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Androulla Vassiliou

# The European Union after the Treaty of Lisbon:

Visions of leading policy-makers, academics and journalists

# L'Union Européenne après le Traité de Lisbonne:

Visions de décideurs politiques, d'académiques et de journalistes

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DG Éducation et culture

Programme pour l'éducation et  
la formation tout au long de la vie

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European Commission  
Directorate-General for  
Education and Culture  
Jean Monnet Programme

Commission Européenne  
Direction générale de  
l'éducation et de la culture  
Programme Jean Monnet

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# Welcome speech

Jan Truszczyński

**Jan  
Truszczyński**

Director  
General for  
Education  
and Culture of  
the European  
Commission



Excellencies,  
Ladies and Gentlemen,

I have the great pleasure of welcoming you to the 2010 Global Jean Monnet and ECSA-World Conference. It is my privilege to introduce Ms Nathalie Nicaud, an outstanding soprano with a brilliant voice and international career, who will interpret the "Ode To Joy" of Beethoven's Ninth Symphony. It is a rare privilege to begin a day's work under such harmonious and melodious conditions.

Ladies and gentlemen,

President José-Manuel Barroso will open this conference. The past weeks have underlined the importance for the Union of having such a forward-looking, committed and driven leader at the helm of our institution. Mr President, we are all very grateful that you have taken the time out of their busy agenda to be with us today.

President Barroso's intervention will be followed by Mrs Doris Pack, the Chair of Parliament's Committee on Culture and Education. As you all know, Mrs Pack is one of the most distinguished Members of the European Parliament, holding many



prestigious awards for her parliamentary work in the fields of education, culture and youth.

Mrs Pack, this is also an occasion to express my warm gratitude to you and the European Parliament for having allowed us to organise this Global Jean Monnet Conference in your premises. It is another example of the outstanding cooperation between our two institutions. Of course, the European Parliament has always been closely associated with the Jean Monnet Programme and its Conferences. This link is personified by Professor José-Maria Gil-Robles who, as former President of the European Parliament and current President of the Former Members Association, also chairs the European University Council for the Jean Monnet Action. Sir, I thank you very much for your continuing commitment to the Jean Monnet Programme.

Ladies and gentlemen,

As we can see here today, the Jean Monnet and European Community Studies Association networks are truly world-wide multipliers of excellence in the study and knowledge about the European Union. In this prestigious room of the European Parliament, Ambassadors, diplomats and Jean Monnet Professors from all continents have come together for a real exercise of intercultural dialogue on the European Union's future after the Treaty of Lisbon. The quality of the people gathered here reflects the quality and the pertinence of the Jean Monnet Programme. And this brings us to our next point: the presentation of the Jean Monnet Prize 2010.

For this part of our agenda, I am glad to give the floor to Mrs Vassiliou, Commissioner for Education, Culture, Multilingualism and Youth. Mrs Vassiliou, let me add how glad we are in the Directorate General for Education and Culture to work under the guidance of such an eminent Commissioner.

# I. Opening session

José Manuel Barroso

Doris Pack

**José  
Manuel  
Barroso**

President of  
the European  
Commission



## **THE EUROPEAN UNION AFTER THE TREATY OF LISBON**

Ladies and gentlemen, dear colleague Androulla,

It is indeed a pleasure to welcome you all – especially the Jean Monnet professors who have come to Brussels from all over the world, and to open this inaugural session with Ms Doris Pack, the chair of the Committee on Education and Culture of the European Parliament.

As you know the European Commission attaches enormous values to your academic work, and to your presence in the public forum.

Today, the Jean Monnet network is the largest knowledge community on European Union issues, and has a truly exceptional level of expertise. With a presence in 62 countries across five continents, you give the European Union worldwide visibility and you give great contributions to academic studies on European affairs.

At the same time you remain independent, authoritative and sometimes critical voices. I wouldn't have it any other way. It is because of this that your views command respect and are the best weapon against some populist attacks and unfair

misrepresentations of the European Union as a project. I would like to invite you to keep in touch with the European Commission and with our project, of course in full respect of your academic independence. I think we are living at a phase when we are in need of the independent advice you can give in the middle of these very important transformations. The European Union, and the European Commission more concretely, will be attentive to some of your suggestions, namely through BEPA, the Bureau of European Policy Advisers. It is a body that works directly with me in these areas, lead by Jean Claude Thebaut, who is with us today. And I am sure that it is a practical way of putting some of your input, if you wish of course, in the policy making of the European Union.

Ladies and gentlemen,

It has become a tradition for me to use this platform to reflect on major policy developments and coming priorities.

Last year, I spoke of how the financial and economic crisis was changing the world. I spoke of the need to respond by building a more political Europe, and called on Member States to recognise their interdependence, and engage more fully on the European level.

This year, we are indeed building a more political Europe, and the entry into force of the Lisbon Treaty can contribute and is contributing to this. This is the subject of this year's conference, and I would like to share some of my thoughts about what this means today. At least seen from the Commission point of view and from my point of analysis of what is going on in our institutions.

As you know, the financial and economic crisis is not yet over, so I will say also a few words about the Commission's ambitious proposals to greatly reinforce European economic governance. This will also see Member States engaging much more at the European level, politically.

First, about the Lisbon Treaty. There is no need to outline its contents, namely in front of such a knowledgeable audience! But there is a curious interpretation of the treaty in certain quarters that I would like to comment on.

As you know, Europe has always been more than a simple marketplace. It's the greatest, and most successful, experiment in economic and political integration in the world. It's a community of law and values. It's an area of cooperation and solidarity.

The motor of all this progress has been the community method: strong European institutions, including a Commission that can develop and implement policies that are in the overall European interest.

We are the inheritors of this method, a precious gift from visionary leaders who were determined to turn the page on war and conflict in Europe forever. So it comes as a surprise to me that some have interpreted the Lisbon Treaty as a defeat for the community method, as a victory for intergovernmentalism.

Nothing could be further from the truth.

If you look at the Treaty, its letter, and its spirit, you will see that what there is more community method, not less. The Treaty of Lisbon reinforces the European project. It reinforces Europe's institutions - all the institutions. It provides greater coherence, effectiveness and legitimacy to our decisions.

Nearly all legislation is now adopted by co-decision, with a significant expansion in qualified majority voting – especially in the field of justice and home affairs, for instance. So how can someone say that the qualified majority voting as a rule means more intergovernmentalism and less community method? How can anyone suggest that the increased role of the European Parliament, the institution directly elected by the European citizens means more intergovernmentalism and less community method? The competences of the Commission have also been acknowledged and reinforced, including its near monopoly on legislative initiative and its executive functions. It gains new competences, notably in the areas of economic and monetary union and external relations.

Europe has also a new face to show to the world, in the person of the High Representative, who is also Vice President of the Commission.

This position streamlines work by merging three previous roles, avoiding confusion and duplication. It strengthens coherence in external action, and brings together all

Europe's external policy tools, both in policy development and policy delivery. What was before done by the High Representative, a Member of the Commission and the chair of the Foreign Affairs Council is now done by the same person.

The new external action service, responsible for Europe's diplomacy, will bind national diplomatic services closer together, and reinforce the place of Europe in the world.

Finally – in what is just the briefest of summaries – a new, permanent President of the European Council is contributing to a reinforcement of the Union, namely through an increased continuity, coherence and strong leadership in the European Council.

Far from seeing the European Council as a rival to the Commission, I see it as a powerful ally who can act as a way of reinforcing the European project if, of course, there is a loyal cooperation between our institutions. Let me tell you now from my experience of six years in this position that the real problem that we have when it comes to a decision at European level, does not come from the institutions if they respect the competences and if they take decisions in the European spirit . It comes very often from narrow-minded, nationalistic, chauvinistic political leaders at national level.

All of these innovations I have just outlined are major steps forward. And their general thrust is clear: a more European approach, more Community method for joint European action. And that's as it should be. Because when we follow a community approach, based on respect of the competences of all the institutions, and loyal cooperation between Member states and the institutions, we can achieve much more.

That is why I'm sharing my puzzlement with you, about how some have misinterpreted the Lisbon Treaty, because it is important, I think, for all of us to convey the truth about these changes. "The European Union after the Lisbon Treaty", provided that there is political will for a stronger Europe, a more democratic Europe, a more efficient Europe, and a more visible Europe on the global stage.

And far from being a high water mark in the construction of Europe, the Lisbon Treaty - like past treaties - is proving to be just the latest staging post in an ever closer union.

Since it entered into force, the European Union has continued to take steps that increase Member States' engagement at the European level, and bind them closer together, in recognition of their increasing interdependence. It brings me nicely to the latest such step I mentioned earlier: the proposals by the Commission for greater European economic governance.

Such a move is essential, because confidence in both European economies and the euro itself have taken a hit over recent weeks. Without confidence, there can be no growth. Without growth there can be no exit from this crisis, no jobs, no investment in Europe's future, no prosperity for Europe's citizens.

Confidence has taken a hit because of the crisis in Greece, of course. And while it is true that the deterioration in public finances is partly due to attempts to limit the impact of the financial crisis, it is also a result of the failure to reduce debt levels during the period of economic growth. Yes, there is speculation against the sovereign debt of some Member States, but speculators are surfing the wave, and the wave is precisely the wave of high levels of debt and the lack of structural reforms. So we should not give the speculators a wave to surf on. And there is I think a misinterpretation of the reality, presenting it just as a result of speculator's action or presenting it just as a result of the lack of structural reforms.

To put it bluntly, some Member States - by no means just Greece - have not undertaken the structural reforms that were needed and they have not respected the Stability and Growth Pact and namely the principles of financial stability that are enshrined in the Lisbon Treaty and were already enshrined in past Treaties.. And the crisis has shown that existing mechanisms for fiscal discipline and imbalances are simply not up to the job, and namely that we have no clear rules about what to do in case of non respect of the Treaties.

Just like the banking crisis, this collapse of confidence has demonstrated how interdependent European Union economies really are, and how a crisis in one

Member State can affect them all, and indeed not only in the euro area, in the European Union and in global markets. If someone still needs some proof, some evidence of the levels of interdependence we are now seeing in Europe and in global markets, I think the recent case with the euro is a powerful, and extremely dramatic, demonstration of how interdependent we are. This underlines the need for action in the euro area, and also by all 27 Member States of the European Union.

The time has come to beef up the 'E' of EMU, instead of just lamenting the shortfalls of the 'M'! As I have been saying for several years, we cannot have a monetary union without an economic union.

On 7 May 2008 when we presented the report of the first 10 years of the euro, commemorating that fact we said in the most explicit terms, that the euro has been a success, but to continue as a success we need stronger economic policy coordination, stronger economic governance of the euro area and also addressing some of the imbalances in the euro area and in the European Union. Two years afterwards, I think, Member States realize that this was the case.

So what are we proposing?

First, to ensure that the Stability and Growth Pact's rules for fiscal discipline are really respected. For instance, earlier scrutiny of the Member States' budgets in a peer review exercise will make sure governments pay more attention to respecting the rules. Some are arguing against this proposal of the Commission on the basis of the so called respect of the principle of sovereignty. It's not recognized in the simple reality. A reality that decisions taken by another Member State have a direct impact on the economic policy and economic situation of all the other Member States. And as the Lisbon Treaty recognizes – economic policy in one Member State is not just a matter of national interest, it is indeed a matter of European interest. So it makes sense, and in fact it reinforces the powers and the competences of national Parliaments that they are in connection with other Parliaments when they prepare their budgets, because the decisions taken by the other Parliaments and their own decisions will have an impact on the overall community in the euro area, and outside the euro area. But it is interesting to see how some national politicians react to something that comes only from common sense. It is impossible to deny that a



decision taken by the Parliament of Greece has an impact in the German Bundestag, as a decision in the French Assemblée nationale has an impact in all other Member States of the European Union. So it makes sense from a political and institutional point of view to have this kind of peer review if we want to have stability and prosperity in the euro area and the European Union.

At the same time, we need to look at the policies. This is what Europe 2020 is about: building a competitive economy for the future, that delivers smart, sustainable and inclusive growth.

Of course, these policy choices have budgetary implications. And yet up until now, we have always looked at the policies in spring - the former Lisbon reports - and the budget in the autumn - the Stability and Convergence Programmes.

That doesn't make sense.

We should look at the policies and their implications for budgetary discipline at the same time. This is why we propose to establish a 'European Semester' for economic policy coordination. It's about joined-up economic governance. As we have seen now during this crisis it's clear that at the root of the crisis are major economic imbalances. So it makes sense precisely to reinforce the Stability and Growth Pact to consider not only the macroeconomic aspects but the microeconomic aspect of the reforms, but also the external dimension. We cannot have an economic policy for Europe that is fragmented as if we are not living in the same world, as if we should not take into consideration the various aspects of our economies and their development.

This is not about taking over Member States' tax systems. This is not about breaching national sovereignty. On the contrary, the European Semester will allow Member States and their national parliaments to benefit from an early analysis of both their budgets and their macro-economic performance.

Obviously, if corrective action is still not taken, then it must be possible to apply sanctions. People do not like the word sanctions, so I've suggested calling them "incentives for compliance". But we need to give credibility to our rules. If we do not

give credibility to our rules, most likely they will not be respected. So we are now proposing some of these sanctions, of course not with the idea to implement these sanctions, but to give some incentives to the Member States to adapt the corrective measures so that they will not need to see those sanctions implemented.

Let me be clear: there is no question of taking financial resources away from a Member State, especially when it is in a difficult position. What we say is that we should look at how in the next, the post-2013 budgets, a link could be established between respecting the rules and the way money is spent.

In a crisis like this, prevention is always better than correction, of course. But when even correction is not enough, the European Union must have the appropriate tools to take immediate action. We need to be able to intervene much earlier in a crisis, once prevention and correction have failed. We need more action, less reaction. That is why the Commission has also proposed a permanent and robust framework for crisis management.

Now, anyone reading the newspapers over the last three months would be forgiven for thinking that the Lisbon Treaty reforms are yesterday's news; that the stability of the euro is our sole preoccupation.

It is true that the Commission has worked night and day to avoid the financial collapse of Greece, and to support the euro area. The Commission has drafted a stability programme with the Greek authorities, led the calls for the €110 billion loan to Greece, and put forward a proposal for a stabilization mechanism for the euro area.

I am proud of the role that the Commission has played throughout one of the most serious crises that the European Union has ever faced. Some consider it the most serious crisis ever, because it was a real test to the rules, to the Treaties, and to the principle of responsibility and the principle of solidarity.

That crisis unfortunately is not yet over, and we are still seeking the best way out. But what is clear is that finding the right direction is much easier with the Lisbon Treaty. And I am coming back to the theme of our subject.

It is a simple fact that without the Lisbon Treaty innovations, especially the new Article 136, we would not have been able to propose the strengthening of the coordination and surveillance of budgetary discipline that I have just outlined. And so I want to tell you that it will be based on Article 136 that the Commission will come with several proposals that in full respect of the Treaty will increase the governance in the euro area and in the European Union. It will be much more difficult, as I am sure all the lawyers among you will recognize; to do it without a clear legal basis. But once again, the legal basis is not enough, we need the political input and the political willingness namely from our Member States. I think today we are closer than we ever were to that. Because as we know, and as most of you know from your studies in European integration history, that it is in times like these, in times of crisis that usually the European Community or the European Union find the resources to act and to move forward in our European project.

Ladies and gentlemen,

Despite the improvements that you can find in the Lisbon Treaty, these remain difficult times for Europe - and indeed the rest of the world.

We live in the middle of a historic challenge: we need to fight against the fear that citizens naturally feel during very difficult economic times; fear that can provoke inward-looking reactions.

And we should not forget that in these times there are sometimes occasions where we see populism, xenophobia and chauvinism in Europe. This has been the case in the past, can also be the situation in the present. That is why we need this type of leadership at all levels to make the case for Europe, the passionate case for some but at least in a rational way for everyone. I have sketched out some of the new tools available to us. I have also outlined some of the key economic challenges, and the opportunities European institutions are already seizing in responding to these challenges. Given more time, I could probably add a few institutional and external policy challenges we face as well! But I know that during the conference you will have the opportunity to address some of those challenges.

But one thing is clear: teasing out all the opportunities these challenges hide, and using the new tools available to us in the best way possible, will call for unprecedented and continual intellectual effort.

We need an impassioned analysis of the facts. We need to interpret these facts in innovative ways. And we need constructive and viable ideas for our future policies.

I expect a great deal from the Jean Monnet Programme in all these respects – analysis, interpretation, and fresh ideas for the future of Europe.

I have no doubt that with your help, our Union will manage to overcome today's daunting challenges.

We will have to build on our historic achievements and make full use of the new tools to devise innovative, but at the same time realistic policies. Above all, we will need to win the battle of ideas. I think we are in a moment in the European integration process where this battle of ideas is coming to a very critical point. We are in a situation, from my point of observation, where if the European Union does not go further, it may be going back forever. This is the situation as we see it. It is not the old doctrine of the bicyclette, but it is a situation where we cannot be in that specific time. I do not mean from institutional point of view, and necessarily from the point of view of new Treaties. That is not what I am suggesting. I think that in the current Treaties we can do much more but there are some decisions crucial for the European Union where we need the support of those who are able to come with new ideas.

The recent crisis calls for swift and extraordinary measures. Everyone knows that. But above all it calls for a more structured European response. When it comes to the future of the euro and our Union, we need to listen carefully to the critics, while rejecting the predictions of professional pessimists. I've spoken last year to you about what I called the "intellectual glamour of pessimism". The world is now full of Cassandras. Sometimes I see in some of the English speaking literature of the euro, what I would call "wishful thinking", because they expect the euro to fail. This is not my analysis. The euro will succeed and the euro will succeed because there are deep interests in the economic integration of Europe that demand that, apart from

the importance of the political project. That is why I am really confident that Europe's unity is Europe's most valued asset, and this is never truer than in times of crises.

We can turn today's challenges into opportunities only if we stand together, give a collective response, and never lose sight of the values that have kept us together for more than 50 years. Those values are more important than ever.

And as I have said, you have an important role in this process. You have the knowledge, the expertise, and the intellectual independence to assist the Union in the difficult tasks that lie ahead.

And this is one, just one of the many reasons why I will always support the Jean Monnet network. Indeed, I intend to defend and consolidate the programme in the years to come.

Ladies and gentlemen,

As well as the traditional cohort of respected academics, this year's Jean Monnet conference has brought together a number of distinguished policy-makers, diplomats, and journalists.

I welcome this fact, because I believe a more diverse audience will stimulate debate over the next couple of days. I also believe that the presence of so many participants from non-academic circles shows the power of attraction of the Jean Monnet network. It is recognition of the vitality and authority of your expanding global community. I have no doubt that the outcome of your work today and tomorrow will live up to the high standards fixed by past conferences.

Therefore, it only remains for me to wish you fruitful discussions, and every success.

Thank you very much for your attention.

## **Doris Pack**

Chair of the Committee on culture and Education of the European Parliament



## **THE EUROPEAN UNION AFTER THE TREATY OF LISBON**

Ich danke für die Gelegenheit, vor Ihnen sprechen zu dürfen.

Als Berichterstatterin für das Programm Lebenslanges Lernen kenne ich das Jean-Monnet-Programm sehr gut und weiß, dass Sie als Jean-Monnet-Professoren ein sehr wichtiges Netzwerk von profunden Kennern der europäischen Integration sind. Die Zahlen sind eindrucksvoll: 1.500 Professoren in 141 Jean-Monnet-Zentren in 62 Ländern, die ca 250 000 Studierende jährlich erreichen. Ich bin stolz, wie hier auf so unmittelbare Weise ein sinnvoller Mehrwert mit EU-Mitteln entsteht.

Als Parlamentarierin und Vorsitzende des Ausschusses für Kultur und Bildung möchte ich zunächst einige kurze Bemerkungen über die Änderungen machen, die der neue Vertrag für das Parlament bewirkt hat, und anschließend auf die Bedeutung von Bildungspolitik für die neue 10-Jahresstrategie der Europäischen Union "Europe 2020" eingehen.

## Der Vertrag von Lissabon und das Europäische Parlament

Ein kluger Mensch hat einmal gesagt: "Damit wir wissen, welchen Weg wir einschlagen, sollten wir uns darüber klar sein, woher wir kommen": vor 60 Jahren markierte die Schuman-Erklärung den Ausgangspunkt eines ehrgeizigen Projekts: die friedliche Einigung der Europäer, die sich Jahrhunderte lang in Bruderkriegen zerfleischt hatten.

Seit seiner allgemeinen Direktwahl im Jahr 1979 hat sich das Europäische Parlament stets bemüht, das Funktionieren der Struktur, die schließlich zur EU wurde, zu demokratisieren und effizienter und transparenter zu gestalten. Dies war auch die Grundhaltung des Parlamentes während des Verfassungskonventes und der Regierungskonferenz zum Vertrag von Lissabon.

Mit Blick auf die neuen Vertragsänderungen möchte ich einige kurze Bemerkungen machen, die sich auf die neuen legislativen, haushaltspolitischen und Kontrollbefugnisse des Parlamentes beziehen:

1. Der Vertrag von Lissabon macht aus dem Europäischen Parlament einen stärkeren Gesetzgeber, indem 40 zusätzliche Politikbereiche unter das „ordentliches Gesetzgebungsverfahren“ (bisher „Mitentscheidungsverfahren“) fallen. Zu diesen Politikbereichen gehören z.B. Landwirtschaft, Energie, Einwanderung, Justiz und Inneres, Gesundheit und Strukturfonds. Insgesamt fallen nun 86 Rechtsgrundlagen unter dieses Gesetzgebungsverfahren. Außerdem sind einige Politikbereiche, die bisher nicht - oder nicht explizit - in die Zuständigkeit der EU fielen, ausdrücklich als solche benannt worden, wie etwa für die Bereiche Energie, Gesundheit, Raumfahrt, Fremdenverkehr und - für meinen Ausschuss von Bedeutung - Sport. Auch dies erhöht den legislativen Einfluss des Parlamentes.
2. Das Parlament hat sich stets für eine verbesserte demokratische Kontrolle und Rechenschaftspflicht auf europäischer Ebene eingesetzt. Zukünftig wird es nun den Präsidenten der Europäischen Kommission wählen und auch die (der) Hohe Vertreter(in) für die Außen- und Sicherheitspolitik benötigt die

Zustimmung des Parlaments. Dies stärkt nicht nur das Parlament, sondern erhöht erheblich die demokratische Legitimation der europäischen Exekutive. Zukünftig bedürfen auch alle internationalen Abkommen, die EU abschließt, seiner Zustimmung. Neue Verfahren, die mit dem Inkrafttreten des neuen Vertrages die bisherige Komitologie ersetzen sollen, sind zur Zeit in Verhandlung. Auch hier werden angemessene parlamentarische Kontrollbefugnisse gewahrt werden.

3. Bei der Aufstellung des Haushalts kommt dem Parlament ebenfalls eine größere Rolle zu, da die Unterteilung in obligatorische und nichtobligatorische Ausgaben abgeschafft worden ist. Das Parlament wird nunmehr gleichberechtigt mit dem Ministerrat über den gesamten Europäischen Union-Haushalt bestimmen. Umgekehrt bedeutet dies, dass auch der Rat viel stärker als bisher auf bestimmte Ausgaben Einfluss nehmen wird, die bislang eine Domäne des Parlamentes waren. Außerdem muss gesagt werden, dass das Parlament bei der Entscheidung über die mehrjährige Finanzvorschau weiterhin in seinen Möglichkeiten eingeschränkt bleibt (Zustimmung statt Mitentscheidung).

Das Urteil des Parlamentes zum Vertrag von Lissabon fällt im Ganzen positiv aus, wenn wir auch die Abstriche bedauern, die der Vertrag im Vergleich zum Verfassungsentwurf enthält. Aber das Glas ist immer noch halbvoll statt halbleer. Die zusätzlichen Einflussmöglichkeiten, die das Parlament durch den Vertrag von Lissabon übertragen bekommen hat, sind kein Selbstzweck, sondern dienen dazu, Erwartungen gerecht zu werden, die wir alle als Demokraten in einer pluralistischen Gesellschaft an ein Regierungs- und Verwaltungssystem haben.

## **Europe 2020**

Die Kommission hat im März dieses Jahres den Vorschlag zur "Europe 2020-Strategie" vorgelegt, die der EU als Richtschnur in den kommenden zehn Jahren dienen soll. Das Europäische Parlament beschäftigt sich aktuell mit dieser Thematik in mehreren Entschlüssen und Debatten. Allerdings ist der enge Zeitplan, der eine Verabschiedung der Strategie durch den Europäischen Rat im Juni vorsieht,



nicht unproblematisch und behindert eine umfassende Bewertung des Vorschlages. Man sollte nicht davon ausgehen, dass das Parlament derart wichtige Texte einfach durchwinkt: ein längerer Beratungszeitraum wäre der Materie sehr viel mehr angemessen gewesen.

Die Kommission hat im Europe 2020 Entwurf richtigerweise die zentrale Bedeutung von Bildung, Innovation, Mobilität und Forschung hervorgehoben. Mehrere der vorgeschlagenen "Flugschiff-Initiativen" betreffen den Bereich Bildung im weiteren Sinn, besonders die Initiative "Youth on the Move".

Wir unterstützen die grundsätzliche Ausrichtung des Entwurfes, auch wenn wir meinen, dass etwa die Mobilität nicht auf die jüngere Generation beschränkt sein sollte: Lebenslanges Lernen ist nach wie vor eine zentrale Aufgabe der Bildungspolitik in Europa. Die Überlegung, das Programm Lebenslanges Lernen mit den Programmen Jugend und Erasmus Mundus zu verbinden, scheint mir in die richtige Richtung zu gehen, um formelle und informelle Bildung enger zusammenzuführen und nationales, europäisches und internationales Lebenslanges Lernen zu gewährleisten.

In jedem Fall sollten den politischen Willenserklärungen aber die entsprechenden finanziellen Ressourcen folgen. In den Verhandlungen zur nächsten finanziellen Vorausschau ab 2014 muss dies seinen Niederschlag finden. Die Vorschläge dazu wird die Kommission im nächsten Jahr vorlegen, parallel zu den Vorschlägen für die nächste Generation der Mehrjahresprogramme im Bereich Kultur, Bildung und Bürgerschaft. Hier wird sich zeigen, wie ernst es allen Beteiligten mit der Förderung von Bildung, Mobilität, Kreativität und Innovation ist.

Wie in der Vergangenheit wird unser Ausschuss für die entsprechenden Mittel streiten. Dafür benötigen wir überzeugende Argumente, besonders in diesen schwierigen Zeiten. Und diese Argumente existieren:

Die Programme im Bereich Bildung gehören zu den erfolgreichsten Programmen, die die EU hat: sie sind überaus populär - das Problem des Mittelabflusses besteht hier nicht, im Gegensatz zu anderen EU-Politiken - , sie erreichen die Menschen

unmittelbar, machen europäischen Mehrwert somit sichtbar und tragen spürbar zu einem weltoffeneren und europäischeren Bewusstsein der Menschen bei. Dabei fördern sie Sprachkenntnisse und andere wesentliche Schlüsselkompetenzen.

die faktische Notwendigkeit, in Bildung zu investieren: In alternden Gesellschaften, mit sich diversifizierenden Arbeitsmärkten und globalem Konkurrenzdruck kann es sich Europa nicht leisten, dass 15% aller Schüler ihre Schulausbildung abbrechen, dass ein Viertel unserer 15-jährigen schwache Lesefähigkeiten besitzen und das nach wie vor Kinder mit Migrationshintergrund nicht angemessen in Bildungssystem und Arbeitsmarkt integriert sind.

Die Bildungspolitik der Europäischen Union kann ganz erhebliche Unterstützung zu den nationalen Bildungspolitiken leisten: Das Erasmus-Programm hat ganz entscheidend zu einem Erfahrungs- und Wissenstransfer beigetragen - insbesondere zur Ausformulierung des Bologna-Prozesses - und damit zu einem Reformprozess, der Hochschulbildung in Europa in die Lage versetzen kann, die heutigen Erwartungen an eine qualitativ hochwertige Hochschulausbildung zu erfüllen.

Aus diesen Gründen halte ich höhere Ausgaben für EU-Bildungspolitik in diesen Bereichen für sinnvoll, notwendig - und alternativlos. Wir sollten uns überlegen, ob wir weiterhin 880 Millionen € jährlich in die Produktion von Obst und Gemüse stecken, wenn gleichzeitig nur 1400 Millionen € in allen Programme für Bildung, Jugend, Kultur und Bürgerschaft bereitstehen. Aus meiner Sicht sollte sich der EU-Haushalt mehr als bisher auf Investitionen in die Menschen konzentrieren.

Natürlich können Erfolge in diesen Bereichen nur erzielt werden, wenn parallel starke Anstrengungen auf nationaler Ebene unternommen werden. Für Bildung, berufliche Ausbildung, Jugend und Kultur existieren bereits Kooperationsrahmen des Rates mit anspruchsvollen Zielen, die in die richtige Richtung weisen.

In haushaltspolitisch schwierigen Zeiten sind Investitionen immer schwierig durchzusetzen. Dennoch bin ich davon überzeugt, dass Investieren in Menschen, in ihre Bildung und Ausbildung, in ihre innovativen und kreativen Fähigkeiten die langfristig sinnvollste Art ist, Europa und seinen Bürgern ihre Zukunft zu sichern.

