Governance and the European Commission’s 2020 strategy

Caius Tudor Luminosu¹

¹ “Politehnica” University Timisoara, Transport and Management Faculty, Romania

Abstract. This paper aims to prove that an essential step for reaching the targets of the European Commission’s 2020 Strategy for the EU to become a smart, sustainable and inclusive economy lies with the reform and integration of the governance at the level of the Union and especially the administration of its member states and the increasing democratization of EU institutions. It is only through administrative harmonization that economic cohesion can be assured. Specifically, the Union should extend member state reporting to areas of public administration, focusing on the efficiency and legality of its actions. Monitoring, akin to the mechanism for cooperation and verification of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption should be implemented with regard to all member states to ensure the good functioning of government with regard to implementing the steps of the 2020 strategy.

Keywords: EU 2020 strategy, governance, democracy deficit, member state monitoring

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1. Introduction

Initiated by the European Commission (EU Commission) in March 2010 and approved by the Heads of States and Governments of EU countries in June 2010 the document² sets out ambitious targets to be achieved within the decade 2010-2020 in areas such as employment, education, energy use and innovation with a clearly stated economic aim: to overcome the impact of the financial crisis and ensure economic growth in Europe. The latter of the two objectives is also intended as the main approach of ensuring Europe’s position in the world in the broad context of globalization.³

The strategy, as laid out by the Commission, comprises three main areas of action:⁴

- Smart growth: developing an economy based on knowledge and innovation.
- Sustainable growth: promoting a more resource-efficient, greener and more competitive economy.
- Inclusive growth: fostering a high-employment economy delivering social and territorial cohesion.

Applying policies further detailed in the document should lead, according to the Commission’s concept, to concrete results (“headline targets”):

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¹ Juris doctor, Chair for economic and social sciences, Assistant Lecturer, e-mail: caius.luminosu@yahoo.com
³ see COM(2010) 2020, p. 7.8;
⁴ see COM(2010), Executive summary, p. 5, and detailed also in the various chapters of the documents;
• the employment rate of the population aged 20-64 should increase from the current 69% to at least 75%, including through the greater involvement of women, older workers and the better integration of migrants in the work force;
• to increase innovation intensity while investing 3% of the EU’s GDP into research and development;
• to reduce greenhouse gas emissions by at least 20% compared to 1990 levels or by even 30% under certain conditions; to increase the share of renewable energy sources in the final energy consumption to 20%; and to increase energy efficiency by 20%;
• a target on educational attainment which tackles the problem of early school leavers by reducing the drop-out rate to 10% from the current 15%, whilst increasing the share of the population aged 30-34 having completed tertiary education from 31% to at least 40% in 2020;
• the number of Europeans living below the national poverty lines should be reduced by 25%.

All these targets commit both the EU and the member states, which should form a “partnership” to be able to implement this strategy of improved economic governance. This paper aims to present a brief and general analysis of the Commission’s concept from an administrative and legal point of view. No references will be made in relation to the economic aspects of the Commission’s document.

2. Overview of the 2020 strategy’s procedural concept

The need to analyze the procedural aspects of implementing the EU strategy for smart, sustainable and inclusive growth may seem rather secondary when compared to the compelling economic solutions to the immediate problems the Union is fraught with at this moment. Especially the economic crisis started in 2008-2009 wiped out “gains in economic growth and job creation witnessed over the last decade”. However, as the Commission actually points out, these dire circumstances merely exposed the structural problems of the European block. The Commission refers only to demographic and economy-related issues, merely mentioning “differences in business structures” as an administration-related issue. Also the Commission observes how “reforms, or the lack of them, in one country affect the performance of all others”. All the other weaknesses seem to originate solely in economic interactions.

On the positive side, when referring to what has been observed as functioning rather well during the first years of the crisis, the document mentions the common acting of the member states and the EU when combating the problems of the banking system.

