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EDICIONES COMPLUTENSE

Conclusions: What future for the Treaty of Lisbon?

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Abstract. This conclusion to the special issue reflects on the evolution of European integration since the early 1990s in order to better understand the contested origins of the Treaty of Lisbon and the consequences the latter have had for the EU's political system. It considers the various contributions of the special issue and shows how the Treaty emerged in an era of shifting cleavages, disputed steps towards a more political Union and rising populism. This legacy has led to more polarisation and politicisation – a phenomenon that the Treaty of Lisbon struggles to encapsulate and conciliate with the culture of consensus and compromise inherent to its institutional structures. As a result, we observe a bias towards policy stability – and even failure – that affects the legitimacy and democratic standards of the European Union. In a context of polycrisis, the difficulty to find compromises – especially in highly normative issues – leads to the de-politicisation of the EU and reinforces the gap between EU institutions and its citizens. The COVID-19 pandemic is a window of opportunity for the EU, in which to choose between integration and disintegration; between values and inaction.
Keywords. European Union; integration; Treaty of Lisbon; populism; polarisation; intergovernmentalism; democracy; crisis

[en] Conclusiones: ¿Qué le espera al Tratado de Lisboa?

Resumen. Esta conclusión del número monográfico refleja la evolución de la integración europea desde principios de la década de los noventa, a fin de entender mejor los controvertidos orígenes del Tratado de Lisboa y qué consecuencias ha conllevado para el sistema político de la UE. La conclusión provee una reflexión basada en las diversas contribuciones del número monográfico y muestra como el Tratado surgió en una era de cambios esenciales en los clivajes políticos y un populismo creciente y como asentó el proceso hacia una Unión más política. Este legado ha llevado a una mayor polarización y politización de la integración europea, un fenómeno que el Tratado de Lisboa lucha por conciliar con la cultura de consenso y compromiso inherente a sus estructuras institucionales. Como resultado, observamos una tendencia hacia la estabilidad de los resultados políticos, e incluso hacia el fracaso de las decisiones políticas, que afecta la legitimidad y los estándares democráticos de la Unión Europea. En un contexto de 'policrisis', la dificultad para encontrar compromisos, especialmente en cuestiones predominantemente normativas, conduce a la despolitización de la UE y refuerza la brecha entre sus instituciones y sus ciudadanos. La pandemia de COVID-19 ofrece una nueva oportunidad para la UE, en la que tendrá que elegir entre integración y desintegración; entre valores e inacción.
Palabras clave: Unión Europea; integración; Tratado de Lisboa; populismo; polarización; intergubernamentalismo; democracia; crisis

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1. Introduction

We tend to take the Treaty of Lisbon as a point of departure, but often forget that its inception and contents are symptomatic of a specific point in time in the history of European integration. The compromise that followed the failed constitutional treaty revealed the limitations of a European Union (EU) that had changed substantially since its origins – both in terms of depth and width. While it reified bicameralism as the normal decision-making method and, thereby, gave a much stronger voice to the European Parliament (EP), it also accredited the supremacy of the European Council in leading the EU. The Treaty of Lisbon also opened a door

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for potential conflicts between different levels of governance – such as national parliaments – and inserted for the first time a way out of the Union.

This side-loped institutional design was a sign of things to come; in some cases, it was actually at the source of major crises in the integration project – notably the exit of the United Kingdom from the EU, made possible with the inclusion of the now infamous Article 50. Since the early 2010s, the EU has faced a growing debate about its core idea of solidarity and common action, with calls for differentiation and re-nationalisation becoming louder. The inability to find a coordinated solution to the 2015 refugee crisis or the knee-jerk reaction to close internal borders at the onset of the COVID-19 pandemic are good examples of this trend.

Intergovernmentalism is, therefore, part and parcel of the Treaty of Lisbon and casts a long shadow over the current state of the Union. This concluding article draws from the contributions of this special issue and brings them into a broader perspective, looking notably at the processes that have led to this intergovernmentalist turn and its consequences. It aims, therefore, to critically consider the impact that the Treaty of Lisbon has had on the institutional structure, governance and democratic credentials of the European Union ten years on. This is particularly important in the current context, which might become a turning point in the project of integration. The article looks first at the main factors that explain the limitations and innovations of the Treaty of Lisbon. It examines then the consequences that these factors play in the current system of European governance and finishes with some scenarios in the (post-)COVID-19 era.

