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The European Parliament's Involvement in the EU Response to the Corona Pandemic

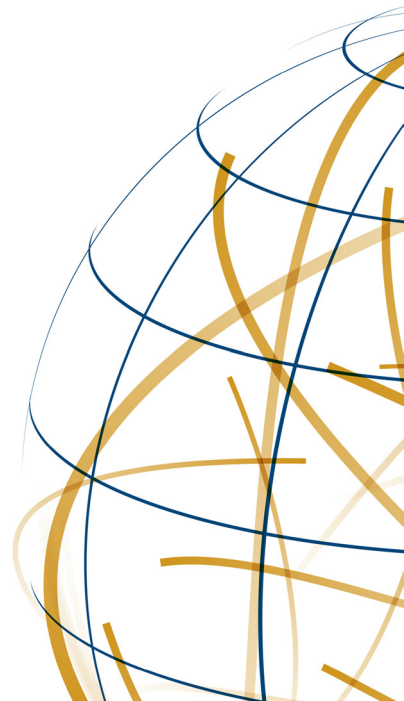
A Spectator in Times of Crisis

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Since the beginning of 2020, European Union (EU) institutions have adopted a number of measures in response to the corona pandemic to coordinate Member States' containment efforts and provide European resources for joint reconstruction. The EU recovery fund will set the course that will shape European integration. Nevertheless, despite its budgetary rights, the European Parliament (EP) has remained an onlooker for most of these decisions, as it did during the euro and refugee crises. In order to strengthen democratic legitimacy and the European perspective, the EP should be more closely involved in the EU recovery fund in the short term, and in the long term be given a co-decision role in the EU's crisis policy instruments.

The position of the EP in the European "crisis decade" – from the euro crisis starting in 2010 to the refugee crisis, to Brexit and the rise of EU-sceptic parties – is marked by strong contradictions. On the one hand, the EP has been significantly strengthened by the Lisbon Treaty, which entered into force at the end of 2009. The co-decision procedure, in which the EP is on an equal footing with the Council, has become the ordinary legislative procedure and is applied to many other policy areas. The EP's budgetary powers have also been strengthened, including a formal right of veto over the EU's Multiannual Financial Framework (MFF). Although exceptions remain, the EP is generally on an equal footing with the Council and acts with this self-conception.

This strengthened role in law-making has also had an impact in practice. In 2008, for example, the EP only had a say in 39.7 per cent of the EU directives and regulations passed, whereas in 2019 it was fully involved in 78.8 per cent (own data collection). Although there are still (rare) exceptions where the EP is only consulted or where the Council can decide on EU legislation on its own, full co-decision by the EP is now considered the norm. The EP has thus played a leading role in shaping major EU regulatory initiatives, such as the General Data Protection Regulation.



Little Involvement in Crisis Policy-Making

This increased level of co-decision in EU legislation is, however, counterbalanced by the fact that intergovernmental procedures dominate at times of crisis in the EU. Whenever quick responses to a crisis were necessary, the EP was largely limited to a spectator role. Whether the euro crisis or the refugee crisis, the main decisions were usually taken by the national heads of state and government in the European Council.

During the euro crisis, for example, the key decisions about the programmes for Greece, Ireland, Portugal, and Cyprus were taken in the Eurogroup and the European Council without the involvement of the EP. Thus, the first programme for Greece in the form of the European Financial Stabilisation Mechanism (EFSM) was based on Art. 122 (2) TFEU, according to which the Council alone decides; the EP is only informed. The subsequent modifications of the Eurozone rescue instruments in the form of the European Financial Stability Facility (EFSF) and the permanent European Stability Mechanism (ESM) were outside the institutional framework of the EU. In addition, because the contributions were based purely on national budgets, the EP was not involved in the establishment of, or the individual decisions on, the programmes of the EFSF and the ESM, respectively. The EP has repeatedly called for more transparency and democratic control of the Troika in the pan-European interest. A notable exception with clear EP input was the reform of the Stability and Growth Pact in 2010/11. Parts of the “six pack” legislation could only be adopted by co-decision, which the EP used to get a full say on the whole package.

