Do we need new foundations? Institutional questions ahead of the new EU Commission

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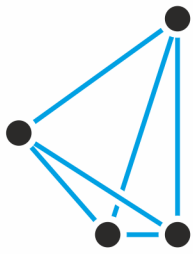
The European Parliamentary elections have not changed the status quo inside the EU. Mainstream parties[1] still control the decision-making but will the power struggle around the selection procedure for the top jobs lead to institutional reforms? What will be more decisive in shaping the future of Europe: the geographic, the political or the institutional divisions and will they strengthen or rather limit each other?

The war of nerves, as Roland Freudenstein[2] framed the post-election period, was shorter than expected and less bloody than many analysts predicted. Was it good will or the understanding that voters expecting a common sense from the mainstream parties that pacified the Greens and the members of the Renew Europe group? It is still not clear, but it is obvious that backdoor agreements silenced some of the troublemakers, such as the members of the Visegrad Group.

And while the short term issues might be resolved, the greater question still looms: can we deepen the EU integration and what would this mean institutionally?

The expected end of a non-existing institution

Starting the list of major institutional changes with the end of the Spitzenkandidat system is a contradiction as it was never institutionalized nor accepted by the European Council. The Spitzenkandidat system was a self-declared institution of the European Parliament and the European political groups. Indeed, it challenged the power and purview of the Council described in article 17 of the Treaty of the European Union (TEU) on proposing a candidate for the post of President of the European Commission.

President Macron indicated as early as Fall 2018, that he was not supporting the system and key political figures of his political movement called it as a „democratic anomaly". [3] Macron's clear stance had its own logic. The Spitzenkandidat system cements existing party structures and gives the power almost automatically to the European People's Party (EPP). Macron's ultimate goal was to challenge the system, including ALDE and its position[4], and redraw the existing party lines. His challenge of the Spitzenkandidat system was only one element in this struggle, that has included the initative of transnational party lists as well.
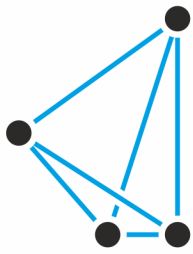
It was not only Macron who had serious concerns about the Spizenkandidats. Long before En Marche, members of the European Council including Donald Tusk tried to manage expectations when they announced in April 2018 that they would not be bound

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[1] I consider both Renew Europe and GREENS as mainstream parties as both are pro-European , federalist parties, mainly representin center-left and center-right voters, and both were participating in ad-hoc coaltions with the two biggest parties.
[2] Interview with Roland Freudenstein, May 7,2019, Martens Centre, Brussels
[3] Macron's party rejects Spitzenkandidat process, Politico, September 5, 2018, https://www.politico.eu/article/macrons-party-rejects-spitzenkandidat-process/
[4] European Parliament votes against transnational lists, Euractiv, February 7, 2018 https://www.euractiv.com/section/elections/news/ep-votes-against-transnational-lists/

by the process.[5] But how could expectations related the system survive until the elections? Keeping democratic legitimacy debates and the Spitzenkandidat system alive was seemingly a shared interest of all mainstream parties for better mobilization of the voters. However, in the next term, the debates will get a new dynamic, and this will be beneficial for President Macron to introduduce once again the question of pan-national party lists and the need of new political movements.

Do we need new Treaties?

As the immediate impact of the elections, the need for wider coalitions became obvious. Reaching consensus will require more debates and obviously more time. Growing tensions between the Parliament and the Commission, partially linked to the Spitzenkandidat debate, reintroduced discussions on the possible need of Treaty changes. The election of Ursula van der Leyen, with an extremely narrow margin, proved that some of the fears are well-grounded. Both sovereignist and federalist groups find logic and arguement behind possible changes.

Sovereignists call for simplification and less co-decision making together with a Commission with limited rights. However, as Roland Freudenstein phrased it through the example of the migration crises: the real question is whether the debates and opinions would be much different if instead of the current formats, a forum of the Schengen Home Affairs Ministers would discuss it? [6]

Same goes for the federalist solutions. A new Treaty, a possible growing isolation of the Central European countries will bring no solution, while some of the reforms, such as introducing Qualified Majority Voting (QMV) in a number of fields, are possible under the current legal framework as well.

