

# CHALLENGE EUROPE

## Europe@50: back to the future

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Issue 16

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## Foreword

by Jacki Davis

As the European Union prepares to celebrate its 50<sup>th</sup> birthday, the storm clouds which gathered following the French and Dutch referenda votes against the Constitutional Treaty appear to be slowly lifting.

But the skies over Europe are still dull and grey, and the mood is likely to be equally sombre when EU leaders meet to commemorate the anniversary, given the major challenges facing the EU in the coming months and years and the lack of consensus on the way forward.

It will, however, provide an ideal opportunity to highlight the astonishing progress which has been made over the past 50 years in the building of Europe – progress which many now take for granted, but which was never by any means inevitable. It is also an appropriate moment to consider both how the EU can break the current deadlock over what to do about the Constitutional Treaty and respond to the longer-term challenges it faces.

In this issue of *Challenge Europe*, a host of leading politicians, academics and commentators address all of these issues in a range of thought-provoking articles on the EU's past, present and future.

Journalists are perhaps overly fond of resorting to clichés such as 'at a crossroads' to describe key moments in the EU's history, but it is no exaggeration to say that the rejection of the Constitution in two founding Member States was a genuine turning point.

It underlined what has been increasingly evident for some time; namely, that the construction of Europe can no longer be driven solely by political elites, as in the early days, but requires the consent and support of the general public.

How that consent can be obtained in an ever-expanding EU is a question to which answers need to be found not only for the short term, as EU leaders wrestle with the dilemma over what to do about the Constitutional Treaty, but also for the longer term as they contemplate the future development of the Union.

The European Policy Centre has long been – and will, of course, remain – closely involved in the debate over how to build on the progress made by the EU over

the past 50 years and confront the challenges it faces now and will face in the future. This publication is intended as a contribution to that debate at this critical moment in the Union's history.

**Jacki Davis is Head of Communications at the European Policy Centre and Editor of *Challenge Europe*.**



# I. HOW DID THE EU GET THIS FAR?

## Introduction

*by Antonio Missioli*

In its first 50 years, the process of European integration has not followed one single pattern of development. Many competing explanations for the astonishing progress made to date have been put forward and tested, but none of these fully grasps the originality and complexity of this unique phenomenon.

For one, the ‘realist’ approach (whereby decisions are still driven primarily by the essential national interests of the Member States) does not account for many of the developments of the past 50 years – most notably, Germany’s determination under Chancellor Helmut Kohl to pursue monetary union.

Similarly, there are many events and developments which do not fit the ‘functionalist’ approach (whereby integration has been driven by a constant spill-over effect) either. Energy policy, to give one example, was at the root of the whole process (the European Coal and Steel Community and Euratom), but gradually disappeared from the EU screen later on, only to resurface now in a completely different context.

The federalist vision of an unstoppable transfer of sovereignty from the nation state to an “ever closer” Union also fails to describe the process adequately. It is, for example, a myth that such a transfer is a zero-sum game, as implied by the traditional federalists (but also by the Eurosceptics who oppose it). It is, rather, a positive-sum game in which not only does the EU acquire new competences, but every individual country also retains some degree of control over any new common policy (as Professor Alan Milward has shown) by pooling sovereignty rather than trying to preserve its residues. Thus it evolves, in the words of Professor Alberta Sbragia, “from Nation State to Member State”.

Furthermore, the traditional contrast between community and intergovernmental procedures and bodies has become increasingly blurred, in part because of the growing tangle of competences in key areas (such as the single market and the Lisbon Agenda), and in part because of the emergence of new policy areas (justice and home affairs, foreign and security policy) to which the usual boundaries do not apply.

Finally, even the notion of ‘subsidiarity’ means different things to different people in different contexts. Allocating competences and decision-making at the ‘most appropriate’ (not necessarily the ‘lowest’) level of government – be it local, national, European, even global – is a permanent challenge and a constant source of controversy. Shifts occur all the time and everywhere, and adjustments may prove indispensable in one or the other direction – for reasons of effectiveness more than ideology.

A certain measure of eclecticism in analysing the European integration process is therefore as necessary as it is timely. However, this does not mean that specific trends cannot be discerned and evaluated, including some unexpected consequences of past decisions.

Paul Gillespie considers the respective roles of personalities and institutions in the EU’s development, and comes to the conclusion that – for a number of reasons which go beyond the sheer ‘quality’ of current political leaders – if the EU did not exist and the Treaty of Rome was presented to them for approval, today’s Heads of State and Government would probably not sign up to it, even though the commitments it contains are far less demanding than those enshrined in more recent treaties.

Yves Mény considers the evolution of the EU’s ‘institutional triangle’ over the past 50 years, and underlines the extent to which the European Commission has lost out lately to the Council and – especially and ironically – to the European Parliament, for which the co-decision procedure has turned into a constant multiplier of influence and powers. He also shows that even at the height of its powers, the College ‘owed’ some of its influence to the Member States – by choice, chance or default.

Philippe de Schoutheete pinpoints the various stages which have led to the current situation in which not only the two traditional ‘modes’ of EU policy-making but also the three more recent ‘pillars’ have become increasingly intertwined and blurred: a process which led Professor Helen Wallace recently to coin the term “transgovernmentalism” to describe precisely these new developments.

Mr de Schoutheete wisely draws a distinction between the area of justice and home affairs, which is mainly about legislation and therefore closer in nature to the community pillar, and foreign and security policy, which is mainly about external action and therefore more reliant on the Member States and their willingness and ability to act (and to do so collectively).

But he also warns that, while some of the past disputes may appear to have little relevance today, a new and arguably more fundamental cleavage may now be emerging within the EU: notably between those who still believe in the benefits of public intervention (be it direct and proactive, or regulatory) and those who see it as fundamentally undermining the freedom and sovereignty of the market.

Finally, Jean-Luc Dehaene wonders whether, in the light of the two shocking 'No's' in the French and Dutch referenda on the Constitutional Treaty, the entire work of the European Convention should be seen as a waste of time. His answer is a categorical 'No', as, in many ways, both the process and the outcome of the Convention represent a point of no return for the EU.

He argues that the former showed (and overcame) the structural limits of traditional intergovernmental negotiations, while the latter convincingly addressed all the relevant issues confronting the Union today, and still represents the best possible point of departure for the forthcoming negotiations on institutional reform.

As to its possible future shape, he says, "the name of the baby is rather unimportant", while all the substance is to be found in the draft text provided by the *Conventionnels*.

**Antonio Missiroli is Chief Policy Analyst at the European Policy Centre.**

## Would today's leaders still sign the Treaty of Rome?

by Paul Gillespie

Fifty years on, it is all too easy to mock the British observer who withdrew in November 1955 from the Spaak Committee preparing what was to become the Treaty of Rome with the parting words: "A treaty has no chance of being concluded; if it is concluded, it has no chance of being ratified; and if it is ratified, it has no chance of being applied."

The genius of that treaty was to create an institutional framework capable of withstanding the pressure of subsequent events such as Charles de Gaulle's election as French President the following year (his followers in the Quai d'Orsay had strenuously resisted supranationality), or the competing model provided by the Organisation for European Economic Co-operation or the European Free Trade Association (which was championed by the British and appealed to many within the German government, including Economics Minister Ludwig Erhard, who would have preferred an Anglo-German Free Trade Agreement to the European Economic Community).

This was EU 'founding father' Jean Monnet's great insight. "Nothing is possible without men; nothing is lasting without institutions," he wrote in his memoirs, describing the high political manoeuvring that led to the Schuman Declaration on 10 May 1950.

In historical retrospect, it is tempting to concentrate on the second part of that famous aphorism. The first part is too often related to objective geopolitical and economic factors such as Franco-German peace or growing economic interdependence impelling states towards integration, rather than to the contingent political choices and leadership which actually gave birth to the Community method.

That misinterprets both the origins of European integration and its current impasse. To answer the question of whether today's leaders would still sign the Treaty of Rome, we must understand the immediate political circumstances that gave rise to it as well as the background circumstances which facilitated it.

As Monnet put it: "One always has to go back to the beginnings of things to understand their meaning." His account, and up-to-date historiography, show

there was no inevitability about the choice of the Community method in which sovereignty is pooled selectively and scrutinised by an independent European Commission which initiates legislation, majority decision-making is weighted and the whole system is overseen by an independent court with direct effect.

Competing confederal and traditional intergovernmental models of cooperation enjoyed equal support at the time in the French, German and Benelux political arenas – and much more in the British one (a factor that loomed large among those opposing the Community method elsewhere). There was no inevitability about the outcome.

Support for these three options cross-cut left-right, sectoral, institutional and structural divisions – especially in France, the crucial driver of strategic decisions about integration in the 1950s and from the 1970s to the 1990s. (Arguably it is the loss of that role in the early 21<sup>st</sup> century which explains much of the EU's current loss of momentum.)

In his valuable revisionist account of the role of ideas in the history of French integration policy, Craig Parsons argues that the outcome of inter-elite and inter-state bargaining in the 1950s was highly contingent on successive coalitional shifts in the French government.<sup>1</sup>

Crucial for the success of the Treaty of Rome negotiations was the appointment of the Socialist leader Guy Mollet as premier rather than the anti-integrationist Pierre Mendes-France, who had led the party to electoral victory in January 1956. Mollet had wavered on the European Coal and Steel Community in 1950-1, but had strongly supported the European Defence Community (EDC) in 1953-4 and continued his commitment to Community methods after the EDC was voted down in the French National Assembly.

In 1956-7, he stepped far beyond his own party, coalition, bureaucrats and interest groups to pursue a new Community deal. Rather than being lobbied by interest groups, Mollet's team lobbied them. In 1957, he secured ratification of the Treaty of Rome thanks to his success in mobilising reluctant agricultural support using coalitional and party discipline, issue linkages and side payments.<sup>2</sup>

### **The role of strong leadership**

The pattern of strong French leaders willing to use their political autonomy to push for more integrationist policies was repeated later, for example by Giscard d'Estaing on the European Monetary System and by François Mitterrand over

the single market and Maastricht. It was replicated by Helmut Kohl in Germany and Jacques Delors in the Commission during the later period.

The point is made here using the French example to underline a wider one: namely, that political leadership makes a vital difference linking objective interests and circumstances to particular outcomes in the history of European integration. Without such leadership, nothing is possible.

At a time in international affairs when institutions matter more and more, they have a lasting effect – not least in constraining subsequent choices about integration. The more Community methods chimed in with prevailing legal and economic norms, the more difficult it became to revert to previously desired confederal or traditionalist alternatives.

This neofunctionalist logic of spillover explains a lot about how integration deepened in the 1980s and 1990s. But the associated assumption that ‘deepening’ was somehow inevitable, irreversible or uncontroversial has been dealt a rude blow as the whole process has become more highly politicised over the last 15 years.

Public opinion became more aware of how intrusive integration had become in constraining national decisions. There was growing concern about the effects this had in hollowing out national democracy without a commensurate growth of democratic access at the transnational level. A gulf emerged between the overwhelming approval for integration among political elites and the better-informed, in contrast to much less positive attitudes among most national electorates.

Nevertheless, the number of those in the EU-15 identifying first with their nation but also with Europe grew steadily in this period, compared with the number identifying only with their nation.

Crucially, researchers have shown that among the first group, such multiple political identities are more complementary than competing and are clearly associated with a willingness to deepen integration in selected fields.<sup>3</sup> By the same token, the growing number of Eurosceptics concentrated among those who identify only with the national became a more potent political influence.

It also remains a large – and for the most part unanswered – question politically and in research terms as to whether the enlargement to 25 Member States

in 2004 and 27 in 2007 will fundamentally alter these configurations in the EU-15 or, in due course, fall into line with them.

### **Widening and deepening**

Faced with this politicisation, EU leaders responded both proactively and defensively. The successive treaties signed at Maastricht in 1992, Amsterdam in 1996, Nice in 2000 and Rome in 2004 represented a substantial effort to constrain a wider membership with deeper structures of decision-making.

On any account, this was an ambitious agenda, which culminated in the constitutional text arrived at through a new and much more open process of negotiation.

During that process, there was an opportunity to resurrect confederal methods, by more clearly differentiating them from strictly inter-governmental or traditional international ones. A double hybrid emerged, combining a strong federal-type arrangement without a central government for intra-EU affairs and trade policy and a confederal arrangement with a relatively strong centre but undeveloped institutions in foreign and security policy.

The Constitution remains at an impasse until after the French elections and will presumably be renegotiated, repackaged or renamed in 2008 during France's EU Presidency.

It is too soon to say whether this whole process was a constitutional moment or a moment of madness. But it would be a mistake to underestimate the achievement of reaching agreement among 25 governments – or the determination of Member States which have ratified it, or still want to do so, to get their way – just because of the French and Dutch referenda results. Countries which could reach such an agreement could certainly be considered capable of confronting the challenges of the Treaty of Rome. That Treaty, after all, was much less broad in scope.

But the 50 intervening years have filled out its remit while retaining the institutional structures and balances reached in the 1950s. So Monnet was right about their lasting effect.

They have survived inter-governmental assault because they solved a crucial problem built into the post-war European order: how to reconcile France and Germany within a framework of wider European legitimacy and security. The

legitimacy was achieved by making that relationship complementary rather than conflictual, through independent institutions and the weighted representation of smaller states. The security was provided through NATO.

According to Albert Einstein, “the significant problems we face cannot be solved by the same level of thinking which created them”. That was the great significance of the bargain struck in the Treaty of Rome, which so changed the relationship between core nation states in Europe.

Recalling the original draft of the ideas involved in April 1950, Monnet remembered showing them to his brilliant colleague, Pierre Uri, in the French planning commissariat, whose reaction was simply: “This puts many problems in perspective.” “That was the point,” added Monnet. “It was less a question of solving problems, which are mostly in the nature of things, than of putting them in a more rational and human perspective, and making use of them to serve the cause of international peace.”

If we are to judge whether today’s EU leaders would sign the Treaty of Rome, we must ask whether they face the same kind of imaginative challenge to realise their goals, represent their interests and put their problems in a more rational and human perspective.

## **New ground rules**

Precisely because they are the inheritors of these 50 years of development, they face a different world on which their institutions have had a lasting effect. In that sense, they need to deepen and consolidate the original bargain rather than to reinvent it.

But the very success of those 50 years has changed the ground rules. New tasks face them, much more ambitious than the functional economic integration with which the Treaty of Rome was predominantly concerned and capable of capturing the imagination of a new generation of Europeans.

They include: managing globalisation and growing economic interdependence in Europe; creating a new framework for political action in this transnational setting; governing climate change and energy requirements; creating stability and security in the 490 million-strong EU and its equally numerous neighbourhoods to its north, south and east; responding effectively to changing transatlantic relations to its west; and representing the EU’s interests in a multipolar world.



The Constitutional Treaty addresses many of these issues, but leaves others ill-defined. Irrespective of what becomes of that text, these tasks will loom more prominently. And whatever text is agreed can be revisited. But does the 1950s' bargain require qualitative change? Is the Community method redundant? Or can it be extended to other spheres? Can intergovernmental methods supersede it?

To answer those questions, we are forced back to the first part of Monnet's aphorism: "Nothing is possible without men." Leaders such as Robert Schuman, Konrad Adenauer, Guy Mollet and Paul-Henri Spaak seized the initiative and drove through the original Community bargain in the face of extensive opposition or indifference.

In Schuman's words, it was "a leap in the dark", a risky venture which had to be fought for again and again before it became institutionalised and could deliver on its promise. We should also remember that it took a long time to do so.

The original shape and style of the EEC had much in common with that of France, warts and all. Tony Judt points out, too, that "the price to be paid for the recovery of Western Europe would be a certain Euro-centric parochialism. For all its growing wealth, the world of the EEC was quite petty. In certain respects, it was actually a lot smaller than the world the French, or Dutch, had known when their nation states opened on to people and places flung far across the seas."<sup>4</sup>

There is far less excuse for such inward-lookingness now than 50 years ago. Yet many EU leaders seem just as parochial and short-termist in their concerns – about immigration, internal migration, relations with Islamic peoples or potential members like Turkey – as were their predecessors who had more sectional preoccupations.

### **Tackling the problem of 'disconnect'**

The perceived disconnect between leaders and voters in the EU is all too easily resolved by accommodating domestic introversion and lowering ambitions.

Researchers discern a new "constraining dissensus" between elites and mass publics, rather than the "permissive consensus" which facilitated functional integration in the first decades of the EU's existence. The Roman god Janus best symbolises a style of duplicitous leadership which faces one way

towards Brussels and another towards domestic electorates in an effort to preserve a diminishing political capacity.

Too little thought has been given to creating new transnational structures of political participation, access and accountability which can reconnect citizens to politics. Direct elections not only to the European Parliament but also for the President of the Commission would be one way to achieve this. So would more efforts to create a public sphere of media and communication across the EU.

This would involve the creation of transnational spaces for deliberation, of stronger political parties and interest groups capable of balancing executive power, and a reconfiguration of political accountability and resources between European, national and subnational levels.

The national is not superseded but entangled with – and harnessed by – the European in this new configuration. Such institutional innovation still awaits the men and women who can make it possible to deliver it effectively. The test will be to see whether and how they emerge from the period of reflection this year and next.

The omens are not good and the answer to the question whether the current batch of leaders would sign the Treaty of Rome now would be ‘No’, but it will take another two years to see whether they and new leaders more ready and able to meet these challenges emerge and consolidate themselves.

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## Endnotes

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## An 'institutional triangle' with only two poles?

by Yves Mény

The ingredients which made the Common Market and then the European Union unique are still in place.

Those who originally conceived these institutions created a framework which had no equivalent amongst the existing tools of government, both at the national and international level.<sup>1</sup>

The entire system was built on three main foundations: the Council, European Commission and the Parliamentary Assembly. Venerable concepts inherent in representative democratic systems, such as the separation of powers, were not fully honoured and the usual dualistic polarisation of institutions (parliament/government) was replaced by the EU's famous and unusual triangle.

This tri-polar organisation could have evolved in a much more traditional way – very close, for example, to the way the German institutions function.

Each of the branches had, in its make-up, elements which could have pushed it in this direction: the Parliamentary Assembly could have moved towards becoming a fully-fleshed representative body; the Council might have become the expression of territorial representation in the style of, say, the *Bundesrat*; and the Commission could have become the Government of Europe.

If this was the hidden agenda of the Founding Fathers, very little of it has materialised, as everybody knows.

Much more explicit was the willingness to avoid the pitfalls and traps so common to international organisations. It was already obvious by the beginning of the Fifties – and even more so by the time the European Economic Community (EEC) was launched – that the visions born after the Second World War of an efficient international system had evaporated.

It was clear to everyone that the decision-making process was blocked most of the time because of the political tensions between the West and the Communist regimes: institutional arrangements are fragile constructions when faced with the harsh reality of politics. This lesson was understood by the Europeans, who were trying to set up new forms of cooperation between former enemies.

In order to make the system work, special tools were put in place with the aim of avoiding the paralysis affecting most of the international organisations set up after the war and, in particular, the United Nations.

The Commission was supposed to be the key instrument of this strategy. It was intended to embody a kind of 'general interest', superseding and overcoming the inherent egoistic vested interests of the nation states.

Three elements were designed to give the Commission the capacity to act, in a sense, *super partes* and to fulfil its mission:

- the representatives of the Member States (the Council) could only act on the basis of a Commission proposal. The Commission was empowered with an exclusive right of initiative;
- after a transition period, most of the Council's decisions were to be taken by Qualified Majority Voting (QMV);
- Qualified majority decisions required the Commission's approval. If the Commission objected to the changes made to its proposal, only a unanimous Council could impose its preferences over those of the Commission.

On paper, there is no doubt that the Commission was in the driving seat, with the added advantage of facing a divided Council (at least in theory) and a lame-duck Parliamentary Assembly. This was the scenario which was initially envisaged, but what actually happened is well-known: in reality, not much of this has been put into practice.

The Council, while divided on almost every issue, has demonstrated its assertiveness when national power is at stake. The Parliamentary Assembly, which was the '*parent pauvre*' in the triangle, has succeeded in gaining power and influence, mainly to the detriment of the Commission. And the Commission itself has, willy-nilly, agreed to its own downgrading, with the result that the triangle initially conceived – while remaining apparently unchanged on paper – has in fact become very different.

I would like to briefly address this evolution both by considering the progressive change in the balance of power between the three elements of the triangle – the Council, the Commission and then the Parliament – and by examining the evolution of the Commission's strategy and behaviour, which had its own (not negligible) impact.

## How the Commission lost its way

There is no doubt that the Commission was initially in a favourable position.

In theory, once the transition period was over and QMV replaced unanimity, the Commission would become a key player in many ways. Its monopoly over the right of initiative, combined with the possibility to withdraw its proposals if it was not happy with the Council's amendments, would give it full control over the engine: no movement without its impulse; no major amendments without its support and approval.