The refugee crisis revealed a similar pattern. Although EU asylum and migration policy was put under co-decision by the Treaty of Lisbon, the central political negotiations on how to deal with the refugees took place in the European Council. The EP also had no influence on the controversial decision about refugee relocation – its legal basis was Art. 78 (3) TFEU,

where the EP is only consulted. The central foreign policy component – the “EU Turkey Statement” on migration – was a political agreement between the heads of state and government of the EU and Turkey, in which the EP was not involved in any way. The EP’s demands for compliance with human rights at the EU’s external borders have failed to resonate. However, the EP was involved in the legislation on strengthening Frontex.

Of all the EU crises in the last decade, the EP was most involved in the case of Brexit. Formally, the controversial withdrawal agreement between the United Kingdom (UK) and the EU required the Parliament’s approval; the agreement on future relations, especially in the trade sector, also needs to be approved by the EP. But whereas the British House of Commons became the site of great political drama – mainly because of the razor thin majority of the UK government, which was constantly in danger on Brexit due to disagreements on the right course for Brexit within the Conservative Party – the EP played a supporting role. In close coordination with the European Commission, the Parliament has backed EU negotiator Michel Barnier in a series of resolutions. Acting as a kind of “bad cop”, it has threatened not to accept the agreement if key EU demands – such as securing the rights of EU citizens, the UK’s budgetary commitments, and the open border with EU member Ireland – are not secured. However, the EP was again not involved in the most politically significant decisions, such as the definition of the EU mandate and the decisions on extensions of Article 50 negotiations.

So even more than at the national level, it remains to be said that in moments of crisis, also in the EU the executive is in charge – both the Commission and the national governments. Partly because treaty changes have become taboo, the many instruments created during crises largely make use of flexibility clauses in EU treaties that do not provide for the involvement of the EP – or are set up entirely outside the EU framework. At the same time, the European Council, where crises are made

Chefsache (a matter for the bosses), is becoming even more prominent.

The EP's Ability to Act during the Pandemic

Like at the national level, the work of the Parliament has been severely constrained by the corona pandemic. The EP was one of the first parliaments to react by cancelling its Strasbourg plenary sessions in March 2020. Ever since then, parliamentary work in Brussels has also been limited. In general, the EP is considered a “working parliament” whose functioning is based on a large number of plenary, committee, and political group meetings, all of which cannot take place in a customary manner during the pandemic. There is also the trans-European component – Members of Parliament (MEPs) and their teams usually travel continuously between Brussels, Strasbourg, and their constituencies. It is precisely this travel and exchange of activity that has been, and still is, hardly possible due to different national restrictions.

These logistical challenges were met relatively quickly by the Parliament. For example, the EP first suspended its monthly move to Strasbourg and declared a state of emergency. In consequence, both plenary sessions and committee meetings were held via videoconferencing, and remote voting was made possible for all MEPs. Currently, the EP is negotiating a long-term adaptation of its Rules of Procedure. Despite isolated technical difficulties, all MEPs were thus able to take part in parliamentary work, even if they were severely restricted in their home countries due to lockdown measures. Whereas in March 2020 all committee meetings had to be cancelled, between April and July 2020, there were 140 committee meetings held via video with simultaneous interpretation; however, the planned plenary session in Strasbourg in September had to be relocated back to Brussels at short notice.

In addition, during the pandemic-related restrictions, the EP has mainly worked under the “urgent procedure” in accordance

with Art. 163 of the EP Rules of Procedure. Legislative texts are thus passed through the usual stations as quickly as possible. Normally, informality through meetings in the restaurant for MEPs or discussions in the corridor is one of the most important decision-making instruments for MEPs. However, the pandemic has forced the formalisation of decision-making. Although the EP was able to maintain its capacity to act despite massive logistical constraints, political work has become more difficult.

Legislation on the Fast Track

As a result, the legislative activity of the EP was noticeably constrained. Most EU legislation is now adopted at first reading, following a common position that is agreed by the Parliament, the Council, and the Commission in the so-called trilogues. This procedure increases the efficiency of EU legislation, but it is also criticised due to its lack of transparency. Nevertheless, the proportion of EU legislation adopted at first reading following agreement in a dialogue has risen steadily in recent legislative periods. In 2019, all 203 co-decision procedures were completed at first reading for the first time.