2. Why intergovernmentalism casts a shadow over Lisbon

In order to understand how the Treaty of Lisbon came to be, we need to pay attention to the changes that preceded the process of constitutional reform. In a sense, Lisbon is the culmination of longer-term processes of institutional reform that sought to fill in gaps in a status quo that emerged with the widening and deepening of the EU after the early 1990s. The outcome was a series of difficult and often unsatisfactory reforms encapsulated in the recurrent treaty changes of Maastricht, Amsterdam, Nice and the failed Constitutional Treaty. This long route of adaptation and progressive institutionalisation was marked by the growing dislocation between a project that was associated with technocratic politics and a Union that was increasingly political.

This section reviews three factors that contributed to this dislocation and that are present in a majority of the articles of this special issue.

2.1. Shifting cleavages

Since the Treaty of Maastricht, EU politics have changed dramatically. Postfunctionalism has shown how the move from an economic to a political Union mobilised citizens and forced a shift from a permissive consensus to a constraining dissensus. This theoretical approach focuses on identity as the main element structuring political competition in the European Union – both on the EU and domestic levels (Hooghe and Marks, 2009). While Antón Losada and Elba Maneiro (this issue) show that EU citizens have largely come to understand their identities as inclusive and complementary, postfunctionalism focuses on those who are attached to exclusive understandings of identity. These citizens became more concerned about the political turn of European integration, since they perceived it as an encroachment into traditional domains of state sovereignty (Hooghe and Marks, 2009; Genschel and Jachtenfuchs, 2016b). At the same time, their concerns were not captured by traditional mainstream parties, which had tended to be either silent or unanimously in favour of European integration (Mattila and Raunio, 2012; Mair, 2013). Consequently, the 1990s saw the emergence of a new cleavage based on national identity, forming an axis ranging from green/alternative/libertarian (gal) positions to traditionalist/authoritarian/nationalist (tan) (Hooghe, Marks, and Wilson, 2002) that was rapidly appropriated by new challenger parties – notably Eurosceptic and radical right parties. Even if these political parties were still marginal, they forced mainstream parties to take a position on issues of European integration and led, thereby, to its gradual politicisation (Hooghe and Marks, 2009; Hooghe and Marks, 2018). Therefore, the dynamics between political parties and public opinion are key to understand why the process of integration has become more prominent (and problematic) on all levels of governance and why decisions on constitutional matters are more likely to fail than in the past.

2.2. Between integration and autonomy

The gradual politicisation of European integration was reflected also in the constitutional compromise reached in Maastricht and the process of secondary decision-making that followed. The successive treaty reforms introduced solutions that softened the institutional framework (notably unanimity in the Council) that contributed to a joint-decision trap, namely, difficulties to integrate further but also to roll-back any competences that had already been integrated (Scharpf, 1988). These solutions – notably the introduction of Qualified Majority Voting (QMV) and the possibility to delegate to technical bodies such as agencies – allowed the EU to mini-

mise conflict and continue integrating despite the existence of a growing constraining dissensus and a context of polycrisis (Zeitlin, Nicoli, and Laffan, 2019; Genschel and Jachtenfuchs, 2016a; Bickerton, Hodson, and Puetter, 2015). However, the literature on Core State Powers shows how, despite the capacity of the EU to continue integrating by insulating itself from the shifting cleavages and growing politicisation emerging on the domestic level, this institutional design is problematic in the long-term: the EU is increasingly regulating in areas of state sovereignty such as migration, taxation, borders and security (hence the concept of Core State Powers) without the capacity to build new forms of centralised authority. This mismatch can easily lead to fragmentation and more politicisation in relation to European integration (Genschel and Jachtenfuchs, 2016a; Genschel and Jachtenfuchs, 2016b).

The treaty changes – notably the shift to QMV in the Council and expansion of co-decision as the ordinary legislative procedure – hide also informal biases in the EU's policy-making process that explain the increasing deadlock in areas where supranational coordination is required. Notably, the institutional architecture that has emerged from the Treaty of Lisbon continues to be heavily intergovernmental. The officialisation of the European Council as one of the key EU actors has led to new inter-institutional dynamics and increased the voice of member states. As will be examined below, this shadow of hierarchy and intergovernmental decision-making has a direct impact on the content and style of decision-making.