Initially, this was the case, both in the policy fields regulated by the treaties (the four freedoms, the Common Agriculture Policy, etc.) and in the new areas where the Commission was keen to play a role via Article 235 of the EU Treaties, using a kind of 'implied powers' strategy.

But Member States became increasingly upset with this entrepreneurial spirit, which they perceived as a kind of creeping and unsolicited expropriation. The strongest reaction, in the form of the 'Crisis of the empty chair', came from General De Gaulle's France, on agriculture policy issues, and ended in January 1966 with the so-called 'Luxembourg Compromise'. This was a major setback both for the Commission and for all those who hoped for an incremental development of a Federal Europe.

Another less visible, but at least as important, evolution occurred in the exercise of the right of initiative.

It became obvious that many, if not most, of the initiatives pushed forward by the Commission were in fact prompted by one or several governments. This was no doubt seen initially as a blessing by an activist Commission.

Many of these proposals initiated by individual Member States (and often, behind them, by lobby groups) were taken over by the Commission, which was in charge of their preparation and responsible for providing the technical expertise.

However, what looked initially like a splendid opportunity for the Commission became a trap: governments acquired the habit of preparing a shopping list of suggestions and recommendations for their stints as holders of the EU Presidency – establishing, *de facto*, the Commission's agenda for it, sending out easy political signals, and then leaving the Commission to

struggle with the hassle of drafting the necessary legislation and face accusations of over-regulating!

With the exception of the implementation of the Single European Act, which paved the way for the Internal Market and gave some autonomy back to the Commission, the general trend has been towards a major shift in the power of initiative from the Commission to the Council.

This would be the least of its problems had the transfer of formal power not been accompanied by a similar transfer of substance.

The added value of the Commission has always been its multinational/transnational expertise, which no other body can match. But the development of comitology has substantially reduced the Commission's capacity to set the rules of the game *vis-à-vis* its national partners.

Many empirical studies have underlined the extent to which policy initiators play a decisive role in determining the objectives, modalities and organisation of a given policy. Proactive members became leaders in establishing the framework of common policies and regulations – “he who pays the piper, calls the tune”, as the saying goes.

In an ever-increasing number of cases, the Commission is not in a position to call the shots and is replaced, depending on the policy area, by the British, the French, the Germans or the Scandinavians and the coalitions they are able to put together.

The Commission continued to weaken its ability to take the lead by opting not to withdraw proposals even when its initiatives were distorted by the Council. This attitude was certainly prompted by the desire to build up consensus and avoid too frequent confrontations. But once again, a kind of convention had been created which reduced the Commission's scope for action.

### **The Council's role in the Commission's decline**

It would, however, be an exaggeration to state that this decline in the Commission's powers is entirely self-inflicted.

There is no doubt that the Council has played a decisive role in this process. As indicated above, although the Council may often be divided on key issues, this does not prevent it from forging a common front *vis-à-vis* the Commission, especially within the context of an enlarged Union.

For instance, even where the Council could take decisions by qualified majority, it still has proceeded *de facto* by consensus – i.e. unanimously – most of the time. And in some cases where one or several Member States were in a minority, it was convenient for them to argue that they had been ‘forced’ to swallow the decision and to put the blame on obscure forces in Brussels.

This evolution has procedural and bureaucratic implications that cannot be addressed properly in this short paper, but which are familiar to EU observers: the Commission has not only lost ground at the initiative stage, but also in the negotiating phase – in particular when a deal has to be struck between the various Member States’ positions.

The Commission plays the role of ‘honest broker’ less and less than it used to, and has been replaced as a go-between by the holder of the EU Presidency.

It is telling that the Commission, which used to get some of its legitimacy from its protective role *vis-à-vis* the small Member States, has lost this game. Prime Ministers from the EU’s smaller countries have acquired *savoir faire* and great skills as negotiators in the ultimate phase.

Sometimes, imaginative political arrangements become more important than whether they are actually feasible in administrative terms, but the result is there for all to see – particularly the media. Expectations are high and sometimes exaggerated about what the Irish, the Austrians or the Portuguese might produce during their term in the Presidency chair. The hope that the Commission could play an instrumental role in getting these results is, unfortunately, rarely fulfilled.

### **The Parliament’s gain is the Commission’s loss**

The other cause of the Commission’s decline lies in the parallel rise of the European Parliament. This new equilibrium should not come as a surprise to anyone: after all, the secret hope of many Europeans was that a genuine Parliament elected by the people could emerge from the modest assembly created by the treaties.

The radical criticisms of the “democratic deficit” in the Eighties and Nineties contributed to creating the political climate needed for change. In particular, it had become clear that electing the Parliament by universal suffrage was necessary but insufficient to correct the democratic deficit; the elected body also needed more control and legislative powers.

This was partially addressed by the Maastricht Treaty in 1993, which established the so-called ‘co-decision’ procedure for approving legislative proposals in some areas. Obviously this has changed the playing field for the institutional game. After many years of quasi-exclusive *tête à tête* between the Council and the Commission, the triangle was taking shape by making a (little) room for the Parliament.

Clearly, however, this was not enough and the Parliament had to try to make the most of the scarce windows of opportunity which opened up to satisfy its appetite for more power.

Up to this point, the story looks like a remake of the classic struggle between executives and parliaments which characterises Western democracies. The difference lies, however, in the fact that the European Parliament was faced with two competitors and not one: the Council and the Commission.

It could have chosen the Council as the main target for achieving its legitimate ambitions. Instead, it set its sights on the Commission for obvious reasons: the Parliament had few instruments with which to twist the Commission’s arm, but even less to wrest concessions from the Council. Furthermore, the Santer Commission ‘scandal’ provided an ideal opportunity for the Parliament to show its muscle and affirm its claims.

The story could have unfolded in an entirely different way, as the Parliament and the Commission otherwise have many interests in common and often take a more transnational approach to issues.

But the results are plain. The Parliament became the objective ally of the Council in weakening the Commission to such an extent that it too has become an ‘honest broker’ between the Commission and Council. A striking example of this new capacity has been the recent re-negotiation and the subsequent adoption of the Services Directive.

### **Size does matter**

A third factor played a hidden but powerful role in the Commission’s decline: its diminished collegiality and increasing bureaucratisation. The Commission is still, formally speaking, a College. But making it truly ‘collegial’ is becoming an impossible task for many reasons beyond the Commission’s control.



First of all, numbers count: it is telling to look at the pictures of the Commission on display at the entrance to its Berlaymont headquarters, from Walter Hallstein's team in 1958 to that of the current incumbent José Manuel Barroso.

The photograph of the first Commission looks like an informal meeting in a British club. Commissioners from only six countries are sitting in armchairs. The Barroso Commission, by contrast, looks like a university cohort after the graduation ceremony.

This image also reflects the unavoidable fragmentation of competences between 27 Commissioners coming from the same number of states. Backgrounds, interests, languages and views about the future of Europe are as diverse as it is possible to imagine. Collegiality in such a context becomes difficult to achieve: if the Commission is supposed to represent some form of common European interest, how can its President ensure there are sufficient grounds and understanding to agree what this is?

This difficulty is now built into the system and it will be probably impossible to go back to the previous situation of a relatively cohesive Commission. If there is no political/ideological glue capable of overcoming the dispersive features of a very large body, bureaucratic/sectoral objectives will inevitably become predominant.

But the Commission faces an even worse problem: the implicit agreement between the Parliament and Council to control the Commission as tightly as possible – particularly by imposing very strict procedural, administrative and financial rules on it – has forced the Commission into an extremely vicious bureaucratic circle.

Today, the entire energy of the Commission apparatus seems to be absorbed by the micro-management of thousands of projects whose formal regularity becomes the obsessive goal. The Commission behaves in a traumatised way, suspicious of everyone because everyone appears suspicious of it.

Politically, the Commission has restrained its ambitions in both quantitative and qualitative terms: fewer proposals and more White and Green Papers, Communications, etc. on the one hand; and more micro-management of *ad hoc* projects and less attention paid to the substance of policy on the other, since formal control has become more important than policy assessment.

## Conclusion

The combined actions of the Council and Parliament are, for very different reasons, the kiss of death and jeopardise the crucial role that the Commission has played in the development of the Union.

Nobody can wish on the Commission the fate of the late *Commissariat au plan* in France or of a Byzantine bureaucracy confined to details and mundane activities. Since Europe has little to do with national governmental structures, the time has come to redress the situation and to give the Commission a new impulse.

The first requirement is to liberate it from the absurd bureaucratic ‘straightjacket’ and to apply the subsidiary principle more effectively. The second is to return to the ‘spirit of the Treaties’ to make it the indispensable third party that Europe needs.

Any democratic system needs checks and balances that the European Union has not yet been able to put in place properly. Too much power is still located in the Council, the rising Parliament remains too weak and the weakening of the Commission has gone too far.

Given the unique nature of the European institutions, a strong Commission is indispensable to the proper functioning of the Union and to avoid the institutional triangle turning into a Bermuda triangle where navigators get lost.

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## Endnote

1. The literature on Institutions and in particular on the ‘institutional triangle’ is immense but one contribution is particularly valuable on this issue: Paolo Ponzano “Le processus de décision dans l’Union européenne”, *Revue du droit de l’Union européenne*, 1/2002, pp.35-52.

## The evolution of intergovernmental cooperation in the European process

by *Philippe de Schoutheete*

It is generally accepted that the point of departure for intergovernmental cooperation among members of the European Community was the Luxembourg report (also known as the Davignon report) adopted by Foreign Ministers in October 1970.

It was the first time that the ‘Community method’, devised by EU founding father Jean Monnet and consolidated by the Treaty of Rome on the basis of texts prepared by the Spaak Committee, was deliberately discarded, in the field of foreign policy, in favour of the traditional methods of diplomatic consultation, in an exercise initially known as “political cooperation”.

The significance of that initial step can only be understood by a flashback to the failure of the Fouchet negotiations in the spring of 1962.

Those negotiations, launched and largely dominated by French President General de Gaulle, had been seen by his partners as a deliberate attempt to subordinate the nascent European Community to an intergovernmental construction established in Paris, presumably dominated by France, and without any of the supranational procedures or institutions which had made Monnet’s proposals acceptable to the smaller countries.

Its final failure was immediately perceived as a turning point, a clear parting of the ways between the Gaullist concept of *l’Europe des patries* and the supranational concept developed in the Fifties. It was also quite acrimonious, with participants accusing each other of arrogant and irresponsible behaviour.

In his memoirs, Paul-Henri Spaak, who played a prominent role both as Belgian Foreign Minister and as ‘foster father’ of the Treaty of Rome, clearly put responsibility for this on the shoulders of French Foreign Minister Maurice Couve de Murville. Years later, in a reflective mood, he asked himself, in my presence, whether he had not, at the time, been too intransigent.

Whatever the merits of the case, the exercise left all parties with the sour taste of an important failure.

The merit of the Davignon report was that it found acceptable compromises on the issues which had led to that failure. The proposed concept was limited in scope: foreign policy *stricto sensu*, with security matters being left to NATO. It would have no legal basis, no institutions and no seat: the model was that of a travelling circus moving from Presidency to Presidency. European Community and NATO competences were specifically safeguarded and the European Commission associated only in a limited way with the new exercise.

On that basis, ministers came to an agreement. The European Economic Community would henceforth be complemented by an intergovernmental exercise parallel to – and therefore also distinct from – it. Political cooperation was born.

All compromises, even good ones, contain an element of ambiguity, and ministerial decisions do not automatically dispel mutual suspicions. Political cooperation developed quite successfully in the Seventies and Eighties in an atmosphere of some ambiguity and suspicion.

The Commission and its friends, especially the Benelux countries, were afraid that ministerial meetings in the intergovernmental mode would encroach on Community competences and institutions. On the other side, France, frequently supported by Britain, was keen to avoid interference by Community institutions in foreign policy matters.

A maximum level of paranoia was reached on a certain day in 1973 when, at the insistence of the French Foreign Minister Michel Jobert, ministers met in the morning in Copenhagen to discuss political cooperation issues and in the afternoon in Brussels as a Council.

### **The Single European Act: what's in a name?**

Common sense and the habit of working together gradually reduced the suspicions, if not the ambiguity. The presence of the Commission, which was very limited at the beginning, was progressively extended to cover practically all working groups. Ministers agreed to answer questions on political cooperation in the European Parliament. Community activities and political cooperation were clearly separate, but not antagonistic.

But the very name of the Single European Act concluded in February 1986 showed just how touchy the whole subject remained even after 15 years of practical experience of the two approaches existing side by side.

The Single European Act was the first substantial modification of the Treaty of Rome, including the first mention of monetary union. It also provided a legal basis for political cooperation for the first time, with a permanent secretariat in Brussels to provide administrative support.

Inquisitive young students must ask themselves why this document has passed down to subsequent generations with the “single” qualification. The answer is that the two parts of the treaty (Community affairs and political cooperation) had been negotiated separately – basically by the Committee of Permanent Representatives (COREPER) and the Political Committee – and the decision to bring them together in one legal text was only taken at the last minute and at the highest level.

The outcome had been so uncertain and seemed so momentous – hopefully putting an end to years of tiresome quarrels and dogmatic disputes – that negotiators, including myself, greeted it with enthusiasm. The fact that a legal text covered both Community affairs and political cooperation, which had never been the case before, suddenly became more important than its content, although that content was quite substantial.

This explains why this treaty is known (possibly uniquely in diplomatic history) not by the name of the town where it was signed (Luxembourg in this case) nor by a summary of its content, but by an adjective which underlines the bringing together of two separate texts.

The importance attached to this at the time (when today it would seem to justify no more than a footnote) shows that the wounds of the Sixties had not been completely healed. With hindsight, I feel that we were right to attach such importance to what was happening because it was the first significant step on a road pursued to this day: gradual *rapprochement* between Community business and intergovernmental cooperation.

### **The Maastricht Treaty: the move towards a ‘pillar’ structure**

The next stage on this road was the Treaty of Maastricht, with the negotiations on that text deeply scarred by the question of the relationship between these two forms of European activity.

In the spring of 1991, the Luxembourg Presidency, on the basis of several months of negotiations in the Intergovernmental Conference, put a draft treaty text on the table which divided the various activities of the Union into *pillars*: a

Community pillar and two intergovernmental pillars for foreign and security policy, on the one hand, and justice and home affairs, on the other. Each pillar would work according to different rules and procedures.

This innovation was, of course, hotly debated. Belgium and the Netherlands saw it as a threat to the Community method which had served us so well over the years, but the majority of the Council seemed ready to go down this road.

In the course of the summer, the incoming Dutch Presidency drafted an alternative text which rejected the pillar structure and brought foreign policy and justice into the Community fold, but with much-reduced objectives and ambitions. However, the Presidency misread the political signals and ran straight into a brick wall at the end of September, when all the Member States except Belgium declared in Council that they preferred the Luxembourg approach.

To this day, that meeting is known in Dutch diplomatic circles as “Black Monday”. Much has been written about the causes of that failure but, for the purpose of this article, the central point is that the major drama of the Maastricht negotiations turned on the relationship between Community affairs and intergovernmental cooperation.

As everybody knows, the text agreed in Maastricht was based on the pillar structure initially suggested by Luxembourg. It fixed the goal of a common foreign and security policy, which was – and remains – a very ambitious objective.

Again with hindsight, it seems to me that we failed to take account at the time of the intrinsic difference between the second and third pillars. Foreign policy, justice and home affairs all deal with matters close to the core of national sovereignty, which explains (without necessarily justifying) why national governments wish to retain control. But they are very different.

Foreign and security policy is essentially executive in nature: it is based not on legislation but on political decisions. In most countries, parliament has little effective influence on foreign policy. By contrast, justice and home affairs policy is essentially legislative in nature: it implies harmonisation of legislation, mutual recognition of acts and procedures – the sort of thing we have been doing for years to establish the single market.

The implication of this is that intergovernmental cooperation, which basically means unanimous decision-making in the Council, is much better adapted to

foreign policy than it is to justice and home affairs. Establishing identical procedures in the two pillars was not an optimal solution.

### **The Amsterdam Treaty: blurring the lines**

This point was taken up by the Treaty of Amsterdam signed in October 1997. The clear separation between pillars, which had been the essence of the compromise leading to Maastricht, was blurred in what was now called the “area of freedom, security and justice”.

Police and judicial cooperation in criminal matters remained in the third pillar, but migration, asylum and judicial cooperation in civil matters were incorporated in a new Community treaty title. However, procedures under that title were not to be fully *communautaire*, even after a transition period of five years. Unanimous decision-making remained the general rule, and the power of the European Parliament and the jurisdiction of the European Court of Justice were limited.

Another significant result of the Amsterdam negotiations was the incorporation of the *acquis* of the Schengen Convention into the treaty framework, with opt-outs for Britain, Denmark and Ireland. But the protocol which did this was presented as an annex to both the European Community treaty and the European Union treaty – another example of ambiguity in the pillar structure.

Foreign policy and security, on the other hand, remained clearly separate from Community business. The treaty created the post of High Representative/Secretary General of the Council, in charge of Common Foreign and Security Policy (CFSP) – an innovation which was to have significant consequences in later years.

The relaxed attitude of the Treaty of Amsterdam towards what had been, in the past, a cause of ideological confrontation between the Community method and intergovernmentalism, was typical of a trend.

After the climactic battles over the Treaty of Maastricht, the advocates of the Community method accepted that some form of intergovernmental cooperation would coexist with it, even in treaty texts. And the advocates of intergovernmental cooperation accepted that European institutions could play some role, without compromising the nature of that cooperation.

Intermediate solutions then became possible, such as the one retained for asylum and migration in the Treaty of Amsterdam. In *The Case for Europe*, published shortly after that treaty was signed, I described “a multiform network of procedures and heterogeneous constructions, providing flexible answers to differing needs”.

### **Current state of play**

This trend was to be confirmed in the following years, not by the Treaty of Nice – which makes no relevant contribution in this debate – but by practice. Two examples are the Lisbon process and the role of Javier Solana, the EU’s High Representative for CFSP.

The “open method of coordination” was devised by the Lisbon European Council in March 2000 because Member States, while recognising that common efforts were needed in the field of economic and social policy and innovation, were in no way ready to accept the transfers of sovereignty which an extension of the Community method would have entailed.

Yet the Lisbon process is not purely intergovernmental: it is based on benchmarking and a system of peer review in which the Commission plays the role of scrutiniser of national policies and the European Council (of which the Commission is a member) that of guidance and arbitration. Professor Helen Wallace calls it “intensive transgovernmentalism” in which “the primary actors are leading national policy-makers, operating in highly interactive mode and developing new forms of commitment and mutual engagement”.

Many observers consider today that the Lisbon process is failing to deliver on its promises but, whatever its merits, the fact is that it was conceived as a sort of halfway house between the Community method and traditional intergovernmental cooperation.

In creating the post of High Representative for CFSP, negotiators in Amsterdam certainly had no intention of departing from its traditional intergovernmental character. But when the European Council appointed a former Foreign Minister and Secretary General of NATO to the post, instead of the high-level civil servant many had expected, a subtle element of change was introduced.

With time, tact and political acumen, Mr Solana has created for himself a situation in which he is not simply a reflection of the common will of ministers



in Council. When taking the floor in the United Nations Security Council, putting his signature on a treaty between Serbia and Montenegro or discussing nuclear issues in Teheran, Mr Solana obviously avoids taking positions or making statements which would antagonise some Member States. But he has a margin of freedom, and is perceived (much more than successive EU presidencies) as the embodiment of the common European interest in the foreign policy field.

This growing perception, shared by Member States and foreign powers, gives him a role not unlike that which the Commission plays in Community affairs. He heads an intergovernmental institution, but the purists of the Sixties and Seventies such as Maurice Couve de Murville or Michel Jobert would not recognise him as one of them. In a way, he has become an institution!

The Convention on the Future of Europe, and the Constitutional Treaty based on its conclusions, are clearly to be understood as confirming, accelerating and extending the trend identified above.

The most spectacular example of this is the proclaimed abolition of the pillar structure. It is possible to argue that this move is more apparent than real: even if pillars no longer exist as such, procedures remain different and separate. But the simple fact that what had been a fundamental element of the Maastricht compromise could now be – at least partly and openly – discarded, shows a considerable evolution in thinking.

An even more cogent example is the concept of a Foreign Minister simultaneously sitting as Vice-President of the Commission. One could hardly imagine a clearer way of blurring the lines between Community affairs and intergovernmental cooperation.

It is certainly significant that this proposal was initially opposed by both the Commission and the Council secretariat. Both Solana and the then External Relations Commissioner Chris Patten expressed serious misgivings in the Convention Working Group which discussed this proposal. It ran directly counter to long-accepted orthodoxy on both sides and yet it prevailed, and today is frequently cited as a proposal which should be retained even if the treaty itself never comes into force.