If we observe the aforementioned conclusions made by the Commission, one can see that underlying the economic aspects there is always an administrative and legal component:

The differences in business structures are present mainly because of the rather large differences in legislation between the member states. Also, the problem of a lack of perhaps necessary reforms, can be traced back to a lack of a legal framework that would make such reforms a matter of coordination and harmonization between the member states. These states are highly interdependent

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5 as stated in COM(2010) 2020, p. 6;
7 COM(2010) 2020, p. 7;
8 COM(2010) 2020, p. 8
at an economic level, therefore influencing each other very much. In opposition to this, member states are at the same time very independent in any area of legislation where competence still lies in the hand of national legislators and not transferred to the Union. Herein lies the greatest potential of improvement and a great risk in the absence of any action. That is why the Commission pleads for “stronger external representation”, as well as “stronger internal co-ordination”.

To solve this case and implement its strategy, the Commission proposes a “strong governance framework”\textsuperscript{9} based on two pillars: a thematic approach focused on the delivery of the main headline targets and country surveillance. The first pillar implies coordinated and harmonized actions of both the Union as well as the member states as partners. The second one refers to state reporting and evaluation, done by the Commission and the member states respectively.

The actual legal instruments used would be in the first place the so-called Europe 2020 integrated guidelines which would be adopted by the Council following the opinion of the Parliament. These guidelines would comprise the agreed targets. Second, policy recommendations that will take the form of Opinions under Council Regulation no 1466/97 as well as recommendations under the Brad Economic Policy Guidelines (art. 120 TFEU and following articles). Enforcing such recommendations would be the responsibility of the Commission.

The procedure proposed by the document would place the guidance and elaboration of the strategy in the competence of the European Council, on the basis of the Commission proposals. So far the procedure stays in line with the role of the Commission as the main actor of European integration. The European Council however, would step up from its rather moderate role, which is also stated by the modified co-decision procedures under the Treaty on the Functioning of the European Union (TFEU), to the main institution regarding the guidance of the Europe 2020 program. This step is motivated, in the opinion of the Commission, by the integrating role of the European Council with regard to the member states.

The Council of Ministers keeps a specialist role activating according to its various formations, representing also a forum of exchange of policy information of good practices.\textsuperscript{10}

The Commission would also act as an executive body, monitoring the implementation of the strategy as well as its effects, presenting policy proposals, policy recommendations and warnings when such actions are required.

The Parliament should play, according to the Commission’s strategy document “an important role in the strategy”, acting in conformity to the TFEU as co-legislator. Beyond this, the Parliament should mobilize citizens as well as the national parliaments. Also all national, regional and local authorities should implement the partnership, mainly by contributing to the elaboration of national reform programs as well as to its implementation.

The Commission concludes that “by establishing a permanent dialogue between various levels of government, the priorities of the Union are brought closer to citizens, strengthening the ownership needed to deliver the Europe 2020 strategy.”\textsuperscript{11} - an intention that closely follows and cites the provisions of art. 1 of the Treaty on the European Union (TEU).

\textsuperscript{9} COM(2010) 2020, p. 27;
\textsuperscript{10} COM(2010) 2020, p. 29;
\textsuperscript{11} COM(2010) 2020, p. 29;
3. Evaluation of the procedure and of the role of European institutions

The procedure seems at a quick glance consistent with the provisions of both treaties governing the Union – the TEU and the TFEU, also respecting the general layout and role of the various European institutions. The procedure is based on art. 120 and 121 TFEU on the economic policy of the Union. These articles provide also the legal basis for the analyzed 2020 strategy. However one cannot but observe that the Commission’s new strategy of economic governance focuses narrowly on the achievement of very detailed economic targets, proposing that one institution, the European Council, should take the “ownership” of the strategy, should “steer” it.\textsuperscript{12}

