

# WHICH EUROPEAN UNION FOR THE 21<sup>st</sup> CENTURY? ASSESSING REFORM OPTIONS

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## ***Abstract:***

*A plethora of reforms was proposed in the last years to solidify European integration and address existential challenges within the EU. Some claim that more integration is the answer, whilst others insist that the European Union needs more of ‘variable geometry’. Current key reform proposals and suggested approaches are examined from three perspectives – efficiency, adequacy, and legitimacy. The three perspectives are used to deliver a holistic and comprehensive analysis of the proposals within a theoretical framework of institutional sustainability. Using these perspectives, the paper is going to illustrate how proposed reforms appear to be logically inconsistent and/or strategically misaligned. The paper proposes an outline of key reform issues to guide further the EU-wide debate.*

## ***Keywords:***

*institutions, European Union, reform, adequacy, efficiency*

## **Introduction**

Recent reform proposals put forward by the European Commission, and the President of France, Emmanuel Macron, aim to address the perceived insufficient legitimacy of the European Union (EU) and its institutions. This paper proposes a novel analytical framework for assessing the reform proposals, based on the notion of adequacy and efficiency as drivers of perceived legitimacy.

The first section presents the analytical framework, based on a multi-

disciplinary review of recent developments in institutional legitimacy research. The second section applies the analytical framework to the reviewed reform proposals with a focus on adequacy concerns. The conclusion outlines the gaps in current reform proposals that should be considered in order to achieve actual improvement of the perceived legitimacy of the EU and its institutions.

## **Theoretical background and analytical framework**

This section proposes three perspectives – efficiency, adequacy, and legitimacy – in order to deliver a holistic and comprehensive analysis of the proposals for EU institutional reforms within a theoretical framework of institutional sustainability.

The three perspectives are interlinked. However, most of the research in European studies so far has examined legitimacy dimensions of EU institutional functioning and reform proposals on the basis of the notions of input, throughout, and output legitimacy (Scharpf, 1970; Scharpf, 2009; Schmidt, 2013; Beetham & Lord, 2014; Piattoni, 2015). It is widely believed that legitimacy processes not only help explain institutionalization and stability, but also deinstitutionalization and change in institutions and institutional fields (Stryker, 2000, p. 180). While contributing significantly to the research of political legitimacy of EU and its institutions, this framework does not capture well the balance of functional requirements of complex interdependence and the integration fatigue evinced by the constraining dissensus. There is thus a need for combined efforts of empirical and normative legitimacy research which takes these new dimensions into account (Kreuder-Sonnen, 2018, p. 461).

This paper benefits from recent extensive research in political science, sociology, economics, organizational psychology, political psychology, and management science, in order to develop a more comprehensive analytical framework for assessing current proposals for EU institutional reforms from the perspective of legitimacy. The framework proposes two dimensions – efficiency and adequacy – that can be considered as drivers of legitimization processes.

The notion of adequacy of institutions can be defined as a Pareto optimal outcome (equilibrium), where a shared set of beliefs among the citizenry exists that those institutions, rights, and boundaries are both appropriate and worth defending (Weingast, 1997: 13). Adequacy of institutions can also be described as an ability to reduce strategic uncertainty and to allow the members of a group to form expectations concerning the supposed behaviour of other

members in the group in the light of personal preferences (Voigt, 1999). Therefore, adequacy provides a qualitative criterion to gauge perceptions of attainment of individual or group preferences in a polity. More importantly, adequacy depends on a significant degree of the heterogeneousness of preferences within the polity. The more heterogeneous the preferences are, the more difficult it is for institutions to achieve Pareto-optimal outcomes. One important result of this relationship is that the institutional reproduction of preference heterogeneity by Europe's splintered polity prevents sustainable, efficient, and democratically legitimate policies (Collignon, 2007). The direct consequence of the perceived lack of adequacy of institutions is to shift the preferred model of governance to a smaller unit of government (i.e. from the EU to national governance; see Marks & Hooghe, 2000). However, it might be useful to examine the adequacy of all four institutional layers proposed by Williamson (2000): social embeddedness, institutional environment, the institutions of governance, and resource allocation and employment. Due to space limitations, this paper focuses only on the second layer – the institutions of EU governance.