There is no doubt in my mind that the role played by representatives of the new Member States in the Convention was highly significant in this respect.

They were naturally less connected to the fundamental debates of the early years of the Community. They did not bear the intellectual scars of long skirmishes won or lost on that ideological battlefield. The issues were new to them and they addressed them with common sense.

## Conclusions

It would be tempting to conclude that the ideological debate of the early years has now been settled, albeit with some remnants of ambiguity and mutual suspicion, by successive compromises.

However, a word of caution is needed. Those compromises are fragile and the debate could flare up again on the basis of a new ideological cleavage. The founding fathers shared with General de Gaulle – and all other European leaders at the time – a commitment to some form of social market economy (although obviously not under that name). The debate was about the level at which intervention and regulation is most appropriately exercised, with the transfer of powers to European institutions felt by some to undermine the freedom and sovereignty of Member States.

Today, the transfer – and even the exercise – of existing powers by European institutions is felt by some, in Britain and elsewhere, to undermine the freedom and sovereignty of the market. That is of course another debate, fuelled by different views on the conclusions to be drawn from globalisation.

This ideological debate goes to the very foundations of our societies. It concerns the legitimate role of all institutions. If it develops into a major issue at the continental level, the compromises described above will be of little use.

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## Was the European Convention's work in vain?

by Jean-Luc Dehaene

Did we waste our time at the European Convention? At first sight, yes.

France and the Netherlands rejected the draft Constitutional Treaty drawn up by the Convention in their referenda. And despite the fact that more than half of the EU's Member States, representing more than half of its population, have ratified the treaty, it is highly unlikely that it will ever enter into force in its current form.

It might therefore seem as if the Convention was held in vain, but is that actually the case? Personally speaking, I believe the opposite. In one way or another, we will always have to fall back on the content of the Convention's proposals, even if the form which is finally chosen may differ.

The challenges which the Convention sought to address continue to loom large on the horizon. Every day it becomes clearer that the institutions and decision-making procedures laid out in the current treaties are no longer effective in a Union of 27 Member States today, and even more tomorrow.

Furthermore, calls for more simplification, transparency and democracy are on the increase. Above all, globalisation's grasp is being increasingly felt and citizens expect an adequate response – something which can only come from Europe.

These challenges were excellently expressed in the questions listed in the earlier Laeken Declaration, when setting out the task of the EU Convention, and these questions were not new: they had already surfaced during the Nice Intergovernmental Conference (IGC), even if they were not explicitly mentioned. No answer was forthcoming, which meant that Nice was viewed as a failure by almost everyone.

It was this shortcoming which directly led to the setting up of the Convention. People were indeed aware of the fact that enlargement to Central and Eastern Europe would fundamentally change the Union; that it would no longer be the same. That is why former European Commission President Jacques Delors spoke about *"la nécessité d'une refondation de l'Europe"*.

In setting up the Convention, the European Council made an attempt to break the deadlock by exploring new avenues.

### **Keys to the Convention's success**

Why did the Convention succeed where the IGC failed? There were several reasons for this.

First of all, because of its composition: politicians instead of diplomats – and not just from Member States' governments but also from parliaments – as well as the full participation of representatives from the European institutions, in particular, from the European Parliament and the Commission. Secondly, because the debates were held in public, in contrast to the secret diplomacy of the IGC. Thirdly, and especially, because of the momentum created, with the Convention meeting on the eve of the last enlargement (and thus, on the eve of the reunification of Europe). The ten future Member States were invited along as full members of the Convention, thereby making it the first institution of the new, united Europe.

All the members of the Convention – the *'Conventionnels'*, to use the terminology of the Chairman, Giscard d'Estaing – were very conscious of the historic nature of this moment. They had an opportunity to create the conditions to get this new Europe off to a good start, and thus decided to try to reach consensus and present their decisions in the form of a 'constitutive' text for a reunified Europe.

This offered the maximum guarantee that the IGC to be held after the Convention would not be able to ignore its conclusions. With hindsight, this turned out to be a correct assessment of the situation.

### **A framework for the 21<sup>st</sup> century**

The Constitutional Treaty is a compromise text precisely because the Convention endeavoured to reach consensus. Consequently, it does not resolve all of the questions and problems raised. Yet it nevertheless creates an adequate institutional framework within which new Europe can tackle the challenges of the 21<sup>st</sup> century.

We also have to bear in mind that enlargement of the European Union after the end of the Cold War has brought a new qualitative as well as quantitative dimension to it – Europe is no longer the same and thus it also

has to reorganise itself. Moreover, the world context within which the new Europe has had to position itself since the end of the Cold War has fundamentally altered.

In the post-war context, priority was given to structuring relations between European nations in order to overcome their differences and lay the foundations for peace and stability. Within the context of globalisation, which arose after the end of the Cold War, the priorities have switched to Europe's place and role in the world.

The Constitutional Treaty lays the groundwork for responding to both of these challenges: namely, reorganising *and* positioning Europe.

To give a very brief summary, the Constitutional Treaty highlights the following priorities in terms of reorganisation: a simplified, satisfactory legislative procedure with a fully-fledged role for the European Parliament; decisions based on majority voting in the Council as the general rule (something which has not yet been fully achieved); a more stable Council Presidency; and a smaller Commission.

In the light of globalisation, the treaty presents reinforcing the political dimension of the Union as the top priority. This requires a step-by-step application of the Community method to the area of justice and home affairs (third pillar), and eventually also to the common foreign and defence policy (although this will take longer to achieve).

### **Where did it go wrong?**

Both political and socio-economic decision-makers agree that these reforms are necessary. They defend the Constitutional Treaty as an important step forward for the Union, given the challenges of the 21<sup>st</sup> century. They therefore subscribe to the results of the Convention's work. So why did it go wrong?

First and foremost, because it is a political error to organise a referendum on such a complex treaty when there is no constitutional obligation to do so (which is the case, *inter alia*, in France, the Netherlands and Great Britain) since this is a typical example of parliamentary work.<sup>1</sup>

Secondly, because *if* you are planning a referendum, you have to organise a good campaign, which was not the case in either France or the Netherlands.<sup>2</sup>

Nevertheless, the referenda have taught us something, particularly the French one.

Firstly, it is striking to note that the expansion of the political dimension of the European Union hardly got a look-in, even though Eurostat statistics clearly show that citizens are in favour of this because they realise that the challenges posed by globalisation can only be tackled at a European level.

Instead, the discussion focused solely on economic aspects, with opponents playing on the population's fears about rapid change in the wake of globalisation in a highly populist manner. The much-praised European social model was supposedly under threat. Enlargement was also presented as a threat in terms of being a source of migration and delocalisation.

When cast in this light, enlargement exhibits the same visible characteristics as globalisation. From that point, you are just one step away from portraying the Union as the catalyst for, and accelerator of, globalisation, and it can then be labelled as a threat – a step which people such as former Prime Minister and current Socialist MP Laurent Fabius in France took quite unashamedly.

The reality is that in the long term, enlargement and the strengthening of European integration are the only structural answers to the challenge posed by globalisation.

In order to become a member of the Union, the new Member States have had to accept its rules of the game (the Community *acquis*) and within the Union, everyone is subject to the same rules.

The EU's structural support sets new members on the path towards growth and accelerated economic development. As a result of this, differences are reduced while the internal cohesion of the Union increases.

Yet this is not just a one-sided operation for the benefit of the new Member States alone. All the European Commission's reports point to a win-win situation, which is demonstrated, *inter alia*, by the positive trade balance in the West's favour.

Just to cite one example of the misunderstandings which arise: the employment which is created thanks to an increase in exports to the new Member States is not 'seen' by citizens, whereas the *marginal* phenomena of delocalisation and migration are very visible and are blown up out of all proportion by the media.

The truth is that if we were able to organise the world along EU lines, the challenge of globalisation would be taken care of in the long term! But this is, of course, wishful thinking and utopian.

A wide gap therefore exists between the (short-term) fears of a considerable section of public opinion, which shudders at the thought of the uncertain future ahead, and the European proactive approach over the long term.

The first group prefers to fold in on itself, rolling into a national or even regional hedgehog position, while the second takes a structural approach to the challenge by further expanding Europe into a global player.

This stands in stark contrast to the post-war years, when the European integration project was supported and experienced by the population as a structural response to the continual threat of national conflicts of interest. Therefore, everything possible must be done to provide citizens with a better understanding of the challenges of the globalised world to which a strong Europe is the only answer.

### **Where do we go from here?**

In the meantime, political leaders in Europe are responsible for providing leadership. They must find a way out of the deadlock that Europe has got itself entangled in. They approved the draft Constitutional Treaty in an IGC and thus they were all convinced that this treaty laid the foundations to allow the EU to meet the challenges of the 21<sup>st</sup> century. Eighteen Member States have ratified the treaty.

It is therefore difficult for the European Council to ignore the draft Constitutional Treaty and start from scratch all over again. It thus seems appropriate to take this as the point of departure.

The name of the baby is rather unimportant, but the Union really needs a new basic treaty. The question is how to ensure that the contents of the treaty (the form is of secondary importance) preserve the essence of the draft Constitutional Treaty (there are some less essential points in it, particularly in the third part) in a way which will allow the newly-elected leaders in France and the Netherlands to ratify the new proposal (preferably without a referendum). It is to be hoped that the German Presidency will find a way out.

I therefore remain convinced that the path indicated by the Convention will turn out to be the preferred way ahead and, thus, that our efforts were not in vain.

**Jean-Luc Dehaene MEP was Vice-Chairman of the Convention on the Future of Europe and is a former Prime Minister of Belgium.**

## **Endnotes**

1. Conversely, a referendum on the principle of enlargement, before starting negotiations, would have been meaningful, since that is an important question of principle. As a matter of fact, I am convinced the answer to that question would have been an overwhelming YES at that time.
2. In the Netherlands, the referendum was decided upon by parliament, against the will of the government. In the initial phase therefore, the government remained aloof. The horses had already bolted from the stable by the time the government's campaign finally got under way.



## II. HOW CAN THE DEADLOCK OVER THE CONSTITUTIONAL TREATY BE BROKEN?

### Introduction

by *Guillaume Durand*

Slowly but surely, the pause for reflection decreed by EU leaders in the wake of the negative French and Dutch referenda on the Constitutional Treaty seems to be coming to an end. This certainly does not mean that a consensus is emerging as to what should be done with the Treaty. However, it appears that the two more extreme positions are losing supporters.

On the one hand, the notion that everything possible should be done to ensure the Constitutional Treaty enters into force as it stands has come up against stark reality: the French and Dutch governments have made it very clear that they will not hold another referendum on precisely the same text again. In this context, continuing with the ratification process in other countries, with Finland joining the ranks of the ratifiers during its EU Presidency, demonstrates a commitment to the substance of the text but will certainly not help it enter into force.

On the other hand, the *status quo* is increasingly less of an option. In particular, the link between further EU enlargement and institutional reform has been made very clear through the recent debate on the Union's "absorption capacity". All the EU institutions have now acknowledged that reforms are needed before the next enlargement takes place: the European Commission in its "integration capacity" report, the European Parliament in the Stubb report and the European Council at its meeting in Brussels in December. Between these two 'non-options', there is, however, a fairly wide range of alternatives.

Rafal Trzaskowski does not deny that institutional reform might be needed. But he puts this in a wider context and explains why the impact of any institutional reform should not be overestimated.

For all the attention paid to it in the debates at the Convention and then in the Intergovernmental Conference, the redefinition of Qualified Majority Voting is hardly the EU institutions' central problem – let alone that of EU citizens. Institutional navel-gazing might also be rather dangerous since it

distracts politicians from the reform and improvement of more substantial policies which would actually help Europe to deliver what its citizens expect: growth, jobs, prosperity, security, etc.

Then there is the option of a “mini treaty” outlined by Alain Lamassoure in this publication, along the lines set out by Nicolas Sarkozy in a speech in Brussels in September 2006.

This obviously raises many questions: how “mini” can this treaty really be? How will it relate to the existing draft Constitutional Treaty? Is this option essentially the same as the one put forward by German Chancellor Angela Merkel in December when she said that it would be a “historic mistake” not to retain the “substance” of the Constitutional Treaty? Is there any difference between the mini-treaty option and the much-reviled idea of cherry-picking? How is it possible to maintain the delicate political balance achieved by the Constitutional Treaty and avoid opening a Pandora’s box if its full substance is not preserved?

Faced with these difficult questions, others believe that, rather than cutting down the constitutional text, some elements should instead be added to it. Andrew Duff MEP argues that the “Constitution plus” option is the best way to assuage the concerns of the French and Dutch voters (and of those in other countries who would probably have voted ‘No’ if they had been given the chance) and to maximise the odds of the future institutional reform being unanimously agreed by the peoples and/or parliaments of 27 Member States.

Irrespective of the substance and form of the future institutional treaty which emerges from the current deliberations, the general assumption which few dare to question is that the Union will eventually need to secure unanimous ratification of the text.

However, it is clear to everyone that the unanimity hurdle is becoming increasingly difficult to jump and might well lead to the repeated failure of whatever consensual text is produced by the EU institutions – especially given the fact that referenda are becoming more and more widespread, partly for national constitutional reasons but mainly for political ones.

Renaud Dehousse takes the near-impossibility of unanimous ratification as a starting point to reflect on how this could be circumvented, thus proposing an innovative mechanism which would enable the Union to ‘leap forward’ out of the current institutional crisis.

Taken together, these four papers set out the main options open to EU leaders as they begin to wrestle in earnest with the dilemma of how to break the deadlock over the future of the Constitutional Treaty.

Many factors will determine the outcome of this process – not least the changing political scene in key Member States such as France and the UK. But there is now at least a widespread recognition that the impasse cannot continue and a way forward must be found sooner rather than later.

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## Can the Council function on the basis of the Nice Treaty?

*by Rafal Trzaskowski*

The decision-making mechanism agreed in Nice in December 2000 is dreadfully complex and allegedly almost impossible to explain to anyone who is not familiar simultaneously with EU jargon, advanced mathematics and the secrets of an ever-changing EU demography.

Not only does a successful coalition of EU Member States have to gather a vast majority of weighted votes; it also has to represent a majority of members and at least 62% of the EU population.

Many politicians and experts predicted that it would be totally unworkable and that it would provide the enlarged EU with a simple recipe for paralysis, if not sheer disaster.

The introduction of a new weighted votes system in the Constitutional Treaty was primarily supposed to be about simplicity. To agree on a given policy, it would be enough to convince a majority of Member States representing roughly two-thirds of the EU population to support it.

This is the officially recognised version of the state of affairs which, with time, gained the status of undisputed dogma in pro-European circles. Since, however, all orthodoxy is forged through confrontation with heresy, I would like to challenge the conventional wisdom.

### **Why Nice is not all that nasty**

Of course, I do not claim that the system of weighted votes agreed in Nice is the most logical, efficient and transparent that we could get. Far from it. I believe, however, that some of the arguments against it are exaggerated.

First of all, the Nice system is complicated only on paper. To agree on a proposal, it would be enough to gather a majority of weighted votes. In almost all imaginable constellations of Member States, the two other criteria will be met automatically.

It is true that it would be possible to take decisions much more quickly under the new system (the thresholds are respectively 55% of Member

States and 65% of the EU population, instead of almost 74% of weighed votes). It seems to me, however, that when it comes to the decision-making process, legitimacy should prevail over effectiveness in such a delicate construction as the EU.

We are all better off if a given decision has undisputed backing of the greatest possible majority of states. We have not yet built a federal construction. The Union does not yet enjoy such popular legitimacy that it can function comfortably with decisions being forced upon others by slim majorities. It seems that most European politicians understand this predicament, which is why the Council of Ministers rarely resorts to voting anyhow.

Secondly, the possible introduction of the double-majority system is not only about simplicity – it also represents a major power shift.

At the beginning of the 1990s, most Member States would have agreed (if asked off the record) that the strengthening of the Paris-Berlin axis was a good idea. Nowadays, many countries have misgivings. Fifteen years ago, the Franco-German integration motor was moving the Union in the right direction; today it is certainly on the defensive - instead of proposing new bold initiatives, it is mostly concerned with preserving the anachronistic status quo.

It is, therefore, altogether sensible – although for many still blasphemous – to ask whether the strengthening of the duo, thanks to a system which depends much more on demography, would *per se* always be beneficial for European integration.

Let me give some other examples. Under the Nice system, a coalition of the majority of new Member States or relatively poor Member States is a force to be reckoned with, as it can easily influence the decision-making process. The double-majority system would seriously reduce the influence of the relatively poor Member States (the 12 ‘new’ ones plus Spain, Portugal and Greece), as they are mostly small in terms of population.

If the system contained in the Constitution were to be adopted, almost all the poor Member States would have to be on the same side in order to block any attempt at watering down or scrapping the EU’s cohesion policy.

As small groups of poor Member States cannot influence decisions because of their demography (their combined population is still a few points short of

the required blocking threshold of 35%), they can only have an impact on the decision-making process when they all stick together. It would be enough for, say, Czechs, Maltese and Cypriots to change their opinion and the net payers would have their way.

Under the Nice system, even if seven or eight relatively rich new Member States opted out of the ‘cohesion club’, it would still not be possible to renationalise or start dismantling the whole policy.

Other, similar examples can be given – under the Nice system, it is enough for the UK and Poland to garner the support of six small Member States in order to block any further watering-down of the Services Directive or, say, frustrate the plans to agree on an inflexible Working Time Directive. Under the new rules, they would have to convince no less than ten of them.

Most importantly, it seems that – contrary to the prophecies made at the time – the Nice system has not led the enlarged EU into decision-making paralysis. Important decisions are being taken day by day.

Did the decision-making process become more difficult? Opinions vary. Some Council insiders claim that after enlargement, decision-making is paradoxically more effective because people are forced to focus more on problem resolution than on futile presentations of national positions.

Contrary to certain predictions, just as before, decisions are very rarely blocked. Moreover, the allegedly obstreperous new Member States block decisions or abstain less often than the founding members. The greatest number of decisions taken by Qualified Majority Voting (QMV) were ones in which founding Member States – Germany and Belgium – were outvoted, simply because federal states find it more difficult to come up with one coherent position.

The most publicised cases – when Poland wielded its veto (on VAT and, most recently, on the mandate for the negotiations on a new agreement with Russia) – were in areas where decisions are taken unanimously, not by QMV.

## **The Constitution was no panacea**

Many of the institutional reforms which would have been introduced by the Constitutional Treaty are undoubtedly necessary to enhance the effectiveness of the enlarged EU. However, we should avoid the conclusion that the recipes contained therein are a panacea for all the ills that beset the Union.

Let us look at the functioning of the Council. There is no doubt that the enlarged Council does not work in the same way as before. However, some claim that it works fine, while others point to difficulties.

According to some experts, it is impossible to negotiate anymore even in the Committee of Permanent Representatives (COREPER), let alone in the Council room. People are staring into screens more than they are looking into each other's eyes. Some participants claim that much more business is done outside the walls of the Council's Justus Lipsius headquarters than before. Most importantly, the delegations do not know each other well enough for a real *esprit de corps* to develop – hence, proud posturing and an aggressive defence of national interests appear to be slowly gaining the upper hand. The Community spirit is in retreat.

All of that, however, does not have much to do with a choice of a particular formula for allocating votes. If decision-making in the EU really became more difficult after enlargement and if the nature of the Council is changing, this is mainly simply a result of the increase in the number of Member States.

It is also due to the changing European policies of the major Member States: the Germans are much more ready to assert their Germanness; the French are in a state of shock caused by enlargement which makes them behave like a wounded lioness protecting her cubs; the British government is much less keen on the EU than at the time of the St. Malo declaration on EU defence policy; the Italians are more inward-looking than under Silvio Berlusconi; and the Poles – well, the Poles are difficult.

Certain reforms contained in the Constitutional Treaty would undoubtedly make the EU more effective: more QMV; a revamped and reinforced Common Foreign and Security Policy (CFSP); and a more robust justice and home affairs policy.

However, the likely impact of some of the proposed changes is doubtful. For example, nobody can predict whether the new permanent post of President of the European Council would actually strengthen the Community method or turn out to be another nail in its coffin. It is far from clear whether the double-hatted arrangement for the Foreign Minister would be workable. (Just one thought in that context – what happens if there is a discrepancy between the Council's and the Commission's views? To whom should the minister be loyal in the first place?)

Many of the other reforms contained in the treaty are purely cosmetic – the Team Presidency is just a fancy name for the current arrangement.

Let's not kid ourselves – the Constitutional Treaty is no magic wand; the functioning of the Council will not be improved overnight by the arrangements it contains. Reforming the Council's internal working methods or an improvement in the overall political climate in Europe might help more.