2.3. The rise of populism

The politicisation of European integration has seen a parallel (and connected) development to the rise of populist forces both on the EU and domestic level. As seen above, the emergence of non-mainstream political forces has often been a product of shifting cleavages and the perception that mainstream parties cannot respond to the concerns of those who feel left behind. Research into the emergence and growth of populist forces shows that the demand side (voters) is broader and more diverse than just 'losers from globalisation' (Rooduijn, 2018). In addition, the phenomenon cannot be explained without taking into account the supply side (political parties) – the success and failure of populist parties is generally linked to their credibility and how mainstream parties respond to newcomers (van Kessel, 2013). What has become clear in the last years is that, contrary to expectations, populist parties are not doomed to failure when they are in government (Mudde, 2013); the ability of populist governments in Poland and Hungary to produce long-term changes to their constitutional makeup demonstrates their ability to redesign domestic political systems to make populism more resilient.

Populist parties have been able to adapt their supply to contextual factors, such as the economic and migration crises – issues that are easily captured by their anti-elitist and nativist tendencies (Caiani and Graziano, 2019). In addition, since these crises have been closely linked to functional pressures to integrate further on the European level, they have contributed, in turn, to the Eurosceptic, anti-elitist and nationalist messages adopted by a majority of populist parties – especially those on the right-side of the political spectrum (Pirro and Taggart, 2018). Therefore, even if there is a majority that supports the European Union, this support has become more contested at the level of party competition. This is extremely problematic for the functioning of EU policy-making, since it has led to a restructuration of internal cleavages also inside the EU institutions.

In sum, we see that the Treaty of Lisbon is the product of an era that has been marked by higher levels of politicisation and contestation of the integration project. It is, however, a difficult causal relationship, with progress in European integration being often a source for populism and identitarian backlash, while the subsequent constraining dissensus also limits the extent and form of supranationalisation. What is clear, however, is that the Treaty of Lisbon has not led to the type of integration that many imagined when the Constitutional Treaty was discussed, namely an EU less in the shadow of member states and more in the hands of supranational institutions.

3. The impact of intergovernmentalism on European integration

The question is, thus, what are the consequences of this specific context in which the Treaty of Lisbon emerged for the inter-institutional balance of power as well as the place that the EU has in the multilevel system of governance. This section looks at how the polarisation that has emerged from the increased contestation and politicisation in domestic and European politics affects the balance of power within and between the different EU institutions. It then examines how these power shifts contribute to policy stasis, before considering the consequences for the legitimacy of the EU project.

3.1. Polarisation and its consequences

The shifting cleavages and restructuring of the European party systems has significantly changed the political landscape both on the domestic and European level. From a Europe dominated by a clear left-right axis with three main party families (Christian-Democrats, Social-Democrats and Liberals), we see now a more frag-

mented and polarised partisan landscape. New parties have emerged not only on the edges of the left-right axis but also bringing in new issues of identity (e.g. radical-right parties) and postmodernity (notably the resurgence of Green parties). In addition, some of these challenger parties have contributed to more open debates on the direction and shape of European integration – either in a soft Eurosceptic variant on both the left and right of the political spectrum or in a harder form that questions the existence of the EU and the legitimacy of its institutions (Hutter, Grande, and Kriesi, 2016; Szczerbiak and Taggart, 2008). Therefore, we have now more political parties on the scene as well as more choice for voters – but also more competition and fragmentation in the policy-making process.

These dynamics are particularly clear to see in the evolution of the European Parliament. The polarisation of European politics means that the number of political groups has risen steadily over the years. This fragmentation has been accompanied by ideological polarisation, which translates into more extreme forces sitting in the EP and a significant reduction of the mainstream groups that dominated the assembly since its origins in the post-war era. In the 2019 elections, the Grand Coalition formed by the European People's Party (EPP) and the Socialists & Democrats (S&D) groups lost its majority, which means that they need to find allies either in the liberal Renew group or other formations such as the Greens. Given that majorities in the European Parliament are highly unstable and very dependent on the topic put to the vote, mainstream groups are finding it more difficult to find majorities. In practice, this means that most votes are supported by supersized majorities that generally include more groups than just those necessary to reach a simple majority (Ripoll Servent, 2019). While this has generated a culture of consensus and compromise within the European Parliament, it has consequences for policy outputs and the quality of democracy – two points that are examined further below.