At the same time, the pandemic poses additional challenges for the dialogue procedure. This is because trilogues are composed of a relatively large number of participants from three different institutions. But even though the European Parliament, the Council, and the Commission each promptly established internal communication channels to hold at least a limited number of meetings securely via videoconference, the technical infrastructure and/or political agreement on a common video format was lacking. Therefore, no dialogue negotiations took place between February 2020 and the following parliamentary summer recess. As a result, in the first half of 2020, the EP took a total of 18 decisions in co-decision dossiers, down from 197 in the first half of 2019 (although traditionally a relatively large number of legislative initiatives are con-

cluded before the European elections). Moreover, due to the lack of its own right of initiative, the EP can only take legislative action if the Commission uses its right of proposal.

The few legislative decisions taken by the EP in the first half of 2020 in the wake of the corona pandemic can largely be characterised as “confirmatory decisions”, in which the EP gives its stamp of approval to legislation driven by the Commission and, in some cases, national governments in the Council. These included measures to mobilise investment in Member States’ health systems, the reinforcement of the EU’s civil protection mechanism, and exemptions to support the agriculture and fisheries sectors.

On the one hand, these decisions show that the EP is quite capable of using urgent procedures in legislation. In April 2020, the procedure for amending the EU budget to free up financial resources for civil protection and severely affected Member States took less than three weeks from the Commission proposal to approval by the Parliament and the Council; the parliamentary process itself took only three days. Nineteen legislative procedures were completed by the EP within 23.3 days on average between March and July 2020, with an average MEP approval rate of 90.8 per cent (own calculation). Despite the higher level of fragmentation following the 2019 European elections, the EP acted quickly and consistently.

Scrutinising the Commission

Parliamentary work not only takes place through legislative and budgetary decisions, but also by scrutinising the executive, in particular if it has to act fast during times of crisis. Here too, the distinct lines of legitimacy in the political system of the EU have an impact: As long as the central political decisions at the European level are taken in the European Council, parliamentary control must be exercised to a large extent through the national parliaments. Although the President of the European

Council reports to the EP plenary after each summit, he is not accountable to the EP.

The Commission, on the other hand, is directly accountable to the EP. Here, following the resumption of committee meetings by video, the Parliament has also fully resumed its hearing activities. According to the EP’s research service, between March and July 2020, the EP held a total of 113 hearings in its committees on the management of the coronavirus pandemic in the EU, 75 of which involved representatives from the Commission. Hearings on the management of the pandemic also included representatives of several EU agencies (such as Europol, the European Medicines Agency, the European Centre for Disease Prevention and Control, among other), as well as European Central Bank (ECB) President Christine Lagarde, the then Eurogroup President Mário Centeno, or, per custom, the head of government of the country assuming the rotating Council Presidency, which in July 2020 was German Chancellor Angela Merkel. In almost all committees, MEPs questioned the Commission about how the EU was dealing with the challenges of the pandemic. The successor to Phil Hogan, who resigned at the end of August 2020, will also have to face a hearing in the EP before being appointed.

During the corona pandemic, MEPs also made unusually strong use of parliamentary questions to the European Commission. Since the beginning of the year until September 2020, they have asked a total of 535 questions relating to “Covid-19”. This is more than all questions from the EP on Brexit in the last five years, and about half as many as on migration since 2014 (own data collection). At the same time, it is noteworthy that the majority of questions came from the political groups supporting the Commission (EPP, S&D, Renew Europe) and not, as is usually the case, from the EU-sceptical or oppositional groups. This underlines the importance of MEPs’ need for information on the pandemic’s impact and the response by the EU.

Nevertheless, the communication function of the European Parliament remains

limited. Neither in the euro crisis nor the refugee crisis was the EP the arena for central European policy debates. This has remained largely the case, despite these hearings. An important exception was the public apology of Commission President Ursula von der Leyen to Italy in April 2020.

EP Involvement in the EU Response to the Corona Pandemic

As public health policy is largely the responsibility of the Member States (or even the leaders at the regional level), the EU's main response to the challenges of the coronavirus pandemic has been economic. As an economic community, the Union has the most instruments in this area, and it is now being expressly challenged by the deepest recession in the post-war period, a recession whose effects are very asymmetric between Member States.

To address these concerns, the EU has gradually put in place a series of economic measures to support Member States. A close look at these instruments, and the involvement of the European Parliament in their adoption, underlines the limits of the EP's power — even beyond the crisis.

