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A few take aways from President
Juncker's 2017 State of the Union speech



FLEISHMANHILLARD

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During what is seen as a defining moment for European Commission President Juncker's legacy, the 'State of the Union' speech on September 13, Juncker delivered a speech that was passionate and very personal and as expected very pro-European. Reflecting on the change of circumstances from the last speech like this in 2016 where there was a sense of existential risk for the EU following Brexit, and the upcoming elections in France and elsewhere, he sought to place the European Union in front of "a new window of opportunity".

The word "Brexit" was never mentioned and the objective was to give the sense that the United Kingdom had already left the Union. Instead, the President of the European Commission focused on the idea of moving Europe forwards using the reinforced support for the EU that came from recent electoral victories against anti-European parties, and evidence of greater support for the EU from the general public. He, for instance, made a number of references to ideas and proposals put forward by Emmanuel Macron during the French presidential campaign; in particular on trade and the future of the EU. There is real awareness in both the Commission and Germany of the need for a successful Macron Presidency for both the future of France and for Europe more widely. However, in many instances – such as his vision for one European President, he also went further than Macron.

All of this said, the strongly federalist nature of the speech has already created tensions with Member States – moves on Eurozone Governance, extension of Schengen to Romania and Bulgaria alongside moves on European defence are all controversial at a national level, and it is not in the Commission's gift to deliver these without the Member States' assent. Specific actions such as the creation of a single European President for the Council and the Commission will not be achieved without a fight (and it's not clear that this is possible without Treaty change either). Likewise for the creation of a Eurozone finance Minister.

While it is hard to believe that Brexit negotiations will not be critical, President Juncker's call to the Member States to think positively and constructively about the future is key. The main question is how far capitals will support the Commission in this highly ambitious reset. Calling for a special European Council in Sibiu in Romania on the day after Brexit in 2019, Juncker stated that he wanted the EU to "come together to take the decisions needed for a more united, stronger and democratic Europe."

There is a short period of 16 months to deliver this agenda before the end of the Commission's mandate. These kind of ambitions have been announced before by European leaders, only to be thrown off track by Member States maintaining their irritating habit of national decision-making. The question

is will this time be any different? A few key priorities and themes structured the speech; announcing what the European Commission will focus on until March 2019.

EU'S TOP 5 PRIORITIES

A transparent and successful trade agenda, a stronger industry base, the continued fight against climate change, a safe digital economy and progress on legal and illegal migration have been and will continue to be on top of the Commission's agenda.

AN EU OF VALUES

President Juncker made clear time had come to draw conclusions on the future of the EU and shared his views on his preferred scenario (scenario 6); a scenario based on freedom, the rule of law and equality of opportunities for Member States and European citizens (consumers, workers, etc).

AN INCLUSIVE EU

President Juncker touched upon a number of key issues where progress needs to be made in order to secure a more inclusive European Union: All Member States joining the Banking Union and the Eurozone (once criteria are met), the development of a European Pillar of Social Rights (posted workers were mentioned a few times) and Enlargement to the Balkans (he made clear however that it would not happen during his mandate).

A STRONGER & MORE EFFICIENT EU

President Juncker called for a European Minister of Economy and Finance (ideally the Commissioner for economic and financial affairs who should become Vice-President of the Commission and president of the Eurogroup) and a more efficient Foreign Policy decision-making based on qualified majority. A task force on Subsidiarity and Proportionality will also be established to ensure that the EU is efficient and is acting when is needed.

A MORE DEMOCRATIC EU

In order to bring the EU closer to its citizens, President Juncker supported transnational lists for the next European elections and the organisation of a democratic conventions in all Member States; 2 proposals made by Emmanuel Macron during the French presidential campaign. In parallel, he spoke about a new Code of Conduct for Commissioners and a single President for the Commission and for the European Council. These two developments could potentially help increase visibility and trust in the EU.

Trade - a broader EU agenda

President Juncker believes the conclusion of the negotiations with Mexico (upgrade of existing agreement) and with Mercosur (new agreement) is within reach before the end of the year. To pre-empt critics of the Commission's lack of transparency in its trade negotiations, the Commission will henceforth publish all negotiating mandates it sends to Council, first and foremost those that open negotiations with New Zealand and Australia.