Polarisation has become more noticeable with the increased number of populist and Eurosceptic forces. It is important to remember that the far-right Eurosceptic group Identity & Democracy (ID) is now the fourth force (out of seven) in the EP, before the Greens, the soft-Eurosceptic European Conservatives and Reformists (ECR) and the equally soft-Eurosceptic radical left (GUE/NGL). This has consequences not only for the balance of power when it comes to building coalitions but also for the daily work of the parliament, which largely depends on the number of seats to attribute speaking time, committee and delegations' chairs as well as rapporteurships for individual files. Although mainstream groups continue to use the 'cordon sanitaire' to isolate those forces that are considered too radical (basically the ID group in the current Parliament), the success of this instrument is limited in an institution that is largely structured around proportional representation (Ripoll Servent, 2019). In addition, the 'cordon sanitaire' has shown explicit weaknesses when it comes to actively isolating radical ideologies, especially when members of mainstream groups either cooperate with or copy the discourses and strategies of populist and Eurosceptic parties. Similarly, it is of no use if aimed at excluding radical ideologies within mainstream political groups, as the example of Hungarian Fidesz (only recently excluded from the EPP group) clearly shows (Ripoll Servent and Panning, 2021).

At the same time, polarisation is not just a phenomenon affecting the European Parliament. While probably less visible, it is equally problematic for the Council and European Council. The culture of consensus that has prevailed even with the end of unanimity is increasingly inadequate to deal with the rising tensions on the domestic level; we observe, hence, a process of bottom-up politicisation that makes bargaining and issue-linkage more challenging (Bressanelli, Koop, and Reh, 2020). While conflicts on the (re)distribution of resources are not unusual (see Kölling, this issue), the rise in populist forces has added new lines of conflict linked to identity and values. Hence, the presence of populist parties changes the rules of the game and makes it more difficult to use traditional tools, such as package deals, to strike agreements between member states. The debates on the redistribution of asylum-seekers or the incorporation of rule-of-law conditionality into the 2021-2027 Multiannual Financial Framework are good examples of the new frontiers facing EU negotiations (Politico, 2020; Zaun, 2018).

3.2. Limited policy change

Polarisation on the domestic level, hence, is playing a more important role on the EU level, shaping its politics, but also its policy outputs. First, as seen above, the presence of more (radical) parties in the European Parliament makes it more difficult for mainstream political groups at the centre of the political spectrum to form clear left- or right-wing coalitions. As a result, most policy outputs in the EP reflect valence positions that can be defended by both centre-left, centre-right and liberal MEPs. While this gives a clear advantage to groups like Renew – which is often perceived as a king-maker –, it also forces difficult choices when some of the larger groups do want to push for a more ideological output (Ripoll Servent, 2015). This is often a difficult choice for such a heterogeneous group as Renew, which gathers in it parties with very different conceptions of liberalism – from economic (neo-)liberals often close to conservative parties to parties focused on social liberal values that are very similar to the Greens and some sectors of the radical left. Therefore, mainstream groups in the EP generally face a trade-off between minimal-winning coalitions with a clear ideological line – which are inherently risky, especially if an early deal cannot be secured with the Council – and supersized majorities that both sides of the ideological spectrum can support. While the latter option is good for inter-institutional nego-

tiations – since it makes it easier for the EP to make Council negotiators come closer to Parliament's position in trilogues (Delreux and Laloux, 2018; Trauner and Ripoll Servent, 2016) –, it also makes it more difficult for citizens to identify who is responsible for specific policy outputs. Therefore, the necessity to find agreements in the centre of the political spectrum – linked also to the diversity intrinsic to any transnational political party – explains why EP political groups often look very similar in their policy choices – making it more difficult for voters to differentiate between their platforms (see also Ares and Volkens, this issue).