## II. 2010 Jean Monnet Prize

Androulla Vassiliou

José-Maria Gil- Robles

Enrique Banús

## **Androulla Vassiliou**

Commissioner for Education, Culture,  
Multilingualism and Youth



### **2010 JEAN MONNET PRIZE**

Excellencies,  
Ladies and Gentlemen,

Let me start by expressing my warm thanks to President José-Manuel Barroso and Chairwoman Doris Pack for having taken the time out of their busy agendas to be with us today. It was a great privilege for all of us to benefit from your unique insights in the current evolution of the European Union and the world.

This conference is my first meeting with the worldwide network of Jean Monnet Professors as Commissioner responsible for Education and Culture. It is an enormous privilege for me to spearhead European Union action in areas which can touch directly the lives of every European citizen. And it is a special privilege to be responsible for the Jean Monnet Programme.

As recent events have proven without a shadow of a doubt, Europe's future depends on further integration based on responsibility and solidarity. To succeed, we need action that is embedded in sharp analysis, skilled reflection and intellectual input.

Looking at this gathering of Jean Monnet Professors, I cannot imagine a more competent group of independent, critical and therefore credible top-level intellectuals on European integration.

The relevance of the Jean Monnet Programme has never been more evident. But let me now move to what we are all eagerly expecting. This is the time to announce the winner of the Jean Monnet Prize 2010.

As you know, the Lifelong Learning Programme awards a number of prizes to highlight excellence in the implementation of specific projects. We have decided to continue with this practice and to award one Jean Monnet Prize per year at the annual Jean Monnet Conference.

Like the previous years, the selection took place under the guidance of Professor José-Maria Gil-Robles – as President of the European University Council for the Jean Monnet Programme – and Professor Enrique Banús, as President of European Community Studies Association-World.

I would like to invite both of you gentlemen to take the floor and to briefly share with us your thoughts on the Jean Monnet Programme and the Prize. But please be careful in your wording: we want to keep the suspense till the end.

Professor Gil-Robles, before you make your statement, allow me to thank you for your continuing commitment to the Jean Monnet Programme. With your unique background as former President of the European Parliament, former President of the European Movement, President of the Jean Monnet Foundation in Lausanne, Jean Monnet Chairholder and coordinator of the Jean Monnet Centre of Excellence at the Complutense University of Madrid, I cannot imagine a better ambassador for the Programme.

I would now like to invite Professor Enrique Banús, Jean Monnet Chairholder and Dean of the Humanities Faculty at the International University of Catalonia, to say a few words on the selection process.

Professor Banús is with us today as President of ECSA-World, which brings together European Community Studies Associations that are active in 58 different countries. I want to thank you and the national ECSAs for their outstanding work.

Let us now come to the moment that we've all been waiting for: the announcement of the Prize winner.

Of course, the Jean Monnet community as a whole is a paragon of academic excellence and of unfaltering commitment to European Union studies. But the criteria for the 2010 Prize go beyond academia.

Therefore, we have opted to award the 2010 Prize on the ground of the pioneering role played by the award-winning Jean Monnet Chair in the establishment of European Union studies during the difficult transition period in one of the newer Member States.

On the basis of this criterion, it is my great pleasure to announce that the 2010 Jean Monnet Prize is awarded to Professor Tibor Palánkai, the Director of the European Studies and Education Centre at the Corvinus University of Budapest.

The establishment of European Union studies in Hungary – as a recognized field of academic research and teaching – owes a lot to Professor Palánkai.

In 1993, when the Jean Monnet Action was opened for the first time to applications from Hungarian universities, he was immediately awarded a Jean Monnet Chair, and later a Chair *ad personam*. This is not surprising. As a pioneer in the field, Professor Palánkai has been teaching about the European Communities well before the end of the Cold War. As a dynamic President of the Hungarian European Community Studies Association, Professor Palánkai and the Jean Monnet Programme played a major role in the expansion of teaching on European integration to all Hungarian

universities, and to all levels of education from basic courses to special studies in postgraduate and doctoral trainings.

In the early 1990s, there were only a few dozen Hungarian experts on European integration; today, more than 250 professors and lecturers teach European integration throughout the country. It is fair to say that, together, the Hungarian Jean Monnet Professors have played a critical role in the accession process, just as the Jean Monnet Professors in many other recent Member States. In this sense, I want to dedicate this Prize to the many dynamic members of our network in the newer Member States and the current candidate countries.

Professor Palánkai, your work is an outstanding example for the entire Jean Monnet community. At the same time, you have built a bridge between the various dimensions of the Jean Monnet Programme. In addition to your Jean Monnet Chair at Corvinus University, you have also been teaching for a decade at the College of Europe – another gem in the Jean Monnet crown. Furthermore, as longstanding member of the European University Council for the Jean Monnet Programme, you continue to be a source of constructive engagement and advice on its development. For these reasons, it is my pleasure to invite you on stage and receive the star that symbolizes the annual Jean Monnet Prize and is a token of the recognition of this prestigious academic community.





**José-Maria Gil-Robles**

President of the European University council for the Jean Monnet Programme; Jean Monnet Chair and Director of the Jean Monnet Centre of Excellence at the Complutense University of Madrid; former President of the European Parliament; President of the Jean Monnet Foundation



Mrs Vassiliou, thank you very much for giving me the floor. On behalf of the entire Jean Monnet community, I want to tell you how pleased we were when President Barroso announced your nomination as Commissioner with responsibility for Education, Culture, Multilingualism and Youth. With such a distinguished, committed and inspiring personality in charge of education, I think we can look forward to a bright future.

Mr President, let me also express a very special word of thanks to you for your courageous and inspiring intervention. Year after year, you are demonstrating your commitment to the Jean Monnet network by taking the time out of your busy agenda to be with us at the annual conference. I can assure you that the Jean Monnet professors are, of course, at your disposal.

For me personally, it is a very particular pleasure to extend a very warm greeting to Mrs Pack. We have been colleagues –and friends- at the European Parliament for many years and I can testify that there is hardly anyone here matching the great dynamism and dedication to the European cause that you have displayed for so many years now. The education and culture community in Europe is very fortunate to

have you as the Chair of the Culture and Education Committee. Thank you so much also for having allowed this Jean Monnet Conference to take place at the European Parliament, as a symbol of positive cooperation between the Parliament, the Commission and the academic community.

President Barroso, Chairperson Pack, Commissioner Vassiliou, at this particular moment in European history, seeing this great need for a better understanding and knowledge on European integration on a daily basis, my message is that the Jean Monnet community is ready to play its role.

Since we are fully *decentralised*, with Jean Monnet Centres and Chairs present at universities in all regions of Europe and beyond, and as entirely independent and critical academics and educators, the Jean Monnet network is one of the very few effective and credible instruments to bridge the knowledge gap on European integration.

May I underline these two characteristics: independent and critical. Because the main, the essential role of Jean Monnet professors is to explain the European policies and institutions; these is surely a much needed task, but European institutions have other tools and programs to cope with.

The role of Jean Monnet professors is rather different: we must explain a history process, and its steps, to evaluate them, its lights and shadows, to analyse the reasons and objectives behind each step with a critical and scientific approach.

An approach that will be different depending on the geographical situation of the chair or module (Europe, Asia, North and South America or Oceania) and the teachers' view of the whole process and its many different aspects. But in any case, with the essential aim of teaching the students the key aspects of a reality they must live with.

Obviously the university is the role humus that can guarantee this approach and the appropriate environment to fulfil this educative role. To place the Jean Monnet

network on the education structure of the Commission was, therefore, the right decision.

I would like to finish with a proposal: with hundreds of Jean Monnet Centres of Excellence, Chairs and Modules at universities in 62 countries on the five continents, literally covering all fields of the European Union's competence, I would like to propose the Jean Monnet community as a prime source for academically sound and well-argued policy advice, at the service, both of the European Commission and the Parliament. We are eager to put our expertise at your disposal – in the framework of the Europe 2020 Strategy and beyond – and to respond to your requests.

Thanks to the expertise of the Jean Monnet professors, I believe we could play a very constructive, clarifying role by delivering independent analyses and advice on topical themes, in a timely way and without hurdles. We are therefore eager to put this expertise at your disposal – in the framework of the Europe 2020 Strategy and beyond.

I am convinced that the institutions working on the new legal framework and budget are fully aware of these essential assets. I am also convinced that we can count on your support in this regard.

## Enrique Banús

President of the European Community Studies Association (ECSA)-World; Jean Monnet Chair; dean of Humanities; Director of the Charlemagne Institute for European Studies and director of the Masters in Cultural Management at the International University of Catalonia in Barcelona



### NETWORKS OF UNDERSTANDING – NETWORKS OF CITIZENSHIP

#### Audacious dreams and rich realities

In the commemoration of the 40-year-anniversary of the Rome Treaties, the well-known German Law Professor Klaus Stern posed the question whether the incredible success of the Communities could become the most relevant challenge for the Union<sup>1</sup>. The question has become more and more pressing: if – as Stern stated – the founding fathers could never have imagined – not “in ihren kühnsten Träumen”, in their most audacious dreams<sup>2</sup> - the dynamic in that 40 years, the further development to the point of the Lisbon Treaty signifies a quality leap (and a complexity leap) which contains immense challenges. One of them consists in explaining what “Lisbon” means to citizens that in a considerable part have not yet understood what “Rome” meant. And it was not easy: “supranationalism”, “intergovernmentalism” (and the mixture of both), “transfer of sovereignty” are not only difficult words, but also unusual concepts, mental world which take distance from the common way in which citizens have imagined over centuries the political life, what means, the political environment in which their daily life happens. The

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<sup>1</sup> “Sind es nicht gerade diese Erfolge des Einigungswerkes, die die Union vor ihre größte Herausforderung stellen?” (Klaus Stern: “Einführung in den Themenkreis”, in: Norbert Horn et al. (eds.): *40 Jahre Römische Verträge*, Berlin, New York: De Gruyter 1998, p. 8).

<sup>2</sup> Stern, *ibid.*, p. 7.

different decision taking procedures are understandable only for experts and the institutional structure has not been simplified by the Lisbon Treaty – quite the contrary. If we add the “acronym–forest” and the “meta–language” that are becoming “normal” when speaking about integration issues, we cannot be surprised that sometimes people have the impression that an initiation rite is needed for entering the elite of those who are able to find a path in this forest.

If the conception is added that this European construction is not related to daily life, that the gap that has to be closed by (in)formation becomes an abyss (or an abyss, the word can be chosen according to the personal pathos). The Enlighten principle “Everything for the people nothing by the people” (Joseph II) can't be acceptable anymore. It opens the way for populist propaganda which often is mixed with a political and intellectual attitude that can be absolutely worthy, based on reasonable motivations or on a different weighting of the priorities: the Euro-scepticism, a portmanteau word that also covers very different attitudes: it is possible to be Euro-sceptic based on an antediluvian nationalism or on a strict federalism or concerned with traditional values (what in German is called “wertkonservativ”) or based on a leftist criticism of a model whose first realisation has been a market.

But most of the common Euro-scepticism is not so elaborated: it is maybe more a feeling than the result of a process of coming to an arguments based meaning; it is maybe more a perception than reception.

It cannot be my task to develop these ideas and to give recommendations how to close this gap: I would be completely overstrained by that “mission impossible”; I only want to contribute from a very concrete perspective: the European Community Studies Association-World- perspective, that is, the perspective of a “network of networks”, of an “umbrella association” that gathers 57 national and 2 regional associations having two common denominators: the interest for the European integration and the academic perspective.

Of course, the opinions I will present in the following pages are only my personal ones: in that sense I do not represent the around 8,000 members of the different associations with all the different motivations, approaches, and attitudes towards the

European project. It is only a reflection born from the idea that academics are responsible not only inside the ivory tower but also for the city which has built the tower and assures its financing and its independency.

182 states are currently member of the United Nations Organisation: in 31,32 % of them an Association is established for studying the European integration; this is remarkable especially if one takes into account that the Member States of the Union build up only 18,83 % of the UN. The question, therefore, is: what can be done from “outside” the institutions, from an association, a part of the civil society that from the beginnings has tried to maintain an alive and even lively and vivid dialogue with the institutions – a dialogue not in the sense of the Cambridge Advanced Learner’s Dictionary, that defines it as “formal talks between *opposing* countries, political groups, etc.”,<sup>3</sup> but in the meaning we can learn from the Philosophy of dialogue, it means, understood as an encounter in the “sphere of between”<sup>4</sup>.

### **Why European studies?**

It can be considered as surprising that this “between”, in that case, the element that is shared and that origins the dialogue, is the “European integration”, a political, economic, social and cultural reality that affects direct and immediately only a part of the participants at the dialogue. This is maybe the first point in which European Community Studies Association could provide a first contribution. In fact, the question for the motivation of so many different people, for the commitment to the European studies coming from so different backgrounds opens the view for a wide range of approaches that go beyond the primary motivation. In some cases the motivation can easily be imagined: for example in the case of neighbour countries, countries negotiating the accession and similar circumstances (so Croatia, Turkey or the Ukraine, for example). Also for countries with a special trade relation it can be supposed: but more than 1,000 experts belong to the US-American European Community Studies Association, around 520 to the Japanese one. And what can be said for Bolivia, New Zealand, Thailand or Chile, mentioning only some countries in a casual enumeration.

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<sup>3</sup> Italics ours.

<sup>4</sup> Maurice S. Friedman, *Martin Buber. The Life of Dialogue*. University of Chicago Press, 1995, p.85.

In fact: I am trying to convince my colleagues from the different countries that they publish what has been their motivation for approaching the European studies. This is not easy, because we academics think that our task is not to tell stories but to transmit information, to convince with arguments, to support interest with facts and their interpretation. We think story telling is a question for writers, filmmakers, artists. But “verba docent, exempla trahunt”<sup>5</sup> – “Words instruct, illustrations (stories) lead” (some translate also with “transform”).

It seems undoubtedly the case that the academics’ task have to do with “docere”, with “teaching”, but no one of us would reject the idea that we also try to attract the students to our subjects. It is a common word among students that every lecturer starts a course indicating the relevance of his or her subject. ECSA members are academics who perform high-level research, teach, debate and increase the visibility of the European Union in a dynamic and independent manner. So the hope remains that European Community Studies Association can provide a convincing set of stories that are able to open the minds not only for the relevance but also for the fascination of the European studies.

## **The Two Step Flow**

There is a fascinating scientific debate how social changes happen, how mentalities change, how collective minds evolve. Again – here is not the place to present this debate; only one point shall be stressed which is specially relevant in our context: taking distance from at that time current opinions about the direct influence of mass media on the readers, two American scholars, based on empirical research, have developed half a century ago a view that concedes a special role to what they call “authorities”. Katz and Lazarsfeld have established in that context the so called “Two Step Flow Theory”, that – in a very simplified description – the information flow is essentially influenced by “authorities” which are recognised as such by the receivers and are decisive for the positive acceptance of the message. They take a position as

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<sup>5</sup> It is a common Latin quote whose origins could not have been traced back. It seems to have been a recommendation for preachers in the Renaissance.

“mediators” who amplify the message’s impact with their authority, that gives credibility plus to the message<sup>6</sup>.

European Community Studies Association's members are – as professor, as lecturer, as researcher, as expert – “authorities”: they are in a position in which they easily can be accepted as authority always when to their position the prestige is added of being a good lecturer, a recognised researcher, an expert who is consulted also by political bodies or professional entities. The scientific publications but also the presence in the media (interviews, articles, TV and broadcast programmes) nurtures this prestige.

So, the message of the relevance of the European integration appears as linked to this authority, to this prestige. On that way it gains a complementary force in the social debate it is (re)presented not only by politicians or representatives of economic bodies (who are both under the suspicion to “sell” what is favourable to their interests) but also by personalities whose independence is one of their fortresses.

We can even do one more step: European Community Studies Association's members are in a certain sense “mediators of mediators”, “authorities forming authorities”. The first field in which most of their activities are developed is the academia, the university, the world of conferences and seminars, the publications and the scientific debate. They have, therefore, two addressees: the own colleagues (with the publications and the scientific dialogue in conferences and other events) and the students. Most of the students will work after the graduation in different professional worlds, but often in positions in which they also will have to “mediate”, to transmit knowledge, perspectives, and the frame for projects. Some of them will work in teaching activities both in school and at the university. In that sense, the European Community Studies Association members’ authority is amplified by the authority of their graduates, who can spread the European perspective also from their respective professional position.

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<sup>6</sup> Elihu KATZ-Paul F. LAZARFELD: *Personal Influence. The Part Played by People in the Flow of Mass Communications*. New York-London, 3rd ed. 1966.



Of course, there are other activities – but, nota bene, secondary activities– in which the European Community Studies Association's member establishes a direct contact to the final audience: all Jean Monnet chairs, Institute for European Studies and other academic institutions in which ECSA members do work, organise regularly open activities for a specific or an open audience: round tables, Europe's Day commemorations, contests, seminars and a very broad range of different events (the European Community Studies Association websites are giving exhaustive information about these activities). Here, the citizen is immediately confronted with “the authority”, whose aptness will be decisive for convincing at least about the idea that there are convincing personalities who support a project that maybe is not understood in all details, but is accepted because it was presented in its fundamental ideas on a convincing and appealing way.

In a certain sense, this was one of the main “outputs” of the founding fathers; they were convincing political personalities who have been able to transmit the idea that they were working on a project that should avoid the disaster of war, destruction, famine, violent rupture of families that has been common during centuries in Europe's history. In the post-war time such convincing personalities were needed. The acceptance of these personalities was synonymous to the acceptance of the project. Where they have been unable to convince (the best example has been the Defence Community in the early 50ties, where emotional arguments have been stronger than the project presentation by its initiators), the project was impossible.

Probably the level of argumentative convincing in post-war Europe was lower than nowadays. In fact, nowadays' society asks for arguments: on one side, too much of the European project has been absorbed by the society that there is no perception of the progress caused by the European integration; on the other side, the project is so rich and faceted that it is no more so easy to present it in only several lines (“peace via common market”); the surrounding world doesn't allow anymore black-white pictures: the world of globalisation is more complex than the cold war world. Therefore, the authorities need to be able to present also arguments – and here the academics, whose “job” consists in working with arguments, have an immense advantage. Their consultancy and their activity is a needed complement to the

political level. Never in the history of European integration has a fluent and respectful dialogue between politics and academia been as needed as nowadays.

### **“Pontifices” are needed**

In Philology, when dealing with literature that has been written centuries ago or in a complete different cultural context, we know that the main problem for the understanding – and the subsequent interpretation – is the distance between the contemporary reader and this text with which he or she doesn't share the cultural frame. In those cases, the philologist has to act as “pontifex”, has to build bridges between the text and the reader, approaching the text to the reader or the reader to the text (here a relevant methodological debate could be started!).

Maybe these considerations from my own professional experience can be transposed also to the European integration. It is a commonplace to mention the gap between the integration and the citizen. Unfortunately, many citizens do not realise that the European integration is part of the framework in which their life happens – like the State, the region, the municipality, the quarter, the street, the apartment building. But whereas the interest for the apartment building, the city or the region has increased in the last decades, the nearness to “Europe” has decreased. We probably have a typical situation in which the aforementioned hermeneutic approach has to be applied.

Of course, Jean Monnet professors and the other members of the ECSAs are, indeed, lecturers and teachers; independent academics and educators. We are not in the business of “selling” Europe. Our input is valuable precisely because we are professors, enjoying the academic freedom to disagree. We try to critically analyse the European integration process, we teach, explain and debate on it.

In this independence we are valuable, even indispensable mediators. Who builds a bridge cannot be part of the river that has to be crossed; and his logic is also not linked to the welfare of only one of the rivers; he has to calculate the bridge as such, staying in dialogue with both parts, but with the needed independence for designing a bridge that is adequate, according to his or her expertise. So, the task for the

European Community Studies Association mediators is not to create “euro-enthusiasm”, to convert the students in enthusiastic preachers of the European integration. The task is to contribute to an “informed society”, the only society that can take decisions based not on easily manipulable emotions but on convictions as a result of profound insights on fortresses and feeblenesses of this model also in comparison with other models that have been used in the past or that could be established nowadays and for the future.

Enthusiasm in the scientific world is suspect; but convinced academics are convincing; engagement and science do not excluded each other: who deals with European studies normally is engaged, also his or her criticism has to be understood as part of the engagement; who critically analyses does it in the hope to contribute to a better understanding and, therefore, to an improvement.

Let me introduce personal experience from the last months. The word “crisis” has been one of the most frequent expressions in articles, speeches, debates. In this time I have often spoken with colleagues, members of the different European Community Studies Associations. And very often the argument was the sorrow about how this crisis could affect the European integration project. Sometimes also critical comments were manifested about the role not only of the national governments but also of the European institutions, whether they really would act correctly in front of the crisis, whether a real leadership was visible.

This preoccupation is a sign that the European issues are for most of us not only a subject that can be studied from the distance, but also a model of coexistence and of conflict balance and resolution that is considered valuable for a continent that too often has been devastated by wars.

### **Nil volitum quin praecognitum<sup>7</sup>**

It’s a wise sentence from medieval philosophers, probably also a part of the common cultural heritage: it is very difficult to tend to something you do not know (or, in a

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<sup>7</sup> See Burton Stevenson: *Stevenson’s book of proverbs, maxims and familiar phrases*. London 1949.

more radical expression: it is very difficult to fall in love with someone before knowing him or her). It is not the case to “fall in love” with the European integration, but the medieval sentence can also be helpful in our context. Knowledge is needed, a knowledge not only of the facts, but of the reasons, of the motives which are behind the facts. Distance, in many cases, is the consequence of the ignorance. Ignorance, in many cases, is the consequence of the lack of adequate, motivating explanation. Motivation: this is a key for the needed approach. And here European Community Studies Association's members are convoked to transmit motivation, taking into account that the point of departure has considerably changed: the post-war generations could understand the European integration project as part of the main project of their generations: to avoid war, to reconstruct Europe. The next generations could understand the European integration project as part of their main project: the creation of welfare, the guarantee of a better future for their children. The distance from the post-war order, as manifested in the 68 movement has caused a first break in this identification, but it partially has been overcome thanks to the new impulse for completing the Internal Market, underlying the freedom potential it contains, the arisen of the social Europe and, then, the definitive overcoming of the painful cleavage in Europe's heart.

Now the students starting the University were born after the collapse of the Berlin wall: for them this is a part of the history, not of the memory. And the Second World War is in their conscience located near the Crusades or the discovery of America. The future of the welfare State is under debate, the economic crisis causes very real anxieties: a job, a worthy housing, the future in a professional and familiar regard....

In this frame, motivation for dealing with other issues is in fact the key. Here is a major challenge for European Community Studies Association members: to transmit motivation and to find arguments for new motivations, but also to be able to re-create the motivations of former times, of the beginnings of the European integration project, to make history visible, even tangible, and to let discover that, under the given circumstances, the European integration has been an audacious project, a great project.

Again: the goal is not to form euro-enthusiasts, but informed citizens. Because they have to configure the future; the continuity or not of the European project depends on their engagement (or lack of engagement). In any case: an informed engagement is better than an un-informed one (which can even be dangerous). And in many cases without information there will be no engagement. Because there will be no motivation.

### **The added value of a network**

“Vae soli”<sup>8</sup> – is said in the Bible: So, at the end of this presentation some reflections have to be added on the value of networks. In fact: all the tasks attributed to the European Community Studies Association's members could be done individually, each one in his or her university, academic world and also in all the other *agorai* he or she may be present. Why a network and why a network of networks? It cannot be the sense of these short paragraphs to establish a general theory on networks, but to reflect specifically on networks in the field of European integration studies. Let us offer some arguments, which of course could be complemented by many others coming from the experience of so many colleagues who have worked for several years in this field, have organised activities with other colleagues – in many cases on a cross-frontier manner –, are members of research networks and have taken responsibilities in the different member associations.

The first idea is that European integration studies are per se multidisciplinary studies: at least legal, economic and political arguments are intertwined, and probably social, demographic and cultural aspects have to be added if a real picture of reasons and consequences of the European integration has to be presented. Also for the motivation this multidisciplinary approach supposes a great advantage. The economic, the legal and the political perspective fascinates some people who feel attracted by one of this perspective. But in some cases a perspective that is restricted to one element of life causes rejection and distance. Only the presentation of all the faces that embraces the European integration allows to see that it is a human and social development – using economic, legal and political instruments –

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<sup>8</sup> Ecclesiastes 4, 10. “Woe to him who is alone”, according to the English Standard Version.

that was born from very hard experience and that takes into account the most respectable European values. On the other side, the multidisciplinary dialogue is always fascinating: allow me in this context to come back to my personal experience when trying to present my specific approach on the European integration to members of other Faculties; dealing with the cultural aspects of the European integration very often high interesting debates arise in seminars given to Law, Economy or Political Sciences students, who are able to complement my perspective with contributions and more often with questions which are point of departure for further reflection and further research.

The second reason: motivators have to be motivated. None of us is a machine that runs and runs and runs. Motivation experiences ups and downs, and sometimes the consideration of some tendencies within the European integration or the insight in the innards of the institutions – an insight that often is available only or at least rather to an expert than to a “common citizen” – can demotivate or at least diminish the motivation, create scepticism. Here the network can compensate: the dialogue with colleagues can re-motivate, can help to discover new reasons for continuing working, can help to create projects in common through which motivation can again flourish.

The third reason is closely connected with the first one: the different perspectives facilitate also an argumentative richness that only very arduously can be achieved from only one perspective. Also the geographic diversity adds complementarity. The discourse is on that way enriched with new examples, new arguments, new approaches: the network opens the horizon and overcomes claustrophobia.

A fourth reason can be added: academics are very sensible for some motivations: normally, the economic compensation is not so convincing (at least in many countries), in some countries the social prestige is very high but in others not, the presence in public life is limited. So, one of the great satisfactions is the reception the own ideas have: the direct impact in lectures and seminars and in the personal orientation of doctoral students, for example; the indirect impact via publications (to be quoted or included in a bibliography is always a satisfaction). Networks are able to enlarge the reception, new audiences are created by a network, new debates can circulate around a theory. Networks amplify the own contribution.

Of course, the fifth reason could be connected to a concept which is “in”: best practices. The exchange of experience within the network can inspire, transmit ideas and provoke not copies but similar initiatives. The sixth reason could also be connected with a concept that is “in”: synergies. Projects can be organised in common (opening also on that way new sources for being financed) profiting from the expertise from here and there, but also – and this could be a seventh reason – realising what is one on the main goals and achievements of the European integration: the crossing of the borders. Taking into account that “seven” is a number with relevant symbolic connotations; the enumeration has to finish here, repeating what has been said at the beginning: it is only one of many possible argument lists.

The most relevant issue could be that of a network repeating on a different scale what is the core of the European integration itself: the continuous dialogue, the breaking of closed spaces, and the relation as a way of enrichment and of friendly experience of “otherness”. But all these characteristics also can be applied to the University itself in its origins: dialogue, overcoming of closeness, and otherness as enrichment – these are founding elements of the university in the European Middle Ages. The network summarises in a paradigmatic manner the two passions of the European Community Studies Association members: Europe and the University.

This is our contribution to a Europe of the citizens. Academia is a concrete realisation of citizenship, the way of life of several thousands of citizens – and around 8,000 of them have decided to canalise a part of their life as citizens through a network that is devoted to the study of the European integration – in a passionate, engaged and at the same time independent manner: open for the dialogue, able to the dialogue.

### **III. Institutional Balance and Inter-Institutional Cooperation**

Fausto De Quadros

Maroš Šefcovic

Richard Corbett

Jörg Monar

Lucia Serena Rossi

Ferdinando Riccardi



**Fausto De Quadros**

Jean Monet, Chair and Professor of Public Law, European Law and International Law et the Faculty of Law of the University of Lisbon



Nous allons ouvrir la première séance de cette Conférence

Permettez-moi de faire quelques observations préliminaires.

Tout d'abord pour saluer tous les présents : Mesdames et Messieurs les Membres du Parlement Européen, Mesdames et Messieurs les Commissaires, Messieurs les Ambassadeurs et autres entités diplomatiques, et tous mes distingués collègues, qui sont venus d'un peu de partout de la planète.

Ensuite pour féliciter vivement l'organisation de cette Conférence du fait de son thème et de son contenu, par les temps qui courent. En réalité, le Traité de Lisbonne, quand bien même il ait été le traité possible et, par conséquent, toujours pas le traité dont l'Union aurait besoin actuellement, annonce la refondation de l'Union européenne et donne un nouvel élan au processus d'intégration européenne à une époque où la globalisation est déjà avancée et surtout en ces temps difficiles que le monde vit sur le plan financier. Ceci étant, je réitère mes félicitations qui doivent être adressées, en premier lieu, à Monsieur le Président de la Commission pour son engagement personnel en vu de l'organisation de cette Conférence. Il me semble approprié de dire que l'organisation de cette Conférence doit être interprétée comme une reconnaissance du grand service que le Programme Jean Monnet rend, depuis longtemps, à l'Union européenne. Ceci me conduit à souhaiter que le

Programme Jean Monnet maintienne son autonomie et gagne encore plus en vitalité.

Je voudrais également remercier Madame Belen Bernaldo de Quirós de m'avoir invité à présider cette table-ronde. J'en profite, d'ailleurs, pour la remercier du travail réalisé dans le cadre de ses fonctions. C'est pour moi un privilège de présider cette séance à laquelle participent diverses personnalités qui ont tant donné à la cause de l'intégration européenne jusqu'à ce jour.