The First Economic Response — Cohesion Funds, SURE, ESM

An early economic response of the EU was the decision in April 2020 to mobilise existing EU funds so that they could be used more flexibly, and partly without co-financing by the Member States (Coronavirus Response Investment Initiative). Given its budgetary powers, the EP was formally fully involved and agreed to the Commission's proposal via the urgent procedure — and through remote voting. This co-decision role was mandatory due to the use of existing EU funds. However, this legal basis also had disadvantages, such as the fact that the criteria for allocation of the funds between the Member States were not changed, meaning that Central and Eastern European countries benefited greatly, although they

were (at the time) relatively hardly affected by the coronavirus.

Parliament's involvement was different when innovative economic instruments were introduced. One example of this is EU support for short-time work allowances in Member States particularly affected (Support to mitigate Unemployment Risks in an Emergency — SURE). A total of €100 billion in loans is to support the various short-time work allowance schemes, which most Member States introduced to mitigate the economic consequences of their respective lockdowns. Such support for national welfare measures would have been highly controversial beforehand, but it passed unanimously within weeks due to the impact of the pandemic. The EP, however, was not involved in this decision. Similar to the EFSM in the euro crisis, the European Commission used the flexibility of Art. 122 (2) TFEU. No approval by the European Parliament is necessary — it was merely informed of the decision. The procedure for the disbursement of the loans also takes the form of implementing decisions by the Council on a proposal from the Commission, without EP involvement.

In parallel with the SURE programme, the Eurogroup agreed in April 2020, after difficult negotiations, on a comprehensive set of instruments to help euro area Member States deal with the economic consequences of the pandemic. This includes the (as yet unused) possibility of borrowing from the ESM on significantly better terms. Again, the European Parliament was not involved — the ESM is an international treaty outside the EU institutions, and its decisions are not controlled by the EP. The ECB's actions, including the Pandemic Emergency Purchase Programme (PEPP), are also not under the direct control of the EP.

No Role for the EP at the Summit

However, the core of the response to the medium-term economic disruption is to be provided by the next MFF (2021 — 2027) and the EU recovery fund. According to the political agreement of the European Council

in July 2020, the MFF will be much larger than had been planned before the pandemic – at €1.8 trillion, including a €750 billion recovery fund (Next Generation EU). This fund will also allow the EU to borrow larger sums on its own, create new own resources, and disburse €390 billion in grants, mainly to the most severely affected Member States. Although limited in time, this combination of a substantially increased budget, new own resources, and direct grants to Member States represents a step forward in the integration of the Union that would have been unthinkable before the pandemic.

Formally, the EP should have played an important role in the negotiations on the MFF – since the Lisbon Treaty, it is not only the annual budget but also the long-term financial framework that requires the approval of MEPs. During the long lead-up to the MFF negotiations, the Parliament therefore passed several resolutions in which MEPs in particular called for a higher EU budget with more investment spending at the European level, new own resources, and a robust rule of law mechanism.

However, the EP was only involved to a very limited extent in the actual political negotiations from May to July 2020. The political initiative to combat the growing divergences in the EU through a recovery fund with grants came from Germany and France, in close coordination with Commission President von der Leyen; the restructured MFF was proposed by the European Commission; and the political wrangling over the relationship between grants and loans and the central pillars of the MFF took place in the European Council. At the crucial summit in July 2020 – where European Council President Charles Michel, the 27 heads of state and government, and Commission President von der Leyen spent five days and nights wrestling over the EU budget – the EP President was invited only to a brief formal exchange of views as a prelude to the summit. The central lines of conflict and negotiation were between the Member States, and the political decision was ultimately one for the heads of state and government.

This negotiating mode is also reflected in the outcome. Although some of the key demands of the EP resolutions can be found in the substantially revamped MFF – in particular the increased budget and the prospect of new own resources – the heads of state and government reached agreement at the expense of the pan-European interest. In the negotiations, cuts were made primarily to overarching programmes (European Defence Fund, Horizon Europe, EU4Health, Erasmus, etc.), whereas financial transfers to the Member States and national rebates were maintained. The prospect of new EU own resources is included, but it remains extremely vague, as is the rule of law mechanism.

However, unlike the previous examples, the MFF process is not yet complete. Although heads of state and government can negotiate the policy framework among themselves in the European Council, the necessary formal implementation requires an agreement with the EP. This includes both the formal MFF decision and the decision on the reform of EU own resources necessary for the recovery fund. Its formal veto right will give Parliament the leverage to try to push its own priorities for the recovery fund and the MFF in autumn 2020.

