

Editorial

New Presidents, New Sound and New Confidence?

Henk van Arendonk*

It is now a year since I wrote the editorial on the European Parliament's May 2014 elections for this journal's 2014-1 edition. My view then was that EU citizens had the right to have their European voices heard, but that European politicians would only pick up the signals if enough voters actually chose to exercise that right.

The turnout at these latest European elections was marginally lower than in 2009 (but has fallen from 61.99% at the first elections in 1979 to 42.54% now). In itself, that is not actually a bad turnout, given the years of crisis that we in Europe have been going through. A less favourable development, however, is the fact that quite some votes were cast for anti-European parties, and that surely must send a signal to the parties of the European political establishment. What does this all mean for the European Parliament's position in the European political arena?

The new European Parliament immediately bared its teeth by making it clear to the European Council that the leader of the largest fraction in the Parliament had to be appointed President of the European Commission. But that first required a political agreement between the two largest fractions, the European People's Party (EPP) and the Progressive Alliance of Socialists and Democrats (S&D). As a result, Martin Schulz was reappointed President of the European Parliament, while Jean-Claude Juncker managed to achieve his burning ambition of becoming President of the European Commission, and there was precious little the European Council could do about it. It is very much the question, however, as to whether that was what Angela Merkel actually wanted.

A year earlier, Juncker had been forced to resign from political office in Luxembourg following a scandal involving illegal phone-tapping practices and the like by Luxembourg's intelligence service. Luckily, Europe is always there to offer a second chance to politicians who are finished at a national level. Whether this is good for European politics, however, is very much open to doubt. Indeed, developments in November 2014 serve merely to confirm these doubts. In early November, an

important file containing details of rulings granted by the Luxembourg tax authorities found its way into the public domain. This file ('Luxleaks') showed how easy it was for multinationals to agree extremely favourable tax rulings with Luxembourg, without any need for substance in that country. This policy had been pursued for years, under the responsibility of Juncker as Minister for the Treasury, thus allowing Luxembourg to profile itself as a tax haven at the expense of other countries. Although, on 12 November 2014, Juncker denied any involvement, as Prime Minister of Luxembourg, in 'organizing tax evasion', he was also Minister for the Treasury during that specific period!

Juncker also announced in November that the Commission wanted Member States automatically to start informing each other of rulings issued, while Moscovici, the new commissioner for taxation, was instructed to draw up a draft directive. In this way Juncker is perhaps hoping to get the issue onto a back burner and that, in the end, a lack of unanimity will mean the proposal does not get adopted. The fact that the European Parliament accepted Juncker's statement on 12 November 2014 suggests in any event that integrity is not that much of a priority on the Parliamentary agenda.

The issue of tax rulings had been on the previous European Commission's agenda. Indeed, the Commission had launched an investigation of possible state aid with regard to Luxembourg's policy on tax rulings, after that country was found not to have been very active in providing information. This makes Juncker's comments on the automatic exchange of information all the more remarkable. Or maybe, since leaving his job in Luxembourg politics, he has suddenly become a committed European?

This recent information has suddenly added a completely different dynamism to the investigation into possible state aid provided to international businesses by countries such as Luxembourg, while the new EU competition commissioner, Margrete Vestager, is immediately facing a difficult case. Even though Juncker has said that he will not become involved, he is nevertheless the person with ultimate responsibility on

* Emeritus Professor of Tax Law at the Erasmus University Rotterdam and chairman of the editorial board of EC Tax Review.

the Commission for this investigation, and that means that, directly or indirectly, some form of influence will always be present. If Luxembourg is found for years to have been issuing rulings that are regarded as state aid, this will undermine the integrity of the European Commission's President and, in my view, make his presidency untenable. The standard bearers of the European political world, and I would include the presidents of the European Council, the European Commission and European Parliament among their number, must be of absolutely impeccable character. Any concessions in this respect will result in the citizens of Europe losing even more of their trust and confidence in Europe.

