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Editorial

2019: A Landmark Year for European Cooperation, or Maybe Not?!

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The euro recorded its twentieth anniversary on 4 January 2019. The absence of formal celebrations was hardly surprising, given the difficulties of the past ten years. Instead, the date was commemorated by an official photograph of the finance ministers of the various Member States, along with European Central Bank (ECB) president Draghi and European commissioner Moskovici. In the photo, Draghi and the Portuguese president of the eurozone, Mario Centeno, are seen posing with a euro coin, probably seeking to symbolize that the currency is in good hands with them. It is striking that the various gentlemen and the few ladies in the photo look anything but cheerful. On the other hand, the issues they have to deal with are of a very serious nature. Shortly afterwards it became clear that 2019 could be a very tumultuous year, with the UK House of Commons voting on 15 January to reject the deal agreed between the other twenty-seven EU Member States and the UK government for an orderly exit from the European Union. Driven by fear, because they see leaving the EU as a betrayal and so as something that has to be punished, the twenty-seven Member States opted for as hard a departure as possible for the UK. The fact that this issue has split the UK population right down the middle was already evident from the outcome of the referendum. And this also applies to the UK Parliament. The vote in the House of Commons represented a massive defeat for Theresa May, with the 432 votes against and only 202 for the deal making it abundantly clear that an overwhelming majority of MPs could not stomach the deal – in my view, correctly – in its current form.

After surviving a motion of no confidence the next day, Theresa May then had the task of coming up with proposals for renegotiating the exit treaty. At the time of writing, no more details of this next phase in the Brexit chaos were known. By the time the editorial is published, however, we will all know the outcome. In other words, whether it will be a hard Brexit or whether politicians manage to agree an amended deal at the very last moment. That is, of course, unless they opt to extend the deadline of 29 March 2019. In this latter event, the next question is whether the UK should be allowed to take part in the forthcoming elections to the European Parliament? Another important issue arising in relation to Brexit or no Brexit is the budget for 2021–2027. While the plan is to finish negotiating the budget before the elections, I fear that reaching a deal later this year is going to involve some very tough discussions indeed.

When partners who are breaking up cannot agree on the way forward, they can normally seek recourse to a court or arbitration as a last resort. But that isn't an option in this situation; instead, whether a deal is agreed will depend primarily on political relationships in the UK, on the one hand, and in the EU, on the other hand. And, in such circumstances, agreeing a reasonable deal is almost impossible.

The next question is what Brexit will mean for European cooperation? Will the UK's departure have a purifying effect and boost European cooperation? This year could well turn out to be the year of truth. Indeed, the elections to the European Parliament could prove a good indicator of what the future holds for the EU, unless politicians themselves don't take these elections so seriously. During the TV programme *Buitenhof*, for example, on Sunday, 13 January, the Dutch prime minister, Mark Rutte, said he didn't regard the European elections as particularly relevant. What matters, he said, is what happens in national elections as that's where the power lies. Rutte seems to view European democracy as being of lesser importance. As he sees it, it's not the European Parliament that pulls the strings, but far more the national parliaments. Or does he mean the European Council? If a prime minister of a Member State doesn't take elections to the European Parliament seriously, we can hardly expect EU citizens to do so. And so European democracy is in for a hard time over the coming months. This may be reflected in the turnout as while the first European elections, in 1979, attracted a turnout of 61.99%, by 2014 this had fallen to a very modest 42.54%. Having gained the highest number of votes, the Christian Democratic European People's Party (EPP) was able to nominate the Commission president

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after the 2014 elections. The Progressive Alliance of Socialists and Democrats was the second largest party, with thirty-two seats fewer. Although right-wing populist parties won quite some seats at those elections, the big question is what those parties are going to do next. Will they join forces and operate as a fraction? Certain countries now have right-wing populist or nationalist parties in power, and so it is not inconceivable that these parties will more than double their seats in the European Parliament. That is likely to mean a far more euro-critical tone from the Parliament over the next few years. This, in turn, will force other parties into pursuing a clearer and more recognizable EU policy. And that cannot but benefit European democracy.

Citizens in Member States will have the opportunity to cast their votes between 23 and 26 May this year. Will the elections result in the largest fraction's *Spitzenkandidat* once again being appointed president of the European Commission? Or will the European Council try, again, to become more of a force? How this appointment pans out will become evident after the elections. Assuming the EPP is once again the largest party, their *Spitzenkandidat*, Manfred Weber from Germany, could become the new European Commission president. But this may also depend on the jobs merry-go-round following the elections, given that new presidents of the European Council, the ECB and the European Parliament are also due to be appointed.