Un dernier mot sur le thème de cette table-ronde. Dans toutes les révisions des Traités, la question institutionnelle – ou, si l'on préfère, la réforme institutionnelle ou l'équilibre institutionnel – a été un sujet difficile à négocier. Mais il n'est pas exagéré de dire que lors de la préparation du Traité constitutionnel et, par la suite, du Traité réformateur, elle est devenue encore plus difficile étant donné les élargissements de 2004 et 2007 qui ont profondément changé l'équilibre entre les Grands, Moyens et Petits États. Je pense que ceci est au cœur du débat du thème de cette séance. Les difficultés surgies dans cette matière concernent surtout – mais pas seulement – la composition de la Commission, la modification du système de pondération des voix au Conseil, les modalités de calcul de la majorité qualifiée au Conseil, le nombre de membres du Parlement Européen et le statut juridique du Haut représentant pour les affaires étrangères.

Mais, comme vous l'imaginez, je ne veux pas trop en dire dans cette introduction, ni retarder la curiosité et l'intérêt avec lesquels nous écouterons les orateurs qui suivent.

## Maroš Šefcovic

Vice-President of the European Commission with responsibility for Inter-Institutional Relations and Administration



### THE INSTITUTIONAL BALANCE AND INTER-INSTITUTIONAL COOPERATION

Thank you for inviting me to be here today.

Discussions on institutional balance and inter institutional cooperation in the framework of Lisbon Treaty is very timely, important and interesting at the same time.

Being Vice President for inter institutional relations, I serve as an interface among the Institutions and I can see how this new map of post-Lisbon political influence is being chartered.

Let's start with the European Parliament.

Co-decision has become the ordinary legislative procedure and now more than 90% of legislation will be adopted jointly by the Council and the European Parliament. This applies also for new areas where this procedure requires clear culture changes from all institutions (agriculture, justice and home affairs). Moreover, the European Parliament has gained the right to be "fully and immediately" informed about international agreements and the overwhelming majority of agreements require the European Parliament consent to be concluded. The European Parliament

demonstrated clearly and even symbolically, by rejecting SWIFT<sup>9</sup>, that it is ready to use fully its new powers which put it on equal level with the Council as co-legislator in legislative and budgetary matters. Being the Commission's negotiator of the new inter-institutional framework agreement, my only goal is that the European Parliament would assume its new powers in the way foreseen by the Lisbon Treaty, and in the way that would strengthen the "community method" and inter-institutional balance.

Let's consider now the other arm of legislator: the Council where I represent the Commission in the General affairs Council.

There as well, Qualified Majority Vote became the ordinary procedure, and the dynamics of negotiations changed. Member States can no longer rely on veto, they must be more flexible and faster in argumentation, and this should lead to a speedier decision-making process. They have to gradually adjust their work to the more assertive European Parliament and general application of ordinary legislative procedure, as the European Parliament has greater influence on the budget debate and on many sensitive files.

Now, let's turn to the new players.

The European Council became an official institution with a full-time President, own budget and an extremely full agenda. New format of Heads of State and government only and a full-time President's very important agenda (economic governance and emergency measures clearly linked to the future of the European Union), reinvigorated the European Council tremendously. The European Council has played and will play a crucial role for the European Union. Therefore, it is very important that its work is done in community spirit which is so important for the European Union. It is not only about what kind of decisions are taken but also how they are adopted- which is so important for the fabric of the European Union.

Another new factor in the European decision-making process is the subsidiarity check mechanism bringing in the National Parliaments. The Commission was in

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<sup>9</sup> An agreement between the EU and US on the transfer of citizens' financial data to prevent terrorist attacks.

intensive communication with National Parliaments through the political dialogue launched by President Barroso and Vice President Wallström in 2006. Since 1<sup>st</sup> December 2009, the subsidiary check mechanism has been added (yellow and orange cards), which will lead to the National Parliaments' increased involvement and importance. I hope it would lead to better European understanding in the capitals, better feedback for the European Union's institutions and more detailed mandates or instructions for ministers for the Councils.

In the framework of the political dialogue, the Commission received 250 opinions in 2009, and more than 70 in 2010. As regards the subsidiarity check mechanism, the Commission has received around 10 opinions, 3 of which negative. The subsidiarity check also creates new opportunities for the Committee of the Regions which must now stand ready to assume their new responsibilities with vigour (e.g. possibility to bring actions to the European Court of Justice).

Let me continue with a completely new element in our decision-making architecture: this is participatory democracy, as an additional layer to the one of representative democracy-represented here by the European Parliament and by National Parliaments. Participatory democracy concerns citizens and civic society. I presented to the College, the European Parliament and the Council the draft regulation on the European Citizen's Initiative, whereby one million citizens from a significant number of Member States can now set an agenda for the Union. It is difficult to predict the ramification of this instrument. But, basing my judgement on the enormous interest the European Citizen's Initiative has raised, on the possibility of online collection of signatures and projects already presented, I expect that this instrument will be widely used and will have strong mobilisation and political impact on the Union. At the same time I expect that dialogue with civic society represented so well by the Economic and Social Committee will also play a crucial role in the opinion making process in the European Union.

So what is left for the Commission?

The Commission must remain the engine of the Union, the strongest representative of community method and the resolute guardian of the Treaties. The exclusive right

of legislative initiative must be and will be used for getting the European Union out of the crisis and back to the prosperity. We must improve economic governance and extend the advantages of the European Union single market. Most of these challenges will be met if we all do our utmost in implementing the Europe 2020 strategy and in reinvigorating the Stability and Growth Pact. The Commission will operate in a much more demanding environment, with more and stronger players. Therefore, the Commission must use wisely its strongest leverages: the right of legislative initiative; the indispensable technical expertise; the understanding of the general European interest, which the Commission so well represents; and the strength of the *acquis communautaire*, which it protects.

To conclude, I believe it's important to say that despite more diverse institutional landscape, the most important is that all the actions have one thing in common: the same goal, a better, more democratic, more comprehensive Union, which is well respected on the global stage.

We might have different ideas of how to get there, but the goal and goodwill shall enable us to use the new Lisbon framework for the best of the European Union and its citizens. And for me, this is reflected in the way our institutions function together, as a system, not apart. Of course, there are differences, arguments, and yes even the occasional turf battle. But in the end, the institutions of the European Union stand or fall by the success of the European Union's collective work. The institutions share the common determination to deliver the policies needed. It may not make the headlines, but cooperation is the default mechanism for the European Union.

## Richard Corbett

Advisor in the Cabinet of the President of the European Council; former Member of the European parliament and former Vice-Chair of its Committee on constitutional Affairs



Mr. De Quadras in his introductory remarks referred to the Lisbon as a "re-foundation" of the European Union, a new Union, in effect replacing the old one. That is of course true legally, but politically I see it more as an evolution, another step in the series of steps that have taken place over the last two decades with successive reforms to the Treaties and to the institutional structure - through the Single European Act, the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty and now the Lisbon Treaty. Lisbon is the latest in a step-by-step evolution, and it is mainly on the institutional front because the Treaty of Lisbon has not made any radical change to the field of competence of the European Union - its field of responsibilities has not been significantly enlarged. What Lisbon has addressed is the way we exercise the competences that are attributed to the European level. It modifies the institutional structure and the relevant powers of each institution with essentially a two-fold aim: greater efficiency and greater democracy.

Perhaps as an example of why I am saying this has been a step-by-step evolution, and as we are here in its building, I can take the European Parliament as an example. The strengthening of the European Union's democratic credentials by strengthening the directly elected Parliament is a striking feature of the successive treaty changes. In this longer term perspective we can clearly see that the European Parliament, when it came to legislation, had a merely consultative role right the way up to the Treaty of Maastricht which introduced a codecision procedure for just a handful of Treaty articles (and a rather restricted procedure at the time). The

procedure was changed to Parliament's advantage with the Treaty of Amsterdam, and its scope was also enhanced. Its scope was then enhanced further with the Treaty of Nice and now again with the Treaty of Lisbon. We now have parliamentary power over virtually all areas of legislation where it jointly decides legislation with the Council in what amounts to a bicameral legislature at the European level. It has happened step-by-step. Similarly, Parliament's power to ratify international treaties. It began with the Single Act with just association agreements and accession treaties. With successive changes to the European Treaties, that has now been expanded step-by-step and now virtually any international agreement of any significance entered into by the European Union requires the approval of the European Parliament to be ratified. We see this step-by-step change as well in the Commission and its accountability to the European Parliament. Under the original Treaties, the Commission was appointed by national governments for a four-year term of office. Step-by-step, with Maastricht, with Amsterdam, and with Lisbon, that has changed. We now have a Commission appointed for a five-year term of office coinciding with that of the European Parliament. The Parliament was given the right to confirm the appointment of the Commission in a vote of confidence (and Parliament insisted on public hearings with each Commissioner prior to its vote). It was initially given the right by Maastricht to be consulted on the choice of President of the Commission, then by Amsterdam to confirm the choice of President and now with Lisbon the terminology in the Treaty is that Parliament "elects" the President of the Commission. The President who by the way, also through successive Treaty changes, now has the right to distribute portfolios, reshuffle portfolios midterm and even, should that be necessary, to dismiss a member of the Commission. So these are a series of incremental changes and Lisbon brings it to what it is, for the time being at least, to a conclusion. I say for the time being, we shall see how long it will be before this gets revised again.

The point on which I wish to focus, however, is that of the European Council. As Mr. Šefčovič said, it is now an institution in its own right under the Treaty, which has consequences. It has to adopt minutes of its own meetings, it has its own budget, it has to have rules of procedure which you can see on the European Council's website. A change of practice, an institutionalisation. As Mr. Sekosevich said, it no longer has the Foreign Ministers normally present at its meetings. At that level, only



Catherine Ashton, as the European Union's High Representative for Foreign Policy, is present which makes it a more compact body, hopefully more collegial in its working methods, a better atmosphere around the table. But the biggest change is of course to the Chairmanship: its Presidency.

Now of course we have always had the President of the European Council, so what is new? Three small changes, but together they constitute a significant new departure.

The first change is one of continuity. In the past the Presidency changed in every second or third meeting, every six months. With a two and a half and normally a five year term of office, you have more time, more continuity to build relationships to know when is the right moment to put something on the agenda, not in a hurry at the end of your term of office but when it is the right moment to do so. More continuity also in external relations where Summit meetings with third countries or groups of countries such as the recent Europe-Latin America Summit last week, our interlocutors were facing a different President every meeting. Now, there is time to build on that continuity. So the first change is continuity.

Second change, the Heads of State and Government around the table in the European Council can actually choose who it is that they want to chair their meetings and to represent them externally. The old system of automatic rotation meant there was no choice whatsoever even when the next President was somebody in whom maybe some heads of State and Government had little confidence or even when the next incumbent would be a Prime Minister facing an election in the middle of their term of office with no guarantee that they would be re-elected even. That has gone. They can now choose somebody avoiding those pitfalls. But also, in choosing somebody, that also implies a degree of confidence and implicitly a political mandate for the person that is chosen.

The third change is that the incumbent does the job full-time instead of part-time. Previous holders of this position had a national government to run which unavoidably and understandably took up 80% or 90% of their time. Having somebody full time now means that it is possible to maintain a direct relationship with every one of the

Heads of State or Government, to talk to them regularly to prepare meetings, to travel if necessary to meet them. That too is a significant change.

These three changes together should make the European Council perform its role better. That also raises questions, especially among academics: is this a reinforcement of the intergovernmental side of the Union at the expense of the more *Communautaire* side? Well there are two answers to that. First, the intergovernmental aspects of the Union are a reality, and for the Union as a whole to work well that part of it also needs to work well and to work better. Second, in many ways the European Council is not purely intergovernmental. It is the place that brings together the different aspects of the Union's make up. After all, the President of the Commission is a full Member of the European Council. And the President of the European Council himself does not represent a Member State, but is commonly chosen to work in the overall interest of the Union. The European Council is also the place where you can coordinate both national and European policies, particularly important regarding macroeconomic policy and foreign policy.

In any case, we have an incumbent who does not see himself as fundamentally trying to undermine the *methode communautaire* on the contrary, President Van Rompuy wishes to maintain that *methode*. I think it is a sort of a guarantee that this is not a smash-and-grab raid by the European Council to the detriment of the European Commission or the other institutions.

Of course there were different conceptions when the Treaty was drafted, that is one reason why the Treaty has such little detail on his role. It was left open. There are some who saw it, perhaps, as in the French 5th Republic constitution model: that he would be *Président* of Europe and the Commission President would be like a Prime Minister in the French 5th Republic dealing with only internal affairs and even then deferring to the President on important issues. Others had a view that was totally opposite, it was a purely pragmatic operation to have a greater continuity in the chairmanship. President Van Rompuy has been very clear, he has said "*I am neither a Président*" in the sense of the French 5th Republic, "*nor am I a mere chairman*". At a recent press conference, when one journalist accused him of being a mere spectator and another accusing him of having organised a *coup d'Etat*, he

said *"no I am neither a spectator nor a dictator, I am a facilitator"* and when you bear in mind that he is chairing the only European institution that has to work by consensus, with 27 Heads of Government - 27 people who in their national context are used to getting their own way and have their own views prevail - that is a tall order in itself. To have that ability to build bridges, to build consensus from apparently very divergent starting points - that is a key part of what this job is about.

Much depends on relations with other institutions where the Treaty is often silent. He has to build those relationships, and he is building them. He meets Presidents of other institutions regularly.

It might be illustrative to look at those points very quickly.

**The relationship with Baroness Ashton:** No problem. The dividing line is very simple one of level. It is like one between a President or a Prime Minister and their Foreign Minister. If an external meeting is at ministerial level it is up to Baroness Ashton. If it is at Presidential or Prime Ministerial level it is up to President Van Rompuy.

**Relationship with the President of the Commission:** Inevitably and unavoidably, more delicate. Public opinion, third countries and others do not immediately understand the difference between the President of the European Commission and the President of the European Council. Both are in Brussels. In external representation, they both represent the Union, each within their sphere and where the borderline is not always clear. Paradoxically, just as at Cathy Ashton's level we have united our external representation, (in putting together the posts that were once occupied by Mr. Patten and by Mr. Solana and we have created 'Patana' to represent the Union, in the form of Cathy Ashton), we have at the same time accentuated the difference at the top level. I won't be surprised if in a few years time there will again be discussion about putting those two posts together, or appointing the same person to both, but in the mean time we have to make this system work. The two Presidents are very well aware that they have to make it work, that they must avoid turf battles, that they must avoid any public squabbling. They therefore meet every week, normally every Monday for breakfast. They talk it through, they

are adults, they are aware of the system, they know they must make it work and they are determined to do so.

**Relations with the Parliament**: his only duty under the Treaty is to report after every European Council's meeting to the European Parliament. Four, five or six times a year, that's all. He has wanted to supplement that and he has indeed done so. Meeting the different Political Groups, meeting Group leaders and I can inform you that the Parliament has just last week accepted an offer from President Van Rompuy to brief the leaders of all the Political Groups straight after the European Council meeting on the same evening, as soon as the meeting has finished, in order to give them fresh information as to what has happened. He sees it as an important role to have a relationship with the Parliament but he does not want to substitute himself for the President of the Commission. The President of the Commission has a much more intense relationship with the Parliament. The President of the Commission heads the executive that is elected by the Parliament and is accountable to the Parliament and is indeed dismissible by the Parliament. The Commission presents draft legislation to the Parliament and a draft budget. The President of the European Council does none of those things. So it is a different type of relationship.

And finally the **relationship with the rotating Presidency**: The rotating Presidency is now going to be a different animal. The Spanish Presidency was in many ways the last of the old system. From now on the rotating Prime Minister no longer chairs the European Council. The rotating Presidency Foreign Minister no longer chairs the Foreign Affairs Council, nor does he represent the Union across the world on Common Foreign and Security Policy matters because that is now the task of Cathy Ashton. Nor will the Embassies of the country holding the Presidency coordinate the Embassies in third country capitals of the European Union countries. That will be a task of the Union's Embassies once the External Action Service is fully up and running. So the rotating Presidency becomes mostly the chairmanships of the sectoral Councils of transport, environment, culture and so on, where Council acts as co-legislature with the European Parliament. It will no longer have the role that it had before. Even before it was never the "President of the Union" as some of them liked to call themselves, as did much of the media. It was simply the chairmanship of one

of the institutions for a short six month period with an inherited agenda and with no extra powers for being President. Now it will be a somewhat less important role even than that. That is something that many people have not yet got used to and frankly I think many national governments have perhaps forgotten what was in this Treaty they (or perhaps a previous government from their country) negotiated several years ago. And I think we will see the rotating Presidency still wanting to have a high profile role but then searching for something to do in order to have that high profile role. So that will no doubt be a delicate matter.

That is how I see these developments. As I said evolution not revolution - but none the less steps forward for the functioning of the European Union both in terms of democratic accountability and in terms of efficiency.

## **Jörg Monar**

Director of European Political and Administrative Studies department of the College of Europe;  
Jean Monnet Chair of Contemporary European Studies at the University of Sussex



## **THE EUROPEAN UNION'S INSTITUTIONAL BALANCE OF POWER AFTER THE TREATY OF LISBON**

### **Introduction**

It is one of the most distinctive features of the European Union (EU) that its institutions – unlike those of traditional international organisations - have been vested with real powers to achieve the objectives defined by its founding treaties. The very substance and extent of these powers – which can create enforceable rights and obligations for individuals – have made their division between the institutions a constitutional necessity right from the start of the European construction as the interests of national governments had to be balanced by the ‘common’ interest of the construction as such, as well as (increasingly) those of citizens subject to European legislation and (indirect) taxation. The balance of powers between the institutions has evolved considerably since the 1950s – and it had to because of the massive expansion of competences and policies as well as the overall progress of European political integration. Treaty revisions have been the primary catalysts of change in the institutional balance. This both happened by responding to pressure for change – such as by the European Parliament (EP) trying to assert its role or national governments trying to design specific solutions for new sensitive policy-making domains (such as justice and home affairs) – and by creating the potential for further change through the practice of inter-institutional relations on the basis of the new treaty provisions.

The Treaty of Lisbon continues the tradition of European Union treaty revisions bringing changes to the institutional balance – and the range of institutional reforms introduced is much more extensive than in the case of the previous reforms under the Treaty of Nice. This contribution is intended to provide an assessment of the shifts in relative power occasioned by the new treaty changes between the European Union institutions which exercise legislative and/or executive power, i.e. the European Parliament, the European Commission, the Council and (as newly formally codified ‘institution’ of the European Union) the European Council. This will allow us, at the end, to draw some conclusions regarding the overall implications of these shifts for the further evolution of the European Union's system.

The following analysis is in need of a prior clarification of the concept of ‘institutional balance’ on which it is based. The concept originally emerged as a legal principle according to which the European Community (later the European Union) institutions have to act within the limits of their respective powers in the context of a division of powers defined by the Treaties.<sup>10</sup> The implication of this legal principle, to which the Court of Justice clearly referred to for the first time in the *Meroni* case,<sup>11</sup> is that the institutional balance is maintained as long as every institution does not exceed its respective powers to the detriment of the others – and disrupted in any case to the contrary. This concept is thus an essentially normative and static one concerned by the respect of the extent and limitations of the powers of each institution as defined by the treaties.

As already indicated above, this contribution is aimed at identifying and assessing the likely changes in the balance of power between the institutions resulting from the Lisbon Treaty reforms. The concept of institutional balance applied in the following is therefore – in contrast with the above mentioned legal concept - a positive and dynamic one as it refers to the relative power positions of the European Union institutions in respect of each other and the changes brought about to these by the recent treaty reforms.

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<sup>10</sup> See Jean-Paul Jacqué: The principle of institutional balance, in: *Common Market Law Review*, Vol. 41 (2004), pp. 283-287.

<sup>11</sup> The Court held that “the balance of powers which is characteristic of the institutional structure of the community” can be seen as a “fundamental guarantee granted by the Treaty in particular to the undertakings and associations of undertakings to which it applies”. Case 9/56, *Meroni* [1958] ECR (English special edition) 133, at 152.

## **The increased complexity of the European Union's institutional balance of power**

For the first two decades of the institutional development of the original European Communities the institutional balance of power was essentially of a bi-polar nature as only the Council and the Commission were institutions vested with real powers.<sup>12</sup> This changed, with the granting of budgetary powers to the European Parliament which had until then been limited to a purely consultative role through the amending treaties of 22 April 1970 and 22 July 1975. As a result a tri-polar Council-Commission-European Parliament institutional balance emerged, with the 'third' pole – the European Parliament – acquiring increased legislative powers – especially through the introduction in 1993 and subsequent extensions of the co-decision procedure – and increased powers over the appointment of the Commission with the successive reform rounds of the Single European Act (1987), the Treaty of Maastricht (1993), the Treaty of Amsterdam (1999) and the Treaty of Nice (2003).

The Treaty of Lisbon not only continues the strengthening of the Parliament's position – especially through a new massive extension of the fields to which legislative co-decision applies (see below) -, but it also transforms the tri-polar into a four-polar system as it gives to the European Council for the first time the official status of an institution (Article 13(1) TEU) which is also vested with powers it had not been provided with explicitly before, such as, for example, the power to “define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice” (Article 68 TFEU).

The 'institutionalisation' of the European Council adds already a degree of increased institutional complexity to the institutional balance as the European Council adds a second formal institutional representation of the interests of national governments to that already provided by the Council, although at a more senior level and with tasks which are clearly separated in the Treaties. Yet even more complexity is added by the introduction of the new combined position of the “High Representative of the

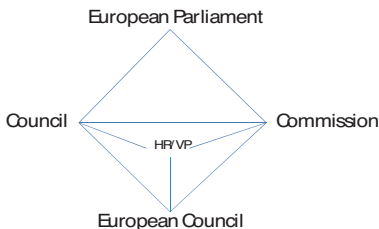
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<sup>12</sup> Here and in the following the Court of Justice will not be considered a part of the institutional balance of power because of the purely judicial nature of its functions. The Court may be regarded as a guardian and arbitrator of the institutional balance – but not as one of its poles.



Union for Foreign Affairs and Security Policy” and Vice-President of the European Commission (HR/VP) whose task is to “conduct” and “put into effect” the Union’s Common Foreign and Security Policy (CFSP) as well as to represent the Union in this field (Articles 18(2), 24(1) and 27(2) TEU). Appointed by the European Council (Article 18(1) TEU) in whose work the High Representative/Vice-President of the Commission “takes part” (Article 15(2) TFEU) and who also defines the “strategic interests and objectives” of the European Union in the Common Foreign and Security Policy’s domain (Article 22(1) TEU), the High Representative/Vice-President of the European Commission is mandated by the Council (Article 18(2) TEU) whose foreign affairs formation the HR/VP presides (18(3) TEU). Yet the incumbent is at the same time responsible within the Commission as one of its Vice-Presidents for external relations and for coordinating other aspects of the Union’s external action and in this respect fully bound by the Commission’s procedures (Article 18(4) TEU). The Treaty of Lisbon has thus assigned to the High Representative/Vice-President of the European Commission a position somewhere in the middle between the institutional sub-triangle of Council, European Council and Commission, creating an extraordinarily hybrid position whose direct relationship to the European Parliament – as the fourth pole in the institutional balance – is limited to consultation and information duties with no binding effects on action (Article 36 TEU). With this hybrid element and its four poles (see graph 1) the post-Lisbon institutional balance bears thus little resemblance to the bi-polar system of the original European Communities, and the pre-Amsterdam triangle has become a quadrangle:

**Figure 1: The post-Lisbon institutional quadrangle**



## The different dimensions of the European Union's institutional balance of power

Power is one of the most complex phenomena of political systems, and – unsurprisingly – the vast political and social sciences literature dealing with this phenomenon has so far failed to arrive at a clear and consistent definition. The array of definitions ranges from Max Weber's forceful – but slightly crude – definition of power as “as every chance to carry out one's will in a social relationship even against resistance, regardless of the basis on which this chance rests”<sup>13</sup> to highly sophisticated differentiations between components of power, such as the no less than 14 different dimensions of power identified by Gareth Morgan,<sup>14</sup> some of which, however, - like the “management of gender relations” – would seem to be of limited relevance to our assessment of changes to the power balance between the European Union institutions. In order to pragmatically limit and focus the scope of this analysis we will in the following investigate six dimensions of the post-Lisbon relative power positions of the European Union institutions of which the first four are based on the respective formal powers of the institutions as defined in the Treaties in line with the principle of conferral (Article 13(2) TEU). These are:

(A) Power relating to the **constitutional position** of each institution. This dimension covers all powers with systemic relevance to the European Union as whole, i.e. powers regarding treaty changes, the budgetary framework, key appointments and the relative degree of autonomy any of the institutions is given with regard to the others.

(B) Power relating to **policy initiation**. This dimension covers all powers given to the institutions in respect of the initiation of both policies and legislation, it is widely

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<sup>13</sup> Max Weber: *Wirtschaft und Gesellschaft. Grundriss der Sozialökonomik. III. Abteilung*, Tübingen (J.C.B. Mohr) 1922, p. 28 [own translation].

<sup>14</sup> Gareth Morgan: *Images of Organization*. Executive edition, San Francisco (Berrett-Koehler/Sage) 1998, pp. 162-174.

recognised that agenda-setting powers – and not just “voting power” in the decision-making process - can have a major impact on eventual policy-outcomes.<sup>15</sup>

(C) Power relating to **decision-making**. This dimension covers all formal decision-making powers provided for by the Treaties, including both binding decisions (legislation, annual budget) and non-binding decisions (e.g. “recommendations” and certain Common Foreign and Security Policy decisions).

(D) Power relating to **implementation**. This dimension covers all powers of implementation in the legislative and budgetary fields as well as powers of control regarding the implementation of European Union measures by the Member States. To these four dimensions two additional ones will be added which are related to relative power increases or decreases likely to result for the institutions from treaty reforms regarding their internal organisation and the enhanced or reduced visibility resulting from their redefined powers and organisation:

(E) Power linked to **institutional strength**. This dimension covers any changes in political impact possibilities an institution might derive from treaty changes to its internal organisation which enhance or decrease its abilities to fulfil its tasks and – wherever possible – provide political leadership.

(F) Power linked to **public visibility**. This dimension covers the changes in political impact possibilities of an institution resulting from treaty changes likely to increase or decrease its public visibility as such visibility – if effectively mediated – can play a major role in creating and sustaining a basis for support.<sup>16</sup>

In the next sections we will look at the Treaty of Lisbon related power position changes of each of the four institutions within each of those six dimensions. As there is no scientific way of measuring power exactly in units or percentage points, and we will only try through our analysis to ascertain relative changes of the power position with regard to the pre-Lisbon situation. Any identified increase in the power position will be retained as “plus” (+) factor for the overall assessment in section 10, an

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<sup>15</sup> See George Tsebelis/Geoffrey Garrett: Agenda Setting Power, Power Indices, and Decision Making in the European Union, in: International Review of Law and Economics, vol. 16, number 3, 1996 , pp. 345-361

essentially unchanged position as a “zero” (0) factor and any likely decrease as a “minus” (-) factor.

### **The constitutional dimension of the institutional power balance**

The Treaty of Lisbon strengthens the European Parliament’s significantly - and this in six ways:

*First*, by extending its powers under the ordinary treaty revision procedure. The Parliament now has a right to submit formal proposals for the amendment of the Treaties to the Council (Article 48(2) TEU), must be represented in the revision Convention<sup>17</sup> and must give its consent to any decision by the European Council not to convene a Convention (Article 48(3) TEU).

*Second*, by extending the Parliament’s powers under the *simplified revision procedures*. Under the latter the Parliament has gained a right of initiative as well regarding any revisions of Part Three TFEU relating to the internal policies and action of the Union (Article 48(6) TEU) and the right to give its consent to the use of ‘passerelle’ provisions which allows the European Council to authorise the Council to pass from unanimity to qualified majority voting in the domain of Title V TEU (Common Foreign and Security Policy)<sup>18</sup> and to move from a *special legislative procedure* to an *ordinary legislative procedure* in the context of the TFEU (Article 48(7) TEU).

*Third*, by extending the Parliament’s powers regarding the launching of *enhanced cooperation frameworks*<sup>19</sup> between Member States to which the Parliament has now to give its consent (Article 329(1) TFEU).

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<sup>16</sup> On the power dynamics of mediated visibility see John B. Thompson: The new visibility, in: *Theory, Culture & Society*, vol. 22, number 6, 2005, pp. 31-51.

<sup>17</sup> The Parliament was represented in the 2002/2003 Constitutional Treaty Convention, but its right to be represented in any future Convention had not been codified in the Treaties before.

<sup>18</sup> With the exception of decisions with military implications or those in the area of defence.

<sup>19</sup> Excepted are fields of exclusive competence and the CFSP.

*Fourth*, by giving the Parliament powers of constitutional importance regarding European Union competences and structures in the field of criminal justice cooperation: The Parliament has to give its consent to any Council decision extending the number of aspects of criminal procedural law which can be the object of common rules (Article 82(2)(d) TFEU) or identifying other areas of serious cross-border crime that may be subject to legislative approximation measures (Article 83(1) TFEU) as well as to the establishment of the European Public Prosecutor's Office (Article 86(1) TFEU).

*Fifth*, by enhancing the Parliament's powers in the appointment process of the Commission: The European Council now has to take into account the elections to the European Parliament and hold "appropriate consultations" in this regard before proposing a candidate to the Parliament as President for the European Commission - who now has to be formally "elected" by the Parliament. The High Representative/Vice-President of the European Commission is also subject to a vote of approval by the Parliament together with all other Members of the European Commission (Article 17(7) TEU).

*Sixth*, by extending the budgetary powers of the Parliament: The removal of the distinction between compulsory and non-compulsory expenditure in revised Article 314 TFEU now puts the Parliament on a perfectly equal footing with the Council regarding the adoption of the European Union's annual budget, a major constitutional function.

As a result of the above changes the Parliament has a significantly increased role regarding constitutional change, the extension of European Union powers not requiring treaty revision, the appointment of the Commission and the European Union's budgetary framework – which together clearly accounts for a major "plus" in the institutional balance.