## **Institutional reform and enlargement**

We should also be aware of the dangers of dogmatic thinking, which rules out the much-needed flexibility which should underpin our behaviour. Do we need institutional reform before another enlargement? Of course we do. Is it wise to make a link between the two? I am not so sure.

The people, when consulted in a referendum, always answer a different question than the one they were asked. Do we want the French or the Brits to have enlargement in mind when they deliver their views on institutional reform? Do we want the opponents of enlargement to point to the fact that, with current demographic trends, Turkey could be the most influential member of the enlarged EU under the double-majority voting system?

Some politicians are very keen on exploiting the link between further enlargement and the future of the Constitutional Treaty. This is dangerous, because accepting this logic could mean that we will have neither.

The European Parliament's constitutional committee proclaims that further enlargement is impossible on the basis of the Nice Treaty. Not only is this dogmatic, but it is also simply untrue. It might be unthinkable for some, but it certainly is feasible.

It is true that the Nice Treaty was only designed to accommodate 27 Member States, but then the Treaty of Maastricht was designed for 12, with no provision made for the allocation of votes to three extra members.

It is possible for the EU to take in Croatia (other countries do not have a realistic chance of getting in before 2010) without agreeing a fully-blown institutional reform. The number of European Commissioners can be changed by a simple, albeit unanimous, Council decision. Changes in the share-out of votes in the Council and seats in the European Parliament can be introduced in the Accession Treaty.



Examples of such changes are numerous in the history of the EU (it is enough to remind ourselves of the negotiations which culminated with the infamous Ioannina compromise on QMV). Croatia, with a population size between those of Ireland and Finland, would be given seven votes. QMV and blocking minority thresholds could be adjusted accordingly.

The EU should, above all, be pragmatic. Although one might agree that there is a need for institutional reform before enlargement, the Union should not state definitely (or create the impression) that without a profound institutional reform, Croatia should be barred from entering the EU. No one should become hostage to the Union's inability to reform itself.

Am I suggesting that the EU does not need institutional reform? Of course not. It needs it very much. Am I suggesting that it would be easy to come up with a better alternative to the Constitutional Treaty? Of course not. I just dislike political correctness which does not allow any discussion whatsoever. Wasn't the 'reflection period' launched precisely for that purpose?

Being labelled as 'anti-European' simply for questioning the impact of some of the reforms contained in the Constitutional Treaty on the functioning of the EU is unfair.

Sometimes when I walk down the corridors of the Brussels' institutions, I get the feeling that some people do indeed live in an ivory tower. We, the so-called experts, are obsessed with the nitty-gritty of the EU's functioning. The citizens are not. We sometimes behave as if the French and the Dutch referenda did not happen.

The great French philosopher Jean-François Lyotard defined the postmodern era which we live in as the end of all meta-narratives. Let's take our cue from this.

### **What EU citizens want**

Our citizens, by and large, tend to distrust grand constitutional designs. They are not interested in how the EU works; they just want it to deliver. We should therefore focus much more on reforming concrete EU policies, some of which function according to the rules established 50 years ago. The Union has always developed organically. The top-down approach simply scares many people off. The founding fathers were so successful in the

1950s precisely because they opted for functionalism; because they were realists who disliked dogma.

Let me repeat the question: should we just forget about the institutional reform? No, but the greatest mistake we can all make is to claim that the Constitutional Treaty – and especially the new voting system – would resolve most of the problems of the enlarged Union. It most certainly would not. The really serious problems lie elsewhere.

We should therefore, pay much more attention to policy changes which, with the exception of CFSP and justice and home affairs, were not even addressed by the Constitutional Treaty. We should not forget about the institutional reforms contained therein, but we should remember that they are nowhere near the top of the average citizen's list of priorities.

Sadly for the people who write about it, not everyone's life revolves around the question of the share-out of votes.

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## Relaunching Europe after the constitutional setback

by Alain Lamassoure

Some 18 months after the unfortunate French referendum rejected the European Constitution, we are still waiting for the famous ‘Plan B’ – the alternative project promised by those who campaigned for a ‘No’.

The consequences of this failure are, however, already clear: France has lost its influence and credibility in a Europe which has stalled. And because we have not changed the rules governing the way the EU works to adapt them to a Union which now has twice as many members, we see evidence – month after month, week after week – of how ineffective exclusively national action is and how paralysed Europe is in the areas where it is needed most.

Let us limit ourselves to three subjects where even the touchiest champions of national sovereignty do not challenge the existence of a European dimension:

1. *The fight against terrorism:* In this area, every decision is taken in Brussels by a Council made up of all the Home and Justice Ministers of the Member States: – 54 Excellencies who can only take decisions by unanimity! The result? Since September 11 2001, while the United States has managed to protect itself from the Allah’s fanatics, our countries have become the prime targets.

In 2004, Madrid experienced the horrific attacks at the Atocha station; London was hit the following year; and, in the summer of 2006, Germany escaped a triple attack on its railways only by a miracle and the UK uncovered plans being made on its soil for an operation that would have been more spectacular and killed more people than the destruction of the World Trade Center.

2. *The management of immigration:* Here again, nothing is possible without the unanimous agreement of the same 54 ministers. Hence, almost nothing is done. And yet all the EU’s Member States have now become immigration countries, and all prefer controlled to unchecked immigration. But, given the impossibility of taking decisions in Brussels, each one equips itself with national rules – even though these are entirely ineffective within an area where everyone circulates freely.

Everyone agrees that the problem must be tackled at its roots, in the countries where these desperate people come from. But what can tiny Luxembourg do in the face of immense Nigeria, Portugal in the face of Ukraine, or even a

country like Spain, which only has a diplomatic representation in six African countries? We obviously have to pool our resources in terms of aid for, pressure on and sanctions against the countries concerned.

3. *Energy*: This is the major concern of all the big powers today and the primary cause of a decrease in our compatriots' purchasing power. But the existing treaties do not even authorise the Union to coordinate national policies.

We therefore continue with an ineffective and ridiculous 'everyone for himself' approach – with some Member States relaunching nuclear energy while others ban it; some increasing gasoline taxes while others cut them; and with everyone queuing up in Moscow to negotiate separate deals to buy Russian gas.

### **Urgent need for action**

There is no more time to waste. That is why, after having consulted extensively in France and across Europe, Nicolas Sarkozy suggested a new path. Since the current EU treaty does not work and since the EU's constitutional ambition appears premature, why not embark on the elaboration of a new ordinary treaty?

However, such an institutional initiative presupposes two political conditions.

The first is an agreement to exclude the possibility of failure. Two or three years after the catastrophe of 29 May 2005, when voters in the Netherlands became the first to reject the Constitutional Treaty, another failure on institutional reform would bury Europe for a long time.

This means that this time, we cannot allow the future of the Union to depend on a 'game of dice', with a referendum here or there: the new treaty will have to be submitted for parliamentary ratification in all the countries where this is legally possible – Ireland being the only Member State where a referendum is compulsory.

The second condition is that reopening the Pandora's box of the very complex negotiations which took place over two years within the European Convention, and then in the Intergovernmental Conference that followed, must be avoided at all costs. These negotiations allowed Member States to reach a delicate political balance: between large and small countries, between old and new members, between federalists and Eurosceptics, between the representatives of the right and those of the left, etc.

To respond to these two requirements, it is necessary to lay the foundations for the elaboration of an ordinary treaty which, like the previous ones (Nice, Amsterdam, the Single European Act of 1985, etc.) will be submitted for simple parliamentary ratification. And this text should be produced with scissors, not a pen, by taking the draft Constitution as a basis and retaining all the articles of this text which add to, or amend, the provisions of the Nice Treaty.

By doing this, one would in fact take on board all those new provisions introduced in the draft Constitution which, without prejudging the nature of the Union (federal or not, liberal or social, etc.), relate to the 'rules of the game' – who decides at European level, on what subjects and how? That is: the principles behind the distribution of competences between the Union and the Member States; the replacement of unanimity by Qualified Majority Voting; the legislative powers given to the European Parliament; the appointment of a full-time Chair of the European Council and of a Minister of Foreign Affairs of the Union; the election of the European Commission President by citizens through the European Parliament; the citizens' right to launch political initiatives, etc.

These provisions represent a quarter of the 448 articles in the draft Constitution. They should be acceptable to the countries which have said 'No', since they were not challenged in the referendum campaigns, as well as to those which have ratified the Constitution, since they have explicitly accepted them.

Gathered together in an ordinary treaty, they could enter into force in 2009 once they have been ratified through the ordinary process of a parliamentary vote in each Member State. This way, the Union will have lost as little time as possible in adapting to the doubling of the number of its members. At least we will have attended to the most urgent things first.

### **Key questions for the future**

Does this mean that Europe will then have the framework for action corresponding to its proclaimed ambitions and the expectations of its citizens for the next two decades? Alas, no! There are at least four other fundamental subjects which need to be addressed in order to make the Union both effective and democratic.

1. *The setting of the ultimate borders of the Union.* For a long time – too long – Heads of State and Government have dodged this fundamental

question, regarding it as too serious to entrust to their national parliaments and their public opinions. However, the public has started to speak up: hostility to Turkey's bid for EU membership played an important role in the victory for the 'No' campaigns in France and the Netherlands, opening up a similar debate in more than ten other Member States.

This debate is at last unfolding in the European Parliament and in the Council as part of the discussions on the EU's "integration capacity". It will have to be concluded by being more precise about the content of the 'privileged partner' status to be offered to the Union's neighbours which do not belong to the geographical continent.

2. *The reform of the financing of the Community budget.* The political crisis arising from the lost referenda in France and the Netherlands has detracted attention from the existence of an equally serious financial crisis: in the absence of own resources at the Union's disposal, its budget is still financed by national contributions.

With high deficits in the budgets of large Member States, no one wants to finance Community policies any more: in December 2005, the 25 Heads of State and Government were able to agree on the budget for 2007-2013 only on condition that their overall contribution to Europe would be reduced as a share of GDP (1.04% against 1.15% in the EU-15), and without being able to finalise the financing of fundamental policies such as transport networks or the symbolic (emblematic) Galileo project.

That is why the European Parliament has proposed working together with national parliaments to try to agree on common suggestions to submit to the Commission and the European Council in 2008.

3. *The establishment of a common foreign and defence policy.* Nuclear proliferation, foreseeable politico-military failures in Afghanistan and Iraq, new risks of conflagration in the Middle East, the handling of the 'frozen conflicts' that Kosovo and Bosnia have become...all this is happening against a backdrop of cuts in military budgets in all European countries while they are increasing everywhere else.

The world moves too quickly to allow us to content ourselves with the real but measured progress that would be allowed by the draft Constitution in this area. Further initiatives will need to be taken.

4. *Finally, the relaunch of the constitutional project.* If we want to establish a union of peoples, and not only a union of states, it is indeed a Constitution that we need. But the unhappy experience of 2005 shows that, even in the EU's founding Member States, people are not yet ready to accept a text of this nature.

Once the Union is back on track thanks to a treaty better adapted to this reality, it will be easier to relaunch the idea in a more serene manner and to imagine a new procedure which will, this time, lead to a referendum on the same day in the countries concerned.

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## Operation Pandora

by Andrew Duff

If they are to rescue their Constitution, Europe's leaders need to steel themselves to do two difficult things.

First, they must rise above narrow national or partisan preoccupations. Each member of the European Council should be held to account individually for the decisions taken collectively. This accountability is at no time more important than in the renegotiation of the stalled Constitutional Treaty. The heads of government should prepare a joint campaign to ensure the successful ratification of the new text.

Second, the European Council must be prepared to take a risk. Putting any new version of the 2004 Constitution back before the parliaments and peoples of Europe is risky.

In deciding how to revise the 2004 treaty, EU leaders face a choice which has to be addressed on both the tactical and strategic levels. One option, espoused most prominently by Nicolas Sarkozy and the faint-hearted, consists of dissecting the original text to devise a 'mini treaty' – with or without a promise of later, more radical reform. A second option, to which this author is committed, involves a 'constitution plus' – that is, modifying the original text with a view to its substantial improvement.<sup>1</sup>

Given that both options carry the risk of a second failure, the key question is which of them is most likely to succeed: a new version which is less good than 2004, or a new version which is better? In other words, do we make do with second best, or do we try to resolve the undeniable problems which have provoked so much dissent against the constitutional project in public opinion?

The German government, which currently holds the Presidency of the Council, has a heavy responsibility to steer the Union towards the correct risk assessment. If they are to crown their Presidency with success at the June Summit, the Germans must broker an agreement on the timing, process and mandate for a new Intergovernmental Conference (IGC).

Their starting point is the Berlin Declaration on 25 March, which will celebrate the signing of the Treaty of Rome 50 years ago.



This document should ask what it is we wish to do together as Europeans. It should explain why the EU has been developed to help us work together and remind us of the basic verities of the European integration process. It would be useful to recall how the EU has proved itself ingenious and determined in overcoming occasional setbacks. It must end with reaffirmation that the early completion of Europe's current constitutional process is essential if the Union is to be equipped to meet the demands of the 21<sup>st</sup> century and the aspirations of a large majority of its citizens.

It might also warn that without a Constitution, Europe will lack internal cohesion and external strength, and the EU's development into a mature, post-national democracy will be halted.

The Berlin Declaration will be an exercise of catechism for the European Council. It will no doubt prove to be particularly inspiring for the Eurosceptical Polish Prime Minister Jaroslaw Kaczynski. One may even hope that it will impose some discipline on the mainstream candidates in the French presidential elections.

Overall, Berlin will help to ascertain that, in the complex crisis that Europe faces, simplistic solutions will not work.

### **Ring-fencing the good**

Everyone will agree with the Germans that it is important to conserve as much of the original Constitutional Treaty as possible (even UK Prime Minister Tony Blair, although, regrettably, he no longer reflects British public or parliamentary opinion on this issue). It can also be accepted that opening up the whole of the 2004 package deal to renegotiation would almost certainly result in something worse.

The next step is more difficult: it is to convince the Sarkozy club that merely to re-edit, or go further and reduce the force and scope of the proposed reforms — as is suggested — is not only technically difficult and politically controversial, but also tactically doomed to fail for a second time in the court of democratic opinion. Any sort of cherry-picking will destroy not only the 2004 text, but also the consensus which lay behind it. In short, the mini-treaty idea represents dubious law, poor politics and bad tactics.

For one thing, Part III of the 2004 treaty is legally inseparable from Part I: the two stand or fall together. Part III amplifies and interprets Part I. Certainly one

can reprint a shortened edition of the 2004 text which leaves out those articles of the existing Treaty establishing the European Community where changes are not proposed. But such a deliberately obscurantist approach would be at odds with the spirit of this transparent age.

One may question whether the Constitution ought to be rescued by crude deception. Likewise, one has no sympathy with those who believe that simply changing the name of the Constitutional Treaty would prompt mass popular conversions to its cause. Furthermore, those who advocate a 'mini treaty' greatly underestimate the extent to which the 2004 text is the result of a carefully-woven political compromise.<sup>2</sup>

German Chancellor Angela Merkel has already seen how her unguarded remarks about wishing to see Christianity in the preamble to the treaty provoked a storm of criticism. Perhaps hers was a deliberate mistake to demonstrate, like King Canute, how easy it is to destroy the consensus so painfully arrived at in 2004.

Thus, the Vatican wants God; the French want a permanent Frenchman in the European Commission; the British want to destroy the Charter, to demote the Foreign Minister and to recall some of their notorious 'red lines'; the Poles back God but also want a return to the Qualified Majority Voting system of the Treaty of Nice; several smaller Member States want to re-open negotiations on the presidency of the Council; and so on. There seems to be all too many who, with Epimetheus, are tempted to open Pandora's vase.

The German Presidency must resist all such temptations. The wise move would be to insist on ring-fencing the 2004 text where the consensus behind it still holds good.

It is not unreasonable to draw the conclusion from the Union's enforced period of reflection that, despite certain imperfections, the overall political agreement still applies to the Constitution's key articles on values, principles, goals, competences, instruments, powers and decision-making procedures (Part I), as it does to the Charter of Fundamental Rights (Part II).

In June 2007 the European Council needs to confirm and consolidate the core agreement between Heads of State and Government of three years earlier, to which they all solemnly appended their signatures in October 2004.

The Germans, having themselves ratified the Constitution, are in a good position to act as spokesman for the majority of Member States which have done so. They might point out that in the French and Dutch referendum campaigns, it was not the institutional reforms encapsulated in the provisions of Parts I and II that proved to be controversial, but rather a general malaise about the current state of European and domestic affairs.

They might add that in the UK, where practically nobody has yet begun to explain or debate the Constitution, the Westminster Parliament has no informed view whatsoever on its relative merits.

Indeed, none of those countries which have yet to deliver their verdict on the 2004 treaty – Czech Republic, Denmark, Ireland, Poland, Portugal, Sweden or the UK – will find themselves in a strong position during its renegotiation.

### **Tackling the real problems**

The one telling criticism of the 2004 package, advanced most cogently by the French left, is that constitutionalising the EU treaties makes it more difficult to effect changes in the future. In the impending renegotiation, therefore, let us seize the chance to soften future revision procedures.

We need to create a clear hierarchy within the treaty so that Part III – that is, mainly the common policies of the Union and the detailed budgetary, legislative and administrative procedures – becomes clearly and directly subsidiary to Part I.

Part IV should be modified so as to allow any amendment to Part III that does not confer new competences on the Union to come into effect once four-fifths of the Member States, representing at least two-thirds of the EU's population, have successfully completed the ratification process.

As far as substance is concerned, five policy areas suggest themselves for modernisation or innovation, chosen to address directly the most important causes of public dissent.

1. The economic governance of the Union should be strengthened, particularly that of the euro zone; and the goals of the Lisbon Agenda, shaping Europe's economic policy response to globalisation, should be written into the Constitution. The euro-zone states should establish themselves as a formal core group under the improved rules for enhanced cooperation envisaged in the

Constitution. The European Commission needs greater powers to propose changes to the national budgetary policies of Member States in the Union's common interest of sustainable economic growth and full employment.

2. A common architecture for the European social model should be defined, setting out agreed, shared solutions to the known, common problems of equity, efficiency and employability. The motto 'unity in diversity' should be articulated with respect to the social dimension of the single market. A new Declaration on Solidarity should gather together all the social policy provisions of the new treaty to ease its interpretation. Those Member States wishing to go further should commit themselves voluntarily to a Protocol on a Social Union, again under the new rules on enhanced cooperation.

3. Environmental policy, which is today merely a flanking policy of the single market and aimed at pollution control, should be upgraded. Combating climate change should become the imperative to which all common policies need to conform. This reform would open up the perspective of recasting farm and fisheries policies. It would also allow a common energy policy to emerge as a major feature of the reformed Union, involving realisable objectives of conservation and renewable energy sources as well as improving the security and diversity of supply.

4. A new chapter should be inserted into Part III governing the enlargement policy of the Union. The Copenhagen membership criteria should be included in the Constitution. The rigorous membership process, involving pre-accession agreements, screening, safeguard provisions and transitional arrangements, at present all absent, could be well described. The concept of neighbourhood policy, introduced summarily in Part I, should be fleshed out in this chapter. A new category of Associate Member should be created as a response to the current debate about absorption capacity and privileged partnerships.

5. A revised financial system, covering both revenue (the UK rebate) and expenditure (the Common Agricultural Policy), is due in any case to be negotiated in 2008-09. The new system should be based on the conviction that the EU budget exists to redistribute wealth between richer and poorer Member States, that it has to be accountable and that it must be designed to enable the Union to match more directly its spending decisions with its political priorities – including future enlargement. The goal is to end up with a system of own resources which is more fair, transparent and buoyant than the present *ad hoc*, overly complicated (and stingy) arrangements.

Modifications to Part III in these five areas would be designed to strengthen financial discipline, modernise social and economic policies, address insecurity about climate change, reassure citizens about enlargement and improve the added value of EU spending. All of these issues have proved problematical in the debates in France and the Netherlands, and more widely across the Union.

### **Improving the process**

The German Presidency will need to propose an efficiently democratic process, as well as a tight schedule, by which such a judicious renegotiation can take place. Clearly, an IGC will need to be convened under the Portuguese Presidency in the second half of 2007 if it is to conclude, suitably gloriously, under the French Presidency one year later.

Tempting as it may be, a new Convention is unlikely to carry out such a renegotiation successfully, mainly because a Convention would be likely to fall victim to Pandora's temptation.

Instead, the IGC and the European Parliament should adopt a new form of constitutional co-decision in which texts are shuttled and reconciled between the two. This is a proven process for complex pieces of EU legislation likely to foster agreement between political parties, Member States and EU institutions.

It has become clear that MEPs have much to contribute to the constitutive development of the Union. An IGC acting on its own would lack the extra legitimacy that inclusion of the Parliament would bring to the process and would, in any case, be hard-pushed to reach the high standards of political compromise required if left to its own diplomatic devices.

