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# Crisis decision-making

## How Covid-19 has changed the working methods of the EU institutions

Sophia Russack and Drew Fenner

### Abstract

The Covid-19 pandemic has caused the dynamics of the EU institutions to change. Much attention has been paid to the functioning of the EU institutions at the highest political level, but less so at the working levels of the Council, the Commission and the European Parliament (EP). What was the nature of EU action in this time and how well did the decision-making machinery work? This contribution analyses all three main institutions by: a) describing how decisions are usually made; b) exploring how they were made in corona times; and c) assessing how well the individual institutions were equipped and able to adapt to these unusual circumstances. It finds that the handling of these challenges varied greatly across the three institutions, largely because of structural reasons and differences in institutional DNA. Overall, crisis decision-making has worked surprisingly well, as the EU's machinery is multilayered and has proved to be solid and resilient. Interinstitutional crisis coordination is yet to be improved.

Sophia Russack is Researcher and Drew Fenner is Research Intern at the Institutions Unit at CEPS.

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## Executive summary

- Overall, EU action in the acute phase of the crisis focused on non-legislative coordination action. A few legislative proposals raced through the interinstitutional process at breakneck speed. Non-corona related EU action continued at a slower pace; digital trilogues<sup>1</sup> were introduced.

### European Parliament

- *Changes:* Unable to convene the traditional plenary under lockdown, the EP implemented remote voting to facilitate decision-making from home. As for committee meetings and plenary sittings, these sessions were shifted to a virtual format.
- *Assessment:* In terms of internal Rules of Procedure (RoP), the EP was flexible and creative, interpreting existing rules to permit remote voting. In practice, however, the EP struggled to adapt during the first few weeks of remote working, being particularly constrained by an initial lack of live translation services for videoconferences. The (partly) virtual sessions were reduced in frequency and duration; less time was spent on debate among MEPs and Q&A sessions with Commission representatives, as a large share of each session was dedicated to the voting procedure.

### Council of the EU

- *Changes:* Unable to convene formal meetings, the Council introduced a derogation making the written procedure more accessible by removing its previous standard of unanimity. As for Council decision-making forums, the working parties and the Committee of Permanent Representatives (Coreper) were crucial for the Council's work, as these groups never stopped meeting in person.
- *Assessment:* In terms of internal RoP, the Council was the most rigid EU institution. Videoconferences of Council configurations were prevented from qualifying as formal meetings, and therefore shifted the locus of Council decision-making to Coreper throughout the Covid-19 crisis. Regarding overall performance, Coreper's coordinative activity allowed decision-making via written procedure to function soundly.

### European Commission

- *Changes:* The Commission utilised pre-existing decision-making channels (in an accelerated way) to execute its presidential-driven crisis response, leaving it unaffected in terms of amending its working methods. However, important changes occurred outside its formal legal framework, including the creation of a Covid-19 clearing house and information channels between the Commission and national ministers.
- *Assessment:* Equipped with very functional internal decision-making procedures, as well as strong in-house policy expertise and coordination experience, the qualities of the

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<sup>1</sup> Trilogues are a set of informal negotiations between the European Parliament, the Council and the European Commission, that aim to reach early agreements on proposals. They have become the default way to adopt EU legislation.

Commission were nicely matched to fit the non-legislative nature of corona decision-making. The Commission was also in a strong position regarding legislative actions, as time pressure kept the co-legislators from amending.

### Comparison of institutional fitness

- Comparatively, the institutional performance of the Commission was superior to that of the EP and the Council. This assessment is based on the aspects mentioned above, but also on the Commission's ability to break into smaller formations of its full composition to discuss policy issues and prepare decisions.
- Unlike the Commission, the Council always convenes 27 experts on a given topic and cannot create subsets. A further difficulty is that the Council's modus operandi is negotiation, rather than exchange and discussion, as in the College of Commissioners. However, the Council was able to 'stay afloat' throughout the crisis by pushing in-person negotiations down to the level of Coreper.
- The EP faced the greatest challenges because of: a) having similar negotiation requirements as the Council without the ability to delegate to a working level; and b) its size, diversity and logistical nature (travel and translation restrictions), which initially prevented it from working at its usual pace.

### Recommendations

- The emergence of remote voting in the EP could serve as the foundation for future 'absentee voting' (in the case of MEPs experiencing illness, maternity leave, etc.)
- The Council should reflect on and reshape the nature of its RoP. It is problematic that it could not harness virtual technologies to convene a proper meeting of the configurations.
- The Commission demonstrates that videoconferences, and other modern forms of communication, can be utilised efficiently for decision-making. These should be kept in the institution's repertoire.
- When it comes to interinstitutional coordination, the institutions (particularly the Commission and the Council) would be well advised to join and formalise different crisis mechanisms.

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## 1. Introduction

In the acute phase of the Covid-19 pandemic, social distancing and the travel implications of the containment strategy disrupted traditional EU decision-making procedures, requiring the institutions to adapt old procedures or create entirely new ones. Unlike national decision-making bodies, the EU was facing very particular logistical obstacles. The political actors of two of the three key institutions - the Council and the European Parliament - are not (permanently) based in Brussels and therefore have to travel to come together to attend meetings and make decisions.

