems to 'best' (i.e. European) practices and standards.

Enforcing common commitments

The heads of state or government of the EU27, assembled at their informal summit in Bratislava in September 2016, solemnly declared that they would "deliver on promises [and] strengthen the mechanism for reviewing the implementation of decisions taken", as well as to loyally cooperate with each other and the EU institutions.⁸⁰ The text of the Bratislava Declaration had only just been adopted when one of the leaders abused the subsequent press conference to score political points at home: he lambasted his colleagues in the European Council for having failed to back his own plans on migration. As long as government representatives choose to dissociate themselves from the responsibility to support decisions taken collectively, European citizens will be deluded into believing that the EU does not belong to them. Unfortunately,

⁸⁰ See Bratislava Declaration and Roadmap, *supra*.

there is very little else that the EU institutions can do to counter this narrative, other than offering unbiased facts and figures through several channels and stimulating proper debate about the EU in national media. As with all political education, it starts at home. Each Ministry of Education of every member state should make sure that the EU and the European integration process gets the attention it deserves in standard secondary school curricula.

While the institutions could look for ways to forge a mutual trust-building agenda that is premised on the full and effective implementation of the provisions of the Lisbon Treaty, the bottom line is that member states have the duty to uphold all rights and obligations deriving from the treaties. As the guardian of the treaties, the European Commission is obliged to ensure that legal commitments made by the member states are enforced. Going by the data in its most recent annual report on monitoring the application of EU law,⁸¹ the high number of infringement procedures – administrative and judicial – shows that ensuring timely and correct application of EU legislation in the member states remains a considerable challenge. As part of the Better Regulation Agenda, the Commission has reinforced its preventive action to support member states (with guidance documents, workshops, *ex post* evaluation reports, etc.) in the implementation process of EU legislation. At the same time, the Commission intends to strengthen enforcement of EU law based on structured and systematic transposition and conformity checks of national legislation. However, member states should also step up their efforts to comply, for the benefit of the public and businesses alike.

In line with the focus on priority files (being ‘big on big things, small on small things’), the Juncker Commission’s enforcement policy has evolved. This has earned it plaudits, in view of its more timely and effective enforcement (in particular in cases of alleged unfair competition and tax avoidance), but also critics, for the political choices made in enforcing rules on certain member states (e.g. the recent non-enforcement of rules under the Stability and Growth Pact vis-à-vis Spain and Portugal). The Commission will take stock of this

⁸¹ Report from the Commission, “Monitoring the application of European Union law 2015 Annual Report”, COM(2016) 463, 15 July 2016 (http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_33/com_2016_463_en.pdf).

development in a new Communication on the application of EU law, which to take a more strategic approach to enforcement across all policy areas.

The Task Force holds the view that the Commission should be consistent in its enforcement policy. Applying EU law is essential to deliver the benefits of EU policies to business and the general public. The proper application of the law ensures that individuals and companies can enjoy their rights and obtain rapid and effective redress if these are violated. If laws are not properly implemented or correctly applied, especially by member states, then the foundations of the EU are weakened. The Commission can go as far as signalling systemic complaints against a member state by bundling together several violations and applying the infringements procedure of Articles 258 and 260 TFEU. By bundling cases, the Commission can expose patterns of non-compliance by member states and provide the Court of Justice with the evidence it needs to enforce EU law, especially the most basic principles of this body of law.⁸²

Upholding the rule of law and fundamental rights

Only European states that respect the values referred to in Article 2 TEU and are committed to promoting them may apply to become a member of the EU (Article 49 TEU). The ineffectiveness of methods to ensure compliance with these core values after accession has been exposed, resulting in the ‘Copenhagen dilemma’, named after the city where these values were included in the list of criteria for EU membership.⁸³

One option to deal with this dilemma – often floated and supported by the majority of Task Force members – is to revise the supervisory and enforcement mechanism of Article 7 TEU. Paragraph 3 of the article allows for the suspension of any treaty rights of member states that breach EU values, up

⁸² See K. Lane Scheppele, “Enforcing the Basic Principles of EU Law through Systemic Infringement Procedures”, August 2013 (www.law.yale.edu/system/files/enforcing_the_basic_principles_of_eu_law.pdf).