Efficiency of institutions can be defined as achieving Nash equilibrium of the institutional power structure, even in cases where there is no Pareto optimal outcome of governance. In Nash equilibrium, individuals adhere to institutions because deviation will make the individual worse off than will adherence (Hall & Taylor, 1996). In other words, institutions are perceived as efficient based on beliefs about situational variables that determine the benefits and transaction costs of collective action (Lubell, 2003). The notion of efficiency feeds into the perception of taken-for-grantedness of institutions. However, other factors have been proposed that contribute to the taken-for-grantedness of institutions, such as cultural traditions, path dependence, social validity, and more recently – relational and narrative networks (Deephouse et al., 2017; Powell & Oberg, 2017; Suddaby et al., 2017). In addition, taken-for-grantedness is an important dimension of legitimacy, since only the breaking of rules manifests the calculative, instrumental decision-making process behind legitimacy (Hurd, 1999). This means that studying specific actions that constitute significant and deliberate non-compliance with EU rules and regulations can provide particularly useful conclusions about the mechanisms and outcomes of legitimization processes. Recent episodes include the invocation of Article 50 of TEU by the United Kingdom on 29<sup>th</sup> March 2017, as well as the refusal of some Eastern European Member States to comply with Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

Linking adequacy and efficiency with legitimacy provides a comprehensive analytical framework for assessment of proposed institutional reforms of the EU. In general, legitimacy can be construed as a property, process, or perception (Suddaby et al., 2017). In all three perspectives, adequacy and efficiency appear to be relevant in explaining, assessing, and forecasting the expected level of legitimacy of institutions. However, considering legitimacy from the perspective of perception offers the most promising theoretical venue, since it allows exploring perceptions, attitudes and judgments as “microfoundations” of legitimacy, as well as the social interactions among actors that ultimately constitute legitimacy as a collective-level phenomenon (Suddaby et al., 2017).

Summing up the reviewed literature, adequacy and efficiency can be construed as the key drivers behind perceived legitimacy. Table 1 proposes an analytical framework that encapsulates the key dependencies, and summarizes relevant research questions.

**Table 1.** Adequacy and efficiency as drivers of perceived legitimacy.

Driver	Relation to legitimacy as perception	Relevant research questions
Adequacy	<ul style="list-style-type: none"> <li>• Perception of the level of attainment of personal or group preferences</li> <li>• Production and reproduction of heterogeneity of preferences at micro and macro levels</li> <li>• Ability to reduce strategic insecurity</li> <li>• Ability to constrain undesired behaviours, actions, policies and outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• To what extent are personal and group preferences heterogeneous within the polity?</li> <li>• Does the polity contribute to the heterogeneity of preferences?</li> <li>• Is the polity perceived as able to reduce strategic uncertainty?</li> <li>• Is the polity perceived as willing and able to constrain/reduce/mitigate undesired behaviours, actions, policies and outcomes?</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Perception of polity as taken-for-granted</li> <li>• Perception of polity as the best available alternative</li> <li>• Perception of the benefits and transaction costs of collective action</li> </ul>	<ul style="list-style-type: none"> <li>• To what extent is the polity taken for granted?</li> <li>• To what extent is the polity perceived as the best available alternative?</li> <li>• How is the balance of benefits and transaction costs of collective action evaluated/perceived?</li> </ul>

In order to operationalize the framework and to assess the current

proposals for reform of the EU institutional setup, the following key research questions can be used:

- Do the proposals provide a comprehensive diagnosis of the perception of adequacy and efficiency of EU and its institutions?
- Do proposals contain analysis of recent events that can be construed as both significant and deliberate non-compliance with EU rules?
- Can the proposals mitigate current deficiencies in the perceived adequacy and efficiency of EU institutions?

