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Small steps amid a pandemic:

The Portuguese EU Council Presidency

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Abstract

The fourth Portuguese Presidency of the Council of the European Union (EU) took place during an unprecedented global and European crisis, the Covid-19 pandemic. Continuing the work of the preceding German Presidency, it can be said that overall, the Portuguese Presidency achieved major successes, in particular the implementation of the Pandemic Recovery Package ('NGEU'), the Conference on the Future of Europe, the taxation of digital multinationals, and the first EU-India summit. At the same time, several obstacles were not fully overcome. These were the deepening of the European Social Pillar, one of the main priorities of Portugal's Presidency, and a European level immigration policy. Moreover, under the impact of varying national policies to contain the pandemic, freedom of movement in Europe was somewhat curtailed.

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Introduction

In January 2021, Portugal took on the Presidency of the Council of the European Union (EU) for the fourth time. For the Portuguese Socialist government, led by Prime Minister António Costa, it was presented in the media and within public debate as a major upgrading of the international standing of Portugal's influence. The German-Portuguese-Slovenian trio took on the Presidency during a time of unprecedented crisis, brought on by the Covid-19 pandemic. The timing was similarly challenging as during the trio's last presidencies in 2007-2008, when the Treaty of Lisbon was signed under another Portuguese Presidency. After the rejection of the Constitutional Treaty in referenda in France and the Netherlands, the preceding German Presidency had managed to reach an agreement on a new reform treaty and Portugal was responsible for the drafting process of the new treaty text. In 2021, it was again Portugal's task to ensure a smooth implementation of a landmark political agreement brokered by the German Presidency on the new EU budget and the massive recovery instrument, Next Generation EU (NGEU).

Under the title 'Time to deliver: a fair, green and digital recovery', the Portuguese Presidency set three priorities: promoting Europe's recovery with emphasis on the green and digital transitions; implementing the Social Pillar; and strengthening Europe's strategic autonomy.

Successes

The pandemic recovery

The political agreement on the unprecedented EUR 750 billion recovery package 'NGEU', totalling a historic EUR 1,8 trillion together with the new EU Multiannual Financial Framework (MFF) for the years 2021-27, was reached during the German Presidency in July 2020. Nevertheless, the recovery instrument stayed the most urgent item also on Portugal's agenda. The most important task during the Portuguese Presidency was to get the package ratified in all Member States and the national recovery plans approved by the Commission and the Council. The decision to maintain the suspension of the EU budget's fiscal rules was welcomed by the Portuguese Government that worked hard during its Presidency for what was called "a sign of coordination unheard among Member States to keep the recovery at the top of priorities". During the Portuguese Presidency, debt emission by the European Commission was achieved in record time, allowing the Member States to jointly have the capacity to issue debt for the first ime. Although the process was contentious, it was approved by all national parliaments. The first 12 national recovery plans were approved in July 2021. Portugal was part of this first batch along with Austria, Belgium, Denmark, France, Germany, Greece, Italy, Latvia, Luxembourg, Slovakia and Spain. Already during the current Slovenian Presidency, the funds began to be distributed to the Member States. Italy and Spain are the largest beneficiaries although in terms of GDP percentage, Greece and Portugal will receive the bigger share.

While undoubtedly a historic step, the NGEU's long-term impact on EU integration is yet to be determined. On the one hand, countries like France considered this initiative in the words of its Minister for Europe, Clément Beaune. Its supporters hope for structural reforms to be put in place, leading to a closer fiscal and political union. On the other hand, the unexpectedly difficult ratification process in Finland is indicative of the possible future contestation of the package's legacy. Also in Germany, ahead of crucial federal elections ending Chancellor Angela Merkel's 16-year-term, the Christian Democrats and the Free Democratic Party strictly opposed the idea of making the NGEU a permanent instrument. In turn, the Social Democrats, who emerged as the strongest party from the elections, endorsed a transfer union in their election manifesto as a step into deeper integration. Originally a Franco-German initiative, NGEU's future will depend significantly on the setup of the new German federal government and the outcome of the elections in France in spring 2021. Furthermore, it can be expected that any permanent mechanism, allowing the Commission to issue debt beyond the acute crisis recovery, will face opposition from the so-called 'frugal four' (Austria, Denmark, the Netherlands, and Sweden) and Finland. The issue has deepened the north-south divide within the EU, which could become increasingly difficult to bridge.

Conference on the Future of Europe

After a period of deadlock during the German Presidency, Portugal lost no time in restarting the negotiations on the Conference on the Future of Europe and put the topic on the agenda of the first informal video conference of the Ministers of European Affairs in January. Already postponed due to the Covid-pandemic, the Conference's start was further delayed by an inter-institutional disagreement on its leadership. Portugal swiftly managed to broker an agreement that resulted in the Joint Declaration in March 2021 and the Conference was launched on 9 May 2021, one year after its original start date. The compromise solution was a complicated one, creating a complex institutional setup with a shared leadership of the presidents of the Commission, Council and Parliament and an Executive Board with equal representation from the three institutions. Nevertheless, it was important to get the Conference started. A further delay would have diluted the purpose of the Conference entirely.