The need to make decisions quickly in areas where the EU enjoys negligible competence added an additional layer of complexity to the situation, streamlining the work of preparatory forums and demanding a response largely composed of non-legislative, coordinative measures.

Institutional flexibility emerged as an essential quality to enable EU institutions to succeed during the Covid-19 crisis. The European Commission, the Council and the European Parliament have altered the way they make decisions in order to ensure continuity of their work in the exceptional circumstances caused by the pandemic. Lately, much attention has been drawn to the highest political players represented in the Council and European Council. However, not much is yet known about how their working levels operated, or those of other law-making institutions.

The aim of this paper is to shed light on these crisis decision-making modes by: a) describing how decisions are made usually; b) exploring how they were made in corona times;<sup>2</sup> and c) assessing how well the individual institutions were equipped and able to adapt to these unusual circumstances. How well did the EU's decision-making machinery work in corona times?

## 2. Nature of corona decision-making

The Covid-19 pandemic is a once-in-a-century kind of event through which to analyse the EU institutions. Since the EU lacks competence in public health policy, the member states were firmly in the driver's seat of the crisis response at first. As a result, the nature of the EU's response to the pandemic was largely non-legislative and coordinative. At the heart of this action was an attempt by the European Commission to intensify information exchange and recommend guidance plans to the member states (e.g. tourism and transport package).<sup>3</sup>

Despite the dominance of coordination measures, the EU still adopted legislation (e.g. the suspension of the airport slot requirements).<sup>4</sup> However, even legislative channels operated differently. The urgent demands of the crisis meant that legislative proposals travelled through

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<sup>2</sup> The time frame analysed is 16 March (start of home office and remote meetings in the institutions) until 10 September 2020 (end of derogations of the Council rules of procedure).

<sup>3</sup> [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_870](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_870)

<sup>4</sup> <https://www.consilium.europa.eu/en/press/press-releases/2020/03/30/covid-19-eu-adopts-slot-waiver-to-help-airlines/>

the interinstitutional process at a breakneck pace (one month as opposed to the average 18 months). Accelerated bureaucratic and administrative processes in the Commission allowed

*Unlike during the economic and financial crisis, the community method was not replaced by intergovernmental action.*

proposals to be designed and adopted by the College within a matter of days. Unlike during the economic and financial crisis, the community method was not replaced by intergovernmental action. Where formal decision-making was applied, the regular decision-making channels were used. Instead of circumventing, processes were accelerated.

It was fortunate that the pandemic came at a point when the legislative circle had just begun, because the institutions did not have much legislation to progress and could therefore attend to corona measures. Nonetheless, not all EU action related to solving the crisis. Some business as usual continued (as scheduled in the Commission Work Programme), but at a slower pace. In the acute phase of the crisis, full focus was put on measures mitigating the corona crisis, but by May digital trilogues on non-corona related files had also been conducted. Despite some limitations (e.g. scope of written exchange) they were assessed as working surprisingly well.

### 3. European Parliament: shift to remote voting

#### 3.1 Usual procedure

##### 3.1.1 Voting

The EP can cast votes under four procedures: show of hands, electronic voting system, roll call vote (RCV), and secret ballot. The show of hands is the most common voting procedure (Rule 187(1) EPRP). The electronic voting system is generally used in situations where a vote by show of hands produces an unclear result, although the President retains the right to use the electronic voting system at any time (Rule 187(1, 4) EPRP). RCV records and publishes the names and voting positions of all participating MEPs. In practice, all salient issues are handled through RCV in committee and plenary, as well as a considerable portion of amendments. Lastly, the secret ballot is primarily used to vote on nominations (Rule 191(1-2) EPRP).

##### 3.1.2 Work of plenaries

Plenaries represent the most formal level of EP decision-making and political discourse. During plenary, the EP adopts its official institutional stances by voting on texts produced in its committees. Additionally, debate is a key feature of each plenary, with the ‘blue card’ and ‘catch-the-eye’ procedures permitting MEPs to question each other and/or address the chamber (Rule 160, Rule 171(8) EPRP). Moreover, each plenary includes set time periods to put questions to the Commission and Council, a prominent feature of the EP’s oversight role. Plenary sits monthly (except for August) in Strasbourg, although additional, shorter sittings can be convened in Brussels upon majority request (Rule 154(1-2, 4) EPRP). The monthly plenary lasts four days and is divided into ‘daily sittings’ in which MEPs vote on legislative and non-legislative (political) matters. In the course of the plenary, the EP considers a large volume of

legislative activity, as “members sometimes have to vote on hundreds of amendments” (European Parliament, 2020).<sup>5</sup>

### 3.1.3 Work of committees

The legislative and political work of EP committees sculpts the plenary agenda. On the legislative front, committees amend Commission proposals by issuing legislative reports, as well as broker compromises with their co-legislator, the Council. On the political front, committees produce non-legislative reports (e.g. resolutions or own-initiative reports), to publicly express the EP’s policy preferences on issues both inside and outside its juridical remit. Although non-binding, non-legislative reports allow the EP to signal its preferences to the Commission and thus shape the contours of legislative debate. Furthermore, committees exercise an oversight role, as all questions put to the Commission and Council during plenary originate at committee level (Rule 136, 138, EPRP). Each committee is led by a Chair. The Committee Chair plays a significant gatekeeping role, making the final decision on convening meetings (Rule 216(1), EPRP), issuing legislative and non-legislative reports (Rule 51(1), and submitting plenary questions for the Commission and Council (Rule 136, 138, EPRP).