⁸³ See P. Bárd, S. Carrera, E. Guild and D. Kochenov, “An EU mechanism on Democracy, the Rule of Law and Fundamental Rights”, CEPS Paper in Liberty and Security in Europe No. 91, Brussels, April 2016.

to and including the suspension of voting rights in the Council. This provision – often unhappily referred to as the ‘nuclear option’ – has never been applied, despite persistent and systemic violations of the rule of law in some member states. The decision whether or not the suspension mechanism is triggered rests with the EU institutions, most significantly with the Council and is thereby highly political.⁸⁴ Hence the need to amend and complement the procedure.⁸⁵ The sanctions mechanism is unusable due to very high procedural thresholds (4/5 majority to unanimity in the Council and a 2/3 majority in the EP), as well as governments’ general reluctance to take action against each other, which is driven by the fear of having to face an assessment of their own compliance with EU values. To address this issue, the threshold should be lowered, particularly for the Council. In the context of accession negotiations, the Council decides to suspend such negotiations by qualified majority vote, based on an initiative of the Commission, in the case of a serious and persistent breach of EU values. Furthermore, the authority to launch the infringement procedure should be transferred from the Council to the Commission and the Parliament. Treaty change would be required for this, however.⁸⁶ But without treaty change, the European Commission should be bold and proceed with a test case – by alleging a breach of Article 2 TEU or the Charter of Fundamental Rights by a member state. In applying the infringements procedure of Articles 258 and 260 TFEU, the Commission could also opt to bundle a string of cases to

⁸⁴ The EP and particularly the Commission, as guardian of the treaties, could and should act stronger towards the Council and encourage it to make use of the mechanism, but such action may not override existing political realities among member states —or convince the likes of Mr. Kaczynski and Mr. Orbán to re-establish the elements of the rule of law which they have dismantled in their countries.

⁸⁵ See, e.g., the resolution adopted by the European Parliament, “EU Pact on Democracy, the Rule of Law and Fundamental Rights” ([www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA\(2016\)579328](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2016)579328)).

⁸⁶ Critics have noted that instead of adding new instruments, the EU institutions and particularly the Commission should exploit the full potential of the existing instruments provided in Article 7 TEU. Paragraphs 1 and 2 of Article 7 foresee preventive steps which allow the institutions to monitor member states in case of risk of violation of EU values. See C. Hillion, “Overseeing the Rule of Law in the European Union: Legal mandate and means”, *SIEPS European Policy Analysis*, January 2016.

expose trends in the non-compliance by member states of the basic values on which the EU is built. Slightly more radically, the entire procedure of Article 7 could be refitted in a more legal way. Currently, Article 7 gives the Court a limited role, as it may only review compliance with procedural rules but not the merits of Article 7 decisions.⁸⁷ Empowering the Court to review the substance of legal acts would reduce the risk of discretionary and opportunistic decisions and break the habit of member states of refusing to act against each other.⁸⁸

Finally, another way of ensuring compliance with the fundamental rights and freedoms enshrined in Article 2 TEU is external to the EU legal order: member states are under the scrutiny of the European Court of Human Rights based in Strasbourg. Moreover, Article 6(2) TEU obliges the EU to accede to the European Convention of Human Rights (ECHR). In spite of laborious and transparent negotiations, the Court of Justice held in its Opinion 2/13 that the draft Accession Agreement is incompatible with the EU treaties because it undermines the autonomy of the EU legal order.⁸⁹ Whatever one may think about the Court's reasoning, it has in effect closed the door to the EU's accession to the ECHR unless, among others, the member states grant it full jurisdiction over the treaties, and in particular the Common Foreign and Security Policy.

⁸⁷ Article 269 TFEU.

⁸⁸ Critics, however, argue that legal criteria alone cannot determine whether there is a breach of values. See European Parliament, "Understanding the EU Rule of Law mechanisms", EPRS Briefing, January 2016.

⁸⁹ See A. Łazowski and R.A. Wessel, "The European Court of Justice Blocks the EU's Accession to the ECHR", CEPS Commentary, Brussels, 8 January 2015.

Recommendations

National parliaments

1. Institutionalise the 'green card' procedure, as a mean of constructively involving national parliaments in EU law-making; reject the proposed 'red card' procedure.
2. Strengthen the national parliaments' role to hold their national governments accountable by streamlining and improving national scrutiny measures on EU affairs.

European Parliament

3. Design a uniform EU-wide electoral procedure and introduce a transnational list to achieve electoral equality among citizens of the Union and truly European and more democratic EP elections.
4. Introduce the right of initiative for the European Parliament to strengthen the EP's ability to shape policy constructively.

Compliance with EU commitments

5. The Commission has to fulfil its mandate as the guardian of the treaties and ensure that legal commitments made by the member states are enforced. In this, the Commission should be consistent in its enforcement policy.
6. Uphold respect for the rule of law and fundamental rights by revising the supervisory and enforcement mechanism of Article 7 TEU: lower the threshold and transfer the authority to launch the infringement procedure from the Council to the Commission and the Parliament.