As defined by the TEU, the European Council, composed of the heads of state and government of the 27 member states has the prerogative to “define the general political directions and priorities” of the Union (art. 15). But the European Council is prohibited “to exercise legislative functions” (art. 15 TEU). After coming into existence four decades ago, the European Council has been fully integrated into the institutional system of the Union only with the reform treaty of Lisbon. The nature of this institution is not undisputed, as it crosses the boundaries of traditional state bodies as defined by legal and state theory. The European Council is widely regarded as part of the executive but through its large concentration of political power and its prerogatives with regard to guiding European integration and policy making, it can influence even the legislative process of the Union. This happens indirectly, with the Council as mediator, whose members are, at the member state level, subordinated to the members of the European Council. The Council’s attributions are both those of a European legislative (art. 16 I TEU and corresponding provisions of the TFEU) and executive.

The Treaty of Lisbon has somewhat diminished the rather large legislative role of the Council – reducing also the influence of the European Council in this matter – by extending the use of the co-decision procedure and thus enhancing the role of the European Parliament. It was however precisely the intent of the last reform treaty on the EU – the so-called Treaty of Lisbon – to elevate the European Parliament more into the role of a real representative legislative body of the Union. But the Parliament’s role as an initiator of policy remains rather secondary, as the Council (and indirectly the European Council) and Commission retain this specific prerogative. This structure, imposing the primacy of the Council over other institutions is a vestige from the early days of European integration.\textsuperscript{13}

The European Parliament itself, the co-legislator on the Union-level (according to art. 14 TEU) should mobilize European citizens and national Parliaments and communicate joint views with the latter to the European Council. However those views would bear in practice little binding force on the other institutions if a regular legislative procedure is not required. This would lead to a large democratic legitimation deficit when implementing the 2020 strategy. According to Section 6 of the strategy document\textsuperscript{14}, the Council will be requested by the European Council to “make the necessary decisions” to implement the Commission’s proposals for specific initiatives, that would follow the recommendations and guidelines of the European Council. The Parliament’s role in this procedure remains unmentioned. Besides the strictly necessary procedural aspects, the direct representatives of the Union’s citizens would remain excluded from initiatives.

This aspect only reemphasizes the weak democratic influence on the strategy and accordingly limits the citizen’s participation in important decisions on the Union level. That is in contrast to the aim

\textsuperscript{12} COM(2010) 2020, p. 29;
\textsuperscript{13} see Sack, ZEuS 2007, p. 465 The author also references the decisional process within the European Council and its far-reaching influence on other institutions such as the Council and thus on the Union as a whole;
\textsuperscript{14} COM(2010) 2020, p. 30;
of the TEU as stated in art. 1 of the treaty. Of course, the entire procedure as proposed by the Commission respects the procedural provisions of the treaties. On the other hand, the treaties do not prohibit the participation of the Parliament from such actions and procedures either. Democratic institutions, such as the European Parliament, also have clear rules referring to accountability and transparency. The European Council’s activities are however sorely lacking these two aspects. Despite the fact that the European Council’s conclusions are legally not binding, they are usually very detailed and are an expression of the political consensus reached between the highest representatives of the member states. These very representatives do not have any accountability for their decisions made in the European Council and as such are not required to assume any responsibility regarding them.

The Commission assumes with regard to the 2020 strategy its traditional role of an executive body with its old prerogative of legislative and policy initiatives as well as keeping its executive role. National, as well as regional and local authorities should have the obligation of implementing the strategy in partnership with the EU-institutions. The Commission itself would start a monitoring process of these implementations, issuing yearly reports on the progress towards meeting the headline targets. This process is partially akin to the monitoring process established by the mechanism for cooperation and verification (MCV) of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the combat against corruption.