## 3.2 Crisis procedure

### 3.2.1 Voting

In response to the travel and social distancing implications of Covid-19, the EP implemented an extraordinary voting procedure: remote voting. By abstractly interpreting existing rules on electronic voting, the EP enabled remote voting without making formal changes to its RoP. To vote remotely, MEPs print a ballot, fill in their name and voting position (in favour, against, or abstention), and email a scanned copy of their ballot to the Secretary-General (SG). The process is secure. First, to access their ballots, MEPs undergo a two-step verification process requiring information from their personal credentials and a randomised code generated via e-token/short service message (SMS). Second, because vote by email functions like the RCV (documenting a MEP’s name and voting position), MEPs can ensure the SG records their votes accurately.<sup>6</sup>

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<sup>5</sup> <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/how-plenary-works>

<sup>6</sup> Remote voting was launched during the plenary sitting on 26 March 2020 and will remain the standard voting procedure in both committee and plenary until at least 31 July 2020, subject to extension (European Parliament, 2020).

### 3.2.2 Work of plenaries

With MEPs sitting plenary in their homes rather than in the hemicycle, the structure and function of the plenary has changed. The most fundamental change is their reduced frequency and duration. In terms of frequency, the EP convened four plenaries totalling seven days of

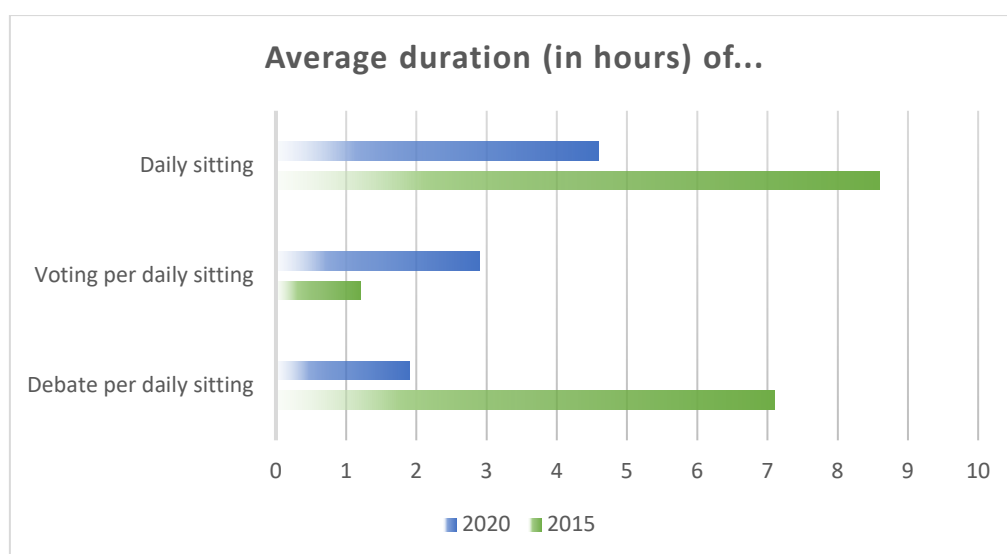
*With MEPs sitting plenary in their homes rather than in the hemicycle, the structure and function of the plenary has changed.*

sittings between the start of remote working on 16 March 2020 and 12 June 2020. During the same period in 2015,<sup>7</sup> the EP held more plenaries for longer, convening six plenaries totalling 15 days of sittings. The average duration of a daily sitting was 8.6 hours across the same period in 2015, whereas in 2020 the average duration of a virtual daily sitting was 4.6 hours. In other words, the average duration of a daily sitting for the virtual plenary is roughly half (53%) the average duration of a daily sitting for a regular in-person plenary. Shorter plenaries have resulted in four key changes. First, debate has reduced, with procedures such as the ‘blue card’ and ‘catch-the-eye’ being suspended. Whereas the average duration of debate per daily sitting was 7.1 hours in 2015, it was only 1.9 hours in 2020 (a 73% reduction). Unlike in committees, only MEPs who were present in person in the hemicycle in Brussels were allowed to speak. However, this trend is not objectively bad, because the quality of plenary debate is generally low, being designed as a sequence of speeches rather than genuine deliberation. Second, given the time-consuming nature of email voting and pressure to approve emergency legislation within tight time frames, voting is the priority of the virtual plenary. Whereas the average duration of voting per daily sitting was 1.2 hours in 2015, it was 2.9 hours in 2020 (a 142% increase). Third, the Q&A periods were shorter. In 2015, the average speaking time of the Commission per daily sitting was 36.3 minutes, whereas it was 12.1 minutes in 2020 (a 66% reduction). The average speaking time of the Council per daily session increased slightly, from 9.3 minutes in 2015 to 10 minutes in 2020 (an ~8% increase). Notably, Commissioners and Council representatives have continued to appear in plenary as well as in committee meetings. Lastly, output of the virtual plenary is less than that of the typical plenary, with only 20 resolutions having been adopted in 2020 compared with 136 resolutions in 2015. Of course, this reduced output reflects the overall reduced political agenda of the EU, with all political capital focused as it was on engineering a sound crisis response.