RECOMMENDATIONS AT A GLANCE

The UK's decision to leave the European Union has not altered the necessity for member states to respond to the crises confronting the EU. On the contrary, it has strengthened their resolve to reform the Union. The EU27 will set out their vision for the future of the Union in a declaration marking the 60th anniversary of the Treaties of Rome. The greatest challenge facing the EU will be to flesh out the political rhetoric in forward-looking and workable terms. This is where the CEPS Task Force's following recommendations can offer a concrete contribution.

Members of this Task Force on EU Reform are convinced that no effort should be spared to introduce improvements *à droit constant*, i.e. within the context provided by the current treaties. While treaty change remains a moot issue in this divisive electoral year, it is the only way to override the constraints of primary EU law. Brexit will force an amendment to the constituent treaties in any case. Treaty change should therefore not be a taboo subject. In the medium to longer term it is the natural way to equip the European community of law for its renewed purpose.

I. Border Management

1. Create a truly common European Border and Asylum System.
2. Establish shared legal responsibility between the European Border and Coast Guard Agency and member states' authorities.
3. Apply the 'corrective solidarity mechanism' to all asylum seekers.
4. Develop a wider range of legal pathways for refugees and economic migrants.
5. Amend the Schengen Borders Code (SBC) to facilitate more solidarity between member states.
6. Strengthen institutions' vigilance to evaluate and enforce compliance with the implementation of the SBC.

II. Socio-Economic and Monetary Integration

7. Enhance compliance: enable complementing enforcement.
8. Complete the Banking Union with an EU-wide deposit insurance scheme.
9. Create the post of a euro area ‘finance minister’ and euro area fiscal capacity.
10. Multiply and channel investment through the extension of the ‘Juncker plan’.
11. Support the Commission’s ‘European Pillar of Social Rights’ to promote better compliance and an EU social *acquis*.
12. Recalibrate EU trade policy by creating more democratic involvement.

III. A Citizens’ Union

13. Institutionalise the ‘green card’ procedure, reject the ‘red card’ procedure.
14. Improve and streamline national parliaments’ scrutiny measures.
15. Harmonise EP elections and introduce a transnational list.
16. Introduce the right of legislative initiative for the European Parliament.
17. Exploit the Commission’s mandate as the guardian of the treaties.
18. Make triggering of Article 7 TEU easier by lowering the threshold and transferring authority to the Commission and the Parliament.

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PRINCIPLES AND GUIDELINES FOR CEPS TASK FORCES

CEPS Task Forces are processes of structured dialogue among EU and national policymakers, experts from academia and think tanks, and/or representatives from industry, consumer organisations and NGOs, who are brought together over several meetings.

Task Force reports are the final output of the research carried out independently by CEPS in the context of the Task Force. The reports are meant to contribute to policy debates by presenting a balanced set of arguments, based on the members' views, available data and literature. Reports seek to provide readers with a constructive basis for discussion. Conversely, they do not seek to advance a single position or misrepresent the complexity of any subject matter. Task Force reports also fulfil an educational purpose, and are therefore drafted in a manner that is easy to understand.

Member contributions take the form of participation in informal debate or a written submission. Input from members is encouraged and made available to all members. Members provide inputs in their personal capacities; their views do not bind the institutions that employ them. Members are given ample opportunity to review the Task Force report before it is published, as detailed below.

Task Force reports feature a set of policy recommendations. These recommendations are meant to reflect members' views. For a recommendation to be featured in the report, there needs to be 'broad agreement' among Task Force members, not consensus or unanimity as to every aspect of a given recommendation. Where consensus coexists with a significant minority view, the report features this minority view next to the relevant recommendation. Where there is no consensus but several contradictory views, the report features all these views and either refrains from making any recommendation or simply advises policymakers to clarify the given subject matter. In all cases, the report seeks to identify the points where there is some form of agreement, for instance a common understanding of facts or opinions. Both policy recommendations and overarching conclusions are summarised at the beginning of the report in the form of an 'executive summary'.

This incisive report comes at a time of almost unprecedented self-examination for the European Union. Faced with growing nationalism, economic, security and fundamental political challenges – not least to the very membership of the Union, the relevance of the EU has become a matter of intense debate.

This clear-sighted and accessible report is the result of discussions in a CEPS task force chaired by Danuta Hübner, MEP, comprising experts from across Europe and a number of different policy fields. Members of the European Parliament, former members of the College of Commissioners, the European Council and Council of Ministers, and leading scholars of EU politics and law came together to share insights into the issues that will decide the future of the EU.

The report offers recommendations for how the Union can show added value to European citizens in the areas of freedom security and justice, socio-economics and monetary policy – recommendations that will help reform the workings of the Union and ensure that it is worthy of the continuing confidence of its members.



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