This statement was questioned by Christopher Glück, President of the Young European Federalists[7], who stressed the importance of a Treaty change to step forward in issues such as taxation and defence. Federalists seemingly push for an EU 2.0, an open treaty that provides space for differentiated integration.

Regardless of whether it can or cannot be solved under the current legal framework, the treaty question will be a major issue in the upcoming months. Party lines are not clear. It was Sebastian Kurz first calling for generational change and a new treaty[8], but there are a number of leaders who would support his initatie. Kurz wants a treaty with stronger collective rules and tougher sanctions for member

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[5] EU leaders: We won't be bound by Spitzenkandidat process, Politico, February 23, 2018 https://www.politico.eu/article/jean-claude-juncker-spitzenkandidat-eu-leaders-we-wont-be-bound-by-spitzenkandidat-process/
[6] Interview with Roland Fruedenstein on May 7, 2019 in Brussels
[7] Interview with Christoper Glück on May 8, 2019 in Brussels.
[8] EU needs new treaty and 'generational change' in Brussels, says Kurz, May 4, 2019 https://www.politico.eu/article/sebastian-kurz-eu-reform-treaty-generational-change/
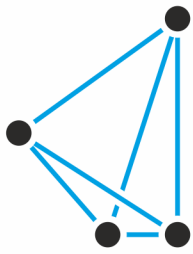
countries that step out of line. The foreseen amendments could possibly aggravate the existing tensions between the Central and Eastern European members and the Western Europeans.

Members of the Commission are not in favour of a new Treaty either. The Lisbon Treaty has been functioning well so far, and necessary changes were also possible through constitutional amendments, but this is not their cardinal fear. In the current, enlarged Europe, ratification of any treaty is a nightmare as it was often proved, lately at the voting on DCFTA for Ukraine (in the Netherlands). It is almost guaranteed that drafting and passing a new treaty would demand a considerable amount of resources with a limited chance of success. An expected failure would undermine the positions of the mainstream and further strengthen the eurosceptics.

Theory on the future directions of integration

The operation of the European Union can arguably be best described by the state cartel theory[9]. According to the theory, the development of the EU was based on the recognition that war and protectionism should not be used any more as tools against other states to assure the survival of the free western world. In this model, relationships between cooperation- seeking capitalist states should be analyzed and described based on their interests, and the difficult balance of dependency and rivalry. The starting point of this model was clearly the Franco-German relationship. The theory recognizes and analyses the different strengths of the stakeholders as well. Similar to business cartels, larger stakeholders can punch above their weight through persuasion or force, but they are also dependent on weaker players.

According to this model, the European Union is a complex web of symmetric and asymmetric relations. The really interesting aspect is that while the model recognizes the Council as an organic institution, according to the theory, the European Parliament is only a symbolic institution to keep democratic pretensions of political parties and the citizens. Stronger parliament would overwrite the cartel logic and it would threaten the positions of the stronger member states.

State cartels can create the market rules, set the prices and control the production. The EU does this on multiple fields such as telecommunication or agriculture. But if being member of the cartel is beneficial for everybody, why is the EU in crisis?

First of all, because that is the nature of cartels. Operation of cartels are the best examples of a prisoner's dilemma: as its members would like to maximize political profit, they are unstable. By breaking the agreement, members are able to make extra profit. However, if all members break the agreement, everybody will be in a worse situation. While Hungary or even the Visegrad Group members were the only ones breaking the

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[9] Holm A. Leonhardt: Kartelltheorie und Internationale Beziehungen. Theoriegeschichtliche Studien (Historische Europa-Studien 16). Olms, Hildesheim/Zürich/New York 2013,
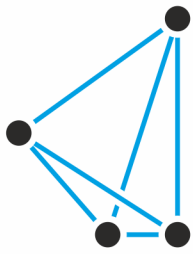
unity, it was an acceptable risk, but with Salvini in power in Italy, and populist parties getting stronger, the threats are increasing above an acceptable level.