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<sup>7</sup> In order to compare to the same point in time of the legislative circle.





### 3.2.3 Work of committees

EP committees also shifted to a remote format. No committee meetings were held in the first few weeks of remote working, largely because of an absence of live translation services for videoconferences. However, by the fourth week of remote working, the Parliament had introduced a new online translation service staffed by EP translators and capable of providing live translation of nine languages. The order and pace at which committees began meeting remotely was dictated by the criteria of urgency and importance. However, with no metrics of urgency or importance, committee chairs played a significant role in interpreting such criteria and therefore controlled the return, pace and frequency of their respective committee meetings. Once convened, committees could draft resolutions, vote on amendments, and convene hearings. The duration of virtual committee meetings was capped at two hours to accommodate EP translators undertaking the exhausting task of live translating videoconferences. Since the start of remote working on 16 March 2020, until 12 June 2020, EP committees convened a total of 115 remote meetings.<sup>8</sup> During the same time period in 2015, EP committees collectively met more, convening a total of 137 meetings. Most, though not all, committees met less in 2020 than in 2015. For example, the Economic and Monetary Affairs (ECON) Committee met 12 times in 2020 and 10 in 2015. Responsibility for policy areas with a strong corona-related dimension was a common trait among committees that met more. Unlike plenary, committee meeting allowed for hybrid constellations, with a mix of MEPs being present in person and online, and also hybrid debate.

*Unlike plenary, committee meeting allowed for hybrid constellations, with a mix of MEPs being present in person and online, and also hybrid debate.*

<sup>8</sup> Numbers based on authors' own compilation. See Annex 1 for details.

## 4. Council of the EU: shift to written procedure

### 4.1 Usual procedure

#### 4.1.1 *Decision preparing*

Council decisions are forged in an internal decision-making process composed of three levels: the working parties, Coreper, and Council formations. The first level is composed of over 150 ‘highly specialised’ working parties and committees.<sup>9</sup> The working party, convened by the presidency of the Council and General Secretariat,<sup>10</sup> conducts both a general and line-by-line examination of legislative proposals. When it has finished scrutinising a proposal, the working party presents its conclusions (or lack thereof) to the next negotiating level, Coreper. Coreper is composed of national ambassadors from the governments of the member states and meets in two formations: Coreper I and Coreper II. Coreper I handles issues of a technical nature (internal market, industry, energy and employment), while Coreper II handles political and economic matters (foreign affairs, economic and financial affairs, and general affairs). Coreper is responsible for negotiating proposals that fail to reach agreement at working party level, as proposals settled at working party level require no further discussion. Proposals settled by Coreper (the majority of Council proposals) are then sent to the final level of Council decision-making – the configurations – to be adopted without discussion (‘A points’). Thus, the Council configurations only negotiate proposals that fail to reach agreement at both working party and Coreper level (‘B points’), as well as proposals too politically sensitive for the institution’s lower levels.<sup>11</sup>

#### 4.1.2 *Decision-making*

The Council has two options to adopt an act: formal voting and the written procedure. Formal voting is “carried out only during a physical meeting of the Council” and requires quorum to be met (a majority of members present) (Article 11(4), CRP; Chapter 3(1B)), Comments on CRP). Under the written procedure, members of the Council vote on acts by submitting a written document (or email) to the office of the General Secretariat (Chapter 3(3), Comments on CRP). Thus, the written procedure allows the Council to adopt acts outside of a formal meeting and without discussion. This explains why the written procedure is, typically, “prompted by grounds of urgency”, either when the Council must adopt an act before a specific deadline or when a Council meeting cannot be arranged (Chapter 3(3), Comments on CRP). As a rule, the written procedure is triggered only by unanimous approval at either Council or Coreper level (Article 12, CRP). Hence, a political decision precedes every written procedure. If the written procedure

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<sup>9</sup> <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/>  
<https://www.consilium.europa.eu/en/council-eu/decision-making/>

<sup>10</sup> Or the European External Action Service (EEAS) for most foreign policy-related working groups.

