Towards a Genuine European Executive Power: from Governance to Government

**Abstract:**

With the crisis the debate over the “governance” of the European Union has resurfaced in various shapes and form: in particular the crisis has brought the deficit of European political and executive leadership to light, likewise the need to reform European “governance” so that “true European economic government” can be built. In this context this paper attempts to analyse the imbalances that typify European governance as it stands and to define the conditions that might foster the emergence of a capacity for action and decision making on a European level that is both effective and legitimate – in short true European executive power, the keystone to the transition from governance over to government.

**A COMPLEX AND FRAGMENTED EUROPEAN EXECUTIVE POWER WHICH IS INEFFECTUAL IN THE FACE OF EXCEPTIONAL CIRCUMSTANCES**

With the crisis the debate over the “governance” of the European Union has resurfaced in various shape and form: in particular the crisis has revealed a lack of European “political leadership” and an “executive deficit”, as well as a need to reform European governance so that true European “economic government” can be created [4], in terms of the eurozone at least.

Prior – even rapid – clarification of these different terms is vital if we aim to engage debate on a clear basis. The vague and imprecise term “governance” was first developed nationally and internationally in the 1980’s, notably within the business context. It was applied to the European Union to take on board the complicated articulation of the various levels of government in a polycentric decision-making system in which coordination and regulation methods prevailed to the detriment of clear concepts of political authority and government [5]. The term “government”, in spite of its apparent simplicity, can mean several things: on the one hand, it means the holder – either individual or collegial – of the executive function;
Towards a Genuine European Executive Power: from Governance to Government

on the other hand it refers more widely to "the means of government", in other words, to the type of political regime (politeia to the Ancient Greeks), i.e. to the way different powers are exercised: "in this sense it means a decision making process based on arbitrage, understood as a discretionary decision that is made either by the majority vote within a collegial body – "government by the cabinet" – or by the leadership exercised by the "head of government", who accumulates (or not) his post with that of Head of State." [6]

It should first be stressed that "European executive power" already exists. But an attempt to describe it requires much more complex analyses than those applied on a national level where its exercise is almost totally the responsibility of the governments whose power can easily be distinguished from the legislative power of the Parliament and from the judicial power of the "judges" in a wide sense of the term. This complexity, which is both technical and legal, results from the high fragmentation of the organisations, be they community or intergovernmental, which compete for the exercise of the European Union's executive power. It is also due to the disparity in types of execution since executive power – which might be defined as "the power to make something effective or to implement" includes some quite different realities, ranging from the production of standards (which refers mainly to the adoption of decisions that aim to provide a precise definition to the content of EU directives and regulations) to administrative and budgetary management, notwithstanding, the adoption of international positions [7].

Furthermore a more modern definition of executive power also includes "the ability to manage and provide impetus". In theory in "normal" circumstances, matters might seem quite clear; however in reality the mode of European governance is already extremely complex [8]. We should recall the idea behind the Lisbon Treaty: • the President of the Commission, with the support of the European Parliament, should exercise political leadership over the Union’s internal policies with a monopoly of initiative; • the European Council has a role to provide political impetus and is there to define the EU’s main strategic guidelines. Its President will facilitate consensus between the heads of State and government and will work in support of the coordination of national policies guided by community goals and the conclusion of major international venues [9].

But the crisis, which has been affecting the European Union, its Member States and its populations since 2008 raises the key question: who decides in exceptional circumstances in the European Union? What is the EU doing? What are its Member States doing? What is the respective role of the various levels of government in managing the crisis? And who is responsible for what, answering to whom in terms of initiatives and the decisions taken as well as their implementation? With hindsight the only community institution that has played a decisive role in the crisis has been the European Central Bank. Although the European Commission is extending its prerogatives at the moment thanks to the strengthening of the supervisory mechanisms of States’ economic policies, it has temporarily lost a great share of its authority because a community instrument that allows for the implementation of a Europe-wide contra-cyclical budgetary policy, is lacking [10]. This weakness has made it dependent on the goodwill of the European Council, the only institution that is competent to create ad hoc instruments (EFSF, ESM, and increase in the EIB's capital). This has gone together with a lack of legitimacy in the face of accusations launched at the Commission because of its focus on deregulation prior to the crisis. Although the European Parliament has legislated over the last few months on the programme that aims to reform budgetary and financial supervision ("six pack", "two pack"), as a “deliberative” institution it has not, by definition, been in a "position" nor has it kept pace in order to manage the crisis. Amongst the European institutions only the ECB – which is a federal institution but not a "political" one, since its legitimacy is based on its independence – has been able to respond rapidly and manage the crisis in exceptional circumstances. It is also remarkable that the crisis has strengthened the role of the ECB, which is the only European institution that has an immediately available contra-cyclical instrument. Its role as lender of last resort alone was sufficient to reassure the markets in spite of the limits set on its remit.