National parliaments, which, with the European Parliament, played an important role in the Convention, should be associated with the IGC through their joint scrutiny organ – the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) – as well as in the continuation of the current and successful experiment of joint parliamentary forums with the European Parliament.

National parliaments, of course, retain their powers to ratify (or not) the final text. After the painful experience of the last years, no government minister could hope to leave his or her national parliament poorly informed or

consulted about the state of the constitutional renegotiation. Furthermore, the European Commission, which is destined to play a key role in this exercise, has now committed itself to taking into account the opinions of national parliaments.

## Ratification

There remains the delicate question of referenda. It is up to those who advocate them to make the case. But it is already clear that some of those political parties which were keen earlier to demonstrate their populist credentials by calling for referenda are less keen to do so nowadays.

One imaginative way out of the dilemma might be for all parliaments to complete their official ratification duties first and only thereafter to hold a Europe-wide referendum to confirm popular support for the European project.

An obdurate country whose government and political parties showed themselves unable to carry their voters would still have the legal power to block the constitutional progress for the whole of the rest of Europe. It might, however, be more prudent for them to choose the safety-valve option of associate membership.

Nicolas the Faint-hearted appears to believe that a 'mini treaty' concerning itself only with the hardcore issues of powers and institutions is more likely to win public support in France, the Netherlands and Britain. I disagree.

From what we know of the French and Dutch voters (and we know a lot), they will not accept a technocratic fix. And there seems very little chance that such a 'Treaty of Nice *bis*' – selling national sovereignty to foreign predators – would ever win the approval of the present House of Commons, let alone the wider British public.

Prime Minister Gordon Brown will be anxious to present the renegotiated treaty as a very great improvement on that signed by his predecessor. This means that the institutional package must be wrapped up inside a genuine reform of EU common policies that achieves some long-held British objectives such as reform of the CAP, more structural economic change and a fairer financial deal.

But the renegotiation will not be a trilateral one between London, Paris and The Hague. As ever in the Union, there must be something in the new deal

for everyone. With an improved product and better marketing, all Europe's leaders will have one last chance to bring the Union the constitutional settlement it needs and deserves.

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### **Endnotes**

1. See Andrew Duff, 'Plan B: how to rescue the European Constitution' (EN and FR) at [www.notre-europe.eu](http://www.notre-europe.eu)
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## Can the European institutions still be reformed?

by *Renaud Dehousse*

Since the spring of 2005, ideas on how to respond to the crisis triggered by the French and Dutch referenda on the EU's Constitutional Treaty have been in rather short supply, despite some innovative attempts.<sup>1</sup>

It is fair to say that the problem is complex. On the one hand, the prospect of a new referendum is widely rejected in both France and the Netherlands; on the other, those countries that have already ratified the draft Constitution will not be easily convinced that they should engage in a new round of negotiations. Should we therefore conclude that the enlarged Union, which encompasses very different visions of the European project, can no longer be reformed?

The mechanism for reforming EU treaties is remarkably conservative. It has not changed since the European project was launched, whereas the number of Member States has risen fourfold and public demands for democratic control have increased dramatically.

This conservatism is easily explained. By keeping control of this process, governments can make sure that European integration does not go in a direction that is incompatible with their wishes.

As is well-known, the section on future treaty revisions contained in the draft Constitution was extremely cautious, retaining unanimity both for the signature and ratification of any amendment to the new fundamental charter.<sup>2</sup> This spoke volumes about the nature of the text: using the word "constitution" to refer to a document of which the real masters remained the states had all the appearances of a sleight of hand.<sup>3</sup>

True, the treaties have been reformed four times in less than 20 years, transforming the European project with the launch of major initiatives such as the completion of the internal market and the single currency. However, over the last five years, a clear consensus has emerged on the need for a "reform of the reform process".

As early as the Amsterdam Treaty in 1997, several voices were raised in criticism of the erratic nature of intergovernmental negotiations, where crucial decisions are often made at the last minute by Heads of State and



Government in a hurry to reach a conclusion.<sup>4</sup> The half-failures both in Amsterdam and then in Nice led to the establishment of more open procedures and the invention of a new body, the Convention on the Future of Europe, which drew up the Constitution.

Moreover, the fate of the Constitutional Treaty highlighted what many had feared: in a Union made up of 27 Member States, where the consent of each member is needed for the least reform, there is a high risk of problems at the ratification stage.

If we accept that Europe has not yet come to the end of its institutional evolution, it would be wise to consider ways of getting around the stumbling block of unanimity so that it might continue to evolve.

### **A model in crisis**

As already mentioned, the general revision procedure set out in the EU treaties is characterised by its extreme rigidity: amendments must be adopted by common accord of the government representatives of the Member States convened in a diplomatic conference, and can only enter into force after being ratified by all the states in accordance with their respective constitutional requirements (Article 48, Treaty of the European Union – TEU).

This procedure involves many difficulties. Its diplomatic nature does not make it a model of transparency, in spite of the leaks that may come from one or other of the participants. Its decentralised nature – with each Member State allowed to present its own proposals – can sometimes lead to disjointed negotiations, especially in the final phases of the conference. The lack of strong leadership is often felt, especially as the number of actors has continued to rise.<sup>5</sup>

Generally, the thorniest problems tend to be referred up to meetings between foreign affairs ministers, or even Heads of State and Government, which leads to bottlenecks. It is no surprise then that during recent Intergovernmental Conferences (IGCs), it has become increasingly difficult to organise the debates efficiently, leading UK Prime Minister Tony Blair to exclaim in Nice: “We can’t go on like this!”

The problem is exacerbated by the ‘double unanimity’ required to conclude an IGC. Each delegation thus has the right of veto on the final outcome; or, more subtly, they can let it be understood that for want of concessions on a

particular point, the final document might not be ratified by its parliament or, as the case may be, in the ensuing referendum.

We thus fall into what has been described as a “joint-decision trap”: self-interested bargaining, with each state trying to maximise its own advantage, regardless of the general interest.<sup>6</sup>

The establishment of the European Convention brought about several significant changes to this basic system: to wit, involving a greater variety of actors in the reform process, since it included members of national parliaments and the European Parliament; and greater transparency in the debates, which were open to the public.

This change in the rules of the game enabled the Convention to achieve a compromise on issues that the previous IGC had stumbled over, such as the dismantling of the pillar structure, the simplification of the treaties and the Union’s legal personality.

However, it would be wrong to conclude that this innovation made a decisive difference to the balance of power in the context of the revision procedure. The constraint of double unanimity still exists. Everybody knew that the Convention was to be followed by an IGC where the Member States could voice any strong objections they had to the draft text and gain additional concessions. The most delicate phases of the debate were thus overshadowed by the threat of the final compromise being called into question, which often led the Convention members to moderate their demands. In other words, the Member States remained largely in control of the final compromise.

The failure of the Constitution must be seen as a confirmation that we face a structural problem.

It was widely expected that the outcome of the referenda would be negative in at least one country; the only surprise was that this occurred in two founding Member States rather than in a traditional nay-sayer like Britain, or in a new one like Poland or the Czech Republic.

In a system involving multiple stages of negotiation and 27 Member States today, 30-plus tomorrow, the chances of failure are high. Besides, the number of bodies which have the power of veto is in fact higher than the number of member countries: a parliamentary assembly can refuse to ratify

a treaty signed by 'its' government, as the French National Assembly did in 1954 with the European Defence Community (EDC) Treaty.

If we fail to address this difficulty, we may find ourselves in a situation where significant reforms will be impossible.

### **How to get round the constraint of double unanimity**

Before the Convention had even begun work, several voices were raised pointing out that with the increase in the number of Member States, it was necessary to review the double unanimity requirement laid down in the treaties – unanimity in the IGC and ratification by all the Member States. Without this, any reform would very likely be doomed to failure. The setbacks suffered by the draft Constitution have provided spectacular confirmation of this view.

Of course, there is nothing new about this problem: the Maastricht Treaty had already been rejected by the Danish people and the Nice Treaty by the Irish. Some therefore concluded that we could take inspiration from these precedents and adopt a protocol or declaration which would answer the concerns of those who voted 'No' before submitting the text to a new vote.

The cynicism of this approach makes it difficult to defend: what is the point of holding a referendum if 'Yes' is the only possible option? This solution is also far too superficial. It lends too much credibility to these texts drawn up with a view to second referenda.

The determining variables which explain the about-face in both cases lie elsewhere; namely, in the organisation of energetic campaigns to overcome the indifference to which the draft treaties had been subjected, and in Danish and Irish fears of being excluded in some way if they voted 'No' again.<sup>7</sup>

The conditions are radically different in the case of the draft Constitution: the motives behind the French and Dutch 'Nos' were so heterogeneous that it is hard to see what kind of formal declaration could answer them all. Besides, these two founding states are not likely to be too concerned about the risk of being excluded, as both of them find it difficult to imagine (although to varying degrees) that Europe could be built without them.

Let's face facts: the European Union has reached the limits of the current reform mechanisms. If it wants to continue evolving, it will have to cross the

Rubicon and throw off the straitjacket of unanimity. It is not a question of putting a pure majority system in place, but, more modestly, of allowing those states which so wish to move forward to do so without being hampered by the objections of a recalcitrant few.

After all, many international organisations, starting with the United Nations, already use qualified majority revision procedures, as a report from the European University Institute commissioned by the European Commission once pointed out.<sup>8</sup>

Unanimity made sense in a union of six states with a shared vision of a more integrated Europe, but with 27 or more Member States, it only leads to paralysis. The question is how to bring about this turning point.

In addition to the political obstacles that a qualitative leap of this magnitude inevitably involves, there is also a legal difficulty, since the present treaties can only be amended by unanimity.

This question occupied a central place in the draft Constitution prepared by the European Commission during the Convention – the ‘Penelope’ project.

In order to avoid a deadlock, the Commission proposed an innovative solution, offering each Member State a choice “between continued participation in the Union, now based on a Constitution, and withdrawal from the Union to take on a special status under which it would not lose anything compared with the current situation because it would continue to benefit to a large extent from the existing arrangements”.<sup>9</sup>

The legal legitimacy of this solution was based on two elements: on the one hand, it offered every guarantee to the recalcitrant states by allowing them to keep their established rights; on the other hand, the Member States were to approve this treaty amendment procedure unanimously.

There were several advantages to this ingenious solution. Quite rightly, it suggested that the question of the conditions under which the new treaty would enter into force should be addressed at the beginning of negotiations, which seems logical given the importance of these conditions in any negotiation. The fate of the draft Constitution confirmed the wisdom of this advice.

It then dealt with the question of the legal status of any recalcitrant states – “the rearguard”, in the words of the chief architect of the Penelope draft, the late

François Lamoureux<sup>10</sup> – which were wooed with the prospect of keeping their present status.

The Penelope document thus endeavored to reconcile respect for the law and the need for reforms. This led it to make a rather optimistic assumption, however, since all Member States were expected to agree to give up unanimity. What made the proposal worthwhile legally (upholding the requirements of international law) also made it weak politically.

The icy reception given to it showed that the time was not yet ripe for this kind of sacrifice. In truth, this is not at all surprising. Unanimity works in favour of those who support the *status quo* and are prepared to accept the failure of an attempt at reform. Even the more pro-European states could be reluctant to relinquish their veto power. In these conditions, except in the case of a state of necessity brought about by a crisis, it is hard to see the governments calmly giving up the power that unanimity confers on them.

For such a radical change to be conceivable, another path must be taken: instead of reforming the existing treaties, a new legal structure would be created alongside the European Union of today. In this hypothesis, there is no need for unanimous agreement: the signatories of the new text can easily agree to attach less onerous conditions to its entry into force; those who cannot ratify the new treaty would anyway remain members of the European Union.

Legally, this solution is perhaps less elegant than the previous one. It is bound to make things more complex, at least in the initial phase, since it would lead to the creation of new structures alongside the existing ones. Moreover, the new agreement could not in principle affect the rules established by the existing treaties.

But simplicity is not the dominant feature of multi-level structures, and the history of European integration has shown that this type of ‘roundabout’ method might be necessary for the process to remain dynamic. Where would we be today if the six founding members of the European Coal and Steel Community had listened to those who argued in favor of reforming the Council of Europe to discourage them from moving ahead?

What form might this new agreement take and what might its aim be? These questions are far beyond the scope of this paper. Proposals have already been made.<sup>11</sup>

Let us simply state that the history of European construction suggests that bold reforms are accepted more easily when their ambitions are concrete enough to secure the support of governments and public opinion. How often was it said during the referendum campaigns that the Constitution was too abstract in the eyes of the average voter? Energy and security policies are obvious candidates for a strengthened Europe.

At the same time, the draft Constitution recorded agreement on many points, which could inspire a new way forward. If things develop smoothly, and the new project proves to be attractive, it will prove that it is possible to lay the foundations of a consensual evolution even without the formal guarantees of unanimity.

Maybe then it would be possible to envisage moving some of the Union's activities toward the new structure, or even reforming the revision procedure laid down in Article 48 of the TEU.

## **Conclusion**

The same applies to the reform process as to so many other aspects of the European institutional set-up: the EU is going through an uncertain period of change.

Although the diplomatic model of the early days, where the states play a central role, is still embodied in the present treaty, it has undoubtedly reached the limits of what it can achieve.

Despite the interesting innovations of the past few years, the intergovernmental nature of the treaty reform process has not been altered. This is likely to make substantive reform near impossible. The more veto holders there are, the greater the risks of deadlock. The paralysing unanimity rule should be reviewed, although without prejudice to the consensual nature of the process.

Changing this would no doubt be a real quantum leap. But will the Union be able to meet the expectations of its citizens if it does not get down to it?

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## Endnotes

1. See Andrew Duff, 'B Plan: How to rescue the European Constitution', *Notre Europe, Studies and Research* No. 52, September 2006, [http://www.notre-europe.eu/uploads/tx\\_publication/Etud52-en\\_01.pdf](http://www.notre-europe.eu/uploads/tx_publication/Etud52-en_01.pdf)
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### III. WHERE IS THE EU GOING?

#### Introduction

*by Antonio Vitorino*

However the problem arising from the rejection of the EU's Constitutional Treaty by French and Dutch voters is eventually solved, it is now very unlikely that the Union will be equipped with a final constitutional settlement any time soon. Nevertheless, the EU needs an institutional reform in the short run that will improve the decision-making process and provide it with the necessary tools to face the challenges and opportunities of a globalised world.

The enlargement train is, however, likely to remain on track, albeit moving at a slower pace than in the past, and the reality is that the Union will have more than 30 members within the foreseeable future. At some point, EU leaders will have to think about institutional reform on the basis of this assumption – unless the promise of eventual membership made to a number of countries is withdrawn, which is both unlikely and potentially very dangerous.

In such a vast and diverse EU, 'differentiated integration' is likely to become a central issue. The experiences of the Schengen free-movement zone, the euro and defence policy all show that this can work in practice – provided there is enough political will – and is effective for implementing crucial policies and advancing integration. But going down this path is also widely regarded as a threat to the Union's political integrity.

The first article in this chapter, by Anand Menon and Kalypso Nicolaïdis, explores the various ways in which a Union of 30-plus might move forward, balancing the need to ensure that the EU remains a common project for all participants and the need for more flexibility.

Greater flexibility might indeed be essential to hold the enlarged EU together and take account of differing national attitudes towards its role and purpose.

If there is one clear lesson from the 2005 referenda in France and the Netherlands, it is that the process of European integration can no longer be driven solely by a European elite, without bringing the public on board as well.



The two votes also exposed the contradictions between what citizens want and what the Union can offer, and between citizens both in different Member States and within the Member States. In this context, finding a new compromise acceptable to European public opinion will be a particularly difficult challenge. Richard Sinnott assesses what the voting patterns in a whole series of past EU referenda tell us about the possible ways forward.

Beyond the institutional architecture and the way the Union can achieve a new constitutional settlement, there is another crucial issue which remains unsettled: the nature of the Union's political system – i.e. the way it really works and connects with EU citizens in practice. John Palmer examines the role of deliberative democracy and European political parties, and considers whether a "more political" Union is desirable and feasible.

Finally, there is the perennial question – often debated but never answered (publicly, at least) by politicians – as to where the EU's borders end: what makes a country European and therefore potentially eligible for membership, and is there an absolute limit to how big the Union can get without collapsing?

Once the Union has fulfilled its promise to bring the Balkan countries into the fold (and possibly a few of the small Western European states still outside the club), the remaining countries with membership ambitions will all be, in one way or another, 'problematic' potential Member States. This does not mean that they should not join the EU – only that their eventual membership cannot, for a variety of different reasons, be taken for granted.

While Turkey has already started (bumpy) accession negotiations, it is unclear which of these countries will eventually be granted 'candidate status' and start talks as well. There is no reason why the Union's door should be closed to anyone as a matter of principle. At some point, however, the situation will need to be clarified, not least because it is directly linked to the issue of what the Union does and does not do, and which Member States participate in which policies.

Answering this question would also clarify the purpose of Europe's 'Neighbourhood Policy', which is currently blurred by the fact that some 'neighbours' are hoping to move into the EU house while others have no prospect of doing so. Graham Avery considers the arguments for and against defining Europe's boundaries, and examines the prospects for an ever-wider Europe.

The first 50 years of EU integration have, for all the ups and downs along the way, been a remarkable success story. The question now is whether the EU can build on those achievements over next 50 years and, if so, how.

This will not, of course, depend only on developments within the EU: in a globalised world, external challenges will provide as many opportunities or pose as many threats as internal ones. But a clear vision will be needed of where the EU is headed – and how it intends to get there – to make the most of those opportunities and minimise the threats.

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## Europe@50: doing less, better, together

by Anand Menon and Kalypso Nicolaïdis

A union whose membership has grown almost fivefold in 50 years is certainly worth celebrating. Yet many – too many – seem to believe that the main lesson for the next half-century is that it has become too big for its own good.

They argue that since consensus on the way ahead has proved difficult to achieve in recent years, and particularly since the recent enlargements (although it is important to remember that these cannot be held responsible for the damp squibs produced by the negotiations on the Amsterdam and Nice Treaties), the only way to drive integration ‘forwards’ is to do so via a small group or small groups of states willing to take the lead.

Nostalgia rather than a new vision seems to be the order of the day. And in the process, the sensible idea of “integration capacity” – that the EU should not try to bite off and swallow more than it can chew – is twisted to mean that operating with new, large countries such as Poland (or Turkey) in its midst without some kind of core group to provide leadership is quasi-impossible.

We, however, believe in an inclusive Europe. We reject the notion that the way ahead for the EU lies via ill-conceived and impractical schemes of variable geometry or a ‘core Europe’ (an exception being foreign policy, in which *ad hoc* arrangements continue to function remarkably well). Neither is practically conceivable, and those who argue in their favour tend to do so on the basis of confused logic.

Indeed, such ideas are potentially counterproductive, given both widespread unease among European people about integration and heightened sensitivities among, particularly, new and small Member State governments concerning the need for equality of status within the Union.

The way ahead for the Union lies in streamlining its policy ambitions, performing its current tasks more effectively and reconnecting with its Member States, notably by cultivating closer links with – and a greater sense of ownership on the part of – their political leaders. Constitutional reform and the next enlargements must wait for these conditions to be fulfilled. But if and when they are, both will be desirable.

## Saving the EU's soul

Are today's EU leaders up to the formidable challenge of balancing choice and solidarity in a globalised world?

The EU is not a regional United Nations. Never before has an institution linking highly developed sovereign states exercised so much influence over so many policy areas while establishing systematic schemes to foster solidarity between political communities.

Yet the largely confederal structure of the Union – in which Member States retain control over all major decisions and, in many cases, take these by unanimity – means that facile comparisons with the development of federal states (notably the US) are potentially highly misleading.

One of the draft Constitution's greatest insights was to acknowledge the right for a Member State to leave the Union as a fundamental principle: we are together by choice, a choice constantly reasserted rather than made once and for all.

This is why we need to understand the EU as a federal union, not a federal state; a construct unique in human history. Such a construct must be flexible to survive but for those states, peoples and citizens who choose to stay in, it must provide a reliable, effective and inclusive common house.

To be sure, the EU at 50 must innovate and renew its stock of instruments and ideas – but without giving up its soul.

Advocates of a smaller Union tend to overlook three of its fundamental characteristics, honed over half a century:

- *The absence of hierarchy*: the EU was explicitly built as an anti-hegemonic project. Never again should one big state be allowed to dominate the rest of the continent. Instead, a subtle balance has emerged between, on one hand, the power that comes with economic and demographic size and, on the other, the respect due to every Member State and its population. Indeed, the EU story has proved that size alone does not imply leadership.
- *Functionalism*: the EU is about doing things together. Thus, if a sub-group of states agree on a specific objective that is best pursued together, they should not be impeded from doing so. Conversely, there is no point in imagining groupings of Member States being formed without specific objectives.