The lack of differentiated policy outputs is compounded by the working practices in the Council and the preponderance of unanimity in the European Council. The tendency of member states to look for consensual solutions – even under the shadow of polarisation and populism – means that policy outputs continue to be defined by incremental policy changes; that is, legislative agreements rarely go far away from the status quo. Indeed, given this culture of consensus, the rise in bottom-up politicisation and more polarised national governments means that there are now more chances for deadlock – especially on files that touch upon core state powers or have distributive effects. In turn, the higher chances of conflict and deadlock in the (European) Council affect the capacity of supranational institutions to steer the process and achieve significant (non-incremental) policy change. The last crises have shown that the Commission had better chances to participate when it dealt with exclusive competences where it had accumulated more expertise (as in the Eurozone crisis), but was overshadowed by the European Council when conflicts touched upon highly sensitive and politicised issues (as in the refugee crisis), where the Commission was seen as weak and less informed than member states (Smeets and Zaun, 2020). Even more importantly, the intervention of the European Council has often pre-empted the participation of the EP – either by choosing non-legislative instruments to solve crises (as in the EU-Turkey agreement of March 2016) or by subjecting any inter-institutional agreement to the final approval of the European Council (Bressanelli and Chelotti, 2020). Therefore, the preponderance of member states in the EU's policy-making process limits the chances for major policy reforms; this is independent from their impact on European integration and concerns rather the chance to address current societal concerns, such as digitalisation, climate change as well as gender and diversity (see also Irigoien, this issue).

Finally, polarisation and politicisation on the domestic level also explains why relations between different levels of governance have become more complex. For instance, the use of the Early Warning System can be understood as a sign of bottom-up politicisation – when many national parliaments raise questions about a legislative proposal, it is highly likely that an agreement is going to prove complicated also within the Council or on an inter-institutional level (see also Borońska-Hryniewiecka, this issue). At the same time, we should not be surprised that the advocacy of national parliaments is more limited than expected; various studies have shown that their participation is likely mediated by their resources and expertise but also by the chances offered to parliamentarians to speak against their governmental majority (Auel, Rozenberg, and Tacea, 2015).

3.3. Democracy, legitimacy and the shadow of efficiency

The lack of clear policy choices and solutions emerging from the EU's policy-making system contributes to the gap between voters and institutions. The technical character of many EU decisions and their lack of repercussion on those issues that matter most to voters (e.g. education, health, welfare, taxes, etc.) makes it more difficult for citizens to understand why EP elections matter. In addition, the consensual nature of EP politics – which has been reinforced paradoxically by increased levels of polarisation – leads to centripetal outputs with political choices situated at the centre of the political spectrum. This explains why EP political groups struggle to design clear political platforms during election campaigns and why voters often cannot see any significant programmatic differences among the mainstream parties (see also Ares and Volkens, this issue). Therefore, despite the increasing levels of polarisation and politicisation both on the domestic and European levels, EU actors struggle to render the EU's system more political – that is, to recreate a sense of parliamentary democracy with clear government and opposition dynamics that help voters know who to 'blame' when they are dissatisfied with specific solutions. Indeed, the difficulty to institutionalise the *Spitzenkandidaten* system (see also Suárez, this issue) reflects this gap between a wish for clearer ideological choices and an institutional structure based on a separation-of-powers logic. This longstanding debate (whether the EU should be more or less 'political') is still at the core of the 'democratic deficit' and 'second-order elections' arguments and extend also to discussions about the role of the Commission and the need to turn it into a 'proper' government (cf. Hix and Bartolini, 2006; Shackleton, 2005).

This call for a more 'political' Europe often clashes with a widespread trend towards de-politicisation, especially during and in the aftermath of a major crisis. The polycrisis of the last decade has put the EU institutions under pressure: the urgency attached to a context of uncertainty and the calls to deliver solutions have often limited the fora in which decisions are made and moved debates and solutions outside the legislative and even the political arena. Most solutions have been largely determined either by non-majoritarian institutions – be them the European Council, the Commission, the European Central Bank or, even, the Court of Justice of the European Union. In the aftermath of the crises, the European Parliament has often seen its role diminished to that of an 'executor' of the European Council's conclusions – with very limited

room for manoeuvre when it comes to adapting and implementing the solutions chosen by the Heads of State and Government (Bressanelli and Chelotti, 2020). Alternatively, many solutions have come hand in hand with an empowerment of technical bodies, notably agencies, networks and other forms of administrative coordination. A good example is the empowerment of Frontex in the aftermath of the refugee crisis of 2015; although expanding the remit and budget of the border guard agency was seen as a valence solution and was hardly contested, this shift hides also a power dimension between member states as well as between different levels of governance (Ripoll Servent, 2018). In the recent COVID-19 crisis, internal border closures have also been treated as a matter of necessity, especially by member states' governments, which have made an effort to de-politicise the disruptions to the Schengen system and present it as a mere technical matter (Wolff, Ripoll Servent, and Piquet, 2020).