<sup>11</sup> <https://www.consilium.europa.eu/en/council-eu/decision-making/#:~:text=The%20Council%20is%20an%20essential,also%20known%20as%20'codecision'>.

involves “a matter brought before the Council by the Commission”, the Commission must also agree to its use. If use of the written procedure is triggered, Council members vote on concerned acts by responding to a written document asking if they agree, reject, or abstain (Chapter 3(3), Comments on CRP). For an act to be adopted, it must receive the “number of votes required, in accordance with the voting rules applicable to its adoption” (Chapter 3(3), Comments on CRP).

## 4.2 Crisis procedure

### 4.2.1 Decision preparing

In response to the pandemic, the Council’s agenda was reduced to key areas of crisis management (e.g. public health, economy and finance). In accordance with this redefined agenda, all working parties deemed non-vital were cancelled, and only those deemed by the Council Presidency and SG to be vital for pandemic measures continued to function. Coreper, along with those working parties, never stopped meeting in person. At the Council level, configurations have been strictly limited to meeting via videoconference. Virtual meetings lack an important set of dynamics that are conducive to negotiation, such as pressure from colleagues in the negotiating room, non-verbal communication (e.g. eye contact, tone and body language), and the ability to informally negotiate in/outside of session. They also raise concerns about security and secrecy. Hybrid meetings, where some ministers attend physically and others virtually, has been ruled out as a solution. Thus, the Council will either meet entirely in person or entirely online. Ultimately, given the significantly reduced presence of working parties, as well as the inability of Council configurations to effectively negotiate via videoconference, Coreper has been vital for Council decision-making throughout the crisis, shouldering an even greater preparatory and political (negotiator) role than before.

*Coreper, along with those working parties, never stopped meeting in person.*

Furthermore, the EU's integrated political crisis-response mechanism (IPCR)<sup>12</sup> has been activated by the Croatian Presidency. This is a pre-existing mechanism which has been triggered in different crisis situations (most notably in the migration crisis) in the past. This ‘Crisis Coreper’ reports to the Council and the European Council and is activated and chaired by the Council Presidency, supported by the General-Secretariat of the Council. This formation also meets in person. It is a forum of informal debate rather than a formal decision-making body, and consists mainly of Coreper 2 ambassadors, with invited representatives of the other institutions.

### 4.2.2 Decision-making

Travel and social distancing measures meant that the Council could not satisfy the quorum and was therefore unable to convene formal meetings. Since videoconferences do not count as formal meetings, the Council could not use virtual means to satisfy the quorum. A key reason

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:32018D1993&from=EN>

that virtual meetings cannot count as formal meetings is the reduced capacity of the General Secretariat of the Council (GSC) legal services. GSC legal services regularly intervene in formal meetings to ensure the legal coherence of Council acts, but certain dynamics of virtual meetings (e.g. insufficient live translation services) prevented legal services from intervening. Moreover, without in-person meetings, no formal Council conclusions could be adopted; just abstract presentations of the main takeaways, accompanied by read-outs of press statements and conferences.

Decisions are usually made by consensus. But as this cannot be taken for granted, the meetings must be organised in a way that facilitates decision-making even if consensus cannot be reached. Therefore, the Council made the written procedure

*The Council made the written procedure more accessible.*

more accessible. Triggering the written procedure normally requires unanimous approval, so the Council introduced a derogation to its RoP. Now, the written procedure may be adopted “in accordance with the voting rule applicable for the adoption of the act itself” (Council of the EU, 2020). In other words, the written procedure can be triggered by qualified majority voting (QMV), instead of unanimity, for policy areas subject to QMV. Thus, by lowering its threshold for adoption, the written procedure is more accessible, ensuring the Council can legislate while in-person meetings (formal voting) remain on hold.<sup>13</sup>

## 5. European Commission: close to business as usual

### 5.1 Usual procedure

#### 5.1.1 Decision preparing

After being given political impetus by the political level of the Commission, a legal draft is produced by the administrative level of the Commission, the directorates-general (DG). The first stage in this process is a series of informal coordination efforts led by a ‘lead department’ across several DGs (Hartlapp et al., 2013, p. 429). This initial stage defines the general character and content of a legislative proposal. The next, more formal way of designing a proposal, is the inter-service consultation (ISC). During the ISC, a range of concerned DGs are consulted by the lead DG, though unlike with the informal coordination, each DG must approve the draft proposal. The ISC’s requirement of unanimity equips each concerned DG with de facto veto power, institutionalising a need for robust cross-DG coordination before a proposal can be considered by the political level (Hartlapp et al., 2013, p. 430).

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<sup>13</sup> First introduced on 20 March 2020, the derogation to the Council’s RoP was extended until 10 September 2020.

### 5.1.2 Decision-making

Once a proposal passes through the ISC, it exits the Commission's administrative level and enters its political level. The political level is a multi-tiered, hierarchical system of decision-making composed of the College of Commissioners and their cabinets.