The next section presents briefly current proposals by the European Commission and some Member States, and delivers an assessment of those proposals based on the analytical framework above.

## **Current proposals for substantial EU reform**

This section briefly reviews the proposals for substantial reform of the European Union institutional mechanism put forward by the European Commission and some Member States. Due to space limitations, only key elements of the proposals are presented.

On 13<sup>th</sup> September 2017, European Commission President delivered his State of the Union address where he outlined the proposals of the European Commission for EU institutional reform. The proposals were based on the White Paper on the Future of Europe, and a number of discussion papers on reforms in certain policy areas. On 27<sup>th</sup> September 2018, the French President Emmanuel Macron also delivered a speech that outlined France's vision on the most important reforms of EU institutions and policies. Elements of Macron's proposals were also supported in early 2018 by Germany (Rettman, 2018). In February 2018, the Commission provided a more comprehensive proposal focused on the reform of the EU institutions, building up on its previous work, and Macron's proposals.

A comparative analysis of both speeches reveals that the key proposals of the Commission and Macron were aligned to a significant degree. Some of the common elements include enhancement of the Common Foreign and Security Policy, a Eurozone budget (separate in Macron's proposal, and integrated in the EU budget in Commission's proposal) overseen by a European Finance Minister reporting to the Parliament, a European Public Prosecutor's Office, a European civil defence force, and dedicated European initiatives in areas such as sustainable growth and digital technology. The Commission President Juncker's overriding concern is the unity of the EU27, although he leaves

open the possibility to advance initiatives with a smaller group of countries in instances where no consensus can be achieved. President Macron, on the other hand, explicitly calls for more differentiated and flexible institutional arrangements to support his vision, including enabling those Member States which want to do more to do more. (EPSC 2018).

While both proposals include some reflections that can be broadly attributed to an assessment of the perceived adequacy and efficiency of the EU and its institutions, there seems to be no systemic approach in developing the proposals from the perspective of legitimization processes.

In terms of adequacy, probably the most contentious task is how to achieve a ‘political union’ or a ‘fiscal union’ for the Eurozone (Gross, 2017; Wohlgemuth, 2017). From the German perspective, recent years have shown that eliminating fiscal deficits is good for the economy in the long run. France, Italy, Spain, Greece, and other Member States see it differently: to them, Germany has been able to achieve surpluses because it has engaged in competitive wage restraint while the others have sustained demand with their own deficits (Gross, 2017, p. 195). However, only Macron’s proposals partially address the insufficient adequacy of the Economic and Monetary Union (EMU) in terms of preference-based Pareto optimization regarding the definition and execution of fiscal and economic policies, and sharing financial risks. Thus, the heterogeneous preferences of Member States (and by extension, the perceived adequacy of the EMU) are not discussed or addressed. This, in itself, is probably the most significant deficiency of reform proposals of the Commission in particular. What is more, reform proposals do not even start to discuss the relative failure of EMU to adequately reduce strategic uncertainty during the Eurozone economic and financial crisis in the period 2008-2013, and to develop a comprehensive approach for future crises. Many of the extraordinary and often extra-legal measures furthering executive discretion of EU institutions developed during the euro crisis have been institutionalized and normalized, embarking the European polity on a partially authoritarian course (Kreuder-Sonnen 2018). In this way, the current political economy of the EMU is producing, rather than reducing, heterogeneity of preferences for fiscal policy on macro and micro scale, with significant negative consequences for the overall perceived legitimacy of the EU and its institutions.

In the other area of EU policies where significant divergence of preferences is observed – migration and asylum, both the Commission and President Macron propose reform of the Dublin system by 2018, strengthening Europe’s external borders and creating legal pathways

for migration into the EU. However, both proposals fail to address the significant heterogeneity of preferences of Member States and European citizens in general. The public opinion in Member States remains sceptical of increased flow of migrants. In 22 Member States, majorities of respondents have a negative feeling about the immigration of people from outside the EU (Georgiev 2017). Most of the specific proposals - more investment in Africa, creation of a European Asylum Office, enhancement of the border security policy, refer mainly to limited improvements of the efficiency of EU's institutional mechanism in migration and asylum policy.