Taxation of digital multinationals

During the Portuguese Presidency "the crisis made it even more important to reach an agreement on the taxation of digital companies", in the words of Valdis Dombrovskis, European Commission Executive Vice-President. The electoral victory of Democrat Joe Biden in the United States' presidential elections also created better conditions regarding an international fiscal compromise. The plan by the Commission envisages the creation of a digital tax in the EU that will function as a source of its own resources from 2023 onwards. The focus is on two levels: the possibility of the re-allocation of taxing rights, and the minimum effective taxation of the profits of Multinational Enterprises (MNEs) to reduce bureaucracy and tax evasion, and prevent the domiciliation of revenues in more favorable tax zones. At the same time, this policy will have to be in line with the measures of the OECD and the World Trade Organization in this context, a process which is still ongoing.

EU – India Leaders Meeting

Although the EU-India Leaders Meeting was held by remote videoconference and not in the city of Porto as planned, for the first time, Indian Prime Minister Narendra Modi and EU representatives were virtually together with the 27 leaders of the Member States. The good relationship between Prime Ministers Modi and Costa (the latter having Indian ancestry) were decisive for this meeting not to be postponed. The meeting was advertised as one of 'The world's two largest democracies'. Advances in joint cooperation were achieved in areas such as Covid-19 and other global health emergencies; climate; commerce, connectivity and technology; and democracy and human rights. From the EU's point of view, it aims to raise its presence in the world, promoting multilateralism and diversifying global partnerships, in particular with the India-Pacific region and Africa. This also constituted a step in balancing the influence of China at global level. The two main achievements were the EU-India Connectivity Partnership and the reopening of FTA negotiations.

Brexit Adjustment Reserve (BAR)

In June, the European Parliament and Council drafted a regulation's agreement on the Brexit Adjustment Reserve (BAR) in order to enhance economic, social and territorial cohesion by providing financial support to the European regions and sectors that are worst hit by Brexit. BAR was defined by the Portuguese Minister of Foreign Affairs as a special and unique emergency instrument that will be made available between end of 2021 and 31 December 2023, as a pre-financing package worth four billion euro.

EU Climate Law

Portuguese Minister for the Environment and Climate Action, João Pedro Matos Fernandes, described the adoption of the first European Climate Law as "the grand accomplishment" of the Presidency. The Climate Law, making the European Green Deal ambition of EU-wide climate neutrality by 2050 and a reduction of net greenhouse gas emissions by at least 55 % until 2030 compared to 1990 levels a legally binding target, was indeed high up on Portugal's priorities list. While it is a great accomplishment for the Portuguese Presidency, climate is currently one of the most likely common denominators among the EU-27 and a consensus was relatively easy to achieve, compared to other also urgent, but completely blocked dossiers, such as migration.

Shortcomings

The Social Summit

The Social Pillar was one of the main priorities of Portugal's Council Presidency. A 'social summit', to be held in Porto in May, was announced as a key event of the Presidency. After a difficult start due to the high infection rates in Portugal at the beginning of the Presidency, the improved pandemic situation allowed the high-level summit to be held in person. Portugal's ambition was to "make the European Pillar of Social Rights a reality", according to Prime Minister António Costa and the Presidency website expected "a giant leap" in the EU's social agenda ahead of the Porto Summit. Although Prime Minister Costa described the Porto Social Commitment, the result of the social summit, as "the most comprehensive and ambitious tripartite commitment ever reached in the European Union", it decidedly remained shy of Portuguese expectations. While it was a worthwhile effort to get the main social partners (European organisations representing employers and employees), as well as the European institutions (Commission, Council and Parliament) to sign the commitment, it nevertheless entails no concrete measures and social policy remains a national competence.

The north-south divide also becomes evident in the Social Pillar: the Nordic EU Member States already have comprehensive national social systems and are not willing to give the EU more competences in social policy to avoid interference with their 'Nordic model'. Ahead of the Porto summit, 11 Member States (predominantly Nordic and Baltic) issued a non-paper reminding the Portuguese Presidency that the Member States "primarily hold responsibility for employment, education and skills and social policies". The signatories are reluctant to grant the Commission more power in social policy and especially the Nordic Member States oppose proposals such as the introduction of an EU-wide minimum wage regulation that could affect their collective bargaining systems. Portugal thus faced tough opposition to its plans and had to accept some degree of defeat, e.g., not mentioning the minimum wage in the Porto Social Commitment.

Digitalisation

Although one of three priorities, digitalisation remained a less prominent issue during Portugal's Presidency. Portugal led the Council discussion on the Commission's proposals for a Digital Services Act and Digital Markets Act and the Presidency issued a progress report in May, as well as a first compromised text on the former in June. However, in-depth discussions on contentious points are still ongoing. On the other hand, as pointed out in a summary video on the Presidency website, the approval of the Digital Covid Pass was one of the fastest instances of EU decision-making ever.