The first tier is the special chefs meeting (cabinet members), the second tier is the Hebdo<sup>14</sup> meeting (heads of cabinets), and the top tier is the College of Commissioners. Although decisions can only be formally adopted by the College, the cabinets play an essential role in the decision-making process. By acting "on behalf of their respective Commissioner" (European Commission, 2014, 4), the cabinets settle all but the most politically sensitive issues on legislative proposals. Then there is the Inter-Institutional Relations Group (GRI), which is responsible for the coordination with the co-legislators. Under President von der Leyen a fourth cabinet-level preparatory body has been established, the Group for External Coordination (EXCO), which discusses foreign issues on a weekly basis. Two decision-making procedures are available: the oral procedure and the written procedure.

All issues of salience are decided by discussion under the oral procedure. The oral procedure is engaged in each of the Commission's three decision-making tiers. In the first tier, the special chefs – sectorally responsible members from all Commissioners' cabinets – engage in lengthy debate to establish agreement on dossiers. If they agree on a dossier, it is adopted without discussion in the College.<sup>15</sup> Dossiers that fail to be settled by the special chefs are sent to be negotiated at the second tier. The Hebdo – all Commissioners' heads of cabinet – function similarly. Dossiers settled by the Hebdo are adopted without discussion in the College, while dossiers the Hebdo fail to agree on are negotiated by the College. Thus, the College only handles cases of disagreement that could not be resolved by the Hebdo, in addition to issues of key political importance which might not run through cabinet decision-making bodies. The College collectively makes decisions, usually adopting proposals by consensus. In the absence of consensus, the College can technically make decisions by simple majority, though this voting procedure is hardly ever used.

The written procedure entails processing dossiers via written decisions. The Commissioners' cabinets have the ability to accept, adapt or reject the dossier before a given deadline, otherwise their approval is assumed. In practice, proposals adopted via the written procedure are routine issues or are of minor political significance. Proposals can only be dealt with in the written procedure if there is no disagreement between the services on its content.

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<sup>14</sup> Named after the French 'hebdomadaire' (weekly) meeting.

<sup>15</sup> Although each Commissioner has the right to demand oral debate on every issue.

## 5.2 Crisis procedure

### 5.2.1 Decision preparing

Urgency shifted Commission decision-making procedures towards more expedited methods. The Commission introduced a ‘fast-track ISC’ to accelerate coordination at services’ level. Usually, the ISC entails a set of timetables and deadlines for every service. The fast-track ISC does this too, but in a fraction of the time it takes the typical ISC. Whereas the normal ISC takes approximately 10 days, the average fast-track ISC took between 24 and 48 hours. Under this fast-track system, services would be given one or two days’ notice to prepare for an upcoming ISC. Although the fast-track ISC is certainly abbreviated and offers less opportunity for services to issue their respective input on draft proposals, it emerged as a pragmatic solution that preserved the core objective of the ISC (institutionalised cross-DG coordination) while also enabling high-speed decision-making.

### 5.2.2 Decision-making

The written procedure is a more dominant decision-making method than the oral procedure, and in crisis times even more so. The oral procedure requires proposals to run through all decision-making levels (special chefs, Hebdo, and College meetings) - taking a minimum of five days to execute. With no time to spare, the written procedure allowed the College to adopt decisions at any time of day, independent of whether a meeting was convened. The written procedure usually processes rather routine low-salience files, but during the corona crisis politically sensitive dossiers of the Commission’s crisis response (e.g. reopening EU internal borders) were also adopted formally in written form. Potentially, this would risk insufficient political consideration of important files, as there is hardly ever any change to files processed in written form. However, they were additionally and informally discussed among the cabinets or College and then adopted by written procedure, a practice described as the ‘écrit finalisation’. In other words, the ‘écrit finalisation’ negotiates a dossier as would the oral procedure, but executes a dossier as would the written procedure.

Remote working conditions affected Commission decision-making groups, with all groups initially working remotely. The special chefs, Groupe des relations interinstitutionnelles (GRI), and Group for External Coordination have since remained almost entirely under remote conditions. Although the Hebdo and the College took to remote conditions for the first few weeks, they have since started to revert to in-person meetings.

#### *Much of the activity within the Commission was of coordinative nature.*

Much of the activity within the Commission was of coordinative nature. One example of this activity is observed in the new ‘Commission – capitals networks’. Acting on the mandate of the European Council, the Commission created coordination networks covering a range of policy areas between Commission DGs and national ministers. For instance, the Commission coordinated a series of videoconferences for a network of national transport and healthcare ministers from across the member states. The purpose of these networks was purely informational, providing the Commission (and member states) with a broad but essential

EU-wide insight into engineering policy responses to combat important dynamics of the crisis. This direct coordination with member states constitutes a genuine divergence from the Commission's institutional DNA. Nonetheless, the networks pose no threat to the Council and do not constitute a breach of the regular legislative procedure, being purely informal and acting as a crisis management instrument that will dissolve after the pandemic.

A big coordination effort was also made internally by the Commission, for example by creating the Covid-19 Clearing House for medical equipment within the Secretariat-General. The Clearing House, established by the Commission on the mandate of the European Council, serves to monitor and coordinate developments in Europe's supply chain of personal protective equipment (PPE), medical devices and medicines. Bringing together a range of services,<sup>16</sup> the Clearing House has enhanced internal (cross-DG) cooperation within the Commission while also intensifying flows of critical information.