Second, based on this method of operation, state cartels are in permanent crisis. With the constantly changing strength of its members, the complex web of asymmetric and symmetric dependencies is challenged as well. The system cannot reach an equilibrium of quiescence, but grievances are deepening into crises and ultimately only federalization processes can prevent state cartels from collapsing.
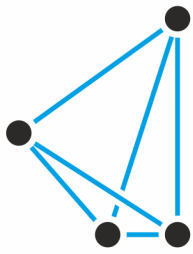
From the logic of the model, the Commission and the European Parliament could not give meaningful answers to institutional questions, as their operational capability lies in the hand of member states. These institutions have no instruments against internal challengers, as they were impotent in the Brexit and Hungarian quota referendum campaign, nor are they capable of responding to external threats, such as Russian propaganda, as long as member states are not willing to provide the tools for that.

There is only one way out from the spin of the crises according to the model: a step towards federalization, which historically pushed forward European integration.

The state cartel model recognizes the supremacy of the member states but does not recognize any point of return for the renationalization of the agenda in the federalization process. That means any major step back requires a new basis for cooperation, and a complete redistribution of power. Nothing similar ever took place in the history of the EU integration. The closes phenomena to this process is the Brexit, which is stuck exactly due to important renationalization issues such as border control or free trade. Brexit is an example of leaving the cartel and not changing its rules or operation.

Currently none of the stakeholders can come up with the necessary strength and secure the necessary support within the EU, to change the rules of the cartel. The model only recognizes the Eurozone countries as the rule makers, with Germany as a leading economic power. The actual operation of this rule is well measured in the EU Coalition explorer of the ECFR[10]

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[10] As page 23 on the primary contacts visually proves only Paris and Berlin has established permanent links with all key member states. As p 16 of the report proves only Warsaw managed to be among the 10 most influential member states from the countries joined EU after 1995.
EU Coalition Explorer, European Council for Foreign Relations https://www.ecfr.eu/page/ECFR269_EU_COALITION_EXPLORER_2018_V1.10.pdf.

Institutional reforms

If the EU really operates based on the state cartel theory, it has two very important implications. Most importantly, member states cannot delegate more power to the European Parliament, neither to the European Commission. Although prime minister Viktor Orbán exaggarated the issue, the competition between the Commission and Council was a problem also perceived by many analysts. As Eric Maurice points out[11], the Commision was not created to become a political authority, nevertheless it will remain political under a „fractured Commision"[12]. Analysts forecast that many of the decisions will take place outside the College, as Commisioners delegated by some of the member states will not be trusted. [13]Experts both mentioned Hungary and Poland, while the end of the coalition in Italy, reduced this risk as Lega can no longer nominate a Commissioner.

Secondly, integration has to continue, but in select spaces that can be fully controlled by the Council (no surprise that defence, homeland security and migration were the most discussed directions), possibly in the absence of most of the Central European countries.

If we consider both of these factors, we can understand better the positions represented by key stakeholders.

As Freudenstein suggests, the concept of 'more Europe' is dead, and so far the selection procedure of the top jobs proved that statement. He suggests that instead of „chronic federalization", the next 5 years will bring further integration and possible institutionalisation in select fields.

If we agree with Freudenstein that in the current European Parliament the majority of MPs is devoted to stop illegal mass immigration, it is not surprising that most analysts expect institutionalisation on the field of asylum and defence with a special emphasis on strengthening the protection of external borders. That includes stronger mandates delegated to the European Border and Coast Guard Agency (Frontex), the newly established Directorate-General for Defence and creation of a European Defence and Security Council.Another issue linked with migration is also knocking on the door of the European Union, and that is climate change. Although the recruiting process of the new EU leaders pushed out climate agenda from the European headlines, the EU Council failed to agree on 20th June on a net zero carbon target by 2050.[14] Still, interviewed analysts all mentioned climate agenda as one of those fields where member states could formulate potential sub-groups, if major reforms or institutionalisation failed.