Citizens simply do not understand the extra contributions that the European Commission announced in early November for certain Member States, alongside rebates for other Member States. It appears impossible to provide a clear explanation to citizens of why these extra contributions are being demanded and the years to which they relate. If I understand matters correctly, the demands are based on agreements to include R&D expenditure, the illegal sector and certain forms of military spending in the calculation of GDP, and these agreements have in any event been made applicable from 2010, with the effect of the relevant recalculations being felt in 2014. I simply cannot comprehend why agreements in Brussels for a review of this nature in 2014 would be extended back to the past so that they suddenly have unforeseen consequences for the 2014 budget, which had actually been approved – again by the European Commission – back in 2013.

In response to all the commotion, Guy Verhofstadt, a committed federalist, came up once again with his hobby horse of European taxes, which, he claimed, would put an end to these sorts of problems. The reality, however, is that by signing the Treaty of Lisbon, Europe effectively bid farewell to the possibility of a federal Europe. European cooperation can best be described as a project with a dynamism all of its own and where we will have to wait and see what the future holds. From this perspective, the introduction of a right for Europe to levy taxes would be a step in the wrong direction. And one that would be more likely to alienate European citizens even further from the European project.

European cooperation requires Member States to treat each other with respect, regardless of the major differences in their sizes, populations and economies. That is why the Council operated a system of weighted voting. In 2009, however, it was decided to introduce a system of voting based on population sizes, with transitional arrangements in place until 2017 to allow Member States to request application of the old, weighted voting system. As a result of the new procedures, the four largest countries (Germany, France, the United Kingdom and Italy) together now represent

54% of the votes on the Council, while the smaller Member States have scarcely any power, even if they are all in agreement with each other. Even though votes are not normally cast, the need for a majority in favour of a proposal is always a consideration behind the decision-making scenes. Going forward, a lot will depend on the political game being played on the Council and how this is communicated to the outside world. Otherwise, citizens of smaller Member States will really start wondering whether Europe is still their second homeland.

Autumn 2014 has seen a series of changes in Brussels. Donald Tusk from Poland was appointed the new President of the European Council from 1 December 2014, although he will still need some time to familiarize himself with his new responsibilities. Juncker, by contrast, has been in his new job since mid-2014, while the Juncker Commission officially started work on 1 November 2014. What can we expect from the Juncker Commission, specifically with regard to tax? On 15 July 2014, Juncker set out his political framework for the European Commission under the heading of 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change'. This document identifies ten policy fields to be addressed in the policy agenda. The first of these is a new boost for jobs, growth and investment. In December 2014, Juncker wants there to be a plan outlining how to mobilize up to EUR 300 billion of additional investments over the next three years. However, this amount would seem to me to be too little to boost growth in the EU.

In the case of the fourth policy area ('A deeper and fairer internal market with a strengthened industrial base'), Juncker states that more fairness is needed in the internal market and that we need, therefore, to 'step up our efforts to combat tax evasion and tax fraud'. These have been important issues for Europe since the crisis first erupted and primarily demand more intensive administrative cooperation between tax authorities. Following on from the Organization for Economic Cooperation and Developments (OECD's) efforts, the EU, too, is seeking to increase the automatic exchange of information. Juncker failed, however, to mention the introduction of a European taxpayer identification number to enable this automatic exchange of information to take place.

The heading of fairness is also seen as including the proposals for a Common Consolidated Corporate Tax Base (CCCTB) and Financial Transaction Tax (FTT). In this respect, Juncker's comments under the tenth policy area with regard to the issue of closer cooperation ('A union of democratic change') are not insignificant. He firmly believes that, as a union, we need to move forward and that Member States wanting to go further and faster should be given all the scope they need to do so. The big danger, however, of having so many different

forms of closer cooperation is that European cooperation will increasingly turn into a patchwork quilt that is no longer recognizable to many people in Europe. Furthermore, the intention in the event of closer cooperation is that the other Member States will ultimately join that closer cooperation. But if this is unlikely to happen, as I suspect will be the case with the

CCCTB and FTT, it would not be appropriate to pursue such closer cooperation.

We will now have to wait for the new European commissioner for tax, Pierre Moscovici from France, to publish his tax policy agenda before we can find out what the European Commission is actually planning for the next five years. To be continued . . .