*A prominent feature of the Commission's internal dynamic was a centralisation of power induced by von der Leyen's strong presidential approach to crisis management.*

A prominent feature of the Commission's internal dynamic was a centralisation of power induced by von der Leyen's strong presidential approach to crisis management. One aspect of this was the creation of a coronavirus response team which enhanced the influence of specific Commissioners and DGs. The response team's core membership initially included Commissioners Lenarčič (DG ECHO), Kyriakides (DG SANTE), Johansson (DG HOME), Vălean (DG HOME), and Gentiloni (DG TAXUD). Gradually, the group's membership expanded to include more Commissioners on an ad hoc basis, until most Commissioners were present.

## 6. Conclusion

### 6.1 Institutional comparison

The pandemic tested the adaptability, decision-making capacities, and crisis fitness of the institutions. Overall, the handling of these challenges varied greatly across the three institutions, largely for structural reasons and differences in institutional DNA. The Council emerged as the most rigid institution. Where the Commission and the EP were able to alter their working methods without introducing formal changes to their RoP, the Council was forced to introduce a derogation expanding the accessibility of the written procedure. Without this derogation, the Council would have been legally incapable of adopting decisions. While the Council activated the pre-existing IPCR mechanism, the Commission was quick to introduce new crisis platforms such as the Commissioners' group around President von der Leyen, the informal exchange network with member states' ministries, and internal coordination platforms.

*Overall, the handling of these challenges varied greatly across the three institutions, largely for structural reasons and differences in institutional DNA.*

<sup>16</sup> Mainly DG SANTE, DG GROW, DG TRADE, DG ECHO, DG CONNECT, DG COM, the SG and Legal Services.

With regard to logistics and communication, the Commission emerged as untroubled, whereas the Council and EP faced major hurdles. The Commission was also less affected by travel restrictions because the institution is entirely based in Brussels. Conversely, the restrictions hindered the Council and, particularly, the EP. With 705 MEPs scattered across Europe, in-person meetings were not an option for the EP, and it was faced with the mammoth task of convening massive online decision-making forums. Another practical barrier that damaged the productivity of the Council and the EP, yet left the Commission unscathed, was access to quality live translation services for virtual meetings. Since the Commission operates in English,<sup>17</sup> such services were unnecessary. However, the Council and (especially) the EP are multilingual bodies and thus require translation services to function. One major difference highlights the lack of translation services between the co-legislators. Where the Council could cope with its inability to convene formal meetings by pushing its decision-making down to the level of Coreper, the EP lacked a comparable preparatory body. Thus, the lack of live translation services incapacitated the EP throughout the initial months (March and April) of the crisis. Within the Commission, the emergence of virtual meetings was widely positive. For example, time limits imposed on videoconferences forced discussions to be impactful and disciplined, and the ability for users to enter and exit videoconferences quickly enhanced flexibility and broadened participation.

Another key structural difference between the institutions was how each organised itself to engage in interinstitutional negotiation. Given the Council's diversity of interests and the EP's vast membership, their 'business model' was bound to struggle in this respect. The Council houses 27 experts focused on furthering their respective national interests, naturally producing an environment prone to initial gridlock and slow-paced concessions. The Commission, however, manoeuvred intra-institutional negotiations with speed and flexibility, reflecting its ability to prioritise specific Commissioners/DGs (portfolio experts), as well as to break into smaller groups (i.e. project teams) to broker agreements. Where prioritised portfolios amplified the role of expertise, smaller groups accelerated negotiation by reducing diversity of interests.

The EU's non-legislative response gave the Commission a more prominent place than the two co-legislators. The Council, however, had limited channels to exert influence: its preparatory staff were operating at reduced levels and were specialised in legislative work, and its role of

*Comparative assessment of the fitness of the EU institutions throughout the pandemic reveals the Commission as the most resilient actor.*

'inter-governmental coordinator' was filled by the Commission. The EP generally lacks tangible power in areas beyond the community method.

Overall, comparative assessment of the fitness of the EU institutions throughout the pandemic reveals the Commission as the most resilient actor for a number of reasons. First, the

Commission possessed the most flexible internal decision-making procedures. Although it

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<sup>17</sup> Mainly in English, though still partly in French. Every document is translated in all official EU languages, but the Commission does not require translations for its internal communication.



accelerated the pace of decision-making, the institution's administrative and bureaucratic components remained intact and highly functional. The same cannot be said for the co-legislators, whose preparatory capacities were initially either reduced or absent. However, the function of Coreper as an institutional 'safety net' afforded the Council a clear advantage over its co-legislator, which remained paralysed. Second, the Commission occupied a dominant position in the interinstitutional process by exploiting its monopoly on legislative initiative. With time pressure making the Council and EP hesitant to amend proposals, the agenda-setting power of the Commission strengthened vis-à-vis decreased legislative resistance from the co-legislators. Third, the Commission performed well as regards non-legislative actions. Acting on the mandate of the European Council, the Commission was equipped with the necessary political clout to venture outside its formal institutional framework and build new groups (Commission – capitals networks, Covid-19 Clearing House, and coronavirus response team). When combined with its policy expertise and coordination experience, these new groups allowed the Commission to exert genuine influence on aspects of Europe-wide crisis response, irrespective of its competence to issue legislative responses.