- *Inclusiveness*: countries able and willing to pursue policies should always be included in cooperative ventures. Smaller groupings should only exist because those on the outside do not wish – or are not able – to take part, not because some Member States choose to exclude others (as seems to have been the case when Lithuania was prevented from adopting the euro).

### **Is enhanced cooperation the answer?**

Under current conditions, two possibilities present themselves in terms of possible flexible futures: the use of the enhanced cooperation procedure set out in the Amsterdam Treaty, or the creation of some kind of ‘vanguard’ or ‘core group’, as suggested, notably, by the ever-inventive Nicolas Sarkozy.

Enhanced cooperation is meant, in theory at least, to be faithful to the principles enumerated above. The Nice Treaty is relatively permissive in this respect as compared to its putative successor – requiring only eight states to participate as opposed to the nine specified (equally randomly) in the Constitutional Treaty. Yet equally, these provisions have never been tested since they were introduced in Amsterdam in 1999, which says something about their attractiveness.

It may simply be the case that the (justified) requirement not to undermine the *acquis communautaire* has ruled out likely areas of cooperation. Functionalism – and common sense – require that the pursuit of one objective must not hinder another.

More significantly, there is no guarantee that those states excluded from the enterprise will not try to force a unanimous vote in an attempt to prevent others from going ahead.

This is clearly a danger in the case of the UK, ever suspicious of the idea of others moving forward even without it. However, it also applies to the new Member States, several of whom are bridling over what they perceive as attempts to confer second-class status on them (a perception reinforced by the ridiculous reasoning that led to Lithuania’s rejection as a member of the euro zone and attendant farces related to labour mobility).

Foreign and security policy may be the area which lends itself best to the logic of variable geometry. We can already discern the outlines of a ‘leadership’ group, notably in the negotiations undertaken by the three largest EU Member States (France, Germany and the UK) with Iran. Capacity and political will

combine here, as they already have and will continue to do so in missions undertaken under the umbrella of the European Security and Defence Policy.

In the spirit of functionalism and non-hierarchy, different groupings of Member States will be most relevant to different types of mission (civil-military or mediation-intervention) and different parts of the world. Those willing and able to act do so in the name of the Union as a whole, and the Union as a whole derives benefits from these actions.

### **A vanguard for the Union?**

The option of a vanguard or core, not formalised in any treaty provisions, takes this logic one step further by implying a greater degree of permanence for the group in question – and, in the case of a core group, the makings of a different identity through collaboration across a number of areas.

The obvious question this poses is: ‘vanguard on the way to where?’ The various political leaders who have talked in these terms have expressed only vague aspirations as to the destination towards which the group will be leading the others. This stands in stark contrast to the rare cases in which variable geometry has been attempted before. In those previous instances – Schengen and Economic and Monetary Union – the decision was taken in the name of a specific objective.

The problem now, of course, is that no such ‘project’ exists, and different vanguards seem appropriate for different tasks.

The ‘big six’ (France, Germany, Italy, Poland, Spain and the UK) already confer formally on matters relating to internal security. A completely different group comprises the Schengen 2 Club, created in May 2005 outside the EU framework and involving Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. Meanwhile, in the light of the Dutch referendum on the Constitutional Treaty, former German Chancellor Gerhard Schröder tried to call a meeting of the six original EEC members – an attempt scuppered by the Dutch and Italians. The call for a vanguard of the founding members after the French and Dutch referenda was paradoxical to say the least.

Others, of course, have seen the Eurogroup as a vanguard in waiting, explaining its reluctance to expand its membership as a desire to preserve its relatively compact size and ability to exercise leadership within the Union on matters of economic policy. Even here, however, the group is characterised

more by divergent preferences than consensus about the future direction the euro should take. French calls for some form of ‘economic government’ lost much credibility following the turbulent second half of 2003 and the success of France and Germany in avoiding sanctions for breaching the terms of the Stability and Growth Pact.

There are two fundamental problems with the notion of a ‘vanguard’. First, its key proponents often seem more concerned with asserting their difference – as big, rich or founding states – for the sake of it, thereby undermining the notion of non-hierarchy: status as a substitute for purpose. Second, in doing so, they are concerned more with leading the Union away from where it is currently perceived to be rather than with enabling it to reach some new destination or to fulfil an obvious need or function.

There are plenty of opponents, particularly within the EU-15, of a Union characterised by perceived deregulation, liberalisation, and social and fiscal dumping. Yet this opposition does not provide a sufficient basis for the creation of a core Europe.

Indeed, the only way to deal with the external impact of other Member States’ actions is via collective action that involves those states. A core group which excluded, for instance, Ireland’s low-tax regime or liberal-minded Britain, would still face the problem of their membership of the single market and hence their continued challenge to higher tax, more regulated economies.

A telling example of the limitations of the idea of a ‘core’ is provided by the current attempts by Taxation Commissioner László Kovács to create a common EU corporate tax base.

The stated objective is sensible enough: it would increase transparency, providing potential investors with greater clarity about the fiscal implications of doing business in the various Member States. Yet it is important to grasp the defensive origins of this initiative in order to appreciate its full significance.

These lie, at least in part, in a desire on the part of some Member States to address what they perceive to be unfair competition from countries with low corporate tax rates. While harmonising these rates is clearly a non-starter in the current climate, France and Germany did attempt a step in this direction using good old-fashioned bullying (Jacques Chirac and Gerhard Schröder threatened to cut regional aid to low-tax economies amongst the 2004 accession states until they raised their corporate rates). When this failed, a

second-best option was devised, to harmonise the tax base, thereby revealing that low corporate rates are, in some cases, more than compensated for by other forms of taxation.

Commissioner Kovács has therefore declared his intention to introduce the necessary legislation and, anticipating opposition, to do so under the enhanced cooperation procedure. Predictably, Britain, Ireland, Latvia, and Lithuania – low-tax countries which have proved relatively successful in attracting foreign investment – have all declared their opposition to the scheme. Herein lies the problem with such schemes: they cannot be effective as long as their main targets refuse to participate.

The tax example also underlines several of the problems implicit in the notion that ambitious schemes pioneered by a few represent a route out of the Union's current impasse.

### **Learning painful lessons**

In the wake of the referendum results in France and the Netherlands, and in the light of a growing willingness among politicians in an ever-increasing number of Member States to criticise the Union openly (for all current German Chancellor Angela Merkel's positive tone, many members of her coalition have used highly acerbic language when discussing the 'tendency' of the EU to meddle in German domestic affairs), the Union and the national leaders within it need to learn some painful lessons.

The first is that caution is required before unveiling new initiatives, particularly those dealing with contentious or politically-sensitive sectors. Tax obviously falls within this category. However presented, the Commission's scheme will inevitably be seen – indeed it has already been portrayed – as a first step towards harmonisation. This, in turn, is grist to the mill of those who want to stoke fears of the dangers of a European superstate.

Competence, in other words, is a more sensitive issue than ever before. No one can control the proclivity of certain irresponsible governments to come up with 'bold' initiatives to 'kick-start' the integration process. But the Commission itself needs to be cautious in attempting to do so, particularly in the current climate of distrust towards integration.

In this regard, the draft Constitution undoubtedly fell short. Its provisions on flexibility only allowed competences to move upwards to Brussels rather than



to come back down to the Member States (in competition or agriculture, for instance); its wording on pre-emption when the Union acts sounded like a ‘big brother’ grab for power on the part of EU law-makers; and its laudable provisions on national parliamentary control failed to include a proportionality test in addition to the unclear provisions on subsidiarity, thus greatly limiting these parliaments’ leverage against centralisation.

The second lesson is that there is a need, not to relaunch the Union, but rather to reconnect it with its constituent Member States. The ease with which national politicians are able to carp and criticise stems from their lack of a sense of ownership of what the Union does; an ability to talk about Union officials as ‘them’.

Consider the European Council: not only is it quick to launch hopelessly unrealistic initiatives (the stated ambitions of the Lisbon process, for instance), but its individual members are equally quick to blame ‘the Union’ for its failure to deliver on them.

It is hardly surprising that national politicians face strong incentives both to blame the EU for everything that goes wrong and to take decisions based on short-term national objectives.

It took Poland’s flamboyant President Lech Kaczynski to dare state a truth about his country that has far broader validity: Poles care about what happens to Poland, not what happens to the EU. Polish politicians, therefore, would be well advised to bear this in mind when formulating their policy stances – as, indeed would all politicians. Defending ‘us’ against Brussels makes good political sense.

### **Restoring the public’s faith in the Union**

Given this, it is little wonder that popular faith in the Union is diminishing. There are two potential solutions to this problem.

In procedural terms, EU Heads of State and Government could decide to implement – without recourse to a formal treaty – most of the ‘democracy related’ provisions of the draft Constitution.

Hence, the ‘yellow’ card procedure which would have been introduced by the Constitutional Treaty represented a way of linking national parliaments more closely with the outputs of integration. The more national politicians

are involved in policy-making, the less credible it is for them to complain about the outcomes.

More substantively, the Union would benefit from turning its back on grand policy initiatives and focusing instead on those tasks it has already been asked to perform.

First and foremost amongst these is the creation of a single market. While political attention has focused on high-profile issues like the Constitutional Treaty, a series of potential threats to the internal market have emerged, ranging from apparently protectionist impulses in countries such as France, Poland, and Spain to recent state aid figures revealing a failure to reduce the sums given by governments to industry over the last year. More generally, even the pillars of free movement and non-discrimination seem to be increasingly questioned.

If the Union is not to falter in carrying out its core task, such trends need to be addressed.

Lessons can be drawn from the debate which surrounded the adoption of the Services Directive during 2006. On the one hand, European citizens often fail to grasp the philosophical and constitutional import of the core principle of mutual recognition, which represents much more than the starting pistol for a race to the bottom. On the other hand, European law-makers need to carry out political impact assessments of their initiatives and not just through perfunctory bureaucratic consultation (which lasted two years for the ‘Bolkenstein’ directive).

Former Commission President Jacques Delors once famously asked who could fall in love with a market. In many ways he was right, and the low-profile nature of this process did little to inspire European publics. Yet, in an era where further ‘projects’ seem unlikely either to find a consensus between governments, or the support of their populations, what is the point of a European Union that cannot even provide such a market?

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## EU referenda: selective veto or inclusive consultation

by *Richard Sinnott*

On the 50<sup>th</sup> anniversary of the Treaty of Rome, the European integration project is confronted by a problem it partially evaded in 1957 – that of democratisation and citizen participation.<sup>1</sup>

This paper focuses on a very specific aspect of this problem, namely the use of referenda in the process of ratifying changes to EU treaties.<sup>2</sup> This aspect of the problem has, of course, immediate and acute implications for the issue of how to respond to the French and Dutch 'No' votes on the European Constitution.

### The problem of ratification by selective referenda

The indecision and delay following the negative outcome of the referenda on the Constitutional Treaty in France and the Netherlands highlighted once again the problems involved in ratifying EU treaties by selective referenda.<sup>3</sup>

Should the electorates in the countries concerned be asked to think again? If so, should this be on the basis of a renegotiated treaty or on the basis of some other concessions? If not, is it right that some national electorates (as distinct from some Member States) should have a veto over the process of European constitutional development?

In this context, it is important to distinguish between two types of referendum, namely accession referenda and developmental referenda. The accession referendum category mainly includes referenda in applicant countries that deal with the proposal to join the Union, but also includes referenda in existing Member States on joining specific areas of EU activity, for example monetary union. The developmental referendum category relates mainly to the ratification of treaty-based developments in European integration, but it also includes possible future referenda in existing Member States on the accession of each new applicant, as proposed in some Member States, most notably France.

The consequences of negative decisions in these two kinds of referendum are radically different. In the case of accession referenda in countries that have applied to join the EU, the consequences mainly affect the country voting 'No'. In the case of developmental referenda, as well as affecting the country that votes 'No', the outcome has a potentially fundamental impact on the Union as a whole.

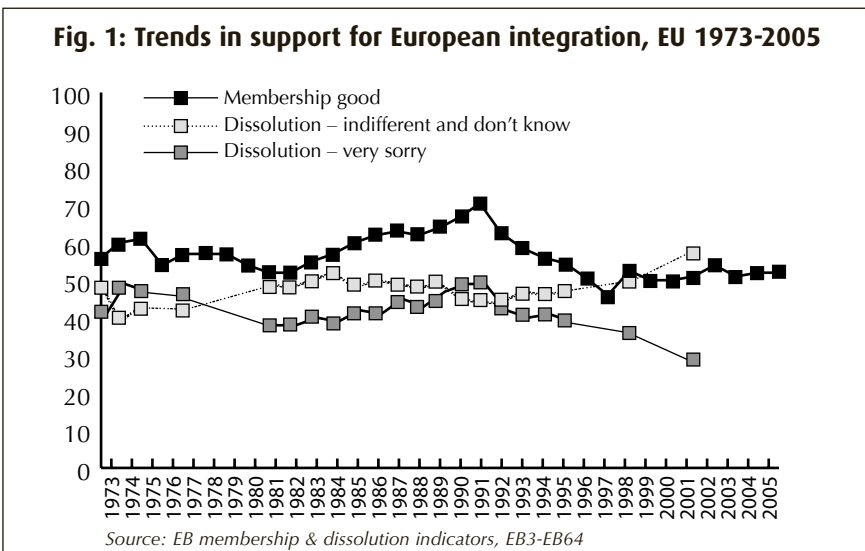
Indeed, it can be argued that the effects of a negative decision in a developmental referendum may be greater for the Union as a whole than they are for the country voting ‘No’. This is because a negative vote in any one country can amount to a veto by that country on the Union’s constitutional development.

In considering how to respond to this problem, it is necessary to take account of the nature of European public opinion. Before embarking on this task, it should be emphasised that this analysis assumes that the treaty changes in the proposed European Constitution are important and cannot simply be abandoned.<sup>4</sup>

However, even if the changes currently on the table are not on this scale of importance, some future set of treaty changes will be. It is therefore important to consider the ratification-by-referendum issue; and this is probably better done sooner rather than later.

### The nature of EU public opinion

The European public’s basic attitude to European integration, as measured by the Eurobarometer ‘membership indicator’,<sup>5</sup> shows two distinctive features – a sustained rise in support between 1982 and 1991 and an almost equally sustained and slightly more precipitous fall between 1991 and 1997 (see the topmost line in Figure 1). The pre-1982 and post-1997 periods are characterised mainly by flat trajectories, with the latter at a slightly lower level of just above 50%.



This lower level of support is part of the context in which the Amsterdam and Nice Treaties were ratified and in which the incomplete process of ratifying the European Constitution went as far as it did.

In fact, however, the public-opinion context of these ratification processes is even less propitious than the membership indicator suggests. An additional Eurobarometer measure (the 'dissolution indicator') shows that enthusiasm for the integration project, which stood at just under 40% in 1981, rose to a high point of only 49% in 1991 and then fell to 21% by 2001.

Equally striking is the finding that the proportion giving either a "don't know" or an "indifferent" response to this question rose to 58% by 2001, with the result that indifference outstripped enthusiasm by 30 percentage points.

All of this may seem to be persuasive evidence that referenda on EU treaty changes should be avoided where possible, and even that those countries that are constitutionally or politically constrained to hold referenda on EU treaty changes should be encouraged to consider taking measures to eliminate those constraints.

However, examination of overall trends in attitudes to EU membership in the four countries which have, at one time or another, said 'No' to EU treaty changes suggests that it would be wrong to assume a direct translation of levels of support or lack of support for integration into voting decisions for or against particular treaty changes.

This, in turn, suggests that it would be wrong to exorcise the referendum as part of the ratification process simply on the basis that support for integration may wax and wane.

The four countries concerned (the Netherlands and France in 2006, Ireland in 2001 and Denmark in 1992) have shown distinctively different trends and levels of support for EU membership.

Thus, the Netherlands started in the 1970s with a high level of support for membership of the Union (just short of 70%). From there, it followed a gradual and, by and large, uninterrupted path of rising support which took endorsement of membership to well over 80% around 1991/92. At that point, however, Dutch opinion took a downward turn which was not halted until 2004, when a modest upward trend re-established itself.

France started in the mid-1970s with a level of support for membership of the EEC that was just slightly lower than that in the Netherlands. Unlike the Dutch, however, the French immediately entered on a downward path that took them to just below 50% in 1980.

The start of François Mitterrand's French Presidency in 1981 was accompanied by a rise in support that peaked at almost 70% in 1987/88, after which it fell year by year up to, and including, 1996. The following decade, while halting the decline, has shown no sign of recovery and in 2005, the year of the referendum on the European Constitution, French support for membership stood at just about the 50% mark.

True to the Eurosceptic image with which Denmark joined the EEC, Danish support for membership languished in the mid thirties until 1985, when it began a sustained rise that took it to the low sixties in 1993/94. At that point, Danish attitudes to EU membership joined the general decline that, as we have seen, started in the Union as a whole in 1992.

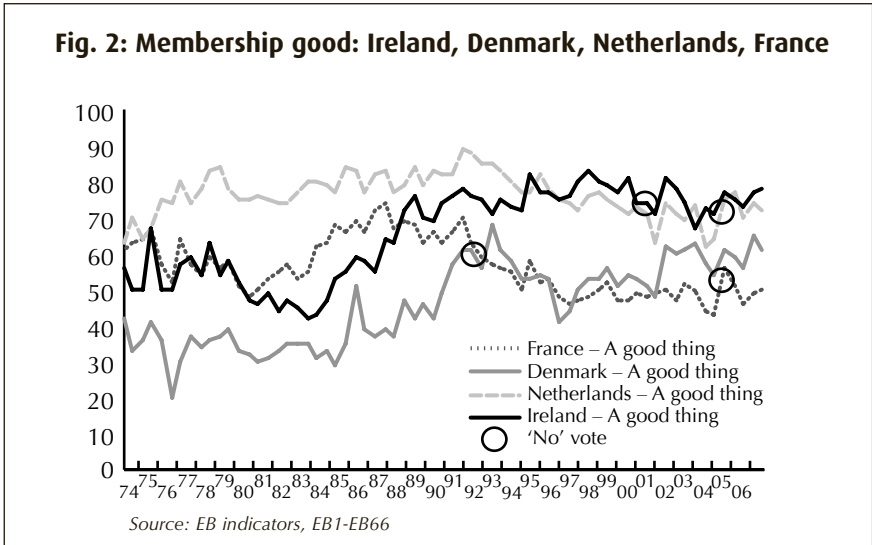
Unlike the European average, however, Danish support for membership experienced a sustained recovery in the late 1990s and was back at about 60% by 2006.

Reflecting Ireland's more positive endorsement of entry into the EU in 1973, Irish opinion in the mid-to-late 1970s was not far behind that of the French. However, 1979 saw the beginning of a substantial drop that took Irish support for membership to the mid forties in 1984.

The 15 years that followed saw a remarkably sustained and substantial rise (from 47% in 1984 to 80% in 1999). In particular, Irish opinion did not join the downward trend that characterised Europe as a whole between 1992 and 1997. After 1999, opinion in Ireland did retreat, but only from 80% to 75%, and the three or four most recent Eurobarometers have shown some signs of recovery from that modest fall.

### **Interpreting the 'No' votes**

Having outlined the trends in attitudes in the four countries concerned, let us return to the four 'No' outcomes in European treaty developmental referenda. It is clear that each of these occurred in quite different public-opinion contexts and at quite different levels and trajectories of support for European integration (see Figure 2).



In 1992, Denmark voted ‘No’ to the Maastricht Treaty when Danish support for EU membership had been on a long upward trend and was about to reach its highest-ever level (68%).

In 2001, Ireland’s ‘No’ to Nice occurred in the wake of a fall in support for membership of the Union, but that fall was from 81% in 1999 to 71% in spring 2001, and it recovered immediately to 81% in autumn 2001. The Dutch ‘No’ to the European Constitution was a bit like the Irish ‘No’ to Nice, in that it was expressed against a background of support for membership in the mid to high seventies. However, it differed from the Irish ‘No’ in that it came at the end of a substantial fall in support from a high of 89% in 1991.

The French ‘No’ was different again. The prevailing level of support for membership was about 50%, having fallen from 74% in 1987 to 44% in 2004.

The key point to emerge from all of this is that referenda can be won or lost in the context of very different configurations of public opinion. However, this contextualisation of the role of public opinion is open to two opposite interpretations that have sparked an intense debate in the political science literature.

One interpretation is that referenda on European issues have nothing to do with Europe and everything to do with the balance of public opinion for or against the incumbent government in the Member State concerned.

In this view, referenda are akin to ‘second-order elections’ (e.g. local or regional or European elections), in which the outcome is said to be determined by the voters’ attitudes to first-order issues (i.e. to their national party identification and/or their assessment of the government’s performance on fundamental issues at the national level).