In terms of opening up the European decision-making process to ensure representation and therefore Pareto optimization of EU policies from the perspective of European citizens, both the Commission's and Macron's proposals fall short of the task. Since the Lisbon Treaty entered into force, participatory governance has been limited to the European Citizens Initiative and the Commission's consultations with organized civil society actors. However, it remains arguable whether consultation mechanisms of this kind do in fact enhance the democratic credentials of the EU (Kamlage & Nanz 2017; Georgiev 2017). The close integration of interest groups into the Commission deliberations might have had the perverse effect of distancing the Commission from broader public opinion (Richardson 2018). The Commission did not seem aware of the limited utility of these consultations, and proposed that "*Member States as well as local and regional authorities should be encouraged to hold outreach events to engage with citizens in public debates and consultations on EU issues, including in particular the future of Europe*". Macron's proposal is to organize national and local debates in 2018 in all EU countries that volunteer, based on common questions for the future of the EU.

The theme of enhancing the role of national parliaments in the EU decision-making process is conspicuously missing in both proposals. This is a particularly serious omission. Enhancing the transnational cooperation between regional and national parliaments in the EU has the potential to strengthen the Union's vertically embedded parliamentary system, make better use of the EU's multilevel system of governance and may help close some of the gap between European policy and the citizens of Europe (Kreuder-Sonnen 2018). National parliaments are structurally organized to develop Pareto optimized policy outcomes and have perhaps the highest level of taken-for-grantedness at national level. At the same time, recent findings of the European Ombudsman show the Council's failure to record systematically the identity of Member States taking positions in preparatory

bodies, and the widespread practice of restricting access to legislative documents while the decision-making process is ongoing. In other words, the Council, acting as a co-legislator, remains remarkably non-transparent and allows Member State governments to ‘blame Brussels’ for decisions they have ultimately taken themselves.

However, both the Commission and Emmanuel Macron prefer to continue to use the *Spitzenkandidaten* process for nomination of Commission President, and to introduce transnational lists for the European Parliament elections. The Commission claims that “*A transnational constituency could strengthen the European dimension of the election by giving candidates the possibility to reach more citizens across Europe (...) as it would arguably create a European space for public debate and a more visible role for European political parties*”. It is not at all clear how developing a “transnational constituency” is both possible and beneficial for the adequacy and efficiency of EU’s institutional mechanism (Olsen & Trenz, 2014).

## Conclusion

This paper has proposed a new framework for assessing the proposals for institutional reform of the EU based on the concepts of adequacy and efficiency as drivers of perceived legitimacy. The analytical framework was operationalized through the assessment of the two sets of proposed comprehensive reforms, put forward by the European Commission, and the President of France, Emmanuel Macron, respectively.

It appears that recent proposals for EU reform do not address the perceptions of the EU citizens that the Union and its institutions are insufficiently adequate. Since 2010, more Europeans tend to distrust the EU. Two dimensions of the lack of adequacy of the EU are not properly diagnosed and mitigated in the reform proposals.

First, the diverging preferences of Member States and their citizens towards EMU reform, and asylum and migration were acknowledged in the proposals. However, the proposed reforms fail to mitigate the role of the EU as propagator of heterogeneous preferences. Second, in terms of improving the decision-making process, the reform proposals focus on procedural fixes based on vague ideas about enhancing participatory governance and creating a “transnational constituency”. Most of the proposed reforms constitute limited improvements of the efficiency of EU’s institutional mechanism.

The EU, its institutions, and the Member States should focus on the

structural drivers of perceived illegitimacy of the Union as outlined above. The proposed limited improvements will not be able to deliver better-perceived legitimacy of the EU.

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