The political landscape in the EU is shifting. The Treaty of Lisbon established the European Council as a European institution and as the EU's political body. This means the president of the European Council has become an increasingly important figure in the EU. Rather, therefore, than seeking to lead the way politically, the European Commission should be primarily the executive arm. That, in turn, demands a role for the president of the European Commission that is very different from the role envisaged by Juncker. And so I'm curious to see how the various roles are divided up later this year.

The European Commission recently reported that it had now completed around 50% of its legislative programme. On a tax front, the degree of success it has achieved over the past five years can be regarded as somewhat mixed. In terms of combating abuse and fraud, the Commission has certainly managed to harmonize, as evidenced by the General Anti-abuse rules (GAAR) in the Parent-Subsidiary Directive of 2015, and the Anti-Tax Avoidance Directive (ATAD) 1 and 2 in 2016 and 2017 respectively. And substantial progress has also been made in sharing information within Europe, including the mandatory disclosure rules that require intermediaries, such as tax advisers, to report aggressive tax-planning structures. It is logical that Member States are embracing these sorts of plans as their budgets are bound to benefit.

In addition, a new EU Customs Code has been introduced, while on 25 May 2018 the Commission published proposals for a fraud-proof VAT system. But there's still a long way to go before these proposals are accepted.

Turning, however, to direct taxes, so far only the Court of Justice has been successful. The same certainly cannot be said about the European Commission, with the new proposals for Common Consolidated Corporate Tax Base (CCCTB) and Common Corporate Tax Base (CCTB) still being 'work in progress'. The Commission's proposal for an Financial Transaction Tax (FTT) has also failed to take off, even through the enhanced cooperation mechanism. While Germany and France clearly want to proceed with these CCCTB/CCTB proposals, many other Member States do not share their enthusiasm. The question to ask, however, is whether these proposals are still relevant: doesn't the idea of basing apportionment on labour, capital and sales belong to the old economy? Introducing such a system would favour countries with a large manufacturing sector over and above those with a larger presence in services and the digital economy. This is why the European Parliament proposed in its March 2018 report to add a fourth factor, data. At the same time, however, the Commission has plans to impose a separate digital tax on the digital economy as a 'long-term solution' (COM (2018) 147 final), along with a digital services tax as a 'short-term solution' (COM (2018) 148 final). Views on the wisdom of introducing a digital tax are widely divergent and the Commission has already announced that it will not start implementing it until 2022. In this way, the Commission is creating scope for the OECD to come up with proposals for getting the digital economy to contribute its fair share to national treasuries. An interim report published by the OECD on 16 March 2018 ('Tax Challenges Arising from Digitalisation – Interim Report 2018') shows that while international consensus exists on the need for a coordinated approach, no agreement has been reached on the direction of any solution. The aim, however, is to reach such agreement by 2020. In my view, setting a digital tax at 3%, which is expected to generate revenues for Member States of only five billion euros, would be very much at variance with normal corporation tax rates and mean the digital economy would still not be contributing anything like its fair share.

We should therefore abandon the idea of the CCCTB and instead focus more on transfer pricing within the EU. Reference can be made in this respect to, for example, the work of the EU Joint Transfer Pricing Forum, including the 'Report on a Coordinated Approach to Transfer Pricing Controls within the European Union' published in October 2018. This is because we also need to reach agreement on transfer pricing if we are to arrive at a fair worldwide allocation of profits.

The proposal announced by European commissioner Pierre Moscovici on 15 January 2019 to gradually phase out the right to veto European tax plans is remarkable. Juncker had previously proposed the same thing during his annual speech on the State of the Union in September

2017, and now Moscovici has come up with a concrete proposal to end the veto by 2025 at the latest and switch to a requirement for a qualified majority; in other words, approval by at least sixteen of the current twenty-eight Member States, representing at least 65% of the EU population. The timing of this proposal, so close to the European parliamentary elections, is puzzling to say the least. Certain Member States have no wish to relinquish any sovereignty on direct tax matters. And while Germany and France, the two engines of European cooperation, are keen to go down this route, it is important that they continue taking account of smaller countries' interests. Otherwise their efforts will ultimately have an adverse impact on European cooperation. I am consequently curious to see whether this proposal will resurface in the new European Commission policy programme published in the autumn.

All in all, there'll certainly be a lot going on in the EU this year and it definitely won't be a dull year. But whether it sees stronger cooperation between the twenty-seven – or maybe still even twenty-eight – Member States is something we'll have to wait until the end of the year to find out.