Beyond that it was the States within the European Council which exercised real political leadership and drafted European responses to the crisis. However, many observers, and some of the best informed accused the Union, early
on in the crisis “of having moved too slowly without the response and decisiveness that were necessary to calm the markets and prevent deterioration in the situation and the contamination of other economies.” [11] The procrastination and hesitation on the part of some Member States, notably Germany, regarding the aid mechanisms to Greece have indeed further weakened the Union’s response to the debt crisis. More recently we have notably seen that the solution which the EU finally found in response to the Cypriot crisis in March 2013 (protection of savings guaranteed, bail-in by the banks’ securities holders and major depositors) came after a great deal of prevarication which was similar to that about Greece at the beginning of 2010.

From this point of view the crisis illustrates that the extremely complex nature which typifies the European political system has a price not only in terms of efficacy but also of legitimacy. The complexity of the European machine, as well as the heterogeneity of national interests and preferences makes decision making and the implementation of joint projects difficult. To date the EU has proven that it can draft rules and is typified by a difficulty in making discretionary choices for various reasons: mistrust about European discretionary policies due to moral hazard [12] or the transfer of political sovereignty, which might go with them, a lack of any true European executive power; the polyarchic nature of the community institutions and its corollary, a lack of clear leadership; competition between the institutions and the States; and also a reciprocal desire for control on the part of the Member States. In particular, the slow negotiation process between Member States seems to affect the efficacy and legitimacy of the decision making process in the work to define strategies to settle the crisis.

**IMBALANCED GOVERNANCE IN EXCEPTIONAL CIRCUMSTANCES: NATIONAL DIPLOMACIES VS EUROPEAN DEMOCRACY**

The pre-eminence of national governments in terms of decision making has had ambivalent effects on European governance during crises [13]. Of course in exceptional circumstances crises can affect Europe positively, to the point of lending credence to the idea that “European integration often moves forward thanks to crisis” [14]. The potentially positive aspect of crises is linked to the fact that they lead to exceptional political action at the highest level within the Member States, in other words on the part of political leaders who have the ultimate legitimacy to take strategic decisions and to make compromises on particularly complex and sometimes exceptionally major financial issues. It is also because emergencies call for decisions that would be more difficult to take at a normal pace and according to usual procedures.

However the pervasiveness of diplomatic logic can lead to negative consequences that are all the more damaging in times of crisis: difficulty for the Union to speak with one voice and to act quickly and effectively; the neutralisation of the Member States which then leads to uncertainty on the markets whose effects are very dangerous in times of crisis.

There is an increasing gulf between the way the European institutions function at present and the demands of the crisis. Diplomatic negotiations time is too slow and the feeling has gradually emerged that Europe is always one step behind the crisis.

Furthermore this functioning method causes anxiety and destabilises: the outcome of the negotiations is always uncertain, the governments’ various positions seem regularly subject to national (and even regional) electoral agendas, the decisions taken by the governments can then be challenged on the national level especially in a context in which many governments have been politically weakened in their own country. The resulting uncertainty greatly increases investors’ perception of economic risk and reduces the credibility of European commitments.

In addition to this the present functioning method, which notably gives primacy to the Council over the European Parliament, creates a problem of legibility and legitimacy for the citizens of Europe: not one democratic debate takes place in which the decisions to be taken on a European level to settle the crisis are explicitly debated. National debates do not allow actors to commit firmly in that the decision will in fact be the result of negotiations between other heads of State and government. Hence there is no real debate over the issues of budgetary federalism and economic policy, notably austerity measures and structural reforms [15].

Lastly, and the recent crisis in Cyprus has revealed this point in a quite exemplary way, if a decision is the result of a unanimous negotiation – in which various opinions are expressed – it will only be taken at the last minute,
Towards a Genuine European Executive Power: from Governance to Government

just ahead of the established “deadline”; and as long as the latter is not credible it can be challenged, forcing everyone back to the negotiation table [16]. Hence the feeling of “Russian roulette” of the inability to decide and of time wasting. This has nothing to do with the constitutional system of democracy which drafts and provides the tools necessary to take decisions in a context of divergent political preference: voting by the majority together with constitutional rules that protect the minority. Again as illustrated so well by the Cypriot crisis, this notably raises the issue of the legitimacy and efficacy of the Eurogroup and of its decision making methods: in reality it is a European institution whose decisions can be suspended according to the will of a tiny minority and which can take a decision that none of its members then defend in a completely irresponsible political context [17].