As exponents of the ‘second-order election’ interpretation put it: “...referenda proposed by governments in parliamentary regimes should be viewed as special cases of second-order national elections in which the results should not necessarily be taken at face value because allowance must be made for the standing of governments in the first order arena”.<sup>6</sup>

The alternative to this view is the ‘issue-voting’ interpretation, according to which attitudes to European integration in general, or to specific European policy issues, or specific aspects of the treaty that is the subject of the referendum, are the determining factors. Expositions of the issue-voting model usually add the obvious rider that the more salient the issue that is the subject of the referendum, the more likely it is that voters’ attitudes to the issues rather than to the incumbent government will determine the outcome.

These conflicting interpretations have profound implications for whether referenda should be encouraged or discouraged as a means of ratifying European treaty changes. If referendum outcomes were mainly determined by domestic political issues and forces, using referenda as even part of the process of ratifying European treaties would be daft. If, however referendum outcomes were mainly determined by the relevant issues, their use in treaty ratification would be quite defensible and could be seen as contributing to the overall legitimacy of the European project.

In an analysis of the conflict between these two interpretations as they apply to the Danish case, Palle Svensson concluded that: “The Franklin thesis of referendums as mainly reflecting the popularity of the government does not hold for Denmark, at least not as far as the European issue in the late 20<sup>th</sup> century is concerned.” He adds that “the sixth Danish referendum on the single currency in September 2000 gives no reason for changing this conclusion”.<sup>7</sup>

Likewise, in a detailed analysis of voting in the two Irish referenda on the Nice Treaty, Garry, Marsh and Sinnott conclude that: “Our analysis...suggests that, although the effect of satisfaction-dissatisfaction with the incumbent government (i.e. the second-order effect) is detectable, it played a much smaller role in



determining the outcome compared with the effect of attitudes to a range of European issues”.<sup>8</sup>

Finally, taking into account the evidence from the 2005 referenda on the European Constitution, Svensson notes that “whether referendum voting is ‘second-order’ or ‘issue-based’ and the extent to which the voters take cues from reference groups or rely on their own attitudes depends on the circumstances, in particular whether the issue is a new or an old one, the length and quality of the campaign and the clarity of the standpoint of reference groups such as political parties”.<sup>9</sup>

This latter point is crucial when it comes to deciding what is to be done; i.e. whether or not referenda should have a role in the ratification process and, if they should, what that role should be.

### **What is to be done?**

The question ‘What is to be done?’ refers not to what the immediate response to the problems involved in ratifying the currently proposed European Constitution should be, but to what to do about referenda as part of the ratification process. If this matter of principle were decided, it could then be applied to the problem of the current constitutional proposals.

One possibility is to seek agreement among the Member States not to hold referenda on the issue. For obvious reasons, this is unlikely to be successful. A more realistic possibility is to muddle through, dealing with negative referendum decisions (or other failures to ratify) as they occur and on an individual basis. This is what was done successfully in responding to the Danish ‘No’ to Maastricht and the Irish ‘No’ to Nice. The end result was an endorsement of the treaty in question in each country in a second referendum.

Depending on the size and weight of the country concerned and on the nature of the issue(s) involved, this may or may not work either in the sense of getting agreement to hold a second referendum or of securing ratification of the treaty in that referendum. In which case, the Union is left with the problem of granting a veto over EU constitutional development to the electorates of countries that, for political or constitutional reasons, pursue the ratification-by-referendum route.

If ratification-by-referendum cannot be abolished, and if muddling through is unlikely to solve the problem of the electorates of particular countries

having a veto over developments in integration, perhaps the time has come to grant the electorates of all Member States – or rather the electorate of the Union as a whole – a voice in the process. In other words, perhaps the time has come to institute EU-wide referenda to deal with constitutional developments in the Union.

In order to clarify what is involved in this proposal, it may be useful to remind ourselves of two simple distinctions: 1) the nature of the outcome of the referendum process, i.e. whether it is indicative or definitive; and 2) the arena within which the referendum takes place – the different arenas in this case being the EU as a whole versus individual Member States.

Cross-tabulating these two distinctions gives a four-fold typology of EU referenda: (A) supranational consultative, (B) supranational binding, (C) national consultative, and (D) national binding. (See Figure 3).

The fact is that the Union already has two of these types of referenda: national consultative referenda (Type C), as in, for example, the Netherlands; and national binding referenda (Type D), as in Ireland. Of the other two types, one (Type B) is probably unrealistic on the grounds that it would be extremely supranational.

**Fig. 3: A typology of potential and actual EU referenda**

| Decision-making arena  | Nature of the outcome                                |  |
|------------------------|--|--|
|                        | Indicative   | Definitive   |
| EU as a whole          | A  | B  |
|                        | Supranational consultative; e.g. none (but possible) | Supranational binding; e.g. none (and impossible?) |
| Selected Member States | C  | D  |
|                        | National consultative; e.g. the Netherlands          | National binding; e.g. Ireland                     |

This brings us the core of the proposal, which is to introduce a Type A referendum; i.e. one in which the decision-making arena would be the EU as a whole and in which the outcome would be indicative.

In short, the proposal is to hold a supranational consultative referendum for ratification of EU treaty changes.

This proposal is more complex than may appear at first sight. This is because, realistically, Type A implies either Type C or Type D. It simply would not be feasible to hold a supranational consultative referendum in which the votes would only be counted, announced and have force at the level of the Union as a whole.

An EU-wide referendum would, *de facto*, also involve a national referendum in each and every Member State. These country-level referenda would also be consultative, except in those states subject to unalterable constitutional provisions making treaty-related referenda binding.

### **Consequences and conclusions**

The first consequence would be the elimination of the selective national electoral veto by extending the referendum to all Member States and by treating the process as consultative.

This would give a reality to the consultative process by gauging opinion in the Union as a whole and using this outcome as a broader context in which to assess the results in the individual Member States.

For example, a narrow defeat in one country would look very different depending on whether the Europe-wide result was a bare majority or, say, 65% in favour. At a minimum, a narrow national defeat accompanied by a strong EU-wide endorsement would provide a reasonable basis for holding a second referendum in a country or countries in which the ratification proposal was narrowly defeated.

On the other hand, if the ratification proposal only squeaked home at the European level and suffered defeat in several Members States, the consultative process might well result in the framers of the treaty being sent back to the drawing board.

If we assume that an EU-wide referendum would take place on the same day throughout the Union, the proposal would have the further beneficial

consequence of eliminating the real or presumed domino effect, and the related and damaging ‘wait and see’ response adopted by several Member States in the wake of the French and Dutch ‘No’ results.

It is assumed here that a Europe-wide consultative referendum process could be introduced by the European Council. Subsequently, and taking account of experience with the proposed process, the device of EU-wide consultative referenda might be incorporated into a European treaty or constitution.

Perhaps the strongest objection to the proposal is that the issues that arise in EU constitutional development are too complex and too arcane, and that they would not elicit either interest or understanding on the part of the European public. The answer to this objection is that if the issues involved are all that complex and/or arcane, they probably do not belong in a constitution.

This brings us back to the point that the quality of the deliberation by the electorate and the degree to which citizens vote on the issue at stake are related to whether the issue is a fundamental one, and to the quality and the effectiveness of the campaign.

The proposal for an EU-wide constitutional referendum presupposes that elites who are committed to strengthening the integration process can and would make their case to the European public at national and European level.

Provided that the proposed constitutional changes are fundamental and provided that elites take on the challenge of convincing the public of the merit of the case for change, using EU-wide and national consultative referenda as part of the ratification process would make a significant contribution to making the European Union more democratic.

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## Endnotes

1. The many dimensions of the problem are analysed in the following recent papers: Stefano Bartolini ‘Should the Union be ‘Politicised’? Prospects and Risks’ in *Politics: The Right or the Wrong Sort of Medicine for the EU? Notre Europe Policy Papers*, No.19, 2006; Andreas Follesdal and Simon Hix ‘Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik’ in *European Governance Papers (EUROGOV)*, No. C-05-02, 2005, <http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-02.pdf>.; Simon Hix ‘Why

- the EU needs (Left-Right) Politics? Policy Reform and Accountability are Impossible without It' in *Politics: The Right or the Wrong Sort of Medicine for the EU? Notre Europe Policy Papers*, No.19, 2006; Andrew Moravcsik 'What Can We Learn from the Collapse of the European Constitutional Project?' in *Politische Vierteljahresschrift*, 47, Jg. 2006, Heft 2, S. 219-241.
2. I would like to thank Palle Svensson for very helpful comments on the first draft of this paper.
  3. The problems had previously been encountered in the Danish referendum on the Maastricht Treaty and the Irish referendum on the Nice Treaty.
  4. For a contrary point of view, see Andrew Moravcsik 'What Can We Learn from the Collapse of the European Constitutional Project?' in *Politische Vierteljahresschrift*, 47, Jg. 2006, Heft 2, S. 219-241.
  5. For a discussion of the Eurobarometer indicators, see Oskar Niedermayer, 'Support for European Integration: Trends and Contrasts', in Oskar Niedermayer and Richard Sinnott (eds.) (1995) *Public Opinion and Internationalized Governance*, Oxford: Oxford University Press. pp. 53-72.
  6. Mark N Franklin, Cees van der Eijk and Michael Marsh, 'Referendum Outcomes and Trust in Government: Public Support for Europe in the Wake of Maastricht' in *West European Politics*, Vol. 18, No.3, 1995: 110.
  7. Palle Svensson 'The European Referendum Experience in Western Europe'. Paper presented in the panel on "Direct Democracy in Europe – comparative and transnational perspectives", 3<sup>rd</sup> ECPR Conference, Budapest, 8-10 September 2005: 9.
  8. John Garry, Michael Marsh and Richard Sinnott, "Second Order' Versus 'Issue Voting' Effects in EU Referendums: Evidence from the Irish Nice Treaty Referendums' in *European Union Politics*, Vol. 6, No.2, 2005: 215.
  9. Palle Svensson 'The European Referendum Experience in Western Europe', Paper presented in the panel on "Direct Democracy in Europe – comparative and transnational perspectives", 3<sup>rd</sup> ECPR Conference, Budapest, 8-10 September 2005: 25.

## Globalisation demands a more political and more democratic Europe

by John Palmer

As it crosses the largely uncharted seas of globalisation, the European Union sometimes implements policies which prove inadequate for reforming its economy, strengthening its internal decision-making or seeking greater influence internationally – not least to help shape the governance of globalisation itself.

But such failures, if followed by an appropriate change of strategy, are unlikely to be permanently or fatally damaging to the Union itself. A continuing loss of *political* legitimacy, however, could pose a mortal threat to both the EU and the wider process of European integration.

The warning signals in recent years of a growing popular unease about the evolution of the EU can no longer be ignored. Opinion polls confirm that the gulf between the EU institutions and citizens in many of its 27 Member States is still growing.

The EU will not be able to confront the challenges of globalisation unless it becomes less technocratic and diplomatic, and more political and democratic. This must involve political parties giving voters in European elections a greater choice of alternative policy strategies.

The European public is bewildered by the complexities of policy-making and decision-taking in the EU. This is, in part, due to the speed of developments, especially the (necessary) enlargement of the Union and seemingly constant changes in both EU policy and governance. Voters have little idea how to engage with the European process or what democratic choices they are being called on to make. EU affairs tend to be dismissed as excessively technocratic and diplomatic, and insufficiently political and democratic.

What passes for public debate on Europe in many Member States does not help. The political elites in most countries conduct their public discourse about EU affairs in a ludicrously short-sighted way. Quick to demonise the Union and its institutions when unpopular decisions are taken – very often at the instigation of the Member States themselves – governments have not surprisingly found it difficult to mobilise support for the EU when they have desperately needed to in their own interests.

It is less widely appreciated that national politicians and political institutions are held in even lower esteem than the EU and its institutions in most Member States.

Opinion polls reveal a startling decline in public confidence in national political parties and government systems, irrespective of the political orientation of specific governments. Professor Vernon Bogdanor illustrates this with striking statistics for the United Kingdom. Fifty years ago, one in 11 of the electorate belonged to a political party; today, the figure is just one in 88. In 1966, 42% professed a “very strong” attachment to the party of their choice; today only 13% do so.<sup>1</sup>

A recent Eurobarometer poll found that across the EU as a whole, just 17% of the population trusted political parties, compared with 29% for civil society organisations – not least the church.<sup>2</sup>

The EU has suffered enormous collateral damage as a result of the backlash against unpopular Member State governments. The referenda on the proposed Constitutional Treaty provided an irresistible opportunity for voters in France and the Netherlands to punish deeply unpopular national administrations, mainly because of domestic economic, political or social issues quite unrelated to the EU. But as a consequence of the two ‘No’ votes, the proposed EU treaty has been derailed.

Why should voters feel so disenchanting with national politicians? There has been a striking decline in ‘ideological’ politics since the end of the Cold War. Voters today are now uncertain what the basic ‘mission and values’ of mainstream parties are.

Accelerating bureaucratisation and the professionalisation of party politics has also marginalised the influence of voluntary party members. Parties across Europe report a massive decline in membership. The energy and the idealism which led younger people to join political parties in the past now tend to lead them into support for single-issue campaigns and activity in voluntary organisations.

At the same time, globalisation is restricting the political space which parties need to develop alternative national policy strategies that sharply differentiate them from each other, but which are credible in the new global environment. Mainstream parties have found themselves driven into an ever smaller and more crowded space in the political centre. This loss of policy differentiation restricts the political choices open to voters.

More worrying than the implosion of membership of political parties has been the downward trend in voter participation in both national and European elections.

Even in the larger EU Member States, governments tend to be seen as increasingly marginal actors in the dramas generated by the sometimes painful adjustment to the new patterns of employment and social welfare policies required to survive and prosper in a global economy. Only extreme 'populist' and xenophobic parties benefit by exploiting public unease at the apparent impotence of national governments and mainstream parties to respond to the challenges of globalisation.

### **Consulting the citizen – the rise of deliberative democracy**

At the European level, these problems have been reinforced by a sense that EU decision-making is too remote, too esoteric, too technocratic and too elitist. Many citizens believe that they are denied the information they need to adequately understand (let alone pass judgement on) what is being done in their name by their governments and by the EU institutions.

More can be done to improve public knowledge and understanding of how the Union functions and the key policy issues it faces. The recent initiatives taken by European Commission Vice-President Margot Wallström to address these problems are welcome. But to be effective, an EU communications strategy requires Member States to take shared ownership with the EU institutions (notably the Commission) of the messages delivered to the public. Communications cannot simply be left to 'Brussels'.<sup>3</sup>

The current democratic malaise has, however, deeper roots than poor or inconsistent information and communication. There is a widespread view that EU decision-makers (especially governments acting together in the Council of Ministers) are not being held properly to account. Voters are confused about the division of responsibilities between regional, national and European levels of governance. They have no clear understanding of who is responsible for what – and who is accountable to whom – within the decision-making architecture.

In modern European democracies, the public expects not only to be informed but also to be consulted about the future direction of decision-making bodies.



That is why initiatives such as the European Citizens' Consultations,<sup>4</sup> launched by the King Baudouin Foundation – together with other non-party political, not-for-profit foundations and a range of other organisations, including the European Policy Centre – to develop radical new ways of consulting citizens on European issues, are so important.

These Consultations are providing an opportunity for members of the public from all 27 Member States to debate the future of the EU across the boundaries of geography and language. Citizens chosen randomly to take part in the deliberations are assisted by experts to identify the key issues at stake, look for common ground and make recommendations to policy-makers on the priorities for Europe's development. The aim is to establish a model for European citizens' participation in the future using a range of innovative techniques.

Thanks to the Convention on the Future of Europe, a European Citizens' Initiative was included in the Constitutional Treaty. This gives citizens the right to propose that the Commission introduce new legislation, although it is still unclear what the minimum number of Member States in which signatures need to be collected should be. It is essential that this is retained in any future treaty.

### **Are party-based democratic politics redundant?**

Improved information or a more structured system of consultation with citizens – while indispensable – may not suffice to close the gap between the public and the EU institutions.

But some experts believe that a fully fledged European *demos* remains a utopian illusion. They argue that the existing democratic mandate given to the EU institutions (including the Commission) by the elected governments of the Member States should suffice.<sup>5</sup> They view 'Parliamentary Government' as feasible only for those 'nation states' where a popular *demos* has already been established.

The EU will, as far ahead as anyone can anticipate, continue to be a 'federation of Member States' and (where appropriate) regions. Indeed, as Professor Alan Milward argues, European integration has rescued, and not displaced, the nation state because it deals with issues which cannot be resolved at national level.<sup>6</sup>

But the crisis of confidence in Member States governments' transparency and democratic accountability when they act within the EU process cannot now be

denied. Any attempt to bypass a stronger democracy at the European level will only add to the problems of democratic accountability at the national level.<sup>7</sup>

Some question the future for any party-based European Parliamentary democratic system and argue that an alternative process of ‘deliberative democracy’ offers a better way forward.

Other forms of decision-making such as “judicialisation, expert decision-making and non-majoritarian institutions” are seen as a substitute for a party-based Parliamentary system at the European level.<sup>8</sup> Still others plead for a “semi-Parliamentary, semi-consociational democracy” in which a European Parliament would essentially act as a communications relay between decision-makers and citizens.<sup>9</sup> These are all variants of the idea that key decisions should be taken through a form of consensus (possibly involving civil society bodies as well as governments) or by courts of justice, rather than being determined by majority vote after a process of party political debate and conflict.

The ‘realists’ and the ‘sceptics’ agree that there can be no European transnational *demos* without a ‘shared’ European identity. In the United States, however, it was the creation of the Constitution which generated a national identity as much as the other way round. Nor are ‘national’ and ‘European’ identities inherently contradictory. As the work of Paul Gillespie<sup>10</sup> and others demonstrates, Europeans already increasingly live in a world of multiple identities.

Advocates of the more radical versions of ‘direct democracy’ recognise that it is vulnerable to the charges of ‘corporatism’ and elitism. Consultative democracy will tend to appeal most to organised special-interest advocates. For the mass of people, involvement in the European governance process will only have meaning when they are asked to choose in European elections between parties with different programmes and values, led by personalities who present themselves as aspirant leaders of the EU executive.

### **The future for European parties**

The growth and complexity of EU affairs has made democratic accountability weak to non-existent when it is exercised purely through elected Member State governments and scrutiny by national parliaments.

More can be done to strengthen the powers of national parliaments to scrutinise the behaviour of governments in the Council of Ministers. But only a dedicated,

elected European Parliament can really be charged with holding the EU's executive institutions to account. This means not only the Commission, but also the Council of Ministers (when governments legislate under Community law).

Without doubt, political parties (national and European) will need to re-invent themselves at the national level if they are to survive the profound changes in political culture brought about by globalisation. Traditional political identities based on 19<sup>th</sup> and 20<sup>th</sup> century class structures are inevitably fading. As a consequence, some of the old ideological delineations between left and right are also melting. Parties will have to fundamentally rethink their internal functioning and their relationship to wider civil society movements.<sup>11</sup>

At the EU level, genuinely European parties with their own identities, programmes and (eventually) membership still have to be built. Of course they will retain close links with their national affiliates in the Member States – in the same way that many regional parties in Member States do. At present, European Parliament elections lack sufficient political consequence to engage voters. They are 'not about enough' in terms of the European political choices offered voters and, therefore, tend to be fought on purely national issues.

When they act together through shared sovereignty to meet the challenges of globalisation, EU Member States can create new space for policy alternatives at a European level in a way which would be impossible for any single state acting alone.

Of course, the realities of globalisation will always impose some limits on the freedom of action open to the Union. But the balance of power which would exist between the global market and the huge potential of the European economies if collectively mobilised by the Member States would be very different to that which exists between the global market and individual countries acting alone.

In this perspective, it becomes possible to offer voters far more wide-ranging and significant choices on issues such as jobs, prosperity, social justice and sustainability. Moreover, if Member States are forced by changes in the global environment to take the construction of an EU Common Foreign and Security Policy more seriously, a healthy democratic debate about alternative European strategies in these areas too becomes possible.

Taken together, these developments would imply a cultural revolution for European politicians. They have – for good reasons – traditionally seen

consensus rather than conflict and choice as central to the dynamic of European integration. But the EU has now evolved to the point where, without democratic political choice between differing strategies, no resulting popular consensus is likely to remain intact for long.

With or without a new treaty, EU parties should go to voters in the 2009 European Parliament elections presenting serious programmatic alternatives to exploit the space for collective action. They should also offer voters their candidates for the Presidency of the European Commission and maybe the Presidency of the Union itself. This would give voters the power to help shape the EU executive (the nearest equivalent to a Member State government).