The same positive assessment cannot be made for the changes to the constitutional position of the Commission: While both the European Parliament (see above) and the European Council (see below) have seen their constitutional position strengthened in several respects, the Commission has not gained any increased

powers of constitutional significance and has to face more political competition on key issues, such as by the Parliament's newly gained right to make formal proposals for treaty revisions (Article 48(2) TEU) and the Parliament's new power to potentially block an enhanced cooperation even after a favourable opinion of the Commission (Article 329(1) TFEU). In addition, the creation of the new hybrid position of the High Representative/Vice-President of the European Commission has for the first time ever given a place at the table of the College of Commissioners to a person who – as regards Common Foreign and Security Policy responsibilities – is directly “mandated” by the Council (Article 18(2) TEU), which can be regarded as an encroachment upon the traditional institutional autonomy and homogeneity of the Commission. As a result, the Commission's overall constitutional position must be regarded as having been weakened by the Lisbon reforms – which makes a clear “minus” on the institutional balance.

The European Council, by contrast, has been constitutionally strengthened: Not only has it been given for the first time the formal status of a European Union institution (Article 13(1) TEU), but it has at the same time been transformed from an essentially deliberative body into an institution which can take binding legal decisions of constitutional importance. It can now – without convoking a Convention or transforming itself into an IGC - adopt a decision amending all or part of the provisions of Part Three TFEU (Article 48(6) TEU), decide on any move of certain fields of decision-making from unanimity to qualified majority voting or from a special legislative procedure to the ordinary (co-decision) legislative procedure (Article 48(7) TEU). In addition the Treaty of Lisbon strengthens the European Council's supreme political orientation function for the entire European Union edifice by a stronger wording (the definition of “general political guidelines” replaced by “general political directions and priorities”, Article 15(1) TEU), by adding a “strategic interests and objectives” definition function to the European Council's functions in the Common Foreign and Security Policy's domain (Article 22(1) TEU) and by providing for the first time explicitly for the European Council to “define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice” (Article 68 TFEU).<sup>20</sup> Finally, it is also the European Council which appoints and

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<sup>20</sup> This guidelines function regarding the area of freedom, security and justice has already been exercised by the European Council before through the 1999-2004 Tampere and 2005-2009 Hague programmes, but Article 68

dismisses the High Representative/Vice-President of the European Commission (Article 18(1) TEU) – arguably the most important new position created within the ambit of the Treaties. It can only do so with the agreement of the President of the European Commission, but the power of appointment clearly rests with the European Council which did not even care to mention the agreement of the Commission's President Barroso when the choice of Catherine Ashton was formally announced in a press communication on 19 November.<sup>21</sup> It should also be noted that in case of a motion of censure of the European Parliament being carried against the European Commission the High Representative/Vice-President of the European Commission has only to resign from his/her duties in the European Commission (Article 17(8) TEU), which allows the European Council to keep its appointee in office as HR even against a vote of the Parliament. The fact, that the newly “institutionalised” European Council now comes for the first time under the jurisdiction of the Court of Justice (Article 263 TFEU) may be regarded as new constraint with regard to its former role “outside and above” the European Union's legal system, but it does not substantially detract from the overall major “plus” which the treaty changes have brought for the European Council on the constitutional side of the institutional balance.

The Council's overall position is not altered in any significant way: While the formal ‘institutionalisation’ of the European Council places it more clearly in a hierarchical position under the latter as the ‘second-ranking’ institution representing the interests of Member States’ governments, the European Council has to decide on Common Foreign and Security Policy's “strategic objectives and priorities” on the basis of the recommendations of the Council (Article 22(1) TEU), a formalisation of its preparatory function of European Council Common Foreign and Security Policy decisions not previously provided for by the Treaties. The Council has lost its final say regarding compulsory budgetary expenditure because of the abolition of the expenditure category distinction in the budgetary procedure (Article 314 TFEU), but still no part of the budget can be adopted against its will, and it has gained powers of constitutional change together with the Parliament as regards the extension of European Union competences in the criminal justice domain and the establishment

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TEU now formally defines this power and adds guidelines for “operational planning” to the European Council's remit.

of the European Public Prosecutor's Office (Articles 82(2)(d), 83(1) and 86(1) TFEU). The new High Representative/Vice-President of the European Commission position means that for the first time a member of the Commission will chair a Council formation – the Foreign Affairs Council (Article 18(3) TEU) -, but as the HR/VP is “mandated” by the Council (Article 18(2) TEU) this can hardly be seen as a weakening of the Council's constitutional position vis-à-vis the Commission. Taken together the power effects of these changes can be regarded as being of roughly equal weight on the positive and the negative side, so that one can conclude on an overall “zero” effect regarding the institutional balance.

### **The policy initiation dimension of the institutional power balance**

The new Treaty does still not give the Parliament an independent right of legislative initiative, but it strengthens its position vis-à-vis the European Commission which is now formally forced to give its reasons to the Parliament if it does not submit a proposal in response to a request of the Parliament to do so (Article 225 TFEU). This increases the pressure on the Commission to act upon parliamentary requests regarding legislative initiatives, and the impact of this change can be clearly discerned in the revised Framework Agreement on Relations between the European Parliament and the Commission which is currently under negotiation: As part of the new “special relationship” with the Parliament, Commission has accepted at the outset the Parliament's demand – as formulated in the Resolution of 9 February 2010<sup>22</sup> – for the Commission to report on the concrete follow-up of any legislative initiative requests following the adoption of a legislative initiative report pursuant to Article 225 TFEU, within three months following adoption. The Commission shall then come forward with a legislative proposal at the latest after one year or shall include it in the next year's Annual Work Programme. If the Commission does not submit a proposal, it shall give the Parliament a detailed explanation of the reasons.<sup>23</sup> The expectation is now clearly that the Commission will act upon the

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<sup>21</sup> Council of the European Union: Informal meeting of the Heads of State or Government, Press Release, Brussels, 19 November 2009.

<sup>22</sup> European Parliament document B7-0091/2010, point 3(c).

<sup>23</sup> European Parliament: Revision of the Framework Agreement between the European Parliament and the Commission, Phase II, Results of the meetings between the EP working party and Vice-President Sefkovic, Version of 29 June 2010, p. 9 (unpublished internal document – the revised agreement still needs to be formally approved by both institutions).



Parliament's proposals, and that any non-action will require a politically uncomfortable justification. In addition, the new "special relationship" is to comprise a "regular dialogue" between the President of the European Parliament and the President of the Commission "on key horizontal issues and major legislative proposals" involving also invitations to the President of the Parliament to attend the Commission's meetings<sup>24</sup> which could enhance the Parliament's influence on legislative programming. The Parliament will also gain a greater influence on the Commission's own initiatives as a result of the extension of the Parliament's co-decision powers (see below) as the Commission will have to take greater account of the Parliament's positions to give the substance of its proposals a chance to be adopted in the end. Overall this amounts to a "plus" for the Parliament on the institutional balance.

The Commission's traditional position as the main initiator of European Union legislation can already be regarded as slightly weakened by the strengthened position of the European Parliament as identified above. Yet its – at least in the 'Community' domain – traditionally exclusive right of initiative is further undermined by the newly introduced citizens' initiative (11(4) TEU). While the Commission remains free not to act upon a successful citizens' initiative it could find itself under considerable pressure, especially if the initiative was backed by the Parliament.<sup>25</sup> The principle of the Commission's exclusive right of initiative in the 'Community' has also be undercut by the fact that the Treaty of Lisbon has maintained a right of initiative for the Member States in the newly 'communitarised'<sup>26</sup> fields of police and judicial cooperation in criminal matters of former Title VI TEU, although these now have to act with a quarter of their number (Article 76 TFEU).

A further challenge for the Commission's right of initiative is connected with new possibilities for national parliaments to control the compatibility of new legislative proposals with the principle of subsidiarity: According to Article 6 of the "Protocol on

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<sup>24</sup> Ibid., p. 7.

<sup>25</sup> A working document on the citizens' initiative of the EP Committee on Constitutional Affairs of 22 June 2010 suggests that the Parliament might react to such initiatives systematically and even if they have not been successful (Working document on a proposal for a regulation of the European Parliament and of the Council on the citizens' initiative. Committee on Constitutional Affairs. Rapporteur: Zita Gurmai and Alain Lamassoure, document PE443.095v01-00).

<sup>26</sup> The application of the term 'communitarised' appears justified as the Union has replaced and succeeded the European Community and both community legal instruments and decision-making procedures are now applicable in these two fields.

the Application of the Principles of Subsidiarity and Proportionality<sup>27</sup> Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. If such reasoned opinions are submitted by parliamentary chambers totalling least one third of all the votes allocated to the national Parliaments, the draft must be reviewed. If they represent at least a simple majority, the Commission must justify any decision not to withdraw the legislative proposal in question which can then be thrown out by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament before concluding the first reading.<sup>28</sup> This gives national parliaments for the first time a possibility to question and potentially even block the Commission's legislative initiative.

Of lesser constitutional significance but still worth noting is a weakening of the Commission's non-exclusive right of initiative in the Common Foreign and Security Policy's domain: Whereas before the Treaty of Lisbon the Commission had a formal right to submit proposals to the Council in the Common Foreign and Security Policy's domain<sup>29</sup> this has now been replaced by proposals made by the High Representative/Vice-President of the European Commission "with the Commission's support" (Article 30(1) TEU). As the High Representative/Vice-President of the European Commission can also make proposals purely on his/her own and is at least partially under the authority of the Council<sup>30</sup> this provision can be regarded as having deprived the Commission of an autonomous right of initiative in the Common Foreign and Security Policy context.

The post-Lisbon balance-sheet for the Commission's powers of initiative is therefore overall clearly more negative than before this latest treaty revision – and must count as a "minus" on the institutional balance.

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<sup>27</sup> OJ C306/150 of 17.12.2007.

<sup>28</sup> Ibid., Article 7 of the Protocol.

<sup>29</sup> Former Article 22(1) TEU.

<sup>30</sup> As mentioned before the HR/VP is "mandated" by the Council (Article 18(2) TEU).

The European Council, again, fares better on this account: As already mentioned the wording of its general political guidance function in Article 15(1) TEU has been strengthened, which gives it even more of a mandate deciding on major political initiatives. More important is the newly introduced explicit power for the European Council to “define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice” (Article 68 TFEU). As “legislative planning” can arguably have a decisive influence on which initiatives are to be submitted and when, this puts the European Council at least formally in a stronger position than the Commission regarding the Union’s legislative agenda in this important policy-making field. Also in terms of policy initiation, therefore, the European Council comes out with a “plus” on the institutional balance side.

The Council’s pre-Lisbon right of legislative initiative in matters of police and judicial cooperation in criminal matters will be more difficult to use now as at least a quarter of the Member States will now have to get together to make use of this possibility (Article 76 TFEU). Yet its initiative function is strengthened in the Common Foreign and Security Policy’s domain as the European Council now has to decide on Common Foreign and Security Policy’s “strategic objectives and priorities” on the basis of the recommendations of the Council (Article 22(1) TEU), but its own margin of initiative regarding the implementation of the Common Foreign and Security Policy remains bound by the European Council guidelines (Article 26(2) TEU), so that one cannot deduct from that any significant shift of initiation power in favour of the Council. Overall the changes to the Council’s position as regards policy initiation appear too slight to have a significant impact on the institutional balance, so that a “zero” factor can be retained.

### **The decision-making dimension of the institutional power balance**

In no other dimension is the strengthening of the position of the European Parliament as a result of the Treaty of Lisbon reforms as evident as in that of the decision-making powers: The Parliament’s co-decision powers under what is now called the *ordinary legislative procedure* (OLP) have been extended to 40 new fields which include major areas such as agriculture, fisheries, structural fund, justice and home

affairs and transport.<sup>31</sup> Of at least equal significance is that the consent of the Parliament to the conclusion of international agreements has now become the rule rather than – previously – the exception: According to Article 218(6)(v) the Parliament's consent is now required for all agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required, which – in conjunction with the major extension of the fields to which the ordinary legislative procedure applies means a massive extension of the Parliament's decision-making power in the domain of European Union's external relations. By its rejection of the provisional European Union-United States "SWIFT" agreement on 11 February 2010 the Parliament has already shown that it is willing and capable to use these extended powers.<sup>32</sup> Last but certainly not least, the Treaty of Lisbon has also put the Parliament on an equal footing with the Council in decision-making under the European Union's budgetary procedure by the removal of the distinction between compulsory and non-compulsory expenditure (Article 314 TFEU). The overall "plus" on the institutional balance for the Parliament as regards decision-making powers could hardly be more obvious.

The Commission's position, by contrast, has been weakened as a direct result of the Parliament's major gain in co-decision powers: If the ordinary legislative procedure (the former "co-decision" procedure) goes into the conciliation phase, the Parliament and the Council can agree on a compromise irrespective of the Commission's position, and in the conciliation phase the Commission can also not exercise its traditional right to withdraw legislation at any point in the legislative procedure. Although this does not mean that the Commission has become "irrelevant" in the fields covered by co-decision<sup>33</sup> as it still retains significant agenda-setting and gate-keeper possibilities,<sup>34</sup> the Commission has to operate under a "structural

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<sup>31</sup> See on this extension House of Lords, European Union Committee: *The Treaty of Lisbon: An impact assessment*, 10th Report of Session 2007–08, HL Paper 62-I, London (The Stationery Office) 2008, Vol. I, p. 66, and Fondation Robert Schuman: *The Lisbon Treaty*, Paris 2009, pp. 39–46 (list of fields) [available at: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/10fiches.pdf>].

<sup>32</sup> See Jörg Monar: *The Rejection of the EU-US SWIFT Interim Agreement by the European Parliament: A Historic Vote and its Implications*, in: *European Foreign Affairs Review*, Vol. 15/2, 2010, pp. 143–151.

<sup>33</sup> As this was argued in Christophe Crombez: *The Treaty of Amsterdam and the Co-decision Procedure*, in: Gerald Schneider/Mark Aspinwall (eds.): *The rules of integration. Institutional approaches to the study of Europe*, Manchester (Manchester University Press) 2001, p. 101.

<sup>34</sup> See Charlotte Burns: *Charlotte Burns: Codicision and the European Commission: A study of declining influence?*, in: *Journal of European Public Policy*, Vol. 11/1, 2004, pp. 1–18.

disadvantage<sup>35</sup> under the ordinary legislative procedure, and with the latter's extension to 40 new fields by the Treaty of Lisbon one cannot conclude on a substantial "minus" for the Commission on the institutional balance.

The European Council, although to a lesser extent than the Parliament, can be regarded as having come out of the Lisbon reforms with a "plus" as regards decision-making powers: Not only is the European Council now vested with important constitutional decision-making powers as a formal institution of the Union, but the Treaty has also assigned to it important reserve powers as regards legislative and Common Foreign and Security Policy decision-making. In the legislative field these are the referral procedures in the domains of the "area of freedom, security and justice" and social security. The first variant of these allows a Member State to activate what has been called an "emergency brake" against draft directives in the fields of criminal procedural law and approximation of substantive criminal law<sup>36</sup> in case it feels that it affects "fundamental aspects of its criminal justice system" (Articles 82(3) and 83(3) TFEU) or against social security measures related to the freedom of movement<sup>37</sup> in case it feels that these "affect important aspects of its social security system" (Article 48 TFEU) by referring the text to the European Council. The second variant allows a group of at least nine Member States, if the necessary unanimity in the Council cannot be reached, to refer to the European Council the draft regulation establishing the European Public Prosecutor's Office (Article 86(1) TFEU) and any measures concerning operational cooperation between police forces (Article 87(3) TFEU). In all five of these referral cases the appeal to the European Council has the effect of suspending the applicable ordinary or special legislative procedures which then has four months to arrive at a consensus solution before the draft legislative act in question is either sent back to the Council for adoption or opens a pathway for adoption of the act by way of an "enhanced cooperation". By suspending normal legislative procedures to await the outcome of European Council deliberations and by giving to the Heads of State or Government the possibility to determine a compromise solution on the respective legal act the European Council assumes thus the role of a quasi legislator which it never had

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<sup>35</sup> See Anne Rasmussen: The Role of the European Commission in Co-decision – A strategic facilitator operating in a situation of structural disadvantage, *European Integration online Papers (EIoP)* Vol. 7, 2003, no. 10.

<sup>36</sup> Now coming under qualified majority voting.

<sup>37</sup> Now coming under qualified majority voting as well.

formally before. The new reserve power in the Common Foreign and Security Policy domain is laid down in Article 26(1) TEU according to which the President of the European Council, “if international developments so require”, can convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in response to these developments. In this case as well the treaty-defined normal Common Foreign and Security Policy decision-making process handled by the Council and the High Representative/Vice-President of the European Commission is interrupted by and subjected to a direct intervention by the European Council. Special European Council meetings as a result of international crises have taken place before, a recent example is the extraordinary meeting on 1 September 2008 in relation with the crisis in the Caucasus,<sup>38</sup> but this has now been transformed in a formal procedure which adds to the formal decision-making powers of the European Council.

The Council's relative power position is affected negatively by the increase of the both the Parliament's and the European Council's decision-making powers: The extension of co-decision to 40 new fields means as many fields in which the Council has now to seek compromises with the Parliament on an equal footing, and the Council has also lost its final say over compulsory budgetary expenditure as a result of the abolition of the former expenditure categories under new Article 314 TFEU. Vis-à-vis the European Council, its position is weakened by the fact that the European Council's decision-making powers can have a formal suspensive and priority effect on ordinary Council legislative decision-making in the above mentioned referral procedures of Articles 48, 82(3), 83(3), 86(1) and 87(3) TFEU, as well as on ordinary Common Foreign and Security Policy decision-making in case of international emergencies according to Article 26(1) TEU. The overall effect can clearly be regarded as a “minus” for the Council on the institutional balance side.

### **The implementation dimension of the institutional power balance**

The Lisbon Treaty has introduced substantial changes to the procedures and categories applying to the implementation powers which can be conferred upon the

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<sup>38</sup> See Council of the European Union: Brussels European Council, 1 September 2008, Presidency Conclusions, Council document 12594/2/08 REV 2, 6 October 2008.

Commission.<sup>39</sup> The Parliament's role regarding Commission implementation acts – which was not recognised by the Council until 2006<sup>40</sup> – has been strengthened by the Treaty of Lisbon in three respects: Acts adopted under legislative delegation (“delegated acts”)<sup>41</sup> can now only enter into force if no objection has been expressed by the Parliament within a period set by the legislative act (Article 290(2)(b), the Parliament can revoke the delegation at any time (Article 290(2)(a) TFEU), and the Parliament has also gained full co-decision rights with the Council regarding the regulations which lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers through legislative “implementing acts”<sup>42</sup> (Article 291(3) TFEU) – which puts the Parliament on an equal footing with the Council regarding the determination of new the post-Lisbon “comitology” system. The Parliament has already used its new powers regarding “delegated acts” by rejecting on 19 May 2010 the Commission's Draft Directive amending the Annexes to Council Directive 95/2/EC on food additives regarding the authorisation of the use of “meat glue”.<sup>43</sup> Taken together the Parliament's new control over Commission implementation powers clearly amounts to a “plus” for the Parliament in the implementation power dimension of the institutional balance.

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<sup>39</sup> A thorough analysis is provided in Paolo Ponzano: ‘Executive’ and ‘delegated’ acts: The situation after the Lisbon Treaty, in: Stefan Griller/Jacques Ziller (eds.): *The Lisbon Treaty*, Wien (Springer) 2008, pp. 135-141.

<sup>40</sup> Through the introduction of the „Regulatory Procedure with Scrutiny“ by the Council Decision of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 200/11 of 17.07.2006. See on this earlier reform and its limitations Gregor Schusterschitz/Sabine Kotz: *The Comitology Reform of 2006. Increasing the Powers of the European Parliament Without Changing the Treaties*, in: *European Constitutional Law Review*, Vol. 3/1, 2007, pp. 68-90.

<sup>41</sup> I.e. non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act which are adopted under powers delegated to the Commission for this specific purpose. As these fall under the competence of the EU legislator the control is up to Council and Parliament.

<sup>42</sup> I.e. legislative acts aimed to ensure uniform implementing conditions of EU legislative acts at the level of the Member States. As the Member States are responsible for the implementation they also responsible for controlling the respective implementing powers of the Commission.

<sup>43</sup> European Parliament resolution of 19 May 2010 on the draft Commission directive amending the Annexes to European Parliament and Council Directive 95/2/EC on food additives other than colours and sweeteners and repealing Decision 2004/374/EC (European Parliament document B7-0264/2010).

The Commission comes out of the Lisbon Treaty reforms with its implementation powers being subject to enhanced scrutiny powers of the Parliament,<sup>44</sup> but the increased powers of the Parliament may also have a positive side for the Commission: The Parliament has in fact always opposed the “management” and “regulatory” procedures of the “comitology” system and could well use its new co-decision powers regarding framework regulations on the Commission’s exercise of implementing powers to reduce the possibilities of the national experts in the committees to block Commission implementing acts. Clearly counting on the support of the Parliament, the Commission has in fact already proposed in its March 2010 Communication on the post-Lisbon “comitology” system that a newly defined “advisory procedure”, which would not be binding on the Commission, should become the “general rule”, and that an “examination procedure”, which would allow national experts to block a Commission draft measure, the exception applicable only if a number of criteria are met.<sup>45</sup> This, and a number of other procedural changes, could make it distinctly easier for the Commission to pass implementing measures.<sup>46</sup> The Szajer draft report of the Parliament’s Legal Affairs Committee on the new Regulation of May 2010 has already endorsed the Commission’s proposition to make the “advisory procedure” the standard procedure and the “examination procedure” the criteria bound exception, although it also provides for a possibility for the Parliament and the Council to indicate to the Commission at any time that they consider a draft implementing act to exceed the implementing powers provided for in the basic act.<sup>47</sup>

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<sup>44</sup> Which the Commission seems somewhat reluctant to fully accept. According to the Szajer Report on legislative implementation of March 2010 which was adopted by the Parliament on 5 May 2010 the Commission “appears to understand neither the extent nor the significance of the changes” (European Parliament document A7-0110/2010, p. 11).

<sup>45</sup> European Commission: Proposal for a Regulation laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, COM(2010)83 final of 9 March 2010.

<sup>46</sup> See Jessica Koch: Committee proceedings for the control of implementing powers, *Centrum für Europäische Politik*, Kurzanalysen, may 2010 (available at: [http://www.cep.eu/fileadmin/user\\_upload/Kurzanalysen/Durchfuehrungsbefugnisse\\_Art\\_291\\_AEUV/PB\\_Control\\_of\\_Implementing\\_Powers\\_Art\\_291\\_TFEU.pdf](http://www.cep.eu/fileadmin/user_upload/Kurzanalysen/Durchfuehrungsbefugnisse_Art_291_AEUV/PB_Control_of_Implementing_Powers_Art_291_TFEU.pdf)).

<sup>47</sup> European Parliament, Committee on Legal Affairs: Draft Report on the proposal for a regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, 2010/051(COD), 20 May 2010.



While the Commission's likely gain of more freedom from control by national experts is still subject to the ongoing legislative process, its position on the implementation side has already been clearly strengthened by the extension of its right to launch treaty infringement procedures under Article 258 TFEU against Member States in the fields of police and judicial cooperation for any failure to comply with European Union law, which had not been provided for former Article 35 TEU for these "third-pillar" fields. As there have indeed been serious implementation deficits at the national level in these fields, this clearly strengthens the Commission's hand in ensuring effective implementation. On the whole one can therefore conclude on at least a slight "plus" for the Commission on the institutional balance side as regards implementation.

The European Council – as a result of its supreme constitutional orientation function in the European Union system – has not been vested with any implementation powers. Its position in the post-Lisbon institutional balance can therefore be recorded with a "zero" effect.

The situation is clearly different for the Council as it now has to share its controlling powers regarding the implementation of European Union measures by the European Commission to a much greater extent with the Parliament than before. The likely evolution of the "comitology" system towards more "advisory" procedures as a standard could also weaken the Council's position on the implementation side, especially as any appeal to the Council in case of the Commission overriding the opinion of a national expert committee seems excluded now as new Article 291(3) TFEU refers to a control of the Commission's exercise of implementing powers by the Member States only. The Council therefore ends up with a "minus" on the institutional balance as regards implementation powers.

### **The institutional strength dimension of the institutional power balance**

The only Treaty of Lisbon change of potential importance to the institutional strength of the European Parliament is the reduction of its Members from 785 to a maximum of 751 by virtue of Article 14(2) TEU. While the reduction of the size may make a

small contribution to rendering the Parliament internally more manageable and the plenary less disparate, this also has cost-side to it by slightly reducing cross-national representation in committees and increasing the already huge number of voters per Member of the European Parliament even further. Positive and negative effects can be considered as roughly equal, and with the reduction in maximum membership accounting for less than 5% of total membership the overall impact is likely to be so limited that the impact on the institutional balance may be safely considered as “zero”.

The Commission, on the other hand, has come out of the Lisbon Treaty reforms institutionally slightly strengthened: The leadership position of the President of the European Commission has been clearly reinforced because of its new power to ask a Commissioner to resign even without the approval of the College, a power which also applies to the High Representative/Vice-President of The European Commission, although the latter’s term in office is then formally ended by the European Council (Article 17(6) TEU). The former explicit power of the President to reshuffle Commissioners’ portfolios (former Article 217(2) TEC) has disappeared but can be regarded as covered by the President’s general power regarding the internal organisation of the Commission (Article 17(6) (b) TEU). The reduction of the number of Commissioners from currently 27 to two-thirds of the number of Member States from 2014 onwards, provided for by new Article 17(5) TEU could have made a contribution both to the internal effectiveness of the Commission and to the de-nationalisation of Commissioners’ posts, but it was shelved by a decision of the European Council of 12 December 2008<sup>48</sup> as a concession to the second Irish referendum campaign. As this merely means the continuation of the current system, it cannot really be seen as a weakening in comparison with the pre-Lisbon system, but future enlargements will as a result clearly make the Commission more unwieldy as an executive institution. Overall one can conclude on a – clearly rather slight – “plus” for the Commission’s institutional strength because of the President’s enhanced leadership position within the College.

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<sup>48</sup> Council of the European Union: Brussels European Council, 11/12 December 2008, Presidency Conclusions, Council document 17271/1/08 REV 1, 13 February 2009, point 2.

The European Council has emerged from the Lisbon Treaty also with a “plus” on the institutional balance side as regards institutional strength, but arguably with a much bigger one than the Commission: The main reason is obviously the introduction of the new post of President of the European Council with a period in office of two and half years. Although a lot will always depend on the incumbent, this clearly provides the European Council with an enhanced continuity and leadership potential. Article 15(5) TEU provides explicitly for the President to „drive forward“ the European Council’s work, to ensure “continuity” and to “facilitate cohesion”. The leadership potential the position provides the European Council with was effectively demonstrated by Herman Van Rompuy’s role in securing the European Council’s statement on the Greek sovereign debt crisis on 11 February 2010 which provided a much needed reassurance on solidarity within the Eurozone.<sup>49</sup> In addition to the role of the new President the possibility for the Heads of State or Government to be “assisted” by ministers of different Council formations (Article 15(3) TEU) – and not only by the foreign ministers as traditionally – could increase the direct impact on the respective Council formations and thus add to the European Council’s leadership strength.

It can be argued that passing from decision-making by consensus or unanimity to taking decisions by qualified majority voting also constitutes a factor of institutional strength as common decisions can less likely to be blocked by individual interests of Member States and are less likely to result in least common denominator compromises. In this respect as well the change for the European Council is quite significant: Qualified majority voting applies now to the election of the President of the European Council (Article 15(5) TEU), the proposal of a candidate for the position of President of the Commission to the Parliament and the subsequent appointment of the European Commission (Article 17(7) TEU), the appointment of the High Representative/Vice-President of the European Commission (Article 18(1) TEU), the adoption of the list of configurations of the Council of Ministers other than those of the General Affairs Council and of the Foreign Affairs Council, in accordance with the decision on the Presidency of Council configurations, other than

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<sup>49</sup> See the analysis in Peter Ludlow: Van Rompuy saves the day – The European Council of 11 February 2010, Eurocomment Vol 7.6., 3 March 2010 (available at <http://www.eurocomment.be/2010/03/03/vol-76-van-rompuy-saves-the-day-the-european-council-of-11-february-2010/>).

that of Foreign Affairs (Article 236 TFEU), the appointment of the President, Vice-President and the other members of the Executive Board of the European Central Bank (Article 283(2) TFEU), and finally the European Council votes by simple majority on procedural issues and on the adoption of its Rules of Procedure (Article 235(3) TFEU). For an institution formerly functioning purely on the basis of consensus this amounts to a quite substantial shift towards majority voting – and adds to its institutional strength in terms of decision-making capacity.

The impact of the Lisbon Treaty reforms on the Council in terms of institutional strength is one of the most difficult to assess in the context of our analysis: On the one hand the Council also gains institutional strength in terms of decision-making capacity – and this quite significantly so - because of the passage to qualified majority voting in no less than 38 old and new fields.<sup>50</sup> But on the other hand, there are some likely weakening effects in terms of institutional strength and coherence linked to the new Presidency system: The Presidency of the Council which will still rotate with the exception of the Foreign Affairs Council (chaired by the High Representative/Vice-President of the European Commission, Article 27(1) TEU) has lost its former direct link with the Presidency of the European Council which is now not any longer assured by the country holding the Presidency. This entails an enhanced risk of lack of coherence and priority differences between the European Council Presidency and the Presidency of the different Council formations, and the Council Presidency is likely to have less authority over fellow ministers in the Council as it lacks the former direct “national” connection with the European Council Presidency. Problems of coherence could also emerge between the Foreign Affairs Council “permanently” chaired by the High Representative/Vice-President of the European Commission and other Council formations chaired by the rotating Presidency ministers. As a result – although these different elements are difficult to measure against each other – one can feel justified in concluding that there are both strengthening and weakening effects which are sufficiently in balance with each other to conclude on an overall neutral (“zero”) effect on the institutional balance.