Certainly, the corona decision-making also had an effect on the democratic quality: shorter plenary and committee sittings and time-intense remote voting procedures meant MEPs had less opportunity to exchange due to shorter plenary and committee sittings and time-intense remote voting procedures. Furthermore, The EP's oversight role has been constrained, as the appearances of Commission representatives were shorter than usual. Lastly, the EP's failure to amend the corona-related proposals also feeds into concerns about democratic legitimacy. However, this should not be overestimated. Increased efficiency of decision-making generally comes at the price of democracy – and the corona decision-making did not circumvent the EU institutional framework and the community method, as its predecessor, the economic and financial crisis, had.

Crisis EU decision-making has worked surprisingly well. The pandemic caused hiccups at the highest political level because of diminished negotiation opportunities and missing visibility and press appearances for politicians. Nonetheless, the decision-making machinery of the EU is multilayered and has proven to be not only solid and resilient but also equipped to make speedy decisions and to modernise its way of working.

*Crisis EU decision-making has worked surprisingly well.*

While the performance of individual institutions and the interinstitutional procedure was surprisingly good as far as lawmaking is concerned, the interinstitutional coordination in a crisis situation could be improved. The tensions between the members states' capitals and the Brussels-based institutions are inherent in the EU's institutional setting. In the corona crisis context it became particularly apparent: the Council's IPCR crisis mechanisms and the Commission's capital networks have different and largely disconnected strands of crisis response. The lack of formalisation led to a lack of coordination among them.

## 6.2 Outlook and recommendations

As the virus is brought under control in Europe, the working methods of the EU institutions will shift back to near normal. Evidence of this can be seen in the July European Council Summit being held in person, as well as plans for the EP to sit September's plenary in Strasbourg. Regardless of the potential for a second wave, the EU institutions' first experience with Covid-19 has provided key lessons about the 'modernisation' of working methods.

Remote voting has emerged as a unique development in the EP's institutional history that could serve as the foundation for future 'absentee voting' (for example, where MEPs are ill or on maternity leave). The Council should reflect on and reshape the nature of its Rules of Procedure. It is problematic that it could not harness virtual technologies to convene a proper meeting of the configurations when the Commission and the EP were both able to formally adopt decisions over a virtual format. Finally, the experience of the Commission demonstrates that videoconferences, and other modern forms of communication, can be utilised efficiently for decision-making. These should be kept in the Commission's repertoire. When it comes to interinstitutional coordination, the institutions would be well advised to join their efforts and to merge different crisis mechanisms, potentially by revising the IPCR to make it more genuinely inclusive for the other institutions. In anticipation of a new wave of Covid-19, or the almost certain occurrence of other crises in due time, a joint EU crisis response should be formalised.

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## Annex I: Overview of committee meetings

Committee	Total meetings 2015	Total meetings 2020
Foreign Affairs (AFET)	10	7
Development (DEVE)	6	2
International Trade (INTA)	4	4
Budgets (BUDG)	13	4
Budgetary Control (CONT)	6	4
Economic and Monetary Affairs (ECON)	10	12
Employment and Social Affairs (EMPL)	5	5
Environment, Public Health and Food Safety (ENVI)	11	10
Industry, Research and Energy (ITRE)	5	8
Internal Market and Consumer Protection (IMCO)	6	6
Transport and Tourism (TRAN)	5	6
Regional Development (REGI)	2	4
Agriculture and Rural Development (AGRI)	7	10
Fisheries (PECH)	3	6
Culture and Education (CULT)	4	2
Legal Affairs (JURI)	4	3
Civil Liberties, Justice and Home Affairs (LIBE)	12	11
Constitutional Affairs (AFCO)	5	2
Women's Rights and Gender Equality (FEMM)	2	1
Petitions (PETI)	3	2
Human Rights (DROI)	6	3
Security and Defence (SEDE)	8	3

## Annex II: List of interviews

Interview #	Institution	Rank	Date
1	European Commission	Senior Official, DG MOVE	27 May 2020
2	European Commission	Member of a Commissions' Cabinet	10 June 2020
3	Council of the EU	Senior Official, General Secretariat	29 May 2020
4	European Parliament	MEP, EPP	24 June 2020
5	European Parliament	MEP, Greens	2 June 2020
6	European Commission	Advisor, Secretariat-General	9 June 2020
7	European Commission	Senior Official, Secretariat-General	15 June 2020
8	European Commission	Senior Official, Secretariat-General	17 June 2020
9	European Commission	Senior Official, Secretariat-General	24 June 2020
10	European Commission	Member of the Presidents' Cabinet	2 July 2020
11	European Parliament	Senior Official, Secretariat-General	22 June 2020
12	European Council	Member of the Presidents' Cabinet	23 June 2020



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