In contrast to the mentioned MCV, the monitoring with regard to the 2020 strategy allows the European Commission “to present policy recommendations or warnings, make policy proposals to attain the objectives of the strategy and will present a specific assessment of progress achieved within the euro-area.” There are no explicit and special sanction mechanisms provided or even intended. Of course, sanctions depend mainly on other subsequent legal instruments used by the Council and Parliament, or the Commission, as a means to ensure the implementation of the strategy. This leaves an actual “partnership”, as described by the Commission’s strategy document, in which cooperation is voluntary and not mandatory. That, in turn, poses another problem, one already encountered during the economic crises started in 2009 (and also before that): the problem of the member states’ willingness to implement internal reforms. As there is no legal obligation strengthened by means of coercion to modify the internal legislation of the member states, the effectiveness of any recommended actions remains a matter of speculation.

Concluding the evaluation, the following can be stated:

The 2020 strategy is intended by the European Commission to represent an active approach to the mainly economic problems caused by the recent economic crisis. The purpose of this paper is not the evaluation of the proposed economic approaches, but of the procedures and the legal foundation of such measures. Considering the far-reaching effects the implementation of the strategy will have not only on Union level but even more on the legislation of the member states and implicit on the European citizens the aspects of

- the democratic legitimation of measures which could affect many aspects of the lives of European citizens and that of

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15 Bieber/Epiney/Haag, p. 135;
17 COM(2010) 2020, p. 29;
18 as mentioned above, during and after the accession of Bulgaria and Romania to the EU in 2007;
19 as seen in the cases of some member states. This does not necessarily imply a general condition existing at level of all member states;
a proper mechanism of implementing the recommended changes in order to reach the desired results is observed to be left unaddressed by the Commission’s document.

4. Observations and recommendations

4.1 Democratic legitimation

As presented in the section before, the Commission’s 2020 strategy leaves some sensitive areas of the European construction unaddressed. To the defense of the Commission it has to be said that the elaboration of a strategy regarding sustainable and social economic growth does not require addressing those issues. Leaving them open, however, could, on a medium or long term, slowly erode the ultimate goals of the Union, as stated in article 3 TEU, mainly those mentioned in para. 3: to combat social exclusion and discrimination, and to promote social justice and protection, equality between women and men, solidarity between generations... and promote economic, social and territorial cohesion, and solidarity among member states.

The Union pledges to create “an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.” (art. 1 TEU) As presented above, the European Parliament’s role is rather reduced. It should motivate citizens but if it lacks the possibility to express the political opinions of those represented, the motivation would consist mainly in information campaigns. The modest turnout at the European Parliament elections could be an indicator of the perceived role of the institution within the decision-making process of the Union.

The reform Treaty of Lisbon tried to adjust the situation by extending the co-decision procedure to more areas and therefore elevating the Parliament more into its intended role of a European legislative. However, the Council remains the Parliament’s “partner” in the co-decision procedure, but a partner that also has executive duties. As discussed above, the 2020 strategy, guided by the European Council, could be under circumstances be adopted and implemented with minimal interaction from the Parliament. The Council itself consists of members whose functions are based on a mediated democratic legitimation, through national parliaments, but having a larger role in deciding for the citizens of the entire Union, than the very direct representative of those citizens. Thus it is no wonder that decisions at the Union level, which in the present case will have a large impact on private persons, are perceived to be adopted in an un-transparent way, leading to a reduced acceptance and to a decreased effectiveness of those measures.

In conclusion strengthening the democratic legitimation of the EU would not only lead to adherence to the Union’s purpose and values, as stated in articles 1, 2 and 3 TEU but also to the justification to use more effective means – such as sanctions – on non-complying member states. This would help and ensure reaching the projected goals of the 2020 strategy.

4.2 Procedures

The second aspect with regard to the Europe 2020 strategy lies within its implementation. As referred before in section 3, the proposed partnership between European institutions and the member states does not ensure the effective realization and achievement of the set targets. As observed by the Commission itself, because of the interdependence of the member states, it is recommended that all 27 states work towards the same goals in a coordinated manner but taking into...
account their specific circumstances. Such a closely coordinated and tuned action on the side of 27 member states is not easy to achieve. One should be reminded of the high number of infringement procedures opened against member states. And the reader should be reminded that in the case of an infringement procedure, sanctions are part of it in order to ensure its effectiveness.