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<sup>50</sup> Fondation Robert Schuman: The Lisbon Treaty, Paris 2009, pp. 27-38 (list of fields) [available at: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/10fiches.pdf>]. The table of the Schuman Foundation lists correctly 44 new fields coming additionally under qualified majority voting, but six of those apply to the European Council so that total for the Council is 38.

## The visibility dimension of the institutional power balance

In terms of public visibility the European Parliament clearly comes out of the Lisbon Treaty with a “plus”: Its increased constitutional, budgetary and legislative powers all offer a substantial potential to make it appear more often than before as an important or even decisive actor on the European stage. The extensive media coverage given to its aforementioned rejection under its new post-Lisbon powers of the provisional European Union-United States SWIFT agreement in February 2010 is an example for that. The extended co-decision powers also guarantee the Parliament more attention by lobbying interest groups (whether welcome or not), and under the new “regular dialogue” with the Commission the latter appear more often as seeking the support of the Parliament which will add to its perceived importance. Even third-countries will regard the Parliament as a more important player on the European Union side because of its extended powers regarding international agreements and are likely to seek more direct contacts with it.<sup>51</sup> Although extension of the Parliament’s powers have in the past not prevented the nearly continuous decline in voting turnout in European elections the Parliament has come out of the Lisbon Treaty with such a strengthened overall position that the resulting enhanced visibility might provide new opportunities in this regards.

The Commission, by contrast, has to face more “visibility competition” as President Barroso has now a new competitor in the public perception in guise of the new (semi-permanent President of the European Council who may well be seen as carrying occasionally more weight than the Commission President because of aura of European Union supreme which comes with the European Council (see also below). This potential “presidential competition” as regards visibility might also be a challenge for the Commission President outside of the Union because of the European Council President’s external representation function in the Common

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<sup>51</sup> The increased importance of the Parliament for the future of EU-US relations was forcefully underlined by Philip H. Gordon, the US State Department Assistant Secretary responsible for European Affairs, when giving evidence on the Treaty of Lisbon implications to the Subcommittee on Europe of the US House of Representatives Foreign Affairs Committee on 15 December 2009 (see US Department of State: The Lisbon Treaty: Implications for Future Relations Between the European Union and the United States, Washington, December 2009 (available at <http://www.state.gov/p/eur/rls/rm/2009/133583.htm>).

Foreign and Security Policy domain (Article 18(6) TEU).<sup>52</sup> There is also a significant risk that the High Representative/Vice-President of the European Commission, although being a member of the Commission and being responsible for external relations aspects under the Commission's competence, might be primarily associated with the Council in terms of public visibility because of its chairing of the Foreign Affairs Council and close association with the European Council whose meetings the High Representative/Vice-President of the European Commission attends (Article 15(2) TEU).<sup>53</sup> The Commission can therefore be regarded as ending up with a relative "minus" on the institutional balance side after the Lisbon Treaty.

The European Council's visibility will benefit from the enhanced continuity and leadership potential of its new (semi-)permanent President. Whereas before the Lisbon Treaty much of the publicity of the preparation, holding and aftermath of European Council meetings focused on the role of head of state or government of the country holding the Presidency (duly flagged up on the Presidency's website), there has already been a distinct shift of the attention to Van Rompuy instead, helped in part by Spanish Prime Minister Zapatero of setting a precedent during the recent Spanish Presidency for yielding the primary role to him.<sup>54</sup> The European Council's visibility would certainly also benefit from more frequent meetings which Van Rompuy clearly favours and which according to him could go up to 10 meetings per year.<sup>55</sup> In terms of visibility the European Council therefore comes out of the Lisbon Treaty reforms with a "plus".

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<sup>52</sup> In his speech before the European Parliament on 24 February 2010 Van Rompuy himself said that "Public opinion and third countries may well find it difficult to grasp the difference between the President of the Commission and the President of the European Council"(Council document PCE 32/10, 24 February 2010).

<sup>53</sup> When welcoming HR/VP Ashton for her first visit in her new capacity in Washington on 21 January 2010 US Secretary of State Clinton, for instance, welcomed her as "High Representative for the Foreign and Security Policy" without making any reference to her position in the Commission in spite of her making reference to issues under Commission competence – such as reconstruction aid to Haiti (see US Department of State: Remarks With EU High Representative for Foreign Policy Catherine Ashton, Washington, January 2010 (available at <http://www.state.gov/secretary/rm/2010/01/135530.htm>).

<sup>54</sup> See Carlos Closa: Institutional Innovation in the EU: The Presidency of the European Council, ARI Analysis 47/2010, Real Instituto Elcano, Madrid, March 2010 (available at [http://www.realinstitutoelcano.org/wps/portal/rielcano\\_eng/Content?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/ari47-2010](http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari47-2010)).

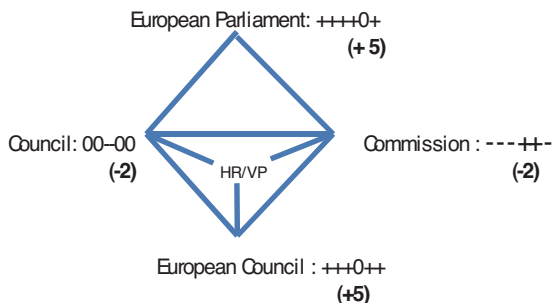
<sup>55</sup> A figure given in his speech before the European Parliament on 24 February 2010 (Council document PCE 32/10, 24 February 2010).

For the Council the picture is, again, a more mixed one: On the one hand the Council might benefit from the likely association of the High Representative/Vice-President of the European Commission with it rather than the Commission (see above). The general passage to deliberations in public provided for by new Article 16(8) TEU can also add to its public visibility. On the other hand, however, the reinforced constitutional position and powers of the European Council as well as its new non-rotating President makes the Council appear more than ever before as a “subordinate” institution of the European Council and inevitably diverts public attention than before more to the latter. The continuing rotation and weaker position of the Council Presidency can also hardly be seen as a positive factor on the visibility side, so that positive and negative effects together may overall result in a “zero” factor on the institutional balance.

### **Conclusions: The shifts in the institutional power balance and its consequences**

If one enters the power change factors identified above for each of the six dimensions analysed into the post-Lisbon institutional quadrangle one arrives at a strikingly clear overall picture regarding the main shifts of power. The European Parliament and the European Council emerge with five “plus” and one “zero” each as the main – and indeed very important - beneficiaries of the Treaty of Lisbon reforms whereas the European Commission with four “minus” and two “plus” and the Council with four “zero” and two “minus” emerge as the clear losers of the new institutional balance. If one assigns one positive point for each “plus”, no point for a “zero” and a negative point for each “minus” the difference between the European Parliament and European Council with a plus of five points on the one hand and the Commission and the Council with minus of two points on the other become even more obvious:

**Figure 2: The post-Lisbon institutional balance**



Several conclusions can be drawn from these clear shifts in the institutional balance:

*The first* – and rather obvious one – is that the European Parliament and the European Council emerge as the primary poles of power in the post-Lisbon institutional system. This means that the evolution of the Union – both as regards its constitutional framework and its policies – will depend more than ever before on the extent to which both institutions agree on strategic objectives and priorities of the Union. There is hence a need for developing cooperation between the Parliament and the European Council, this all the more so as the relationship between the two is the least defined between any two of the European Union institutions in the Treaties. President Van Rompuy’s oral report on 24 February 2010 to the European Parliament on the results of the informal European Council meeting of 11 February – although Article 15(6)(d) TEU only obliges him to do so after formal meetings – was therefore a step in the right direction, and no less constructive are the contacts he has initiated with political group leaders of the Parliament and his monthly meetings with the President of the Parliament.<sup>56</sup> Yet, in order to arrive at a more regular and effective dialogue, the two institutions could consider working on a formal framework

<sup>56</sup> See Carlos Closa: Institutional Innovation in the EU: The Presidency of the European Council, ARI Analysis 47/2010, Real Instituto Elcano, Madrid, March 2010 (available at [http://www.realinstitutoelcano.org/wps/portal/rielcano\\_eng/Content?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/ari47-2010](http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari47-2010)).



agreement defining information and consultation mechanisms, this also in the light of the fact that the European Council is now a formal institution which could become formally part of an inter-institutional agreement.

*The second* and hardly less obvious conclusion is that of the relative decline in power of the Commission, especially in the legislative field (extension of co-decision) and in external relations (High Representative/Vice-President of the European Commission more under the control of the Council than the Commission). The Commission is clearly facing a stronger Parliament and a stronger European Council, and appears more and more squeezed between the two, with its formerly primary function of political and legislative initiative coming more under the influence of the former and – at least as regards strategic political initiatives – being even more taken away by the latter. As a strengthened European Council might see the Commission more and more as an executive instrument of its supreme guidelines it might be in the Commission's best interest to seek a closer cooperation with the Parliament also strategic objectives and programming. The new "regular dialogue" between the Commission and the Parliament under the soon to be approved revised Framework Agreement between the two institutions comprises already some elements going in that direction.

*The third* conclusion is that the Lisbon Treaty reforms have also put the Council on a path of relative declining power, mainly because of the ascendancy of both the Parliament and European Council. Now operating under the European Council with increased formal powers and a greater continuity and leadership potential because of the (semi-)permanent Presidency, the Council could gradually develop into an institution fulfilling more and more the function of a "super-COREPER" vis-à-vis the European Council. The fact that Member States can now formally appeal to the European Council under Articles 48, 82(3), 83(3), 86(1) and 87(3) TFEU for supreme arbitration with a suspensive effect on Council legislative procedures marks clearly a step in this direction.

*The fourth* conclusion is that the new High Representative/Vice-President of the European Commission's position is by far the most complex and – from an inter-institutional perspective - tension charged innovation of the Treaty of Lisbon. Quite

apart from the huge international demands which come with her job, Baroness Ashton might not be envied for her uneasy institutional position within the institutional sub-triangle of Commission, Council and European Council with its multiple dependencies. The overall institutional context suggest that the High Representative/Vice-President of the European Commission will be drawn more into the power ambit of the Council and European Council – which will not make Baroness Ashton's position within the Commission any easier.

*The fifth* and final conclusion relates to the possible categorisation of the post-Lisbon institutional balance. There has been a long tradition of interpreting changes of the institutional balance as shifts along the lines of a more supranational or intergovernmental orientation of the European Union's institutional system.<sup>57</sup> After the Treaty of Lisbon reforms this supranational vs. intergovernmental categorisation seems increasingly obsolete as supranational and intergovernmental elements are now so intermingled and the distinction at least partially diluted that they are difficult to apply to the institutional reality. The new position of the European Council is a case in point: Traditionally it has been seen as the very embodiment of intergovernmentalism, so that the strengthening of its position in the post-Lisbon system should be tantamount to a shift towards more intergovernmentalism. Yet the European Council has now become a fully-fledged European Union institution subject to the jurisdiction of the Court of Justice, chaired by a non-rotating President and voting by qualified majority. It can surely not any longer be regarded as an intergovernmental body in the classic sense, although it surely still represents the power of national governments at their highest level. The same difficulties with the supranational/intergovernmental categorisation can be encountered on supranational side of the divide: The Commission has traditionally been regarded as the archangel of the supranational principle within the European Union's institutional structure, but no one can seriously deny that the Commission is exposed to major influences from the side of national governments, and with the principle of one Commissioner per Member State now being confirmed also for the post-Lisbon period a purely

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<sup>57</sup> For an interpretation of the post-Lisbon institutional balance according to the supranational/intergovernmental dichotomy see Youri Devuyst: The European Union's institutional Balance After the Treaty of Lisbon: "Community Method" and "Democratic Deficit" Reassessed, in: Georgetown Journal of International Law, Vol. 39/2, 2008, pp. 247-325.

supranational view of the Commission seems hardly to correspond to institutional reality.

Rather than trying to fit a constantly evolving institutional system, whose purpose is to transform a wide variety of interests of citizens, governments, societal and economic actors, national and European administrations (to name only a few) into common policies, into the Procrustean bed of abstract categories, it is worth asking whether the Union's most recent major institutional reform has given more or less weight to the sources of power which can claim the greatest legitimacy in the European Union system. As the Union is based on the double legitimacy of that of its citizens and of the Member States it seems that the significant strengthening of the European Parliament – which represents the former – and of the European Council – which represents the latter at their highest level corresponds to the very nature of the European construction as it has emerged from sixty years of development. This, however, does not yet guarantee that the changed institutional balance will be more efficient and effective in terms of policy results. Much will depend on the practice of inter-institutional cooperation and the efforts of each institution over the next few years to make the new elements of the institutional balance work.

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## **A NEW INTER-INSTITUTIONAL BALANCE: SUPRANATIONAL VS. INTERGOVERNMENTAL METHOD AFTER THE LISBON TREATY**

### **Introduction**

The present contribution is aimed at assessing the new inter-institutional balance resulting from the Treaty of Lisbon in the light of the global evolution of the European Union integration process, in which the Treaty is, albeit, a further but not a final step.

Taking into account the fact that the Lisbon Treaty supersedes the European Community, it has been suggested that, in place of a Community method, a supranational method, as opposed to the intergovernmental method, should be used.

Having said that, it may also be useful to remember that the Community method is centered on the key role of the European Institutions, that of the promotion and protection of the general interest: traditionally, this is the European Commission and the European Court of Justice, as well as the European Parliament which represents the European citizens. When the Treaty strengthens those institutions, it also reduces the power of national governments to influence the European decision making process. On the other hand the intergovernmental method is based on a

preponderant role of the intergovernmental institutions, i.e. the European Council and the Council, with a small involvement of the other institutions. This method is even less supranational when such institutions must decide in unanimity, so respecting the classic principle of international law according to which national sovereignty can only be limited by consent of all the States concerned. In the following paragraphs the evolution of the powers determined by the Lisbon Treaty will be taken into exam with reference to the single institutions in order to assess the new inter-institutional balance of powers.

### **The Intergovernmental side**

The key political question that inspired the negotiations, first of the Constitutional Treaty and then of the Lisbon Treaty, was how to redesign the external representation of the European Union in order to ensure better visibility and more coherent actions. With this aim, the “intergovernmental side” of the European institutional machine has been transformed, notably by strengthening the role of the European Council and of its (new) permanent President.

According to the new article 10 of the TEU, Member States are both represented in the European Council by their Heads of State or Government and in the Council by the members of their governments. After a long historical evolution, from sporadic meetings of Heads of States and Governments to a regular gathering every six-months (since 1974), and then to a sort of institutions whose powers (but not whose status) were recognized by the Maastricht Treaty, the European Council becomes with the Lisbon Treaty a fully-fledged Institution, since article 13 TEU expressly mentions it in the institutional framework.

The European Council is involved in many different procedures entailing “high policy” or highly controversial decisions: it declares a serious breach of fundamental values by a Member State (article 7 TEU), it will decide on the future composition of the European Parliament and of the 2014 Commission, it proposes the candidate President of the Commission, appoints the Common Foreign and Security Policy High Representative with the agreement of the President of the Commission. With the Lisbon Treaty the European Council plays a new role in the procedures of the

Treaty revisions, accession of new member states and withdrawal of members from the European Union. Moreover, the European Council acquires an explicit role as last resort political arbiter, not only in the new "Ioannina Compromise" (article 31 TEU), but also in the many cases of "emergency brakes" provided by the Treaty on the Functioning of the European Union in sensitive matters (articles 48, 82, 83, 86, 87).

In some fields, the European Council is the key institution: it establishes the strategic interests and general objectives of External Action, has a prominent role in defining and implementing decisions in the common foreign and security policy, in the freedom security and justice area as well as in economic and monetary matters. But, more generally, the European Council becomes the true policy maker of the European Union providing the general political impetus and setting the legislative directions and priorities. In so doing, it has transformed the Commission's power of proposing legislation into a sort of technical power. If at the beginning of European integration, the legislative priorities were indicated by the institutions devoted to promoting the general interest, the latter is now only deputed to transform the political priorities, established by the Heads of State and Governments, into legislative drafts. The Commission maintains of course, the right of proposing something different from what has been indicated by the European Council but experience shows that this rarely occurs: nevertheless the Council has recently reproached the Commission for not having faithfully fulfilled the indication contained in the Stockholm Program. As it is quite easy to follow the discussions of the Ministers in the Council, the path indicated by the European Council proves to be a fast lane for the Commission with regards to making proposals.

The European Council may play a useful role whenever a serious political problem arises, or when the decision making process is at an *impasse*. The Treaty of Lisbon makes transparent and explicit what have been achieved in practice through the years. The political authority of the European Council will not be discussed here, but should the setting of the political priorities of the European Union be left only to an institution which represents the interests of the States and whose *modus decidendi* is necessarily based on political compromise? If the Commission's political role in proposing the legislation of the European Union is fading away, only a substantive

contribution of the European Parliament could balance the intergovernmental side when new legislation has to be adopted.

A further enhancement of the intergovernmental side of the European institutional machine stems from the creation of the President of the European Council. According to article 15 TEU, the President of the European Council could seem as not much more than a simple chairman. He chairs it and drives forward the work of the European Council on the basis of the work of the General Affairs Council, ensuring their preparation and continuing cooperation with the President of the Commission. He is supposed to facilitate the consensus within the European Council, to present a report to the European Parliament after each of the meetings of the European Council. Such information takes the place of the previous mechanism according to which it was The European Council which reported to the European Parliament (Article 4 TEU in Nice version) and it has to be seen whether it will represent a step forward or backward in the democratization of the interinstitutional dialogue. According to the same Article if international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy. On the external side, he should ensure at his level the external representation of the Union on issues concerning Common Foreign and Security Policy without prejudice to the powers of the High Representative.

But, as so often happens, the actor is more important than the plot. Mr. Van Rompuy has proven to be much more than a simple chairman. With an intelligent use of his powers he is acquiring an authoritative standing and a proactive role. Thanks to his permanent position, he outclassed not only the rotating presidency but also the High Representative; together with the latter he has confined the national Ministers for Foreign Affairs in a minor role during the European Council Meetings where they are no more systematically invited and in the external relations since he meets alone or with the Commission President foreign Chiefs of State. Additionally, by holding monthly meetings, he is simultaneously propelling the role of the European Council and his own by the fact of playing the coordination role which is the formal duty of the General Affairs Council. The Belgian rotating presidency of the second semester of 2010 will probably give him the chance to further improve his

position. Mr. Van Rompuy recently stressed that the Spanish Presidency felt in a sort of transitional period and that he would have only gradually exercised his own prerogative. With the help of the Belgian presidency he can now consolidate his stronger role and affirm it as a general rule.

The intergovernmental side of the European institutional machine is completed by the Council of Ministers. The Lisbon Treaty should speed up the decisional process: by introducing the Ordinary Legislative Procedure and the qualified majority voting in most of the European policies it allows the Council to overcome the national vetoes. Moreover, from 2014 the simpler double majority will take the place of the current, complicated voting system.

On the other hand, the global position of the Council in the inter-institutional balance is not strengthened by the Lisbon Treaty and it resents the rise of the other institutions. As far as the relations with the European Parliament are concerned, it is clear that the Council must share an increasing amount of its legislative powers with the Assembly. This is clearly the case when powers should be "delegated" to the Commission (new art. 290 of the TFUE) and it remains an open question for the future legal framework to be established according to art. 291 TFUE for the "mechanisms for control by Member States of the Commission's exercise of implementing powers" (former "Comitology" domain). In addition, the new strengthened role given by the Lisbon Treaty to national Parliaments (art. 12 TEU) can further limit the marge of manoeuver of the members of national Governments in the Council.

With regard to the European Council, the Council is assuming a functional role, implementing the political decisions of the latter and the role of rotating Presidencies is diminished by the action of the President of the European Council and of the High Representative of the External Action Service.

As far as the latter is concerned the repartition of the tasks of the High Representative are not entirely clear, even if the rotating Presidency is to chair the Trade and Development formations. The recent practice shows that the new powers of the High Representative, who chairs the External Relations Council, are tarnishing



the role of the national Foreign Affairs Ministers, even more so since Mr. Van Rompuy excluded them from the meetings of the European Council.

The system of rotating presidencies, which was in force before the Lisbon Treaty, surely had some shortcomings: it was difficult to understand outside of Europe, it was not able to ensure a clear external representation of European Union and of the Common Foreign and Security Policy and it was too brief for granting a durable political impact. On the other hand, it provided a single decisional backbone, with an integrated management of all the meetings of Heads of States, of Ministers and of Ambassadors in the Coreper. In the new system it is not clear who will watch over the cross coherence of the different European Union fields of legislation, as there is no evidence that the General Affairs Council is engaged in such a task .

### **Does the High Representative for the External Action stand more on the intergovernmental, or on the supranational side?**

In order to attain a better external visibility of the European Union, the Lisbon Treaty reshaped the role of the former High Representative for the Common Foreign and Security Policy, who now represents more the External Action of the European Union.

In comparison with her predecessor Javier Solana, the post-Lisbon High Representative plays many different roles: besides being Vice-president of the Commission charged with External Relations and chairing the External Relations Council, she is going to lead the European External Action Service, a third job which is itself very demanding. The first months of her mandate – mainly dedicated to the establishment of the European External Action Service - showed the fatigue of keeping the pace.

The different roles are sometimes difficult to combine. Due to her presence in both Council and Commission, the High Representative should embody a perpetual search of compromise between the two methods. Nevertheless, she sometime seems to be more concerned with her intergovernmental tasks: for instance, the fact that Ms Ashton didn't take the oath before the Court of Justice together with the other Commissioners could be questioned. On the other hand Ms Ashton, although

often criticized for her scarce involvement in public events, is overshadowing the national Ministers of Foreign Affairs, especially the one of the rotating Presidency, with the help of the President of the European Council.

The High Representative is part both of the intergovernmental and the supranational method, representing in institutional terms a type of clearing house of different points of view. Only a well balanced synthesis of the High Representative's double nature can help to address the real problem of providing the Union's single voice. In so doing, the High Representative must respect the attributions of the President of the European Council and of other Commissioners (in particular those of Development and Trade).

How such a repartition will work in practice within the respective inter-institutional relations is yet to be seen, though hopefully this will be carried out in a manner of coordination rather than competition. Of course the problem goes beyond the persons and involves the delimitation of powers between the European Union and the Member States. However, recent disputes in negotiating international agreements show that it is still difficult for the European Union to speak with a single voice. In the case of the United Nations' talks on mercury, the High Representative, the Commission and the Member States all claimed to be competent, which only resulted in weakening the overall European position on the international stage.

### **The Commission: a battlefield of the two methods.**

The Commission, considered in the original EEC system as the pivot of the Community method, has along the years progressively lost its political leadership, becoming an eminently technical institution. A more inter-governmental approach, based on negotiation and compromise, characterized the last mandates of the Commission. This is possibly due to the fact that the rule to attribute one Commissioner to every state may induce Member States to consider their Commissioner as an ambassador of national positions. The Lisbon Treaty prescribes to reduce the number of Commissioners from 2014 unless the European Council unanimously decides differently. As a political agreement in this sense is said to have been already concluded, there are few hopes that the number of Commissioners will be diminished.

The Lisbon Treaty did not strengthen the role of the Commission, at least in the traditional sense. Firstly, the presence of the Vice President and High Representative of the European Union External Action could undermine the authority of the President of the Commission, who can dismiss every Commissioner but the High Representative. This seems unlikely with the current Ashton/Barroso relationship but the possibility of this occurring in future Commissions cannot be excluded.

Secondly, the intervention of the Commission in the law making procedure seems to be weaker. In the codecision procedure, whose application has been extended, over 70% of the acts pass in first reading with a direct agreement between the European Parliament and Council, therefore bypassing the Commission. The delegation functions will be jointly monitored by the Commission and the Parliament and can be revoked. The Commission, who has the power of proposing European Union acts, resents the increasing influence of the European Council and will, in some cases, share its competencies with Member States as it is already clear that reaching the threshold of  $\frac{1}{4}$  of the states prescribed by the Lisbon Treaty in the Freedom Security and Justice Area, is not too arduous and several proposals have already been presented.

Thirdly, as has been mentioned above, the Commission increasingly has to submit to the control of the European Parliament. Although the Commissioners are designated by the States, the Commission is politically responsible towards the European Parliament, which must elect them, but can also dismiss them. A silent fight has been engaged in between the Parliament and the Council/European Council for the control of the Commission, which is also a struggle between supranational and intergovernmental methods. Two different ideas about the role of the Commission are evident: the latter can be conceived as an independent and strong proactive institution or, on the contrary, as a sort of Super-secretary of the European Governments.

The redistribution of powers operated by the Lisbon Treaty seems to confirm that the Commission is destined to play a more technical role than a political leadership role.

It is clear then that the whole institutional balance will depend on the capacity of the European Parliament to pull the Commission onto the supranational side.

On February 9th 2010, the European Parliament approved a Resolution concerning the Framework Agreement on relations between the Parliament and the Commission whose aim is to establish a “special partnership” between the two institutions.

Such a partnership rather configures a subordination of the Commission to parliamentary control. According to the resolution, the President of the Commission will have a regular dialogue with the President of the European Parliament on key horizontal issues and major legislative proposals. This dialogue should also include invitations to the President of the Parliament to attend meetings of the College of Commissioners. As far as the proposals of European Union acts, the Commission should explain when it cannot deliver individual proposals foreseen in the annual program or when it departs from it. Regarding the action of single Commissioners, if Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, the President shall either require the resignation of that Member or explain his refusal to do so before Parliament in the following part-session. In order to ensure better monitoring of the transposition of the Union law, the Commission should make available to Parliament information about all the infringement procedures.

The most innovative are the provisions related to the European Union external action. Using its leverage on the Commission, the European Parliament aims to acquire an increasing influence on the international agreements concluded by the European Union. The Commission shall give immediate and full information to Parliament at every stage of negotiations on international agreements (including the definition of the negotiation directives). The resolutions require the Commission to support Parliament in the negotiations on European External Action Service; the Commission will also support Parliament with a view to continuing and reinforcing the “Community approach” in development policy, which should remain within the competence of the Commission. At international conferences, the Commission, should, at Parliament’s request, facilitate the granting of observer status to the Chair of Parliament’s delegation in relevant meetings.

The draft Agreement already negotiated between the European Parliament and the Commission seems to very much trouble the Council, according to which it tries to modify the institutional balance between the institutions by giving prerogatives to the European Parliament which are not provided for in the Treaties. Furthermore, it tries to affect the autonomy of decision of the Commission. The two issues which the most worrying for the Council are international negotiations and infringement procedures.

At the end of its mandate the Spanish presidency asked the Conference of Community and European Affairs Committees of Parliaments of the European Union to take a position against the above said draft agreement. COSAC replied that “the independence of the European Commission should not be questioned and that the acts of the Council assume a particular significance for national Parliaments which exercise control of this body through their respective Governments. Conference of Committees' expects that respective prerogatives of all European Union institutions be maintained, as defined in the Treaties, which entails no change in the status of the Council, thereby upholding the ability of national Parliaments and the European Parliament to influence European policy.”

The European Parliament and Commission negotiators tried recently to calm down the Council worries (see: <http://register.consilium.europa.eu/pdf/en/10/st12/st12717.en10.pdf> ) but it is at least worrying that in the fight for the control of the Commission the Council tries to join forces with the national parliaments against the European Parliament. This inter-institutional agreement may be a turning point in the European Union institutional relations.

Acknowledging the need of granting political accountability the High Representative recently referred to such Agreement with regards to the Decision which establishes the European Service on External Action (<http://register.consilium.europa.eu/pdf/en/10/st12/st12401-ad01.en10.pdf>) accepting most of the issues raised by the European Parliament.

## “Agentification”

A further symptom of the progressive weakening of the Commission is the multiplication of Agencies (currently more than 30 financed by the European Union budget) who have been given competences previously managed by the Commission. The Lisbon Treaty, in article 15 of the TEU, prescribes that “the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible”. Nevertheless, the practice shows that, above all in the Freedom Security and Justice Area, where many agencies are charged with delicate tasks, the level of openness deemed possible is quite low. The problem is even more serious since article 41 of the Charter of Fundamental Rights expressly recognises the right to a good administration and article 42 enshrines the right of access to a document and the European Union has now a specific legal basis to adopt regulations which could frame "an open, efficient and independent European administration" (art. 298 TFUE)

Moreover, it is not very clear as to who should control the Agencies when acting in or outside the European Union. The competence of the Court of Justice has been explicitly extended by the Treaty of Lisbon to the acts setting up bodies, offices and agencies of the Union which may lay down specific conditions and arrangements concerning actions brought by natural or legal persons. But the remedies of the legality review, failure to act, and preliminary rulings on validity can only assure an ex post control. The same can be said for the powers of the European Ombudsman enshrined by article 43.

A more stringent control on the agencies could be performed by the European Parliament who should decide how to implement it when it acts as legislator (when it adopts or modifies the legal basis setting the Agencies) by also fulfilling the specific provisions which associate also the national Parliaments’ oversight for Eurojust -art. 85 TFUE - and Europol -art. 88 TFUE ) and as Budgetary authority (by so being inspired by the practices of the US Congress). The above mentioned European Parliament Resolution on a Framework Agreement requires that the nominees for the post of Executive Director of regulatory agencies should come to parliamentary committee hearings.