On average, his message was balanced: a Europe that protects (e.g. through revamped trade defence measures such as anti-dumping tools), opens markets (by demanding reciprocity in negotiations, expecting similar standards to those in Europe on e.g. investment) and shapes globalisation (by setting standards on labour, environmental protection and sustainability).

He sounded upbeat when saying that "partners across the globe are lining up at our door to conclude trade agreements with us". The Commission President expressed much more confidence in his trade agenda than his last year's speech, when Brexit had just occurred and it was unclear whether the EU would fall victim to insurgent populism in subsequent elections in the Austria, Netherlands, and France.

Indeed, he concluded his speech with "So let's throw off the bowlines. Sail away from the harbour. And catch the trade winds in our sails."

SPLITTING OF FUTURE TRADE AGREEMENTS

President Juncker explained that the Commission wants to open and conclude FTA negotiations with Australia and New Zealand within this mandate. Negotiating mandates with both countries were sent to Council on September 13. Moreover, "the European Parliament will have the final say on all trade agreements", and Juncker committed again to fully involve the institutions in all stages of the negotiations.

Without mentioning 'splitting' the mandates explicitly into a trade part and an investment part, this likely implies that the Commission will opt for what has become known as the 'fast-track' procedure: to negotiate FTAs solely on policy areas that fall under exclusive EU competence as defined and delineated in the ECJ Opinion 2/15 last May.

This would imply that bilateral investment protection will not be included in those agreements (apart from investment liberalisation, including liberalisation of FDI for services and non-services sectors), instead the Commission will likely push for setting up the Multilateral Investment Court on a separate track. As such, those agreements only require ratification by the Council and the European Parliament and can thus be passed in a speedier manner.

While remaining vague on whether the Commission will go into the above described direction, concrete proposals on trade and investment will be published on the website of DG TRADE on the 14th September.

INVESTMENT SCREENING

In his State of the Union speech delivered in the European Parliament, Commission President Juncker announced a proposal for EU rules on Foreign Direct Investment Screening.

The proposal was accompanied by a wider communication on foreign investment in a globalized world. Generally, trade was given strong priority in today's speech, and this legislative proposal was the first announced by the President.

The proposal and the Communication clearly sets out the path forward for Europe as being open to foreign investment, but at the same time imposing a clear framework for these investments. The initiatives address the concerns over the EU being seen as - as Juncker called it in his speech - "naïve free traders".

The Communication also proposes a few non-legislative measures supporting their strategy (see below).

Already before the initiative was launched, it has been subject to intense political debate inside the Commission and between Member States in the past months. You will recall that European Leaders in June called for an assessment of investment screening by the Commission, pushed by newly elected President Macron, who in his Presidential campaign pushed for a stronger EU stance on this issue; an approach that was later supported by Germany and Italy.

German support emerged after a number of high-profile Chinese take-overs in country, including that of robotics company Kuka. This political push has prompted the Commission to swift action and helped this issue become a priority for President Juncker.

On balance, the approach put forward today is relatively soft, with a strong focus on coordination between Member States when they screen foreign investments according to their own processes, and few new soft powers for the European Commission - which is only empowered to provide non-binding opinions in certain cases.

It is worth remembering that, within the European Commission, VP Katainen and Commissioner Malmström, jointly in charge of trade policy, and the leadership of the powerful trade department within the Commission ("DG Trade") have argued for caution in the wake of the FR-DE-IT push. Also, traditional free-trading countries (e.g. Netherlands) and investment-seeking countries (e.g. Greece) alike have been skeptical about an approach that would deter foreign investment. This push-back has likely influenced the final outcome.

It is finally worth noting that the proposal stresses the principle of "reciprocity", which comes as EU business claim that investment in / access to the Chinese market has become more restrictive in recent years.

TRADE DEFENSE

Yesterday, the European Parliament and Commission failed to reach an agreement in trilogues on the EU's reformed anti-dumping rules, despite a last-minute intervention by Commissioner Cecilia Malmström. An agreement would have been an important signal that the Commission takes its role as an "EU that protects" against the excesses of globalisation serious, as President Juncker had laid out in his State of Union speech last year. Earlier, the EP had expressed concerns that the proposal would open the gates to cheap Chinese imports of steel and other products. As such, the initiative did not receive much attention. It is unclear at this stage when an agreement is expected.