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[11] Interview with Eric Maurice May 9, 2019, Brussels
[12] Interview with senior EU Commision officer, May 8, 2019, Brussels
[13] Both previous experts mentioned this in the interview.
[14] EU takes stock after climate deal disappointment, EurActiv, June 28, 2019 https://www.euractiv.com/section/climate-strategy-2050/news/eu-takes-stock-after-climate-deal-disappointment/
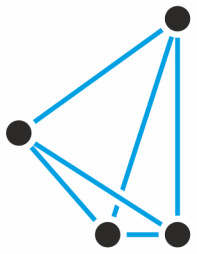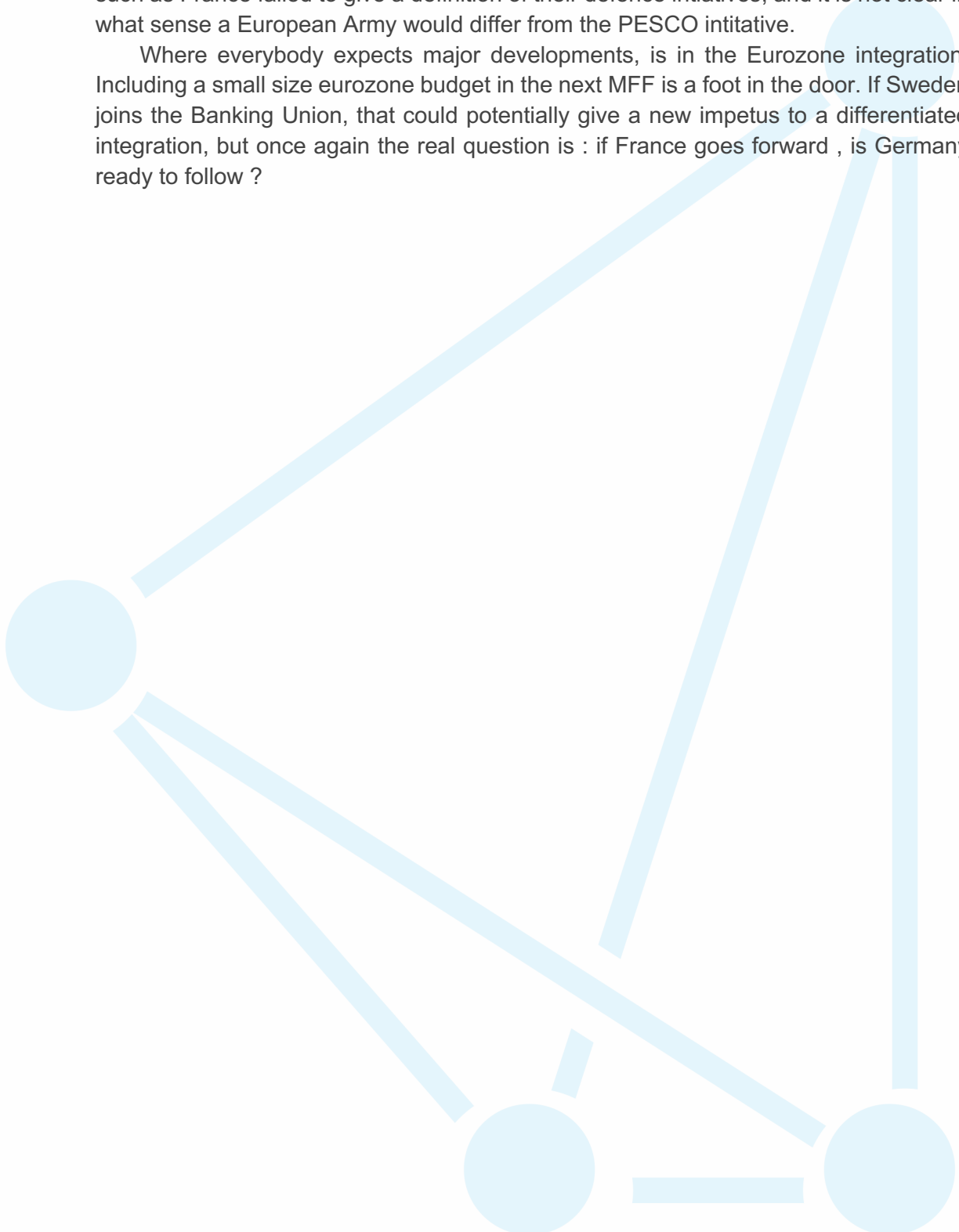
Defence integration is supported by most of the member states, yet leading nations such as France failed to give a definition of their defence intiatives, and it is not clear in what sense a European Army would differ from the PESCO intitative.

Where everybody expects major developments, is in the Eurozone integration. Including a small size eurozone budget in the next MFF is a foot in the door. If Sweden joins the Banking Union, that could potentially give a new impetus to a differentiated integration, but once again the real question is : if France goes forward , is Germany ready to follow ?