## **Supranationality; The wider Powers of the European Parliament**

Originally born as a non-directly elected and almost powerless Assembly, the European Parliament is the institution which has undergone the most remarkable evolution over the years since the '79 elections and notably following the Treaty amendments adopted since the Single European Act in '86. The Lisbon Treaty strengthens all the powers of the European Parliament which is probably the real gainer in the last revision round.

*Legislative powers.* Revision after revision, the European Parliament has almost fully attained the status of co-legislator. With the Lisbon Treaty the codecision procedure is extended to nearly new 50 areas including common agricultural policy, structural funds, free movement of workers and of services and many aspects of the Freedom Security and Justice Area.

Even more interestingly, the consent procedure (previously called assent) now applies to many important fields: serious breach of Fundamental Values (art. 7 TEU), rules on the compositions of the European Parliament (art. 14 TEU), appointment of the Commissioners (Art. 17 TEU) and of the whole Commission, revision of the founding treaties (art. 48 TEU), accession new States (art. 49 TEU), withdrawal (art. 50 TEU), measures preventing discrimination (art. 19 TF), extension of the rights of citizenship (Art. 25 TF), certain aspects of criminal law (art. 82,83 TF), Eurojust and Public Prosecutor (art. 86 TF), uniform electoral procedure (art. 223 TF), financial resources (art. 311 TF), Multiannual Financial Framework (art. 329 TF) enhanced cooperation, flexibility clause (art. 352TF). Finally but not less importantly, the Parliament consent is required for many international agreements "covering fields to which either the ordinary legislative procedure (NDR "codecision") applies or the special legislative procedure where consent by the European Parliament is required" (art. 218 TF par. 6 al (a) point v).

Moreover, although the European Parliament is still lacking of a real right of initiative, the Lisbon Treaty oblige now the Commission to state the reasons if it does not intend to follow a Parliament request to submit a legislative proposal (art 225 TF).

Finally, as far as the non - legislative acts are concerned, while the Executive function is mainly attributed to Member States (art 291 TF) and therefore submitted to Comitology, the control on the acts delegated to the Commission (art. 290 TF) will be jointly made by the Council and the Parliament on an equal footing.

*New Role in International Agreements.* In the cases of PNR agreement on the passenger name records, SWIFT agreement on the data regarding European financial transactions operated by Belgian consortium and the Anti Counterfeiting Trade Agreement (ACTA), the European Parliament showed its determination in influencing negotiations of international agreements by so opening the way for a rather new form of Parliamentary "diplomacy". In fact the Parliament is more and more using his power of consent not as an *ex post* control (which would be difficult to use once the negotiation is accomplished) but as an *ex-ante* control on the Commission when acting as international negotiator. By addressing the political questions from the very beginning, and by threatening not to give the consent required by Art.218 TF, the European Parliament is gaining an authoritative role so that it is often required to meet the delegations of the contracting third states. Has highlighted above the consent of the European Parliament is since Lisbon required in many cases: association agreements, accession to the European Convention on Human Rights, when the agreement has important budgetary implications, when they establish an institutional framework, when codecision is required on the internal side.

*More Budgetary Powers.* The Lisbon Treaty extends the final say of the Parliament to all the Ordinary and Straordinary Expenditures and gives it a veto power by applying the consent procedure to the approval of the Multiannual Financial Framework. From the beginning of European integration, the European Parliament exploited its budgetary power as leverage for incrementing its prerogatives and conquering political weight. Such power will be most likely be used in the near future in order to politically influence external action of the European Union, including the Common Foreign and Security Policy and the new External Action Service. As regards the latter, it is not coincidence that the High Representative recently



proposed a specific funding mechanism enabling an escape from too strict control by the Parliament.

*Control on other Institutions.* The Lisbon Treaty introduces new hearings which should make it easier for the European Parliament to assess the action of the other institutions: the European Council and the Council shall be heard by the European Parliament (Art 230 TFEU); the President of the European Parliament may be invited to be heard by the European Council; a question time before the Parliament is envisaged for the High Representative. Moreover, the Parliament is involved, even if indirectly, in appointing the European Court of Justice by choosing one of the members of the advisory panel which is called to give an opinion on the choice of the European judges.

What is becoming more and more apparent is a new relationship between the European Parliament and the Commission. At the beginning of European integration, the Commission was a type of “tutor” for the Parliament, supporting the latter in its struggle for achieving more powers. Such a relationship has been upturned as the Commission has become the first to be subjected to the strict control of the European Parliament. After the collective resignation of the Dehane Commission, the European Parliament forced some Member States to withdraw their candidate for the Commission (see the cases of Buttiglione under Barroso I and Jeleva under Barroso II). More generally, the Parliament has assumed an increasingly critical attitude towards the Commission, frequently expressing its disappointment for the lack of ambitions of the latter.

*A new Alliance with the national Parliaments?* The control on subsidiarity and proportionality as well as the “emergency brake” procedures suggest the opportunity of better coordination between the European Parliament and the national ones. In order to avoid a coalition between the Council and the easier to manage the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), the European Parliament should establish and cultivate a direct link with national parliaments. Such a link can be useful also for the latter, in the light of a better control on the national government.

## The Court of Justice as a Constitutional Judge

At the very core of the supranational method stands the European Court of Justice (ECJ). The Court primarily essential for ensuring the Rule of Law in the European Union, overseeing the legality of European acts and the uniform application and interpretative coherence of the same. The instrument of preliminary rulings allows the Court to use the national judicial systems for monitoring the compliance of the Member States.

The Court was conceived by the founding treaties as an independent judge aimed to protect and enforce the rule of law in the European Union. But the Court is also part of the system and it can exist because the latter exists: this is the reason why the Court always maintains a pro-integration, which often means supranational, approach.

Secondly, over the years, the Court developed a corpus of fundamental principles of European Union Law which progressively detached the European Union legal system both from the international and the national ones, building what the Court itself defined as a new kind of legal order (*Van Gend*). This has been apparent in the case law concerning the supremacy and the direct effects of European Union law, in which the Court affirmed the doctrine of a hierarchical superiority of the European Law over the national ones.

Thirdly, the Court interpreted the competences of the European Union in order to expand them both on an internal and external level. The Treaty of Lisbon endorses the broad definition of the European Union external competences as expressed by the Court of Justice in its *Lugano* Opinion. The Court has recently stressed the pre-emptive effect of European Union action regarding the international competences of the Member States (*Commission vs. Sweden*).

The Lisbon Treaty widens the competence of the European Court of Justice to the entire 'Area of Freedom Security and Justice' and to the individual sanctions applied in the field of the Common Foreign and Security Policy. Apart from the latter, the European Court of Justice's competence still does not apply to the Common Foreign

Security and Defense Policies. But, with the European Union accession to the European Convention on Human Rights these sectors will be submitted to the control of the Strasbourg Court.

The full entry into force of the Charter of Fundamental rights as well as the European Union accession to the European Convention on Human Rights, both provided for by the Lisbon Treaty, are likely to have an effect on the Court of Justice. Since the proclamation of the Charter in 2000 the European Court of Justice started to interpret fundamental rights more broadly, becoming a supporter of individual rights and not only a defender of the European Union law. After the accession, the dynamics between the Luxembourg Court and Strasbourg Court are still to be defined and represent a further challenge in the light of the constitutionalisation of the European Union system.

The analysis of the European Court of Justice case law shows a development of its role from an administrative to a Constitutional judge. A further evolution of the Court in this sense can be expected in the next years and will add more supranationality to the whole system. This is due to the delicate position of the Court which will increasingly face the Court of Strasbourg from one side and the national Constitutional Court from the other.

### **Is the European Union's system more supranational or more inter-governmental? The challenge of the new inter-institutional balance**

It is quite clear that the Treaty of Lisbon modifies the traditional inter-institutional balance of powers. The European Council and the European Parliament gain weight, while the Council tends to fade and the Commission is weakened. Nevertheless, this is not a zero sum game: all considered, the intergovernmental front seems to be reinforced in comparison with the supranational one. In fact the Commission, which was the traditional core of the Community/supranational method, often resembles a super-secretary of the Council or a research department. A more intergovernmental system entails the risks of a poor leadership, a weak control on the common rules and a scarce consideration of the European Union general interest, the latter being something different from a compromise among the many different national interests.

In the light of such a risk many different proposals have been advanced in order to re-balance the system. Some think tanks seem to consider that the best solution would be merging the roles of the Presidents of the Commission and of the European Council. It is argued that such a solution would accentuate the intergovernmental character of the Commission, further reducing the autonomy of the latter.

A more effective idea has been advanced by Federalist movements which campaign for a Commission's President jointly elected with the European Parliament. An even more radical solution was mentioned by the German Constitutional Court in its *Lisbon Urteil*, i.e. the direct election of the President of the Commission. Such a solution would entail two positive effects: on one hand the President of the Commission, and the Commission itself, would acquire more visibility in front of the citizens and from the other side its political legitimacy would be increased. Unfortunately, such modifications would require an amendment of the founding treaties, which is in the hands of national governments and parliaments, unlikely willing to accept such modifications.

If the drift of the Commission towards the intergovernmental side is difficult to hold back, only a proactive role of the European Parliament can re-balance the whole system in the supranational direction.

By means of the many revisions of the original treaties the European Parliament gained an even more important role. What was once the so called "democratic deficit" has been progressively filled. But the European Parliament still suffers – as the whole European Union does - of a political deficit. The European Parliament needs to share not only the legislative role (with Council) but also the political impetus and the setting of priorities (with the European Council). At this stage of the European integration the European Parliament does not need more powers; it needs to develop a vision of Europe which also offers to the European Union citizens the ground for a European identity.

What is suggested is a political re-balancing of the institutional system which requires no modification of the existing Treaty. It should be based on the permanent and constructive dialogue between an assertive Parliament and the new President of the European Council. Such a dynamic would be the better way of exploiting the

innovations provided for by the Lisbon Treaty for ensuring a new balance between supranationality and intergovernmental method.

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**SOME OF THE LISBON TREATY'S INSTITUTIONAL SHAKE-UPS ARE CLEAR BUT OTHERS REQUIRE EXPLANATION**

### **Two changes that have transformed the way Europe operates**

As a professional experienced in the European Union's mode of operations, I believe that the impact of some of the institutional changes is already evident and fully operational, whereas others are still surrounded with uncertainty. The repercussions are hugely significant and clearly evident in the following two areas:

**1. *The European Parliament's new powers.*** As a co-legislator in virtually all domains and directly involved in two crucial areas - trade policy and trade - where it could do no more than express its views in the past, the European Parliament is implementing a root-and-branch transformation in how Europe operates. The plethora of tangible examples speak for themselves. The media are well aware of the fact that this is the first time that the European Parliament has had such power and attention.

**2. *The stable presidency of the European Council.*** Much has changed and I believe much of it has been positive. I think that the initial criticisms of the appointment of Herman Van Rompuy as the President of the European Council were misplaced. He was criticised for not being a celebrity in Europe or anywhere else in the world and

was even described as a Mister Nobody. A world celebrity would have had to drag their past and well-known opinions around with them. As soon as he took up his post, Herman Van Rompuy made what looked like a modest statement that was in reality brimming with guile, saying that his personal views had never been important and he never expressed his own views on any subject because the views that he would make public would always be the opinions of the European Council as a whole. Humility? At first sight, perhaps, but his statement actually means that any statement he makes expresses the views of the European Summit, with all the weight and significance this entails.

He has already had an opportunity to make important, if not revolutionary statements, like when he said that economic governance of Europe already exists, it is the European Council. that he went on to explain with great eloquence<sup>58</sup>. He sticks to the basic idea that he expresses the views of the European Summit as a whole, using the word "government" when he speaks French, and the word "governance" when speaking English.

Another significant change introduced by Herman Van Rompuy is that the European Council now meets virtually every month. It is true that Van Rompuy convenes special summits to discuss specific issues, but in practice, whenever the European Summit gets together, it discusses everything that's happening across the board. This means that all European Union heads of state are directly and permanently involved in European affairs, an issue that some of them paid only half-hearted, intermittent and superficial attention to in the past. As far as some European prime ministers were concerned, the most important and pressing concern at the six-monthly European Councils in the past was to wangle a meeting with the President of the United States. Such a meeting does carry enormous weight in the media back home, of course, but a president of the European Commission once told me that the United States President's assistants would ask him "Who's that guy over there?", to which he would have to reply. That guy over there was the current President of the European Union Summit. A few weeks later, a different person would get the job. The un-changing

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<sup>58</sup> From Van Rompuy's speech in Lille, France, on 10 April 2010: "the members of the European Council believe, like me, that the European Council must play an economic governance role because it is the only body with the political energy needed to make bold and difficult decisions

nature of the new presidency may grate a little with some people but Europe as a whole benefits from it.

### **Foreign policy misunderstandings and uncertainties**

The impact of other institutional changes cannot yet be clearly measured on the ground and will have to be monitored as they develop. There is a question mark hanging over the fact that just one individual has three hats - head of the European diplomatic service, president of the European Foreign Relations Council and vice-president of the European Commission. In my view, the main reason for this perplexity is not the often criticised character of Catherine Ashton who is wearing these three hats, but rather the fact she is described and presented as the European foreign minister. This job does not exist and neither does a common foreign policy. Catherine Ashton and the European diplomatic corps will help it gradually get set up, analysing problems at the European Union level and getting diplomats of various nationalities to work together, gradually drawing up common positions. This will be a long process and progress will be piecemeal. The idea of a regular qualified-majority-voting system will have to be left to one side. Van Rompuy has made very wise comments in this connection and, as we know, he never expresses his personal views but only the opinions of the European Council as a whole<sup>59</sup>.

### **Cautious, step-by-step approach.**

I will cite two examples, one from the past and one from the present, that call for a cautious, step-by-step approach in this domain. The European Convention that prepared for the new Treaty was discussing the sensitive issue of foreign policy when the Iraq War broke out. Several Convention members were deeply concerned and verging on despair at the European foreign policy collapsing before it had even begun! A very different reaction came from Jacques Delors, speaking unofficially on the fringes of the Convention, and Valéry Giscard d'Estaing, speaking officially as the Convention chairman, both of whom commented that if a European foreign policy had

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<sup>59</sup> Van Rompuy commented on this issue: "if we take as our starting point that a single common foreign policy is required, then we will fail at everything. We have to implement several policies, agreeing on Iran



been in existence, with the option of making qualified-majority decisions, then it would have collapsed because the European Union would have split in two and the member states that would have been in the minority in the vote would never have gone along with the majority decision.

Today's example is recognition of Kosovo as an independent state (which could apply to the European Union in the future). Most member states recognise the new country of Kosovo, but not Spain and a handful of other countries. A European view does not exist. Is it necessary to try to decide on a European view without delay? Spain's attitude is not determined by hostility to Kosovo but rather by respect for the general United Nations rule whereby a section of an officially recognised country cannot decide unilaterally to separate off. One can understand why Spain reacts like this, given that there are strong movements for the autonomy in the Basque Country and Catalonia. The European Union member states have to discuss this together and analyse the reasons underlying both views and then try to find a common position that takes account of the history and situation of each country. This will be the task of the new European diplomatic corps, when it is in operation. Jacques Delors has written some illuminating pages on this question in his Memoirs.

### **Strengthened cooperation.**

Another of the institutional changes, whose mechanics and impact are not yet clear, is the new system of strengthened cooperation which may play a highly significant role in determining the future of the European project. Jacques Delors recently suggested using it to set up something he feels is needed, namely a European Energy Community. He is aware of the doubts that strengthened cooperation generates in the member states, which criticise it for running the risk of moving towards a two-speed Europe. To appease these fears, he uses the term "différenciation", pointing out that if people had waited in the past until everyone agreed, then the single currency and the Schengen Area would not be in existence today. He points out that all member states would be able to join strengthened cooperation in the future, as long as they agree to

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or the Middle East, seeking compromise on a case-by-case basis, one issue at a time. "

the criteria and meet the rules. Clear enough from the journalistic point of view but experts say it is a very fraught both legally and politically.

## IV. Fundamental rights and European Union Citizenship

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## Jacqueline Dutheil de la Rochère

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### DROITS FONDAMENTAUX ET CITOYENNETE EUROPEENNE

Ces deux thèmes ont leurs racines dans l'histoire de la Communauté et de l'Union. Le traité de Lisbonne apporte certaines novations au premier rang desquelles la reconnaissance à la Charte des droits fondamentaux – dont un des chapitres est consacré à la citoyenneté – d'une valeur juridique équivalente à celle des traités (art.6.1 TUE), et l'annonce que l'Union européenne adhèrera à la Convention européenne des droits de l'homme (art.6.2 TUE) sous réserve de l'accord unanime des Etats concernés sur la définition de modalités adéquates. Le traité de Lisbonne apporte surtout la confirmation de l'importance des deux thèmes combinés au moment où l'Union, toujours à la recherche de sa propre identité, doit affronter la menace du terrorisme, les difficultés économiques et sociales liées à la crise financière mondiale, la globalisation.

1. Le traité de Lisbonne même s'il marque un temps d'arrêt dans l'évolution vers un degré plus avancé de fédéralisme européen, reprend du traité établissant une constitution sur l'Europe un certain nombre de dispositions qui soulignent l'importance des principes démocratiques et, à ce titre, devraient contribuer à **renforcer dans l'esprit du citoyen européen le sentiment politique d'appartenance**. Un nouveau titre du Traité sur l'Union européenne (Titre II) rassemble les dispositions consacrées aux principes démocratiques. L'article 10.1 proclame que « *le fonctionnement de l'Union est fondé sur la démocratie représentative* ». Il est ensuite précisé que les citoyens sont directement représentés, au niveau de l'Union, au Parlement européen et, indirectement, au

Conseil européen et au Conseil « *par leurs gouvernements eux-mêmes démocratiquement responsables, soit devant leurs parlements nationaux, soit devant leurs citoyens* ». Le traité de Lisbonne aurait pu/dû citer également la Commission qui se trouve démocratiquement légitimée, ainsi que son président, par un vote d'approbation du Parlement européen.

Autre innovation du traité de Lisbonne, les **parlements nationaux** sont désormais intégrés dans le système institutionnel de l'Union, au fonctionnement de laquelle ils « *contribuent activement* » (art. 12 TUE). Un certain nombre de leurs fonctions sont énumérées, dont la plus significative est celle de « *veiller au respect du principe de subsidiarité conformément aux procédures prévues par le protocole sur l'application des principes de subsidiarité et de proportionnalité* » (art.12 (b) TUE). On observe par ailleurs, dans le traité de Lisbonne, que toutes les prérogatives liées au principe démocratique sont conférées non aux peuples mais aux citoyens. Ainsi en est-il du droit de participer à la vie démocratique de l'Union (art.10.3 TUE) ou du droit d'échanger des opinions publiquement avec les institutions de l'Union (art.11.1 TUE). La citoyenneté européenne semble devenir le concept qui permet de dépasser la contradiction entre l'absence de peuple européen et l'affirmation de la légitimité démocratique comme fondement majeur de l'Union. Il faut toujours garder en mémoire que dans la construction européenne la formulation des concepts contribue souvent à leur émergence.

2. Si la **citoyenneté européenne** est ainsi plus fermement affirmée, elle reste une **notion transfrontière** et cosmopolite **à laquelle ne sont rattachés que quelques uns des droits fondamentaux** reconnus dans par l'Union européenne.

2.1 La notion de citoyenneté européenne, bien évidemment empruntée au droit constitutionnel national, s'applique dans le cas de l'Union à une entité politique qui n'a pas la qualité étatique et qui a démontré son inaptitude à se doter d'une constitution. **La citoyenneté européenne apparaît comme une notion seconde**, dépendant de la citoyenneté d'un Etat membre. L'article 20 TFUE, reproduisant les dispositions de l'article 17 CE – introduit, à l'occasion de la révision de Maastricht, dans le traité CE afin que la Cour de Justice puisse en connaître -, indique qu' « *est citoyen de l'Union toute personne ayant la nationalité d'un Etat membre* » et que « *la*

*citoyenneté de l'Union s'ajoute à la citoyenneté nationale et ne la remplace pas* ». Ces formules qui ont l'inconvénient de confondre les concepts, politiquement et juridiquement différents, de nationalité et de citoyenneté, soulignent bien la distance qui sépare l'Union européenne d'un ensemble fédéral.

La Cour de justice a montré quelque hésitation entre une conception purement nationale de la citoyenneté selon laquelle la loi nationale déciderait notamment de l'acquisition ou de la perte de la citoyenneté nationale, et par voie de conséquence de la citoyenneté de l'Union, et une conception plus européenne visant à encadrer les compétences des Etats membres afin de faire émerger certains éléments de spécificité de la citoyenneté européenne. Un premier arrêt de 1992 (C-368/90, *Micheletti*, 7 juillet 1992) exprimait une volonté d'ouverture en acceptant d'étendre le bénéfice de la citoyenneté européenne aux détenteurs d'une double nationalité d'un Etat membre et d'un Etat non membre. Plus récemment, la Cour a reconnu que l'acquisition comme la perte de la citoyenneté devaient s'exercer dans le respect du droit de l'Union, que notamment un comportement frauduleux lors de l'acquisition de la nationalité d'un pays de l'Union, et par conséquent de la qualité de citoyen européen, pouvait entraîner le retrait de l'une et l'autre qualité, sous réserve bien entendu du respect du principe de proportionnalité (C-135/08, *Rottmann*, 2 mars 2010).

2.2 Dans le traité de Lisbonne, qui se contente de réviser les traités antérieurs, les dispositions sur la citoyenneté sont réparties entre le TUE (articles 11 et 12 sur les principes démocratiques) et le TFUE (art.20 à 25) où figurent plus spécifiquement les **droits** et sont évoqués les **devoirs** (art. 20.2) **du citoyen européen**.

On trouve tout d'abord le droit de circuler et séjourner librement sur le territoire des Etats membres (art.20.2(a)), droit qui n'a pas grand-chose de commun avec la conception que l'on se fait traditionnellement de la citoyenneté comme attribut autorisant la participation au fonctionnement de la société politique. Or ce droit de libre circulation et libre séjour, couplé avec le principe de non-discrimination, a nourri une abondante jurisprudence de la Cour qui a conduit à donner un contenu matériel significatif au concept de citoyen (droits sociaux, droit à l'éducation, droit au nom, etc.), à telle enseigne que dans le TFUE les dispositions sur la non-discrimination

ont été regroupées avec les dispositions sur la citoyenneté (TFUE, Deuxième partie). On notera également que les dispositions sur la libre circulation et le libre séjour sont loin de bénéficier au seul citoyen européen ; il y a au contraire une tendance à l'élargissement, par la voie du droit dérivé<sup>60</sup> et de la jurisprudence, du cercle des bénéficiaires de tels droits.

Au plan des droits proprement et indiscutablement constitutionnels, le TFUE comme le traité CE avant lui, consacre au bénéfice du citoyen européen, et comme un monopole de ce dernier, le droit de vote et d'éligibilité aux élections au Parlement européen ainsi qu'aux élections municipales dans les mêmes conditions que les ressortissants des Etats membres, et le droit de bénéficier sur le territoire d'un pays tiers, où l'Etat membre dont ils sont ressortissants n'est pas représenté, de la protection diplomatique et consulaire de tout Etat membre, dans les mêmes conditions que les ressortissants de cet Etat. Le lien avec la politique étrangère et de sécurité commune est souligné à l'article 35 TUE (nouveau).

L'innovation la plus significative est celle de l'initiative citoyenne qui figure à l'article 11.4 TUE : des citoyens de l'Union, au nombre de un million au moins, ressortissants d'un nombre significatif d'Etats membres, pourront prendre l'initiative d'inviter la Commission, dans le cadre de ses attributions, à soumettre une proposition appropriée sur des questions à propos desquelles ces citoyens considèrent que l'adoption d'un acte juridique de l'Union est nécessaire.

Les autres droits reconnus au citoyen européen par l'article 20 TFUE, -droit d'adresser des pétitions au Parlement européen, droit de recourir au Médiateur européen, droit de s'adresser aux institutions de l'Union dans une des langues du traité - sont en réalité des droits dont le champ d'application est étendu par le TFUE lui-même et par la Charte des droits fondamentaux (Chapitre V, Citoyenneté) à un cercle beaucoup plus étendu de bénéficiaires puisque, outre tout citoyen de l'Union, toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre de l'Union peut en bénéficier. On notera incidemment que le fait que la Charte soit érigée par le traité de Lisbonne au rang de source de droit primaire du

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<sup>60</sup> Voir par exemple la directive n°2003/110 du 25 novembre 2003 sur le droit de séjour des résidents étrangers de longue durée, JOUE n°L.16, 23 janvier 2004.

droit de l'Union va renforcer la valeur juridique du seul article du chapitre « Citoyenneté » de la Charte ne trouvant pas de véritablement de source directe dans les traités, le principe de bonne administration (art. 42 de la Charte).

3. Ainsi le traité de Lisbonne renforce la dimension politico-institutionnelle de cette citoyenneté très spécifique qu'est la citoyenneté de l'Union, sans en changer fondamentalement la nature composite. Le citoyen européen aura toute raison de recourir aux droits fondamentaux reconnus par la Charte, par la Cour Européenne des Droits de l'Homme et par les principes généraux du droit tels qu'ils résultent notamment des traditions constitutionnelles communes des Etats membres (art. 6 TUE) ; mais le citoyen ne dispose pour l'ensemble de ces droits d'aucun monopole. Le respect de ces droits est intrinsèquement lié au champ d'application du droit de l'Union *ratione personae*, mais aussi *ratione materiae* et *ratione loci*.

Il n'est cependant pas sans intérêt d'évoquer les perspectives dessinées par la Commission dans une communication du 20 avril 2010 (COM (2010) 171) sur la mise en place d'un espace de liberté, de sécurité et de justice à l'horizon 2020 qui est celui du programme de Stockholm. La Commission insiste sur les besoins de sécurité, sur le respect des droits fondamentaux, mais aussi sur la nécessité de donner une valeur ajoutée à la citoyenneté européenne. Parmi les objectifs précis on retiendra tout ce qui peut encourager une plus importante participation aux élections européennes et une libre circulation plus effective. Les attentes du citoyen sont clairement mises au cœur de la démarche, ainsi que l'illustrent les communications qui suivent.



## **Iñigo Méndez de Vigo**

Member of the European Parliament;  
President of the Administrative Council of the College of Europe;  
Chairman of the European Parliament Delegation to the Convention drafting the Charter of Fundamental Rights;



### **LA UNIÓN EUROPEA D'ESPUÉS DEL TRATADO DE LISBOA Y LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA.**

Me complace mucho estar hoy con ustedes y participar en este encuentro organizado por la Comisión Europea. Para mi es un honor formar parte de la familia de catedráticos Jean Monnet que cumplen con el objetivo de promover la integración europea, a través de aquello a lo que tanta importancia atribuía Salvador de Madariaga: "Europa sólo se hará cuando sea una realidad en la conciencia de sus ciudadanos". Gracias, especialmente a Belén Bernaldo de Quirós, que es el motor de estas cátedras.

Permítanme que haga una reflexión sobre las consecuencias de la reciente entrada en vigor del Tratado de Lisboa y su efecto en los Derechos Fundamentales.

Durante el debate sobre el Tratado Constitucional -y recuerdo que el Tratado de Lisboa es su trasunto, donde fueron sacrificados determinados aspectos formales para salvar el fondo en la afortunada expresión del profesor Ziller- algunos estudiosos pusieron en duda la originalidad del modelo institucional y las reformas consagradas en el texto resultante de la Convención europea. Incluso algunos llegaron a afirmar la mayor importancia del Tratado de Maastrich y motejaron al Tratado Constitucional de simple apéndice de aquel.

No es el momento de reabrir aquella polémica pero sí quiero reafirmar lo que ya dije entonces: Maastrich supuso un cambio profundo de los Tratados fundacionales... en la dirección equivocada y ello porque implicó una ruptura con un cuarto de siglo de método comunitario. Admito que probablemente sin la creación de los dos pilares intergubernamentales, respectivamente Política Exterior y de Seguridad Común y Justicia e Interior, los Gobiernos no hubieran dado pasos significativos ni en uno ni en otro campo. Pero han tenido que pasar 16 años y cuatro reformas sucesivas de los Tratados para que el de Lisboa haya acabado con aquella anomalía.

El Tratado de Lisboa ha provocado un cambio notable en las relaciones de poder entre las instituciones de la Unión en plena sintonía con el modelo acordado en la Convención que elaboró el Tratado Constitucional. La configuración del Consejo Europeo como institución y la creación de un Presidente permanente le atribuyen un peso específico en el análisis y la dirección de la política de la Unión. La primera persona que ocupa dicho cargo, Herman Van Rompuy, acaba de manifestar su voluntad de reunir al Consejo una vez al mes y su marca se está dejando sentir en la nueva configuración del modelo económico resultante de la crisis financiera. La presidencia permanente del Consejo Europeo afectará de una manera nítida a las presidencias rotatorias del Consejo, que no de la Unión como nos bombardea sin descanso la actual Presidencia desde los aviones de Iberia hasta los sellos de correos. Dicha presidencia rotatoria del Consejo bajo la fórmula del "trío" tendrá como principal objetivo la coordinación de los consejos sectoriales. A mi juicio, el auge del Consejo Europeo se traducirá en una concentración de los consejos sectoriales en las labores legislativas comunitarias donde comparte poderes en pie de igualdad con el Parlamento Europeo.