Freedom of movement in Europe

The basic principle that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States was somewhat curtailed by Member States' measures to reduce the contagion of Covid-19. Decisions were taken individually by the various Member States and even differently between regions of the same country. At the beginning of the pandemic especially, many Member States closed borders unilaterally and without consultations at EU level. The vaccination roll-out coordinated by the European Commission promised to be key to reopening borders and reestablishing freedom of movement, however the roll-out was delayed by delivery problems and a dispute with the vaccine producer AstraZeneca in early 2021. Nevertheless, with the arrival of summer, an increasing rate of vaccination amongst the population of the EU was reached, reducing the risks of propagation, and the use of the EU Covid certificate was extended.

At the same time, countries can still impose other restrictions, if deemed necessary and proportionate. Moreover, only the vaccines approved by the European Medicines Agency (EMA) – Comirnaty (BioNTech-Pfizer), Janssen (Johnson & Johnson), Spikevax (Modern) and Vaxzevria (Oxford-AstraZeneca) – were eligible for the EU certificate, which can be discriminatory in cases such as, for example, Hungarian citizens who have been administered the Russian Sputnik vaccine.

Immigration policy

There was a substantial delay in the establishment of common legislation on migration and financial support to the states that receive the highest numbers of immigrants (Italy, Greece, Malta, Spain). Ten months after the migration pact was presented, the EU had still not reached a consensus. This was one of the priorities defined by the Portuguese Council Presidency, in particular aspects such as preventing irregular immigration, promoting sustainable channels for legal migration, integrating immigrants and safeguarding human rights in general. Due to lack of progress – despite Portugal's efforts at the beginning of its Presidency to hold talks with several Member States on the issue – the Slovenian Presidency has 'inherited' the migration dossier from Portugal. It should also be mentioned that this delay is part of the broader process of a Commission migration policy that has been in the making for five years without much progress.

External affairs: EU- African Union summit and EU-Mercosur trade agreement

The EU-African Union summit was a prioritised item of the Portuguese Presidency. Originally scheduled to take place under the German Presidency, it was indefinitely postponed by the development of the pandemic and has consequently lost momentum, in spite of High Representative Joseph Borrell's intention that 2021 would be the year of 'Africa for the European Union'. Another external affairs dossier that Portugal passed on to the Slovenian Presidency was the EU-Mercosur trade agreement. Despite talks between Portugal and Argentina (the latter holding the Mercosur Presidency simultaneously with the Portuguese EU Council Presidency) in early 2021, the negotiations did not proceed as hoped for by the two Presidencies due to some EU Member States' concerns over deforestation in the Amazon, such as France and Ireland.

Conclusion

Portugal started its Presidency of the Council under difficult circumstances, with Covid-19 case numbers in the country going up rapidly in January after the easing of restrictions over the holidays. In this context, Portugal was initially criticised for its high staff expenses although the Presidency had to be organised almost entirely virtually. However, after the vaccination campaign gained momentum in the spring, decreasing infection rates enabled in-person meetings and notably, the Porto Social Summit could be organised as planned.

One more contentious issue deserves mentioning: under the Portuguese Presidency, hearings in the legal cases under Article 7 against Poland and Hungary were taken up again for the first time since the beginning of the pandemic. The issue was addressed at the end of the Presidency during the European Council from 24-25 June: there was an extensive exchange on the rule of law and European values in the context of anti-LGBTQI legislation in Hungary, a topic rarely discussed at the highest EU level in such a direct manner. Consequently, in July the Commission took legal action against Hungary and Poland regarding the situation.

All in all, Portugal managed the Presidency well considering the Covid-19 restraints and many urgent, high-priority dossiers on its agenda. Portugal's most important task was to ensure the approval of the national Resilience and Recovery Plans to get the NGEU money flowing into the recipient states. This goal was achieved and together with the adoption of the European Climate Law, it is fair to say that Portugal largely lived up to its own Presidency slogan of 'Time to deliver: a fair, green and digital recovery'.

Portugal also deserves credit for its efforts to finally get the Conference on the Future of Europe launched. However, only the 'green' part of the slogan reads as a complete success story – as for 'fair', while being a good start, the Porto Social Commitment failed to live up to Portugal's ambition regarding the Social Pillar. In the field of digitalisation, Portugal's performance was weakest.

The main question for the future of the EU that remains from the Portuguese Presidency is whether the NGEU is an exceptional policy just to overcome the crisis generated by the Covid-19 pandemic or an instrument that will stay and be used in the future to manage economic crises and to promote investment. Will the Maastricht rules be suspended only in 2021 and 2022 and how will they be revised in the future? The EU will need room for manoeuvre in the next few years to make the financial transfers necessary to enhance resilience and solidarity at the European level. However, the Member States do not share a vision of how much solidarity will be needed and the re-negotiations on the EU's fiscal rules promise to become a difficult issue for future Presidencies of the Council.