The main problem with the de-politicisation turn is that it makes it even more difficult for citizens to know who is responsible for EU policies and who to held accountable for their consequences. For instance, the actions of Frontex in pushing migrants back in the Mediterranean have been repeatedly criticised; however, it remains difficult for citizens to know who is responsible for these actions (Frontex, member states' border guards, domestic governments, the Council, the Commission?) and whether there is anything they can do to change these policy choices (Mungianu, 2016; Horii, 2018). Indeed, this example shows the problematic relationship between institutional and normative legitimacy: while the legitimacy of the EU's institutions (and hence the political system as a whole) might be now less contested than in the past (see Losada and Maneiro, this issue), the normative choices that come out of this system are increasingly facing contestation from citizens. Parts of this contestation can be mediated through elections, but larger parts – especially when it concerns solutions that have been presented as 'technical' and 'apolitical' – cannot be integrated and processed by the current system, especially if it continues to act as if de-politicisation is the only solution to dealing with deep conflicts affecting common values and identities. The debate on conditionality in the Multiannual Financial Framework for 2021-2027 is a perfect example of how EU actors attempt to solve a major democratic crisis through highly technical negotiations. Although the budget is inherently political, the question of rule of law and illiberalism goes much further than making funds conditional to good behaviour – especially when this instrument might prove a paper tiger (Coman, 2020).

Therefore, beyond the important structural gaps that continue to underpin the debates on the EU's democratic deficit, there is a wider concern about building its normative legitimacy. Indeed, while maintaining the embedded institutional consensus can be seen as a way to ensure that the EU maintains its inertia, it should be careful to avoid that democracy and the rule of law pay the price of avoiding major conflicts among its members.

4. What future for the Treaty of Lisbon?

This special issue has shown the long-lasting impact of the Treaty of Lisbon. Despite its uncertain and contested origins, the treaty marked a watershed in the process of European integration. At the same time, it faces now major challenges linked to recent crises. While the impact of the Eurozone crisis has somewhat faded, it has not completely disappeared; in a way, it set the path for an era of polycrisis that has enhanced the role of intergovernmentalism, while fighting a battle between polarisation on the one hand and de-politicisation on the other. This is the framework in which the most recent crisis – the COVID-19 pandemic – has emerged. The immediate reaction to the crisis has followed similar patterns of urgency, de-politicisation and re-nationalisation. The closure of borders, the bans on exports and the lack of coordination and solidarity in the early hours of the pandemic are reminiscent of previous events like the refugee crisis. At the same time, this crisis is also offering a window of opportunity for more integration and solidarity – especially in financial terms.

Therefore, the COVID-19 pandemic offers several scenarios for the future of European integration. It might offer a new opportunity for questioning the ability of the EU to respond to crises in a coordinated manner. With a lack of clear leadership and competition between the Commission, the European Council and the individual member states (and an almost invisibility of the European Parliament), citizens might struggle once again to attribute responsibility for both failures and successes. Similarly, de-politicising the crisis by emphasising technical aspects linked to vaccines, cross-border policies and essential goods might be a new angle of attack for populist and Eurosceptic forces. This might lead to more contestation of the EU's political system and even to further disintegration. At the same time, the pandemic also offers an opportunity for enhancing solidarity, linking highly contentious issues like rule of law, shared responsibility for asylum-seekers and economic recovery to force long-lasting political (rather than technical) solutions and making it clear for citizens what are the choices facing the European Union and how to choose among them. Therefore, it also opens a door for furthering integration and providing the EU with the necessary competences to fight current and future crises. It is also a chance for reinforcing the sense of solidarity and belonging that underpins any political community. The COVID-19 pandemic is, thus, a turning point for the EU, in which to choose between integration and disintegration; between values and inaction.

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