La Política Exterior y de Seguridad y Defensa fue uno de los temas estrella del debate que tuvo lugar durante la Convención europea. Lisboa rompe con el modelo de Maastrich creando la figura de un Ministro de Asuntos Exteriores (aunque lo denomine Alto Representante) que ya no es el Secretario General del Consejo sino que preside el Consejo de Ministros de relaciones exteriores y que tendrá a su cargo un servicio diplomático de la Unión Europea. Este Servicio de Acción Exterior es objeto de debate entre Comisión, Consejo y Parlamento en el momento que redacto

estas líneas; la decisión que recaiga sobre su naturaleza y estructura serán determinantes a la hora de calibrar su orientación intergubernamental o comunitaria. Creo que el juicio que debe hacerse sobre la Alta Representante y su actuación requiere mayor sosiego. No hay que olvidar que Catherine Ashton reúne no sólo las competencias del antiguo Alto Representante y del Comisario encargado de relaciones exteriores sino también de las del Presidente en ejercicio del Consejo. Algunas descalificaciones que se están haciendo de la señora Ashton me parecen irresponsables. Creo que hay que darle tiempo al tiempo.

El Tratado de Lisboa introduce un elemento de profundización democrática en el marco institucional de la Unión gracias a las nuevas competencias legislativas y de control político atribuidas al Parlamento Europeo, a la participación de los Parlamentos nacionales -incluidos los autonómicos en nuestro caso- en el control previo de subsidiariedad y de la propuesta de iniciativa legislativa popular actualmente en trámite parlamentario. El sistema de alerta temprana por el que los Parlamentos nacionales podrán ejercer un control previo de la subsidiariedad es otra de las grandes novedades del Tratado y obligará a un mayor involucramiento de los Parlamentos nacionales en las tareas de la Unión. Ya no habrá excusa para discursos victimistas...

En este nuevo marco institucional creado por el Tratado de Lisboa el papel que juegue la Comisión será determinante. Aquí se encuentra, a mi juicio el principal interrogante de la dirección que tomará la Unión en los próximos años. Yo hago votos porque Duraó Barroso y su equipo persistan en la línea de los padres fundadores, definan y defiendan el interés comunitario y actúen como un verdadero *honest broker* en las relaciones entre el Parlamento y el Consejo.

El Tratado de Lisboa ha supuesto la culminación de la batalla emprendida por el Parlamento Europeo desde finales de los años 80 en favor de la superación del déficit democrático de la Unión y en pro de la eficacia y transparencia de sus instituciones y procedimientos. La desaparición de los pilares intergubernamentales, la reducción y simplificación de los procedimientos para la adopción de decisiones así como el auge que adquiere el Parlamento Europeo constituyen pasos decisivos en la buena dirección. No puedo decir lo mismo respecto a la transparencia; el

Tratado de Lisboa es mucho menos claro que el Tratado Constitucional y con él la función pedagógica tan necesaria para establecer un vínculo permanente entre Europa y los ciudadanos requerirá de grandes dosis de esfuerzo y hasta de imaginación.

Esta iniciativa de mayor democratización europea viene reforzada con la incorporación de la Carta de los Derechos Fundamentales al Tratado.

La idea de una Carta de los Derechos Fundamentales de la Unión Europea surgió en junio de 1999 cuando los jefes de Estado y de Gobierno de los Quince se pusieron de acuerdo en que la evolución de la Unión exigía la redacción de una Carta de Derechos Fundamentales que pusiera de manifiesto ante los ciudadanos la importancia sobresaliente de estos derechos y su alcance. Los anteriores Tratados no recogieron disposición alguna relativa a los Derechos Fundamentales y hasta ese momento este vacío tuvo que ser paliado por el Tribunal de Justicia a través de su jurisprudencia.

En realidad, la entrada de los Derechos Fundamentales en el derecho primario se produce cuando la política se hace presente, es decir, con los Tratados de Maastricht y Ámsterdam, puesto que en ellos se lanzó un mensaje claro a los europeos: la Unión es más que un mercado, la Unión es un proyecto político. Pero no fue hasta el 17 de diciembre de 1999 cuando quedó formalmente constituida la Convención para la redacción de la Carta, de la cual tuve el honor de ser el Vicepresidente y de la que formé parte con otros dieciséis diputados europeos elegidos por el Parlamento Europeo, quince representantes personales de los jefes de Gobierno de los Quince, treinta diputados nacionales elegidos por los respectivos Parlamentos, un representante de la Comisión Europea y otros observadores del Tribunal de Justicia de la Unión Europea y del Consejo de Europa.

La Convención se impuso a sí misma una línea de rigor técnico-jurídico redactando los artículos de la Carta como si fuese a tener un valor jurídicamente vinculante mediante su integración en el Tratado de la Unión Europea, sin hacer promesas que no pudieran cumplirse, sin sobrepasar el marco de las competencias y tareas fijadas

por los tratados ni contener ninguna disposición contraria a las Constituciones de los Estados miembros.

El proyecto de Carta fue aprobado por un amplio consenso por todos los miembros de dicha Convención. A continuación fue remitido al Consejo de Biarritz en octubre de 2000 y aprobado por unanimidad y, finalmente, la Carta fue proclamada de forma solemne durante el Consejo Europeo de Niza, pero como una declaración política sin efectos jurídicos vinculantes.

El resultado fue un catálogo bastante completo de Derechos Fundamentales, que incorporaba, junto a los derechos civiles y políticos clásicos y a los derechos de ciudadanía europea, los derechos sociales y económicos, y asimismo, la nueva formulación de derechos en materia de biomedicina y bioética, protección de datos personales, derecho a una buena administración, acceso a los servicios de interés económico general y un texto equilibrado en la definición del contenido de cada derecho. La elaboración de la Carta supuso muchas renunciaciones y exigió grandes dosis de prudencia y realismo para lograr el consenso necesario para su aprobación.

Yo siempre he luchado junto al Parlamento Europeo para que la Carta tuviera plenos efectos jurídicos y no fue hasta la Convención que redactó el Tratado constitucional cuando se abogó por la inclusión de la Carta en el texto del Tratado. Con las vicisitudes que ustedes conocen, la Carta quedaba incorporada al Tratado de Lisboa, por lo que se convierte en un compendio de derechos civiles, económicos y sociales de aplicación obligatoria en toda la Unión Europea y pasará a convertirse en el ADN de todos los europeos.

En suma, el Tratado de Lisboa supone un gran avance en el proceso de integración europea e implica un paso más hacia la Unión política. Para mí cualquier Unión Política sería una Unión basada en los derechos y libertades que compartimos los europeos. De ahí que la Carta, que constituye su mejor expresión, se convertirá en un elemento capital que nos abrirá las puertas de un futuro común y compartido.

## **Aurel Ciobanu-Dordea**

Director responsible for Fundamental Rights and Citizenship, Directorate General for Justice, Freedom and Security at the European Commission



### **FUNDAMENTAL RIGHTS AND UNION CITIZENSHIP**

First of all, let me thank you for the invitation to participate in this panel on Fundamental rights and European Union citizenship. These are issues that go to the heart of peoples' concerns and the very creation of a new "Justice, Fundamental Rights and Citizenship" portfolio shows the importance that President Barroso attaches to strengthen even further the action of the Commission in this area.

I would like to point out from the outset all the components for developing an ambitious fundamental rights policy at the level of the European Union which are now in place:

- first of all, with the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union is legally binding;
- secondly, the promotion of fundamental rights is one of the priorities of the Stockholm Programme adopted in December 2009 by the European Council, setting the strategic guidelines for developing an area of freedom, security and justice in Europe;
- thirdly, the European Union is preparing the launch, as soon as possible, of the accession negotiations to the European Convention on Human Rights.

The Commission believes the Union can, and should contribute to address these calls through a rigorous new policy, the main lines of which will be proposed by the

Commission by the middle of this year. Vice-President Reding already presented certain key orientations during the so-called "Interlaken conference" on the reform of the European Court on Human Rights.

Our first priority will be to ensure that the Union is beyond reproach whenever making legislation. When the European Commission proposes legislation, this must fully respect the Charter of Fundamental Rights. **The Charter will be the compass for all European Union policies**, thus truly confirming that it is indeed in the DNA of the Union, as Mr Mendez de Vigo pointed out earlier. It will be the base for rigorous impact assessments on fundamental rights concerning all new legislative proposals.

The second priority of the Union should be to make sure that the texts emerging from the legislative process are in line with the Charter. It will be a collective responsibility of all the institutions and the Member States to ensure that the European Union law is and remains consistent with fundamental rights throughout the legislative process.

The third priority of the Union's policy in this area should be at the level of the Member States. The European Union Charter of Fundamental Rights applies not only to the European Union institutions, but also to Member States when they implement the European Union law. We will use all the tools available under the Treaty to ensure compliance with the Charter of national legislation that transposes the European Union law. The Commission intends to apply a **"zero tolerance policy" on violations of the Charter** and, whenever necessary, trigger infringement procedures.

The key objective is to render as effective as possible the rights enshrined in the Charter for the benefit of all people living in the European Union. This is indispensable to reach a high level of mutual confidence in the area of justice, freedom and security, as well as for the credibility of the European Union external policy on human rights.

In order to follow up to these priorities, the Commission intends to prepare and present in the near future an annual report on fundamental rights in the European

Union, focusing on the compliance with the Charter at European Union and Member-State level within the remit of the European Union competences.

The first edition of the report will be a mainly methodological one. It will provide information on what has been done by the Commission to apply its Fundamental Rights Policy and the major developments within the European Union in the area of Fundamental Rights. It should also offer an additional incentive to the European Parliament and the Council to hold an annual policy debate on what has been done in the areas where the Union has powers to act, and what should be done in the future, in order to ensure the effective enforcement of the Charter. The Commission will work in partnership with the European Parliament, Member States and all interested parties for elaborating the report.

Member States should not misinterpret Commission's effort to contribute to the development of Fundamental Rights Policy at Union level. There is nothing in it about creeping the European Union competences or about the need to have more legislation. It is rather about mainstreaming fundamental rights across all relevant Union policies, in particular for ensuring full compliance of the European Union legislation with the Charter; it is also about improving implementation and enforcement of fundamental rights on the ground within the ambit of the European Union law, about solving real difficulties faced by real people in this respect.

The effort of developing progressively such a policy at the level of the Union has also more to do with the need to facilitate the smooth functioning of a diversified enlarged Union. In order to preserve and increase the strength of the Union, to consolidate its political cohesion, we need to ensure, among others, a high level of mutual confidence based on a strong commitment to the promotion of fundamental rights' protection that truly reflects the values the Union is built upon. Consolidating the mutual confidence between the judicial and police authorities of the Member States is a prerequisite for a strong and effective area of freedom, security and justice.

Accession of the European Union to the European Convention of Human Rights (ECHR) is of high political and legal significance. It will guarantee that any alleged victim of an action undertaken in the framework of the Union's competences is able



to bring a complaint against the Union before the Strasbourg Court under the same conditions as those applying to complaints brought against Member States. In political terms, accession means that the European Union reaffirms the pivotal role played by the ECHR system for the protection of human rights in Europe.

The accession to European Convention of Human Rights is not an isolated initiative but as one among several leverages underpinning the development of an ambitious European Union policy aimed at strengthening the effectiveness of the fundamental rights that people enjoy in Europe. The European Court of Human Rights is likely to have fewer occasions to intervene on matters linked to European Union law if the European Union is beyond reproach when it makes legislation and when Member States implement it.

Ladies and gentlemen,

Turning now shortly and a bit abruptly – due to the scarcity of time – to the concept of Union citizenship, I would like to recall that in his political guidelines of 3 September 2009, President Barroso stressed the need to reinforce Union citizenship and participation, by giving real effect to the rights of European citizens. The Treaty of Lisbon brought forth a series of new tools, boosting its function as an active status and a basis for democratic participation:

- Firstly, it clearly recognises the right for citizens to participate in the democratic life of the Union;
- Secondly, it makes dialogue with civil society an overriding principle across all spheres of activity and enshrines the key relevant standards to which the institutions must live up;
- Thirdly, it complements the set of rights attached to Union citizenship with the introduction of the citizens' initiative.

The Commission is committed to using all opportunities offered by the Treaty of Lisbon to give a stronger voice to citizens, and to help build a genuine European public space.

One of the key priorities was in this vein the proposal, presented on 31 March, for a regulation on the citizens' initiative, aimed at putting in place procedures and conditions which:

- on the one hand, are simple, user-friendly and accessible to all European Union citizens, and
  - on the other hand, ensure that this mechanism remains credible and is not abused.
- Discussions on this proposal are well-advanced, so we have good hopes that this mechanism will be set in motion and start to be used very soon.

The new tools offered by the Treaty of Lisbon will be essential in delivering a more open and participatory way of making Union citizenship meaningful. At the same time however, the rights that already exist for the benefit of European citizens must be strengthened and expanded. There remains a gap between the applicable legal rules and the practical reality citizens are faced with in their daily life, in particular in cross-border situations.

A whole range of initiatives are being prepared in order to increase the effectiveness and accessibility of these rights, and I will outline just a few to give you a taste of what is being done and the importance which is being attached to these issues.

Firstly, it is vital that citizens are aware of the rights offered and the possibilities open to them. The Commission intends therefore to raise citizens' awareness of their rights and on how to make full use of them. In this context, President Barroso has asked Commissioner Reding to spearhead the effort to communicate more effectively on the European Union policies and their concrete impact in the daily lives of citizens.

Secondly, the priority for the Commission is to look at all the direct or indirect, administrative and procedural obstacles created by national boundaries in the effective exercise of citizens' rights and to identify concrete actions to take with a view to removing these obstacles.

To this effect, the Commission has launched last month a public consultation focusing on how citizenship rights can be strengthened and completed. It is vital that the broadest possible range of stakeholders, including public authorities, academia, civil society and individual citizens, express their concerns and expectations and

contribute their ideas. In this context, we would of course hope to benefit from the insights and expertise of all eminent participants in this conference.

The issues raised and the ideas put forward in the context of this consultation will be debated at a Conference on European Union citizens' rights, which will take place on 1<sup>st</sup> and 2<sup>nd</sup> July this year.

The outcomes of the consultation and the conference will feed into a Citizenship Report which will be adopted by the Commission in October this year. The Report will not only take stock of the progress accomplished, but will also outline the concrete measures that the Commission will take to empower citizens to effectively enjoy their rights and will present a roadmap for their realisation.

The overall objective of our policy in the area of citizenship is to ensure that, in all aspects of their everyday lives, European citizens are able to make use of their rights as European Union citizens in the same way as they use their rights as national citizens. When they move to an European Union country other than their own to study or work, to set up a business, to start a family, or to retire, when they source goods and services across borders, at all times, European Union citizens need to be confident that their individual rights under the European Union rules will be upheld.

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Ladies and gentlemen,

A key overarching theme in the Commission's approach to developing both its fundamental rights and citizenship policies is that, to formulate policies oriented to peoples' needs and protecting and promoting their rights, there must be a genuine dialogue and closer cooperation at local, regional, national and European level between all relevant actors, including academics, social partners and civil society.

We need to reflect and debate on how this innovatory and dynamic concept of Union Citizenship can help deliver tangible benefits to people, as socio-political realities change and the Union evolves.

We need to hold debates on how to approach the challenges for the Fundamental Rights' culture that is or should be specific to the European Union and its Member States that stem from societal changes, from the evolution of ethics, from the processes stimulated by globalization, from the migratory trends, from the modern technologies or from asymmetric threats such as terrorism, or from the ongoing economic crises. All these challenges, that are largely natural, have a tremendous impact on for political and cultural attitudes from our societies, and on the treatment given by legislators, magistrates and administrators to specific problems or cases. We need to reflect together on new attitudes and solutions that are lasting, rather than developed on an ad-hoc basis, and that are in line with our perceived values. And, not least, we must assess the extent to which our values are influenced – legitimately or not – by such trends.

Jean Monnet Professors are in a privileged position to spark a cross-border public debate on these issues and can play a key role in making fundamental rights as well as citizenship rights a more tangible reality. This is a time of great challenges, as well as of great opportunities. And the Commission looks forward to a dynamic and thought-provoking dialogue with you on how to tackle these challenges and use these opportunities to the full, in terms of making concrete, visible steps towards a Europe of rights and a Europe at the service of its citizens.

## **Dusan Sidjanski**

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## **ESPACE POLITIQUE EUROPÉEN : LA PARTICIPATION CITOYENNE**

### **Introduction**

En partant de la création d'un espace des libertés et des droits des citoyens, on peut se demander quelle est en fait la participation effective ou possible des citoyens européens au processus de décision dans l'Union européenne. Toutes sortes d'accès sont ouverts aux citoyens en relation avec les principes démocratiques généraux et sous l'angle du fonctionnement et des pratiques de l'Union européenne. Le Traité de Lisbonne élargit cette participation des citoyens européens à la vie publique dans le cadre de l'Union créant ainsi un noyau de l'espace politique européen. La place et le rôle des citoyens sont des résultats fondés sur l'héritage culturel à partir duquel se sont développées les valeurs fondamentales européennes à vocation universelle. Parmi ces fondements figurent en premier lieu les droits inviolables et inaliénables de la personne humaine autour de laquelle s'épanouissent les valeurs de la liberté, de la démocratie, de l'égalité et de l'état de droit. C'est sur le respect de ces principes et de ces valeurs que s'édifient et que fonctionnent la démocratie des pays membres et la démocratie au niveau de l'Union en plein développement.

La Charte des Droits fondamentaux précise les trois libertés notamment qui forment les bases de l'espace politique européen. La liberté de penser et de conscience (art. 10) ; la liberté d'expression, d'information et d'opinion qui donne lieu aux pluripartismes, aux pluralismes d'opinion véhiculés par les médias et l'Internet notamment ; la liberté de réunions et d'associations qui facilitent la création d'associations de citoyens ainsi que des mouvements et des partis politiques. Ces rassemblements, souvent sans une structure organisationnelle, sont largement facilités par les moyens rapides de communication tels que les SMS, Internet, et le Facebook. Ces moyens de mobilisation des citoyens ont été utilisés dans les grandes manifestations de protestations et plus récemment dans des rassemblements appelés « grands apéritifs » qui, au cours de ces réunions de masse, incitent à la consommation d'alcool et peuvent dégénérer en « troubles gratuits » et actes violents.

Ces associations et ces réseaux de communication connaissent une explosion à tous les niveaux : communes, régions, villes, Etats, Europe, Monde. Ils prennent des formes plus structurées dans les organisations politiques telles que les partis politiques, les associations civiques ou les organisations syndicales. Ces organisations constituent des intermédiaires entre les citoyens, les gouvernements et les autorités et pouvoirs locaux en incitant les citoyens à s'y affilier pour la défense de leur projet politique ou de leurs intérêts. L'article 10 al. 4 mentionne expressément les partis politiques au niveau de l'Union qui « contribuent à l'expression de la volonté politique des citoyens de l'Union ». C'est sur ces principes que se développe une société pluraliste et démocratique dans le cadre de l'Union européenne qui symbolise la quête d'une nouvelle structure politique à vocation fédérale.

### **Démocratie représentative**

Tout citoyen européen a droit au vote et à l'éligibilité. A l'exemple du fonctionnement des démocraties dans les pays membres, les citoyens européens ont la capacité de prendre part aux *élections du Parlement européen* tous les cinq ans. Par l'agrégation de leurs choix exprimés par leur vote, ils définissent les orientations politiques du Parlement européen alors que la composition de la Commission reflète les majorités

dans les pays membres. A propos des élections européennes, deux questions ont attiré particulièrement mon attention :

Tout d'abord *le taux de participation* relativement bas aux élections européennes se situant autour de 50 %. Ce taux, de surcroît déclinant, correspond paradoxalement à l'accroissement des pouvoirs du Parlement européen. La logique voudrait que cet accroissement de pouvoirs effectifs se traduise par un niveau de participation électorale plus élevé. D'aucuns feront remarquer que dans deux Etats fédéraux, les Etats-Unis et la Suisse, les élections présidentielles ou les élections fédérales se situent à un niveau comparable à celui enregistré aux élections européennes. Si ce point mérite réflexion, il ne doit pas constituer une justification pour ne pas chercher à inciter les électeurs à une participation plus active et plus proche des niveaux de participation lors des élections nationales. A ce titre, une meilleure information sur le rôle du Parlement européen dans le processus de décision dans l'Union et en particulier sur ses *pouvoirs de codécision* en matière législative pourrait être envisagée. Par la même occasion, l'information devrait mettre l'accent sur l'impact des lois européennes sur la vie quotidienne des citoyens.

Un autre aspect nous interpelle sur le contenu de la campagne électorale qui, à l'avenir, devrait mettre en relief davantage le lien entre les problèmes de la vie politique nationale et les apports des programmes et actions politiques dans le cadre de l'Union. Simultanément, il serait souhaitable, comme l'a proposé Jacques Delors, d'établir au plus tôt un lien plus direct entre les résultats des élections européennes et la désignation du Président de la Commission et si possible des membres du Collège.

Un résultat positif est acquis par les auditions que pratiquent les Commissions parlementaires européennes des candidats aux fonctions de membres de la Commission européenne. Un pas a été effectué en instaurant l'investiture du Président de la Commission par le Parlement européen suivi de son approbation de l'ensemble des membres de la Commission. Il est tout aussi important de mettre en vue les fonctions de contrôle démocratique et notamment l'existence de la notion de censure, fonctions qui sont attribuées au Parlement européen.

Droit de vote au niveau local. Droit d'être candidat / député européen aux élections au Parlement européen ainsi qu'aux élections municipales dans l'Etat membre où il réside dans les mêmes conditions que les ressortissants de cet Etat (art. 20, b et art. 22, par. 1 et 2). Si la participation aux élections européennes est la conséquence logique de la création progressive d'un espace électoral européen qui est encore fragmenté par des procédures électorales nationales, l'introduction du droit de vote et d'éligibilité au niveau municipal constitue une innovation sous la forme d'une amorce d'une *démocratie de proximité* au sein de l'Union.

Certes, la portée de la démocratie de proximité dépend de l'usage qui en sera fait par les citoyens. Mais cette innovation est porteuse d'un grand potentiel, d'autant que le Comité des régions est constitué des élus des régions et des pouvoirs locaux. Sa vocation est de développer à l'avenir la participation de ces élus au processus de consultation et, à terme, de décision. Faut-il rappeler qu'à l'origine une initiative allemande, reprenant une idée chère à Denis de Rougemont, visait à créer un Sénat des régions.

### **Emergence des structures politiques européennes**

Pour l'heure, les groupes politiques constitués au sein du Parlement européen se sont renforcés à mesure que les pouvoirs du Parlement se sont accrus. La caractéristique essentielle de ces groupes politiques est qu'ils réunissent les parlementaires issus de différents pays en fonction de leurs orientations, leurs programmes et leurs ambitions européennes. Il est cependant significatif de constater que ces noyaux des futurs partis politiques n'ont pas donné vie à la constitution de partis européens. Les formations à vocation européenne au-delà des groupes politiques n'ont pas acquis une force et un contenu comparables aux partis nationaux. Comme dans le cadre national, les groupes politiques sont le véhicule des intérêts et des visions politiques de leurs électeurs. L'acquis essentiel est dû au fait qu'ils se sont rassemblés en fonction de leurs affinités partisans tout en demeurant pour l'heure principalement dans l'enceinte du Parlement européen. Selon les théories et les hypothèses prémonitoires d'Ernst B. Haas, ces groupes politiques auraient vocation à se constituer en noyau de futurs partis politiques



européens. Cette vision optimiste formulée dans son ouvrage publié en 1958 n'a pas donné lieu à une confirmation concrète à l'heure actuelle.

Le Traité de Lisbonne innove en associant les Parlements nationaux au fonctionnement de l'Union européenne. C'est un exemple de décisions au plus près des citoyens que le nouveau Traité cherche à instituer en introduisant plus de transparence et en associant davantage les Parlements nationaux au processus de décision. Cet ensemble d'instruments devrait pouvoir assurer une meilleure participation électorale et politique des citoyens, d'autant que le Parlement européen est sorti en grand vainqueur de la négociation qui a abouti au Traité de Lisbonne. C'est une des avancées dont nous sommes redevables à la Constitution européenne issue de la Convention européenne et reprise par le Traité de Lisbonne.

Au fur et à mesure que le Parlement européen renforçait ses pouvoirs, il devenait de plus en plus la *cible des groupes de pression* de diverses associations de citoyens ainsi que des lobbyistes. Sous l'angle de la science politique, l'observation des activités de ces diverses associations peut constituer un indicateur du pouvoir réel dont dispose une institution telle que le Parlement européen. En effet, le Parlement européen, à l'origine Institution consultative, n'attirait point les groupes d'intérêt ou diverses associations. Dans la mesure où d'Institution consultative le Parlement européen est devenu un codécideur en matière législative avec le Conseil des Ministres, les groupes et les lobbyistes, qui avaient centré leur action essentielle sur la Commission européenne, ont cru utile de l'étendre au Parlement européen qui devenait un acteur de premier plan dans une phase ultérieure. Lors de l'approbation, en codécision avec le Conseil, des propositions de la Commission, le poids du Parlement européen s'affirme. Il n'en reste pas moins que le moment et le temps dans le processus de décision gardent toute leur importance. La stratégie développée par les principaux acteurs sociaux consiste à intervenir au début de l'élaboration des propositions de la Commission ainsi qu'au moment de leur approbation par le Parlement européen.

## Participation ou démocratie directe

*L'initiative européenne* est une des grandes innovations contenues dans le Traité de Lisbonne. C'est une nouvelle voie ouverte aux citoyens qui leur offre la possibilité d'obliger la Commission à formuler des propositions à la suite de l'adoption d'une initiative. Encore faut-il signaler que le recours à l'initiative - qui exige une déclaration de soutien d'un million de citoyens, nombre relativement réduit par comparaison avec l'ensemble des citoyens européens - souffre de plusieurs limitations. Tout d'abord, les initiatives ne peuvent être prises que dans les domaines correspondant aux attributions de la Commission européenne. Elles exigent, en outre, l'apport des citoyens d'au moins un tiers des Etats membres. Par ailleurs se pose la question de recevabilité d'une initiative qui est examinée sur la base de 300'000 déclarations de soutien dont l'organisateur saisit la Commission. De plus, si le contenu de l'initiative s'inscrit contre les valeurs de l'Union, la Commission est censée la refuser.

L'initiative adoptée selon les règles pointilleuses de répartition des citoyens qui l'appuient par Etat membre, s'adresse à la Commission qui doit faire savoir ses conclusions concernant l'action qu'elle compte entreprendre. Il en ressort que *l'initiative n'a pas d'effet direct* mais ne peut être réalisée que par l'intermédiaire de la Commission. Toute cette procédure assez complexe est censée être transparente et figurer sur le site de la Commission. Selon l'expérience acquise dans les pays qui pratiquent l'initiative et le référendum, cette action représente un certain coût d'où l'apport financier prévu par le règlement.

Il est intéressant de faire un bref détour pour comparer l'initiative européenne à l'initiative telle qu'elle est pratiquée en Suisse. Deux différences majeures sautent aux yeux : les soutiens de l'initiative répartis selon les Etats membres ne figurent pas dans la procédure en Suisse qui se base sur le concept du peuple suisse, le peuple européen n'étant pas présent dans les conditions actuelles. Une deuxième différence tout aussi fondamentale concerne l'effet que produit l'acceptation d'une initiative. Dans le contexte suisse, l'acceptation de l'initiative par la majorité du peuple a un effet immédiat et se traduit par son inscription dans la Constitution. En revanche, une initiative européenne aboutie n'est qu'une exigence adressée à la

Commission pour qu'elle élabore des propositions selon les procédures en vigueur dans l'Union européenne, en raison du monopole de propositions dont elle dispose.

La pétition est une procédure citoyenne instaurée depuis plusieurs années et largement pratiquée par des citoyens, des résidents, des associations et des entreprises. En effet, on en dénombre plus de mille par an. Si les impacts des pétitions n'ont pas fait l'objet d'analyses approfondies quant à leurs effets concrets, il n'en reste pas moins qu'il serait fort intéressant pour les politologues et les sociologues d'étudier leur contenu qui permettrait de brosser un tableau des demandes de différents acteurs sociaux, demandes adressées au Parlement européen.

L'existence d'un *médiateur européen* conduit à des centaines de recours et de plaintes de toutes sortes qui lui sont adressés. C'est aussi un accès intéressant offert aux citoyens européens qui l'utilisent fréquemment, à tel point qu'il en résulte une surcharge de travaux du médiateur.

A ces différentes voies plus ou moins directes qui s'ouvrent aux citoyens européens et dans certains cas aux résidents dans l'espace de l'Union, il faut ajouter la pratique des *auditions*. Tant la Commission que le Parlement ont pris l'habitude d'inviter des acteurs représentatifs pour des auditions qui leur permettent d'être à l'écoute des intéressés. Faut-il mentionner en dernier lieu le fait que désormais les citoyens peuvent adresser leurs demandes d'information à la Commission qui est censée leur répondre. Davantage de transparence jointe à l'extension des accès divers et à la procédure d'initiative visent tous ensemble à assurer une participation plus intense des citoyens européens dans l'espace politique européen en formation.

**Démocratie participative et processus de consultation:** Réseaux d'organes et de mécanismes consultatifs

### **Associations de citoyens, Groupes d'intérêt et influence**

L'émergence d'un pouvoir européen qui s'exerce directement sur les citoyens et sur leurs associations conduit à l'émergence en parallèle de contrepoids : la formation

d'associations au niveau européen dont les membres sont des associations et des groupes d'intérêts nationaux. Par l'intermédiaire de ces associations européennes, les associations nationales et leurs membres ont la possibilité de présenter et de faire valoir leurs intérêts auprès de la Commission européenne et du Parlement européen. En articulant leurs intérêts, elles font valoir devant la Commission et devant le Parlement leur contribution au processus de décision. Le but de ces associations, qui représentent les intérêts sectoriels et souvent limités des citoyens européens en tant qu'acteurs économiques, idéologiques ou culturels, est d'infléchir les décisions communautaires. A cet effet, elles utilisent tous les canaux d'influences auprès des institutions communautaires, à savoir la Commission et le Parlement européen.