Conclusions

Since at least 2010, the EU has been going through overlapping crises, which have also permanently altered its institutional balance. As in the euro and refugee crises, the EP has played only a minor role in shaping the EU's political and economic responses to the coronavirus pandemic. This marginal role is partly explained by the nature of the challenge – health policy is not an original EU competence, and much of the action to contain the pandemic was taken at the national level, and at best coordinated between Member States within EU bodies.

On the other hand, the classic patterns of European “crisis policy-making” were also evident in the areas in which the EU had competences: The European Council was the

central decision-making body and political stage, and all facets of crisis policy-making became *Chefsache*. The European Commission was given further implementing tasks, such as the control of programmes for the recovery fund. At the same time, legislative work – in which the Parliament has full say – was reduced to a minimum. Even in the negotiations on the central course to be set for the EU budget in the coming years, the heads of state and government in the European Council want to present the EP with a *fait accompli*. Meanwhile, new instruments either use flexibility clauses in the EU treaty without parliamentary participation (like SURE) or are directly organised outside the EU's legal framework (like the ESM).

This marginal role cannot be justified by the logistical challenges for parliamentary work during the coronavirus pandemic. In a relatively short period of time, the European Parliament succeeded in maintaining its own capacity to act by means of a combination of video conferences and remote voting, despite the severe restrictions on conducting cross-border political work. In the processes of adjusting the EU budget and adopting legislation, the EP proved its capability to take decisions within a very short time by means of the urgent procedure. Despite the growing fragmentation of the EP, the political groups quickly mobilised clear majorities for these decisions. In none of the procedures with mandatory parliamentary involvement was the Parliament a blocking or even a major delay factor.

The EU Needs Parliamentary Involvement Even in Times of Crisis

The far-reaching measures launched to contain and combat the economic consequences of the coronavirus pandemic in the EU also require greater parliamentary legitimacy at the European level. In the short term, the adoption of the MFF and the recovery fund is the central test for the EP's role in the EU's institutional balance.

The formal right of consent of the EP contrasts with the practical preliminary decision by the European Council, in which the national governments weave a compromise around their individual national interests. In doing so, they have also cut spending in areas that the EP has called for in the interests of Europe as a whole. It is now up to the German Council Presidency to negotiate a compromise between the EP and the Council so that the MFF, and in particular the financial resources of the recovery fund, are available on time. The majority political groups (EPP, S&D, Renew Europe, and Greens/EFA) have publicly stated that they will only agree to the MFF if improvements are made to the rule of law and pan-European programmes. It will also be important for parliamentarians to establish control over the implementation of the recovery fund and the associated national programmes. The MFF decision will also be the moment when the Parliament could commit the Commission and Member States in the Council to concrete details and a fixed timetable for envisaged new own resources.

However, MEPs face a dilemma: Following the political agreement in the European Council, the EP would have to accept responsibility for delays in the MFF and disbursements from the recovery fund. If, on the other hand, the EP accepts the preliminary decision of the European Council, MEPs would lose their credibility and be carelessly giving up their participation rights.

In the medium to long term, the EU should also discuss in the upcoming "Conference on the Future of Europe" how European crisis policy-making can be better legitimised by Parliament. After 10 years of crisis, it is no longer sufficient to refer to the unique situation of individual crises when crisis mode has become the normal state of affairs. However, two means that require treaty amendments could in the future further strengthen the involvement of the EP, even in times of crisis. On the one hand, the Parliament should be given a right of initiative in addition to the European Commission's existing monopoly

on making proposals. With its own initiatives, the EP could thus react during — but of course also outside times of — crisis, thereby bringing in a stronger pan-European element to EU crisis response in addition to the Commission.

On the other hand, the EU's crisis policy instruments should be reformed to include involvement of the Parliament. As long as it is primarily national resources and competences that are affected — as is the case with the ESM — parliamentary control is the responsibility of the national parliaments. If EU instruments are used, however, such as with the SURE short-time working allowance programme and the EFSM, the Parliament should be given a right of consent in the course of the next treaty amendment. For this, Art. 122 TFEU would need to be amended to require co-decision.

Times of crisis will always require quick decision-making, which, at the national and European levels, is mostly the domain of the executive. But this quick decision-making also needs to be scrutinised by Parliament, and long-term changes should require parliamentary approval. With so much crisis-driven policy-making in the EU, the Union should also adapt its crisis policy instruments with stronger EP involvement.

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