The major political groups in the European Parliament are at last serious about achieving full party status – a development that the Constitutional Treaty would have encouraged by giving European parties their own legal identities and by providing funding. Change is already under way.

In a study of voting patterns, Simon Hix, Professor of European and Comparative Politics at the London School of Economics, states that "...on the positive side, and potentially far more profound, is the emergence of a genuine 'democratic party system' in the European Parliament. First, voting in the Parliament is more along transnational and ideological party lines than along national lines, and increasingly so."<sup>12</sup>

It is already possible to discern the outlines of a developing European *demos* – in the ever-growing cross-border activities of business, trade unions, non-governmental organisations and other civil society interests as well as through the still slowly-emerging political life of the EU institutions, above all the European Parliament.

The evolution of European democratic politics will strengthen – certainly not undermine – democracy at the national and sub-national levels.

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## **An ever-wider Europe? Where will the EU's borders end?**

*by Graham Avery*

The Treaty of Rome, whose half-century we are celebrating in 2007, envisaged from the beginning that the European Community would expand. However, although it stated that “any European state may apply to become a member”, it was silent on the criteria for membership or the limits of enlargement.

Since then, the EU has enlarged repeatedly: in fact, there have been few years when it was not negotiating with prospective members. Its population has expanded from 230 to 490 million, the number of its Member States has grown from six to 27, and the number of its official languages has increased from four to 23.

At the outset, no one predicted the extent of this expansion. It is true that in the 1950s, EU founding father Robert Schuman wrote with extraordinary foresight: “We must construct Europe not only in the interests of the free peoples, but also to welcome the people of the East who, when delivered from their current subjugation, will demand membership and our moral support.”

But even as recently as 1987, did anyone expect that Schuman's dream could be realised? When the Iron Curtain still existed, who predicted that the countries of Central and Eastern Europe – including some which were part of the Soviet Union – would become members of the EU within 20 years?

This history of expansion is a tribute to the magnetism of the European model of integration. It was largely unplanned: the EU never invited other states to join its club – in fact it has tended to discourage them – and its strategy for enlargement has been reactive rather than proactive. It has grown under pressure from its neighbours, not through imperialist ambition.

So perhaps the fact that successive expansions were unpredicted should give us pause in forecasting the future.

But in recent years people have begun to ask: ‘How many more countries can we take in? How far should the EU expand? Where will it finally end?’

Many of Europe's politicians have called for a debate or even a decision on the EU's future limits, particularly after the 'No' vote on the Constitutional Treaty in France's referendum, in which it is often argued (incorrectly) that enlargement played a major role.

Interest in the EU's future borders is not limited to the political class or the academic world. Ordinary citizens, welcoming the arrival of the new members in 2004 and 2007, have often posed these questions. They are reasonable and pertinent questions, and not necessarily critical of the EU's expansion. But few political leaders want to give an answer, and their reluctance is paradoxical at a time when it is universally agreed that the EU should listen more to the concerns of its citizens.

### **What has the EU said about its limits?**

What exactly have the European institutions said up to now on the subject of the EU's future frontiers? Practically nothing.

The European Council of December 2006 held a much-heralded debate on all aspects of enlargement, and its conclusions include a dozen paragraphs on the subject, including the promise of "greater transparency and better communication". But they say nothing in response to the frequently-asked question about the EU's future limits.

The wide-ranging report on enlargement which the European Commission prepared for that discussion states that: "The question of the ultimate borders of the European Union has been raised in recent years. This has enabled the Commission to draw a number of conclusions.

"The term 'European' combines geographical, historical and cultural elements which all contribute to European identity. The shared experience of ideas, values, and historical interaction cannot be condensed into a simple timeless formula, and is subject to review by each succeeding generation. The treaty provision...does not mean that all European countries must apply, or that the EU must accept all applications. The European Union is defined first and foremost by its values."

The Commission is saying here, in an elegant way, that the question has no answer (in fact, this is a simple repetition of what it stated 15 years ago in a report to the June 1992 European Council in Lisbon). It adds a diplomatic

warning to certain European states (unnamed) which may think of applying for EU membership.

But surely the question of the future limits merits an answer, even if it cannot be a precise definition or a timeless formula? And why is the question considered ‘taboo’ by Europe’s institutions?

History shows that ‘taboo’ questions of this kind are often the important ones. So let me try to give an answer, and to explain why the politicians are reluctant to address this issue.

### **What does ‘Europe’ mean?**

The problem of defining limits has its origin in the fact that the Treaty of Rome said that “any European state may apply” without providing guidance on how to define ‘European’. Opinions differ on what it means in geographical, cultural and historical terms.

It is often said – and the Commission has reaffirmed – that membership of the EU is defined by values rather than geography.

The Treaty of Amsterdam in 1997 added a reference to values: its Article 49 modified the text of the Treaty of Rome to say that “any European state which respects the principles set out in Article 6 [which mentions ‘liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’] may apply to become a member of the Union”.

This reference to values followed the decision of the European Council in Copenhagen in 1993 that “membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.

These ‘political criteria’ are now a condition for opening (and continuing) negotiations with an applicant country.

But this does not help us much with our question of limits. In fact, if the argument concerning European values was really valid, we would expect like-minded states in distant parts of the world to be considered as possible members – for example, New Zealand, a country mainly peopled by Europeans whose society respects many European values.



This demonstrates that geographical contiguity or proximity is a precondition for membership of the EU. Interestingly, some territories which lie outside Europe are nevertheless within the EU: for example, France's overseas departments (Guadeloupe, Martinique, etc.). This exception proves the rule, because the reason why they are considered as part of European territory is that they are part of French territory.

So what are the geographical limits of the European continent? To the North, West and South, it is well-defined by seas and oceans, but to the East there is no definitive boundary. Although the Ural Mountains and the Caspian Sea are often invoked as natural frontiers, some geographers consider Europe less as a continent than as the western peninsula of the Asian landmass.

In any case, different geographical, cultural and political concepts of Europe have existed at different times. Asia Minor and Northern Africa were included in the Roman Empire's political and economic space, while many parts of today's EU were outside it – most of Germany, parts of the UK and several other Member States.

For some commentators, the experience of the Renaissance and the Enlightenment defines Europe in cultural terms. For others, the Christian religion is the critical factor.

Such examples show how difficult it is to arrive at an agreed definition by drawing on historical experience.

### **Towards a list of 'European' states**

But is it really so difficult to say which countries are accepted as European in the 21<sup>st</sup> century? Official lists of European states do exist: they can be found in the membership of the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE), intergovernmental organisations to which all the EU's Member States belong.

Let us look first at the Council of Europe which, in 2007, will have the following 47 members: the EU's 27 Member States, plus Albania, Bosnia-Herzegovina, Croatia, Macedonia (FYROM), Montenegro (applied in June 2006, membership expected soon), Serbia, Turkey, Iceland, Norway, Switzerland, Armenia, Azerbaijan, Georgia, Moldova, Russian Federation, Ukraine, Andorra, Liechtenstein, Monaco and San Marino.

Now let us check this list against that of the OSCE, which has 56 members: the 47 member states of the Council of Europe plus Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Canada, the United States and the Holy See.

It is obvious that the basic aims and activities of these two organisations are different from those of the EU, and they include a number of states which could not be considered as Union members. So let us analyse them more closely in relation to possible EU membership.

We can exclude three groups of states:

- USA and Canada: ‘transatlantic’ members of OSCE (and of NATO);
- Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan: members of OSCE which are considered by that organisation as ‘Central Asian’;
- Andorra, Liechtenstein, Monaco, San Marino and the Holy See: micro-states which have no real interest in joining the EU<sup>1</sup>.

This analysis leaves us finally with 17 states which are officially recognised as European, but are not yet members of the EU:

- Albania, Bosnia-Herzegovina, Croatia, Macedonia, Montenegro and Serbia (Balkan countries);
- Turkey;
- Iceland, Norway and Switzerland (countries of the European Free Trade Association – EFTA);
- Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine (East European countries covered by the European Neighbourhood Policy<sup>2</sup>);
- Russia.

Of these 17 states, the first seven (the Balkan countries plus Turkey) are already considered by the EU as potential members. Could it eventually embrace the ten others? Can the final limits of the Union be defined in this way? Will EU-27 eventually become EU-44?

### **The outer limits of the EU**

In my view, this list of 44 countries is the best approximation that we can now make to an official definition of Europe in geographical terms, and it is the best answer that can be given at the present time to the question ‘where ultimately could the borders of the EU lie?’

This does not, of course, mean that the EU will necessarily have 44 members. As the Commission has reminded us, no European country is obliged to apply for membership and the EU is not obliged to accept applications. Furthermore, new states may be created in Europe in future (Montenegro, for example, became independent in 2006) and existing Member States may even leave the EU.

Thus the total of 44 is not fixed in stone; but, as of now, it does represent the 'outer limits'.

Naturally, some will argue that certain countries in the list of 44 – for example, Turkey, or Russia – are not really European and should not be members of the EU. Since there are honest differences of opinion within the Union concerning the concept of Europe, such positions are perfectly legitimate. But it would be difficult for EU governments to take such positions officially, since they are signatories to the agreements from which the list is derived.

If the EU decided to refuse an application from a country in this list, it could hardly justify this on the basis that the country was not European. A refusal to open negotiations for membership would have to be based on the conclusion that:

- the country does not respect sufficiently the principles mentioned in Article 6 of the Treaty, or the Copenhagen political criteria; or
- the European Union does not have sufficient 'absorption capacity' to integrate the country as a member.

The 1993 European Council in Copenhagen stated that "the Union's capacity to absorb new members, while maintaining the momentum of European integration, is an important consideration in the general interest of both the Union and the candidate countries".

It is often said that this 'fourth criterion' is not a condition for membership in the same sense as the others decided at Copenhagen, and the Commission, in its recent report on enlargement, has usefully demystified the notion of absorption capacity.

Nevertheless, the December 2006 European Council stated explicitly that "the pace of enlargement must take into account the capacity of the Union to absorb new members", and it is clear that institutional reform of some

kind must precede or accompany any expansion of the EU beyond its present 27 members.

So if an application for membership is received from another European country, the EU could refuse to open negotiations for one of these reasons. But such a decision would surely be less definitive and permanent than a refusal on 'geographical' grounds, since in principle an applicant country could one day reform itself sufficiently to respect European values and the Union could one day reform itself sufficiently to improve its absorption capacity.

### **Prospects for future enlargement**

Let us pass to a rapid survey of the 17 European countries which are not yet members of the EU. What are their chances of joining, and when?

In the last 12 years, the number of EU Member States has more than doubled and its population has increased by one-third. In the coming years, it will continue to expand, but more slowly. That much is clear, but we cannot be precise about the timescale. The December 2006 European Council confirmed that target dates for accession will not be set until negotiations are close to completion.

In the short and medium term, the EU will limit its expansion to:

- the six countries of the Balkans (Croatia, Bosnia, Serbia, Montenegro, Macedonia, Albania);
- Turkey, whose accession is uncertain and in any case will not take place for a long time;
- the three EFTA countries (Iceland, Norway, Switzerland) which, if they applied, could join rapidly.<sup>3</sup>

The 'next frontiers' of the EU would thus correspond to all of Europe without any countries of the former Soviet Union.<sup>4</sup>

In the longer term, the EU may eventually consider as potential members:

- six East European countries (Ukraine, Armenia, Azerbaijan, Georgia, Moldova, Belarus) which will, in the meantime, remain in the EU's Neighbourhood Policy;
- Russia, also a European country but whose size would make EU membership difficult; and in terms of values, it is currently moving away from the EU rather than towards it.

Why is the question of future frontiers so problematic?

I have listed above the countries which I believe could be considered as prospective EU members, and reviewed briefly their prospects. I do not claim that my analysis is complete, and I have not offered a definitive prediction for the ultimate limits of the Union.

However, one can at least tackle the topic in a way that gives answers to the questions that people pose. So why do the EU's institutions and leaders find it so difficult to address them?

Without doubt, there will be an answer to the question of the EU's ultimate limits: one day – maybe in 2057, when the centenary of the Treaty of Rome is celebrated - historians will be able to give it. However, what interests us here and now is whether a decision could be taken on these limits in advance.

Public discussion on the EU's future frontiers is characterised by the fact that, in general, politicians opposed to further expansion ('enlargeophobes') are in favour of a decision, while those who wish to continue the process ('enlargeophiles') prefer to avoid debate.

More fundamentally, the discussion encounters three kinds of problem.

First, it is *divisive* between Member States, which have widely-differing views on future membership – and all decisions on enlargement must be taken by unanimity.

Member States which have borders with non-members often wish to include them in the EU to ensure stability and security in their neighbourhood (and to allow the neighbours to take over the task of managing the EU's external frontiers). Poland, for example, wants its neighbour Ukraine to be an EU member in the long term. But politicians in other states such as France and Germany have a more restrictive position, even on the inclusion of Turkey. In fact, discussions on the 'limits of Europe' can too easily become debates on 'will Turkey join?'

Second, it risks *negative consequences*. Take the case of Ukraine: it is so far from meeting the Copenhagen criteria that, in any case, EU membership is impossible for many years. So why try to decide 'Yes' or 'No' now, when a 'No' could have undesirable diplomatic and even economic consequences for both sides?

Third, it is *premature*. Take again the case of Ukraine: its long-term alternative to EU membership is not clear – would it be the present EU Neighbourhood Policy, an enhanced policy or some other kind of relationship?

Until the neighbourhood policy has developed more fully over a number of years, it is impossible for either side to make a rational judgement. Moreover, in politics, time is a precious commodity: it is unwise to take political decisions long in advance of the moment when they are necessary.

There is a final argument of *interest* in keeping open the prospect of EU membership to other European countries. Experience has shown that neighbouring states are willing to modify their political and economic behaviour considerably in the hope of obtaining membership. Their transformation in the direction of stability and prosperity are in the EU's interest. In order to maintain this leverage, the possibility (not the guarantee) of accession needs to remain open.

To define the Union's ultimate borders now would demotivate those excluded and diminish the leverage for those included.

So it seems likely that for the EU's enlargement, and its ultimate borders, a policy of 'constructive ambiguity' will prevail. The EU's final limits will result from the course of events and successive political decisions, rather than from a strategic choice made in advance.

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## Endnotes

1. Liechtenstein is an interesting borderline case: although it is a member of the European Economic Area, it has signified that, with its tiny population (34,000) it prefers to stay outside the European Union.
2. With the exception of Belarus, which nevertheless would be accepted for the EU's Neighbourhood Policy and for the Council of Europe, if its political conduct was more in line with European standards.
3. Norway and Switzerland already applied for EU membership, but their people said 'No' in referenda. If Norway reapplied, Iceland would probably follow.
4. With the exception of Estonia, Latvia and Lithuania, which joined the EU in 2004.

## Afterword

*by Renato Ruggiero*

On 25 March, the Heads of State and Government of the EU's 27 Member States will meet in Berlin for a solemn celebration of the 50<sup>th</sup> anniversary of the Treaty of Rome. At the start of April, the process of electing a new French President will begin. Then, in the middle of June, just a few days before the end of Germany's EU Presidency, Chancellor Angela Merkel will preside over a European Council largely devoted to overcoming the current impasse over the Constitutional Treaty and thereby relaunching the European project.

The combination of all these factors has already had a positive impact on the long 'pause for reflection' which was launched after the double 'No' to the EU's Constitutional Treaty in the French and Dutch referenda.

The debate has now been revived, albeit in a less-than-perfect manner, and a new sense of realism seems to be spreading among both the large majority of Member States (18 up until now) which have already ratified the treaty and those which have rejected it.

While it is clearly premature to advance hypotheses about possible compromises, there are positive signs that both 'sides' – those which ratified the treaty and those which responded negatively – are demonstrating a certain willingness to agree that whatever solution is found cannot ignore either the political significance of the fact that 18 EU Member States have successfully ratified the Constitution, or that two countries said 'No' in popular referenda.

A path towards a compromise should be possible, saving the substance of the treaty while changing the form if necessary. Italian Foreign Minister Massimo D'Alema, in a speech to the European University of Florence, was in any case very clear in setting out some of the reforms that are essential for Italy: the creation of an EU Foreign Minister and a permanent President of the Council; the extension of Qualified Majority Voting; the introduction of instruments of direct democracy; and granting full legal force to the Charter of Fundamental Rights.

Europe-wide opinion polls also provide some signs of encouragement, showing that most of the critical verdicts on the current state of European construction reflect a demand for 'more' not 'less' Europe.

In recent polls from Gallup Europe in Brussels, 77% of those interviewed from the EU-25 Member States wanted a common security and defence policy, and 68% wanted a common foreign policy. Furthermore, more than 50% (rising to above 75% in some countries) felt that it was more the responsibility of the European Union than of individual Member States to promote peace and democracy in the world, protect the environment, ensure security of energy supplies, prevent the main threats to health, promote economic growth, preserve social rights and fight unemployment.

As the dialogue over institutional reform gets under way again, all eyes will be on the Germany Presidency's first 'big' appointment: the celebration of the 50<sup>th</sup> anniversary of the signing of the Treaty of Rome.

On this occasion, EU Heads of State and Government must approve a declaration on the future of Europe. This should be a highly political and necessarily short document, which takes as its starting point the recognition of the enormous political and ideological value of the construction of Europe to date.

No one can fail to acknowledge our continent's profound historical achievements. Following the end of a terrifying global conflict which began in Europe, men of great vision and courage conceived of – and realised – an innovative process for intra-European relations based on the creation of common institutions able to articulate common interests.

It was not a matter of revoking national sovereignty but of sharing the exercise of it, based on the common good. It is this grand vision which makes it possible to characterise Europe as an original system of values centred upon the individual – and it is these values, more than others, which identify what it means to belong to, and share in, the construction of Europe.

It is absolutely essential to remember the deep motivations which lay at the heart of this historic project. This is especially true for younger generations who have only known the success of these values and not the tragedies which Europe and the world suffered in the first half of the 20<sup>th</sup> century.

But it is also clear that, on its own, this is necessary but not enough to confront the new reality and the new problems facing society today. It is often said that Europe is in need of a new 'motivation'. However, we do not need to search for this new motivation: it is all too clear in our daily lives and in the challenges we face in the future.



Our times are characterised by rapid and profound changes in the world balance; by global challenges which no single nation state, however powerful, is capable of tackling successfully on its own.

Forecasts suggest that the current ranking of the world's economic powers could be profoundly changed by the emergence of new great powers: China, India, Russia and Brazil. Within two or three decades, it is likely that no single European country will feature among the top-ranking powers. And even redressing huge financial imbalances such as those affecting the United States will require proactive international collaboration.

The problem of poverty in the world and the unacceptable disparities in living standards look ever less sustainable. Migration flows can constitute a valid response only within certain limits. Experts predict that the world's population could rise by two billion over the next two decades, with 80% born in the South of the globe.

To an ever greater extent, problems such as inadequate increases in water and energy resources and the need to protect the environment could become unmanageable, even for developed countries, in the absence of new and adequate global policies.

In the light of this reality, the realisation of a more complete European Union – one which, by dint of its institutional, political, economic integration, and its social and cultural development, allows our continent to continue to be a protagonist of peace and progress in the new world order – is therefore not an option, but a necessity. There are no valid alternatives. We also have a political and ethical duty, both to the new generations in our countries and to demonstrate our solidarity with all those who live in poverty.

There is a strong demand today to improve the governance of our growing interdependence and the resulting globalisation. But only an EU geared towards a genuine political union, equipped with a foreign, security and defence policy, integrated in a monetary union accompanied by genuine coordination of economic and social policies and framed in Community-style democratic institutions, will be able to respond to people's hopes and fears in a rapidly-changing world.

The forthcoming Berlin Declaration should therefore be a political message capable of commanding consensus among the 27 Heads of State and

Government, and thus facilitate the launch of the difficult negotiations on the Constitutional Treaty and the future of Europe.

However, in order to be credible and to avoid looking like a mere exercise in fine rhetoric, this message must contain some commitments. I will mention two: it must equip the EU with real and effective decision-making capacity; and it must fix one or more dates to set the time horizon for completing the fundamental aspects of the EU.

As well as setting a date to achieve this major objective, one should also be fixed – for example 2009, right before the next European elections – for reaching an agreement on the 'constitutional' problem. After all, setting a date for meeting such goals has been a well-established practice in the construction of Europe and would therefore be difficult to argue against.

The next few months will be crucially important in determining whether it is possible for us to get back onto the path towards a stronger European Union, working together and all with the same rights and duties.

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## Mission Statement

The European Policy Centre (EPC) is an independent, not-for-profit think tank, committed to making European integration work. The EPC works at the 'cutting edge' of European and global policy-making providing its members and the wider public with rapid, high-quality information and analysis on the EU and global policy agenda. It aims to promote a balanced dialogue between the different constituencies of its membership, spanning all aspects of economic and social life.

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