As provided in the 2020 strategy, the only action that can be taken against a member state, that has failed to adequately respond to a policy recommendation of the Council or has even developed policies which are contrary to the advice, under art. 121 para. 4 TFEU, the Commission could issue a warning. It is however neither not clear what legal force such a warning would have, nor what consequences would arise if the warning fails its effect. Recommendations are legally non-binding, secondary Union law instruments of the European institutions. They are not provided with any direct effect for that matter. The doctrine holds that recommendations have, however some indirect legal effects, such as constituting a prerequisite for later actions – e.g. an infringement procedure. But a direct procedure for ignoring a recommendation of the Council is not possible due to the non-binding nature of the act. The Council could decide (not taking into consideration the vote of the representative of the concerned member state) to address the member state in question a recommendation and to make that recommendation public. No further sanction is possible.

Considering the complexity of the task at hand, as well as the implications at a national level when initiating administrative reforms, it is not provided that the absence of direct sanctions will achieve the desired results. The lack of will to conduct the necessary changes in one member state could possibly affect others or even the Union as a whole.

As a proposal for remediation of this situation would be the creation of a sanctioning mechanism similar to the mechanism for cooperation and verification (MCV) of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption. The mechanism provides for clearly determined sanctions in case of non-compliances with the Commission recommendations: the so-called safeguard measures (as defined in art. 37 and 38 of the Protocol to the accession treaty) “including the suspension of Member States’ obligation to recognize and execute, under the conditions laid down in Community law, Romanian judgments and judicial decisions, such as European arrest warrants.” The legal basis of the MCV is the accession treaties of the two states to the EU, the two countries having agreed on a voluntary basis into submitting to the monitoring mechanism. Such procedures cannot be implemented against the will of the current member states, as the TEU and the TFEU do not provide such possibilities. Revising the treaties would be the only option for providing a legal base for such actions.

An effective sanctioning mechanism would greatly improve and ensure the compliance of the member states for the realization of the set targets of the 2020 strategy. Such a measure, which would cut deep into the remaining sovereignty of the member states, has to be balanced by granting more democratic participation rights to European citizens. Also, setting up or, better said, extending the

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22 COM(2010), 2020, p. 28;
24 See the procedure of art. 258 TFEU, Müller-Graff/Scheuing, EuR Beiheft 3/2008;
25 See e.g. Bieber/Epiney/Haag, p. 190;
MCV to other policy areas, some of which should be introduced into the treaties, like the fight against institutional corruption both on the Union and at the member state level, would ensure that necessary reforms would not be set off indefinitely by the states. An analysis of such an extension and its effects are however not the purpose of this paper.

5. Conclusion

The afore-mentioned mechanisms and procedures should be implemented with regard to all member states to ensure the good functioning of public administration with regard to implementing the steps of the 2020 strategy, as they represent a further guarantee that its high aims will become a benefit to the citizens of Europe and also of other states. They would represent a solution that would ensure the functioning of the Union not only on a short term, as a “crisis-only” solution, but a means to ensure the success of the European model on a long term. The institutional and conceptual reform of the EU must not be left aside, the main aim and at the same time main means for achieving this is the increased democratization of the Union.

Also, the added EU-value on the global scene cannot limit itself to a purely economic aspect. As restated in the preamble of the TEU, the European Union also upholds certain political and social values. This is especially true after the entry into force of the Charter of Fundamental Rights of the European Union and the planned EU accession to the European Convention on Human Rights. Of course success is measured more easily on an economical scale and economic success – such as growth and prosperity – reinforces the political life and workings of a society. However, narrowing down and reducing a form of social organization merely to its tangible and material results would nullify most civilizing and cultural achievements of the European continent, depriving human society as a whole of a wide range of alternatives and perspectives.

References:


28 COM(2010) 2020, p. 8;