From this point of view European governance is suffering an imbalance between national diplomats and European democracy [18]. Although the States still believe themselves to be sovereign and the arbiters of last resort in terms of decisions to be taken in a time of crisis [19], the weaknesses of European governance as revealed by the crisis lead us to an analysis of the terms of European political leadership. Although the Union is in fact a Union of States it is also a community of citizens and the creation of true European leadership necessarily includes the strengthening of the unity of the European political environment if we agree that popular will is the basis of the legitimacy of power within our democratic regimes. The EU is not an exception to this rule. However what do we see other than a lack of democratic competition in the appointment of the main European leaders? For the time being there is no political competition in the appointment of the President of the Commission; the election of the President of the European Parliament is undertaken on the basis of a bipartisan consensus; and last but not least, the appointment of the President of the European Council is not organised according to minimal democratic rules which we might have the right to expect in the appointment of the holder of such a position: putting oneself forward as a candidate, competition between several candidates, public, transparent debate. True European political leadership supposes stronger popular legitimacy, the base on which it must rest. The issue at stake lies in transferring – even partially – the source of the Europe States’ legitimacy over to the citizens. This additional democratic legitimacy, as matters stand today, would help to enhance European political leaders’ ability to act and take decisions in the face of national political leaders and ultimately create true European executive power if certain conditions were fulfilled.

WHAT CONDITIONS ARE REQUIRED TO MAKE A EUROPEAN EXECUTIVE POWER POSSIBLE?

First of all the software used in designing decisions has to be changed and, the balance between “the rule” – which results after a long, complex process – and the “choice” [20]- which has to be easily identifiable on the part of the citizen: although the management of some common policies naturally calls for the use of regulation (the fight to counter anti-competitive practices for example), the nature of the problems faced by the Union is such that a great number of issues that need to be addressed urgently, are more about “government” method rather than simple “governance” [21], for example in terms of the budget where “discretionary” power is vital. Furthermore European political leadership has to be clarified in terms of the rivalry between institutions and the Member States within post-Lisbon polyarchic governance, a prior condition for effective, legitimate decision making. Indeed regarding the exercise of executive power, divergence can be damaging, from a general point of view, but this can be worse in exceptional circumstances. Whilst dissension can foster a balanced choice within a legislative body, since it encourages the debate of arguments and positions, it can be detrimental to the exercise of executive power [22] notably when decisions have to be taken in times of crisis. From this point of view a fragmented or plural executive power is not optimal [23] and in the case of the European Union, the European Council sometimes considered as a “collective executive power” cannot, in reality, undertake the executive function effectively.

Furthermore a democratic system supposes the ability to answer the question “who is doing what?” a condition of the political responsibility of those who govern. But the fragmentation of power on a European level (expressed in “troika”, “task force”, “group of 4” - to define the Presidents of the European Council, the European Commission, the Eurogroup and the European Central Bank – are striking formulations ...) can only lead to a dilution of poli-
Towards a Genuine European Executive Power: from Governance to Government

Institutional issues

tical responsibility that must now be clarified. Again it is striking to recall the terms used by the Founding Fathers of the American Federation to describe this danger. Indeed they insisted that not only could a plural executive not act or decide effectively, but it also impeded the efficacy of responsibility mechanisms: “one of the most powerful objections to plurality in the Executive (...) is its tendency to mask errors and destroy responsibility.”[24]

From this point of view, solving the European “executive deficit” entails creating clearer, more legitimate, more responsible leadership. To do this the presidency of the Commission would have to be merged with that of the Presidency of the Council in order to strengthen the European Union’s political legitimacy and democratic legitimacy – this would also help Europe to speak with one voice only. The Lisbon Treaty allows for this innovation: it was to enable this possibility that the ban on holding more than one national mandate was maintained, whilst the ban on holding another European mandate was withdrawn. The European Council would simply have to appoint the same person to two posts. This would strengthen the political legitimacy of the title holder of this presidency who would enjoy community and intergovernmental legitimacy and be politically responsible to the European Parliament. Hence the President of the Commission would head the European Council. This single president might be elected by direct universal suffrage, as put forward by the CDU during its Leipzig Congress in November 2011. This would provide the President of Europe with direct democratic legitimacy and also a clear political mandate. Alternatively, and this option seems to be more realistic, he might be appointed by the European Parliament – as planned for in the Lisbon Treaty – based on the result of the next European elections, since he would be the lead candidate. This would be election by indirect universal suffrage according to the model in application in most EU Member States (parliamentary democracy model). In expectation of this reform, the European Council should commit to appointing the candidate to be put forward by the party or the majority coalition in the European Parliament to the post of President of the Commission and possibly of the European Council.