Eurozone reform

Following French President Emmanuel Macron's call for institutional reform, Juncker put forward his much anticipated proposal to establish an EU finance minister, replacing the current Commissioner for Economic and Financial affairs with a Vice-President position within the Commission who would also chair the Eurogroup. Notably, however, was an absence of significant Eurozone reform proposals – such as the creation of its own finance minister as called for by Macron.

In many ways this was in line with Juncker's vision for a more unified EU post-Brexit and a rejection of a 'two-speed' Europe. Such an approach was clearly evident in Juncker's ambitious proposals to ask all EU Member States to join in the single currency and align with the Banking Union's supervisory framework, which could potentially receive push-back from Member States outside the Eurozone.

Combined with this was a confirmation that there will be no separate Euro budget line as speculated, but rather Euro area resources would be clearly defined within the overall EU budget, while a European Monetary Fund (EMF) would be established, replacing the existing European Stability Mechanism (ESM). A more controversial proposal was Juncker's call to reform the Council voting system in areas pertaining to the internal market – namely taxation – through the so called "passerelle clause" which would remove the clause of unanimity and replace it with qualified majority voting (QMV).

Such a change would require agreement by all Heads of State or Government and is likely to receive strong push back from Member States as their opportunity to veto certain rules would be diminished.

Digital Agenda

Although President Juncker did not elaborate much on it, the digital agenda remains a top priority for the European Commission. During the speech, and as expected, he insisted on the risks for European democracies and businesses that remain under prepared for cyber-attacks. Juncker went so far as to declare that 'cyber-attacks can be more dangerous to the stability of democracies and economies than guns or tanks'. He therefore announced that new tools for ensuring a

more cyber-secure environment would be provided through the new European Cybersecurity Package. The contents of the package revise the EU's cybersecurity strategy for the first time since 2013, beefs-up the role of ENISA, creates a new cybersecurity certification framework, and guides Member States on implementing the Network and Information Security (NIS) Directive. While Juncker's attention was fixated on cybersecurity, the Commission quietly published its long-awaited Regulation on the Free Flow of Data. The initiative driven by Vice-President Ansip received surprisingly little coverage despite its impact on non-personal data.

Clean Energy package action and climate action

The Energy Union and Climate Action were mentioned only at the margin. President Juncker confirmed EU's commitment to "achieve the Energy Union" and the will to step into the gap that the US has created by leaving the Paris agreement (with a not-so-innocent pledge to "keep the planet great"). The Clean Energy Package currently under discussion is part of the "80% of this Commission's proposals already on the table" and that "still have to become legislation". This chimes very well with what Vice-president Šefčovič stated in January, calling 2017 "the year to deliver the Energy Union". No additional announcement was made on that front. Most interestingly, the reaction of Manfred Weber, President of the EPP Group (centre-right) underlined that security was of utmost importance and called the EU to stop the Nord Stream 2 project.

Cleaner and fairer mobility

Transport was not a big topic during the speech. President Juncker simply announced the upcoming proposals on emissions reduction from cars and vans. He mentioned several times social aspects of transport which should be taken into account through the Posting of Worker proposal. The initiative was referred to emphasise the need for better social standards across Europe.

The transport agenda is very rich in 2017 and in the next months of negotiation, with a Mobility Package published in May, which touches on road charging, international road haulage market and social issues such as the posting of workers initiative. A new mobility package will follow in November, which will address the decarbonisation priority.

Brexit... and the day after

The forthcoming Brexit was mostly referred to by President Juncker implicitly, handling it as something already... delivered. Several times, President Juncker addressed to "the EU 27 member states". The only open reference was to say how much the EU and the UK will regret it. Most revealingly, the President of the Commission used this opportunity to announce the Sibiu Summit, conveyed for the first day after Brexit, to move towards more integrated and solidary Union. No comments were made to the current negotiations and to the eventual "Phase 2".