In addition to the possibility (using the existing treaties) of merging the presidency of the Commission with that of the European Council so that the political legitimacy and the democratic legitimacy of the European Union are strengthened it is vital to place the Eurogroup under the supervision of the European Parliament by creating a Vice-President of the Commission and the Council responsible for the euro and economic affairs; this would lead to the creation of the post of European Finance Minister as suggested by Jean-Claude Trichet [25] and Wolfgang Schäuble. This person would jointly ensure the role of Economic and Monetary Affairs Commissioner and of President of the Eurogroup – who would then answer to the European Parliament. He would hold the position of Vice-President of the Commission and of the Council. He would use the Eurogroup to prepare and follow-up eurozone meetings and the Economic and Financial Committee in view of meetings involving all EU Member States. Reporting to him would be a General Secretariat of the Treasury of the eurozone whose range of tasks would depend on the goals of the budgetary union now being created, (notably via insurance mechanisms and existing budgetary instruments).

Jean Pisani-Ferry has pointed to the danger linked to this merger, asking “is it possible to have a Commissioner who would demand sanctions against a State and who would then chair the Council during which this proposal would be validated or rejected?” [26] In reality a similar situation exists in terms of Competition: the European Commission investigates and decides, under the supervision of the EU’s Court of Justice. However Jean Pisani-Ferry puts another solution forward, which might also be possible: the creation of an independent budgetary committee which would lead to the “outsourcing of the monitoring of excessive deficits, granting this role to an authority that is separate from the DG for Economic and Financial Affairs (ECFIN), (...)”, over which the Commission would have no authority. The introduction of an independent budgetary committee like this would free the commissioner of his role of prosecutor and then enable him also to take on the role of President of the Eurogroup.”

The Vice-President of the Commission and the Council responsible for the euro and economic affairs would be the euro’s political “face” and “voice”. He would be responsible for communicating the Eurogroup’s decisions (spokesperson) and for representing the eurozone externally within the international financial institutions. He would be responsible for explaining how the eurozone Member States’ budgetary or structural policies form a


23. Hamilton maintains that we should “not to be examinated of plurality in the Executive” and that “the ingredients which constitute energy in the Executive are, first, unity”, because it enables decision making in “the most critical situations” when a decision is “more than necessary” in The Federalist Papers, n°70, op. cit.


25. Cf. Speech by Jean-Claude Trichet, the then President of the European Central Bank, during the award of the Charlemagne Prize 2011 in Aachen on 2nd June 2011.

Towards a Genuine European Executive Power: from Governance to Government

Institutional issues

coherent mix with the ECB’s monetary policy. Finally, he would have to communicate regularly with the national parliaments and within the conference that will bring together (as part of the implementation of article 13 of the Budgetary Pact [27]) the representatives of the European Parliament and national parliaments’ economic committees.

The qualities of the Vice-President of the Commission and Council responsible for the euro and economic affairs might be laid out in a Protocol on the Eurogroup.

CONCLUSION

When Max Weber, tried to define the conditions for “a clear, detached decision making spirit” he said that this required “a small number of decision makers and an unequivocal responsibility vis-à-vis each other and also vis-à-vis the governed” [28]. If a government system is to function there must be political leadership, an ability to take decisions and democratic responsibility. If European citizens continue to think that political, economic and social problems can only be solved by their democracies as part of a complex system of governance involving the EU and its States then these will continue to grow weaker and enable the emergence of populism and extremes. In fine, it is a question of introducing a “mixed government” [29] thereby satisfying demands for democratic legitimacy and responsibility, a capacity to respond and to take political decisions in exceptional economic circumstances – even in times of crisis – and also in order to respond to the political requirement par excellence: defining a goal and making European public action make sense.

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27. Article 13 of the TSCG stipulates that “the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the national Parliaments and representatives of the relevant committees of the European Parliament in order to discuss budgetary policies and other issues covered by this Treaty.”


29. This theory is part of the tradition of the « mixed constitution » which can be found in texts from Polybe to Montesquieu and also the Italian Renaissance authors notably Machiavelli and Guicciardini; cf. Norberto Bobbio, « Governo misto », in N. Bobbio, N. Matteucci, G. Pasquine (eds.), Dizionario di politica, Milano, UTET, 1990. For the premises of the implementation of this concept in the EU see Mario Telo, « Pertinence et limites des théories fédéralistes : vers une constitution miste ? », in F. Esposito and N. Levrat (eds.), Europe : de l’intégration à la fédération, Geneva University, Academia Bruylant, 2010, p. 163-175.

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