Il est intéressant de constater qu'à ses débuts, le Parlement européen, qui ne disposait que de pouvoirs consultatifs, était rarement l'objet de sollicitations de la part de ces groupes européens. En revanche, au fur et à mesure que ses pouvoirs se sont étendus et renforcés, il est devenu l'objet de pressions ou la cible des actions de ces groupes. A ce titre, on peut faire remarquer que l'action de ces groupes auprès des institutions européennes est un *indicateur du pouvoir* dont elles disposent.

Dès l'origine de la Communauté européenne, la Commission a été la principale cible de ces groupements. D'autant plus que le fait qu'elle disposait du monopole de l'initiative permettait aux groupes de se faire entendre dès le début du processus de décision et de chercher à influencer l'élaboration des propositions de la Commission. Encore faut-il remarquer qu'à son tour, la Commission éprouve le besoin de consulter ces groupes formés au niveau européen pour obtenir des informations techniques ainsi que pour évaluer la répartition des prises de position convergentes ou divergentes de ces différents groupes. De cette manière, elle est en mesure de faire des prévisions quant au soutien sur lequel elle pourra compter de la part des groupes concernés par sa proposition. Dans certain cas, la Commission a pu s'appuyer sur le soutien de certains groupes pour mieux défendre sa proposition au Conseil.

La Commission consulte de préférence les associations qui se sont constituées au niveau européen, soit des associations qui remplissent des fonctions générales, soit des associations spécialisées. L'existence et l'action des groupes présentent un avantage pour la Commission qui peut recueillir leurs avis qui résultent d'arbitrages entre positions divergentes et forment une agrégation des intérêts de membres nationaux ou régionaux des organisations européennes. A titre d'exemple, on peut citer le rôle important de BusinessEurope (anciennement Unice), de la Confédération européenne des syndicats ou du COPA représentant les organisations d'agriculteurs et du BEI qui reflète les aspirations et les demandes de citoyens en matière d'environnement. A ces organisations générales s'ajoutent près de 500 organisations et groupements spécialisés. Dans des cas exceptionnels, les membres d'une association européenne sont des individus citoyens et résidents européens. Exemple : l'association européenne des ostéopathes.

Ainsi se tisse autour de la Commission un vaste réseau d'associations diversifiées qui représentent, le plus souvent indirectement, les intérêts des citoyens et résidents organisés au niveau régional ou national. Sans entrer dans le détail de cette analyse, il faut mentionner qu'avec le Professeur Jean Meynaud, nous sommes parvenus à une conclusion générale, à savoir : plus les pouvoirs et les attributions des institutions communautaires se renforcent et s'étendent, plus le nombre d'associations se forment en réponse à ce pouvoir naissant. On constate donc un certain parallélisme entre l'accroissement des pouvoirs communautaires et l'émergence des groupes correspondants. C'est pourquoi il sera utile de suivre l'évolution et l'action de ces groupes d'influence à la suite de la mise en vigueur et lors de l'application du Traité de Lisbonne qui approfondit et élargit les pouvoirs de la Commission et du Parlement européen notamment.

## **Lobbyiste et eurosphère**

### **Organes consultatifs**

Parmi les organes consultatifs qui associent diverses représentations des intérêts économiques et sociaux, on retient tout d'abord le *Comité économique et social* dont les membres sont des associations et des groupes nationaux. Cependant, l'activité

de ces groupes nationaux est coordonnée par les Conseils et les secrétariats des associations européennes correspondantes.

A cet accès des associations au niveau national il faut ajouter l'existence plus récente du *Comité des régions*. A la différence du Comité économique et social, le Comité des régions compte principalement des élus des régions des villes et des pouvoirs locaux des Etats membres. A l'origine, l'expérience des Länder allemands avait inspiré l'idée d'un Sénat des régions. Cependant, la trop grande différence entre les régions et des formations infra étatiques des Etats membres ainsi que la résistance de certains d'entre eux à la régionalisation interne a abouti à un compromis. Il n'en reste pas moins que le Comité des régions garde sa vocation politique en assurant la participation de divers niveaux d'élus au processus de consultation.

A part ces deux organes, il existe des centaines de *comités consultatifs* créés par la Commission ou par le Conseil, connus sous le nom de la comitologie. De surcroît, lors de l'élaboration des propositions par la Commission, les experts du secteur privé sont appelés à participer à titre consultatif aux côtés d'experts officiels invités à titre personnel et n'ayant pas de mandat de leurs administrations. Une journée passée à Bruxelles nous permet d'observer des réunions multiples composées de centaines de participants issus du secteur public et privé.

### **Participation des grandes entreprises et des régions**

A titre d'exemple, on peut mentionner la présence à Bruxelles des grandes entreprises européennes. Quant aux petites et moyennes entreprises, elles cherchent à se faire représenter par leurs organisations communes. Un phénomène relativement nouveau qui mérite notre attention est la représentation directe des régions et notamment des Länder à Bruxelles dont nombreux d'entre eux disposent des délégations permanentes. Aussi trouve-t-on des cas où les représentants des Länder siègent auprès des Ministres au Conseil. D'autres réseaux se sont formés dont les médias qui constituent une des concentrations les plus grandes de journalistes, de télévision, de quotidiens et de diverses publications. D'autres exemples pourraient être mentionnés tels les Centres de réflexions (think tank) qui

observent de près la Commission et rédigent des rapports et parfois des propositions. Enfin, il ne faudrait pas oublier le rôle des Chaires Jean Monnet qui se réunissent régulièrement en Congrès sur des thèmes d'actualité ou des thèmes prospectifs. Ainsi, des universitaires et des représentants d'Instituts et de Départements européens se trouvent aussi associés périodiquement à la réflexion sur les questions européennes.

### **Comment motiver les jeunes citoyens ?**

En premier lieu, *l'éducation civique européenne* mériterait d'être développée à tous les niveaux. Elle permettrait d'initier les jeunes et les moins jeunes Européens au fonctionnement et au rôle de l'Union européenne tant au niveau interne qu'au niveau mondial. A cet effet, l'éducation civique européenne ne devrait pas se limiter à des descriptions des Institutions européennes mais s'attacher à développer une approche plus concrète en partant des problèmes et des solutions envisageables. De l'étude de certains cas, on remonterait à la présentation du fonctionnement de l'Union européenne. Aujourd'hui où l'on dispose de moyens de communication performants de haute technologie, il est possible d'organiser des *jeux* et des *simulations* où les participants ont l'occasion de pratiquer divers rôles qu'assument les responsables dans l'Union européenne et dans les Etats membres ainsi que ceux qui représentent les intérêts de diverses couches de citoyens. De cette manière, les jeunes se familiariseraient avec les méandres et la vie réelle des Institutions de l'Union. C'est d'autant plus intéressant que l'Union est en pleine transition. Au côté de l'action fondamentale du Président, de la Commission et du Collège, le Traité de Lisbonne prévoit des hautes fonctions-clé, à savoir le Président du Conseil européen et la Haute Représentante de l'Union européenne. L'action de ces trois Hauts Responsables témoigne de l'importance qu'accordent les gouvernements membres à la présence de l'Union sur la scène mondiale.

La *dimension mondiale* a été quelque peu négligée. Or, plusieurs de ses composantes sont susceptibles de motiver les jeunes en commençant par le rôle de l'Union européenne à l'égard des pays en développement. De fait, l'Union européenne est le plus grand contributeur d'aide à ces pays. Débattre de l'action de la Commission et de l'Union et l'analyser; chercher à promouvoir l'engagement des

jeunes dans le service de coopération européen ou par des relations directes (d'école à école, d'associations à associations), des stages et des échanges; collecter des fonds pour soutenir des projets sur place en matière d'éducation, etc. Autant de multiples moyens qui motivent les jeunes et laissent apparaître la nécessité de l'Union.

De surcroît, l'Union est confrontée simultanément à la crise globale et à la crise intérieure dont la Grèce n'est qu'un bout visible de l'iceberg. La crise a rendu plus vive la tension entre la méthode communautaire et la méthode intergouvernementale qui privilégie le rôle des Etats et en particulier des grands. Cette tension remet en question le rôle de la Commission, seule Institution capable, avec le soutien du Parlement européen, de promouvoir l'intérêt général européen et de garantir l'équilibre entre les grands Etats les petits et moyens Etats membres. La question est ouverte : laquelle des deux méthodes garantit au mieux la protection des citoyens européens. Un récent exemple nous met en garde tel le rejet du gouvernement allemand du projet d'aide commun des membres de la zone euro à la Grèce pendant plusieurs mois, provoquant des dommages économiques et sociaux et suscitant une "guerre des médias" allemands et grecs ainsi qu'une mobilisation des opinions publiques dans ces deux pays membres. Il est urgent que tous les Européens, les jeunes y compris, prennent conscience de la crise économique et financière qui envahit nos sociétés et du fait que l'échec de l'euro sonnerait le glas du projet politique de l'Union.

Contrairement à une idée acquise, l'intégration et le rapprochement des peuples européens n'est pas un processus irréversible. Nécessaire plus que jamais, l'Union a besoin du soutien des citoyens et de la mise en œuvre de grands projets communautaires. Et surtout d'une jeunesse européenne engagée. D'où l'importance de donner *une dimension et un esprit européens à l'éducation*. Les histoires nationales souvent tendancieuses devraient être confrontées entre elles en s'inspirant du *manuel d'histoire franco-allemand*. Une histoire générale de l'Europe servirait de cadre à ces entreprises communes. Le tout étant conçu dans la perspective d'une histoire mondiale. Une approche similaire serait appliquée à l'étude de la géographie, des frontières et des peuples. Les frontières qui sont censées être supprimées à l'intérieur de l'Union mais qui survivent dans certaines



mentalités que viennent nous rappeler les "conflits linguistiques" et des problèmes de minorités ranimés entre la Hongrie et la Slovaquie, tous les deux membres de l'Union. Quel recours apporterait une solution? L'application généralisée de la citoyenneté européenne sans frontières. Telle est ma conviction.

A présent, dans le monde globalisé, la *concurrence* se joue en particulier dans le domaine de *l'éducation et de la recherche* et notamment en matière de science et de technologie. Si, jusqu'à présent, notre but était de rattraper l'avance des Etats-Unis et de parvenir au niveau des meilleures Universités américaines, désormais la concurrence entre Institutions académiques et Centres de recherche concerne de plus en plus les pays émergents. Il suffit de jeter un coup d'œil sur le nombre de chercheurs et ingénieurs que forment la Chine, l'Inde ou le Brésil pour prendre conscience de la nécessité de former dès les premières scolarités les enfants et les élèves à l'approche scientifique. Comme mentionné précédemment, cette approche s'intègre dans l'ensemble de la culture européenne et se développe par le recours à la méthode interdisciplinaire.

Il est essentiel de créer des bases aussi larges que possible de jeunes attirés par la science afin que la sélection puisse faire ressortir les plus prometteurs d'entre eux et leur offrir les moyens d'une éducation de qualité. A l'image de l'époque de la Renaissance où existaient, en particulier en Italie, des centaines d'ateliers de peintres qui accueillait des milliers d'élèves. Grâce à cette abondance de talents potentiels, les villes italiennes de la Renaissance ont pu produire des chefs-d'œuvre en peinture comme en sculpture. En s'inspirant de cet exemple, on peut se donner comme une des finalités au plan européen de prévoir des introductions à la science par la méthode mise au point par Leon Lederman et Georges Charpak, tous deux Prix Nobel de physique, qui consiste à ce que les élèves pratiquent des expériences. Au lieu de commencer par enseigner les concepts abstraits scientifiques et mathématiques, *la Main à la pâte* vise à renverser l'ordre séquentiel en commençant par l'expérience. Il s'agit essentiellement d'une introduction à la science en apprenant aux élèves à formuler des hypothèses et en les invitant à les soumettre à des preuves lors de l'observation des expériences qu'ils sont amenés à effectuer. Sur la base de leurs observations et des preuves fournies, ils apprennent à dialoguer et à argumenter entre eux après avoir présenté les résultats de leurs expériences.

Au cours de cet exercice, ils acquièrent la capacité de s'exprimer ainsi que de rédiger des protocoles contenant les résultats de leurs observations. La discussion engagée sur leurs expériences et la comparaison de la validité de leurs preuves les conduisent au respect de ceux qui, parmi eux, présentent des arguments les plus convaincants. Cette démarche ouvre leurs horizons à la discipline scientifique, au raisonnement et à la logique. Elle contribue simultanément à leur apprendre à travailler en équipe et à accepter les critiques valables. Ce dialogue, qui se fonde sur les résultats de leurs expériences, a tout une série de conséquences bénéfiques pour le développement tant de leur curiosité que de leur rigueur scientifiques. Au plan européen, *la Main à la pâte* a été reprise, grâce à l'initiative du Président Barroso, par le projet Pollen, suivie aujourd'hui par le nouveau projet Fibonacci. Au niveau secondaire, des expériences inspirées par *la Main à la pâte* se développent dans les Collèges et les Lycées sous la forme d'un enseignement complémentaire. Il est à souhaiter que cette approche puisse être généralisée en Europe.

Une autre expérience qui mérite notre attention est pratiquée depuis quelques années à Chicago sous l'impulsion de Leon Lederman : il s'agit d'un *Lycée scientifique libre* qui sélectionne 200 jeunes par an et pour une durée d'études de 3 ans. Provenant de diverses couches ethniques et de catégories sociales différentes, les élèves s'épanouissent librement dans un milieu scientifique de haut niveau. A la sortie du Lycée, ces jeunes scientifiques sont littéralement happés par les meilleures Universités américaines telles que MIT, Harvard, Princeton, Stanford entre autres. C'est un projet-pilote semblable que cherche à lancer Georges Charpak en France tout en espérant que, suivant l'exemple de Pollen, il sera prochainement repris au sein de l'Union européenne. Ce sont autant de voies qui conduisent à promouvoir et à faire émerger une réelle société de connaissance. Une société comprenant de nombreux foyers de diffusion des connaissances allant de *la Main à la pâte*, pratiquée à tous les niveaux, jusqu'à l'enseignement supérieur dont les masters et doctorats européens et les recherches de haute qualité. Cette approche par paliers, intégrant les diverses disciplines tout en restant ouverte aux innovations, vise à créer une vaste société de connaissance et de formation professionnelle, donnant naissance à des emplois nouveaux dans un environnement de liberté et de qualité. Ainsi s'édifie une société de réseaux d'échanges et de mobilité procurant de nouveaux accès à la connaissance et aux emplois.

Un autre aspect auquel j'attache une importance particulière est l'effet de cette méthode sur le développement des personnalités et sur l'intégration des élèves provenant de diverses catégories sociales au sein de leur classe. Enfin, comme l'a souligné la Vice Ministre Chinoise de l'éducation au cours de sa visite des écoles qui pratiquent *la Main à la pâte* en France, cette introduction à la science constitue le *meilleur apprentissage de la démocratie*. De surcroît, elle assure l'accès de larges couches d'élèves à la connaissance scientifique et, de ce fait, est susceptible de fournir de nombreux scientifiques et chercheurs potentiels. Ainsi, aux côtés des enseignements traditionnels d'histoire, de géographie, de langues comme de philosophie, les élèves et plus tard les étudiants acquièrent une vue générale de la *culture européenne* au sens le plus large dont font partie intégrante l'histoire de la science, la science et la technologie. Une des principales richesses de l'Europe qui est dépourvue de matières premières est la ressource humaine. Il s'agit dès lors de développer ce potentiel humain qui est la meilleure garantie de notre avenir dans le monde globalisé.

Pour plus de détails, voir mon site web : [www.dusan-sidjanski.eu](http://www.dusan-sidjanski.eu)

## Elsbeth Guild

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## WHAT FUNDAMENTAL RIGHTS FOR WHOSE EUROPEAN UNION CITIZENS?

### Introduction

It is difficult to over-estimate the importance, and in the fullness of time, the impact which the Lisbon Treaty has and will have regarding fundamental rights and citizens of the Union. There are three main reasons for this:

- Citizenship of the European Union has finally acquired its Bill of Rights in the form of a legally binding European Union Charter of Fundamental Rights; the skeleton which citizenship of the Union has been is now acquiring the flesh and blood it needs to merit the title;<sup>61</sup>
- The European Union Charter of Fundamental Rights transforms citizenship in the European Union as it redefines who is entitled to bundles of rights which inform the meaning of citizenship and belonging;<sup>62</sup>
- The European Union Charter of Fundamental Rights is neither part of a constitution in the traditional nation state sense, nor is it an international human rights treaty even in the regional sense of the European Convention on Human Rights. As a new mechanism for the delivery of rights it transforms

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<sup>61</sup> Peers, S & A Ward, *The EU Charter of Fundamental Rights: Politics, Law and Policy* Hart, Oxford, 2004.

<sup>62</sup> Guild, E 'The Variable Subject of the EU Constitution, Civil Liberties and Human Rights' (2004) EJML pp. 381-394(14); Framework 7 Project: ENACT which examines the changing meaning of citizenship in the EU

the relationship between the individual and the state through a different type of rights entitlement arisen from and embedded in the European Union.<sup>63</sup>

In this chapter I will examine each of these three reasons for rethinking the relationship of fundamental rights and European Union citizenship which the Lisbon Treaty has given to us. In doing so I will be making three main points:

- To be a citizen of the Union has become much more attractive to nationals of the Member States as rights which they may not be entitled to or able to enjoy from their underlying national citizenship are now available to them through the Charter and European Union citizenship;
- By defining in the Charter who is entitled to rights in the European Union we have changed the meaning of citizenship. There is a widening of rights holders to include not only nationals of other Member States (even those subject to transitional arrangements as regards free movement of workers) but also third country nationals;
- The entitlement to rights no longer depends either on national constitutional settlements or on international human rights treaties (with all the difficulties attendant on accessing those rights), they are now to hand for use by the individual backed by the Member States' promise of good faith to European Union law in their delivery.<sup>64</sup>

I will commence with an outline of the key aspects of the Charter relevant to my above contentions and then I will examine how they change the nature and meaning of citizenship.

### **A Bill of Rights for European Union Citizens**

The European Union Charter of Fundamental Rights was adopted by the three central European Union institutions (Parliament, Council and Commission) in Nice 7 December 2000. It was the result of 12 months of discussion and negotiation which

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today <http://www.enacting-citizenship.eu/>; the research which this project is generating has been fundamental to my own understanding of European citizenship and its relationship to rights.

<sup>63</sup> Menendez, A J *The Chartering of Europe: The European Charter of Fundamental Rights and its Constitutional Implications* ARENA Working Paper 01/13.

took place in the form of a Convention established by the Cologne European Council 3-4 June 1999. The Convention included not only members of the institutions which would ultimately adopt it but also members of national parliaments assisted by experts and taking into account the views of civil society.<sup>65</sup> It was a magnificent accomplishment, and like all such events, surrounded by controversy and debate. The intention for the Charter was that it would codify the rights to which European Union nationals were already entitled. There was no objective to extend those rights by virtue of the Charter.<sup>66</sup> However, as with any such action to consolidate rights which individuals already hold, by bringing them together in one place set out clearly in one document, there is a centrifugal effect: rights engender rights. The interaction among rights and the necessity of enjoying some rights in order to be able to access others becomes apparent from any such effort.

Due to the rather strong opposition in 2000 of at least one Member State, the Charter was not inserted into the treaty amendments which the Nice Council proposed to the Member States. Instead it remained a self standing document without a direct legal status in the European Union's legal order or indeed that of its Member States.<sup>67</sup> As an aspirational document setting out a Bill of Rights, however, it gained authority and importance. As the years of its long languish as a more political rather than legal document stretched out, it acquired supporters in many different areas. While the Charter was referred to in political debates at the European Union and national levels, and by judges in the Member States, it also gradually gained stature at the European Court of Justice, initially as Advocates General began to have regard to it. Nonetheless it remained outside the realm of binding legal documents within the European Union order. Remedying this unsatisfactory situation was central to many Member States and the European Union institutions for a number of reasons. Among them were:

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<sup>64</sup> Though of course Poland and the UK have opted for a limited effect nationally of the Charter and the Czech Republic has been permitted to join them in this limitation.

<sup>65</sup> For all the background documents, including the remit of the project and the civil society contributions see [http://www.europarl.europa.eu/charter/default\\_en.htm](http://www.europarl.europa.eu/charter/default_en.htm); for a scholarly analysis see S Peers and A Ward *The European Union Charter of Fundamental Rights* Hart, Oxford, 2004.

<sup>66</sup> De Burca C & J B Aschenbrenner 'European Constitutionalism and the Charter' in Peers, S & A Ward, *The EU Charter of Fundamental Rights: Politics, Law and Policy* Hart, Oxford, 2004 pp 3 – 35.

<sup>67</sup> S Peers, 'Taking Rights Away? Limitations and Derogations' in Peers, S & A Ward, *The EU Charter of Fundamental Rights: Politics, Law and Policy* Hart, Oxford, 2004 pp 141 – 182.

- Member States need confidence that their national constitutional settlements with their people are not undermined by European Union measures because of the lack of comprehensive and legally binding fundamental rights provisions at the European Union level;
- The European Union needs to have a single document setting out what rights exist under European Union law so that this is clear for Member States' authorities and people in the European Union;
- As European Union law engages in areas where people are directly affected, a parallel reinforcement of rights is needed to ensure that state and supra state powers do not grow at the expense of rights of people;
- The addition of the Area of Freedom, Security and Justice into the European Union's field of law making demands that peoples' rights are set out as well to guide how the legislation in the AFSJ is crafted;
- National courts required confidence that European Union law is not only adopted in conformity with fundamental rights, a matter normally included in the preambles of European Union secondary legislation, but that in its application and transposition people affected by those measures have a chance to challenge them on the basis of a clear and legally binding set of rights which they are entitled to enjoy;
- The coherence of European Union law depends on full human rights compliance as the Member States' obligations under the European Convention on Human Rights and other international human rights treaties must not be undermined by European Union law.

The long and arduous road which led to the Lisbon Treaty does not require further explanation here. People's uncertainty in a couple of Member States regarding the assurances of their national governments and political class about the desirability of the Constitutional Treaty threw the process into disarray in 2004. A long reflection period followed by adjustment and modification of the project has resulted in a successful passage of the Lisbon Treaty and a new foundation for Europe. For my purposes here, Article 6 of the Treaty on the European Union is most important. It simply states "The Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as

adapted at Strasbourg on 12 December 2007, which shall have the same legal value as the Treaties.” In this way, the Lisbon Treaty gives legal force to the Charter after ten years of ‘half life.’<sup>68</sup>

So what does the Charter mean for citizens of the Union? It sets out a Bill of Rights to which they are entitled. It does so in seven chapters respectively entitled (1) Dignity; (2) Freedoms, (3) Equality; (4) Solidarity; (5) Citizen’s Rights; (6) Justice and (7) General Provisions. Among jurists there has been much discussion whether the different chapters have different legal effects.<sup>69</sup> This debate tends to resemble discussions about the numbers of angels which can fit on the head of a pin. It seems to me that from a natural reading of the Charter and an examination of the General Provisions, which the TEU invites us to do, there is no substantial foundation to accept that for instance the provisions contained in the Dignity chapter are somehow juridically different from those in any other chapter. For example, Article 2 which is found in this chapter contains the right to life. It mirrors a similar provision in the European Convention on Human Rights. The European Court of Human Rights has never questioned the legal applicability of the right to life and has interpreted it frequently in complex and politically sensitive cases.<sup>70</sup> The European Union Charter sets out rights irrespective of the title of the chapter in which they have been placed.

The rights which are contained in the Charter come mainly from two sources: first rights which already existed in European Union law such as for citizens of the Union the right of free movement (Article 45); secondly, the European Convention on Human Rights (and its protocols).<sup>71</sup> Here the Charter specifically states that in so far as it contains rights which correspond to those in the European Convention on Human Rights (ECHR), the meaning and scope of the Charter rights shall be the same as that of the European Convention’s rights. However, this provision expressly does not prevent Union law from providing more extensive protection (Article 52(3)).

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<sup>68</sup> There is substantial academic concern that the process has not developed in a sufficiently coherent manner. Zuleeg, M ‘The Advantages of the European Constitution’ in von Bogdandy, A & J Bast *Principles of European Constitutional Law* Hart, Oxford, 2010 pp 763 – 786.

<sup>69</sup> J P Jaqué, ‘Les droits fondamentaux dans le traité de Lisbonne, version provisoire 5 février 2010.

<sup>70</sup> See for instance *McCann & Ors v UK* (27 September 1995 Series A No 324) where the UK was found in breach of Article 2 because of the actions of its military in killing three members of the IRA (Irish Republican Army) suspected of preparing a bomb attack.

<sup>71</sup> Kühling, J ‘Fundamental Rights’ in von Bogdandy, A & J Bast *Principles of European Constitutional Law* Hart, Oxford, 2010 pp 497 – 514.



The Charter takes on legal force with the entry into force of the Lisbon Treaty at a critical moment for the European Union. In the same month, December 2010, the Council adopted the Stockholm Programme, a new five year plan for the development of the Area of Freedom, Security and Justice (AFSJ). The AFSJ is now ten years old and includes as policy areas: border controls, immigration, asylum, judicial cooperation in criminal matters and policing. Under the new Lisbon Treaty architecture, all of these areas are now full European Union competences. The Stockholm Programme calls for many new initiatives in all the fields which the Area of Freedom, Security and Justice covers. While it calls for the promotion of citizenship and fundamental rights as a central plank and demands tangible realities in the sector, in the actual measures which it calls for there is little which is evidently 'liberty' oriented.<sup>72</sup> Instead, after the very important statement that the European Union is built on fundamental rights, the measures called for in the body of the Programme tend to privilege, in quantity, those which are internal security related, more databases, more criminal justice cooperation, more crime prevention. For instance, in the Programme, the Council invites "Member States and the Commission to actively promote and support crime prevention measures focusing on prevention of mass criminality and cross border crime affecting the daily life of our citizens in accordance with Article 84 TFEU."<sup>73</sup> In principle this is excellent but in practice the problem is what kind of measures do Member States adopt to this end?

For instance, as a crime prevention measure, the United Kingdom authorities enacted the Terrorism Act 2000 which permits police officers to stop and search individuals without needing to demonstrate a reasonable suspicion that the individuals had committed or were about to commit a crime. Using these powers the British police stopped and searched, among many thousands of other persons, a young man riding a bicycle and a photographer going to an arms fair. These two people challenged the lawfulness of the stop and search before the national courts and finally to the European Court of Human Rights on the basis of their right to privacy in Article 8 of the European Convention on Human Rights. Article 7 of the Charter covers exactly the same legal territory as Article 8 of ECHR. The European

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<sup>72</sup> OJ 2010 C 115/1.

<sup>73</sup> OJ 2010 C 115/21.

Court of Human Rights found the United Kingdom's laws permitting police officers to stop and search individuals on the basis of a broad discretion was in violation of the right to private life.<sup>74</sup> It stated:

"62. Turning to the facts of the present case, the Court notes that sections 44-47 of the 2000 Act permit a uniformed police officer to stop any person within the geographical area covered by the authorization and physically search the person and anything carried by him or her. The police officer may request the individual to remove headgear, footwear, outer clothing and gloves. Paragraph 3.5 of the related Code of Practice further clarifies that the police officer may place his or her hand inside the searched person's pockets, feel around and inside his or her collars, socks and shoes and search the person's hair (see paragraph 36 above). The search takes place in public and failure to submit to it amounts to an offence punishable by imprisonment or a fine or both (see paragraph 33 above). In the domestic courts, although the House of Lords doubted whether Article 8 was applicable, since the intrusion did not reach a sufficient level of seriousness, the Metropolitan Police Commissioner conceded that the exercise of the power under section 44 amounted to an interference with the individual's Article 8 rights and the Court of Appeal described it as "an extremely wide power to intrude on the privacy of the members of the public... [65] Each of the applicants was stopped by a police officer and obliged to submit to a search under section 44 of the 2000 Act. For the reasons above, the Court considers that these searches constituted interferences with their right to respect for private life under Article 8."<sup>75</sup> When the Stockholm Programme calls for measures which actively promote and support crime prevention, it echoes the justifications put forward by the United Kingdom authorities in the *Quinton and Gillan* case. Yet such measures would clearly be contrary to the Charter even without any widening of the protections of the individual expressly permitted in it.

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<sup>74</sup> *Gillan and Quinton v UK* (12 January 2010)

<sup>75</sup> The judgment goes on to consider whether the interference fulfilled even the lower threshold of 'in accordance with the law' and concludes that the powers of authorization and confirmation as well as those of stop and search are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. "They are not, therefore 'in accordance with the law' and it follows that there has been a violation of Article 8 of the Convention" (para 87).

The sister judgment, *S & Marper v UK* (4 December 2009) also clearly has implications for the development of the Area of Freedom, Security and Justice. In this case the European Court of Human Rights found the United Kingdom police DNA data base, which includes fingerprints, cellular samples and DNA of persons never even suspected of criminal activity let alone convicted, to violate the right to private life. Once again the question was the scope of the right to private life in Article 8 of the European Convention on Human Rights and mirrored at Article 8 of the Charter. The European Court of Human Rights stated “122. Of particular concern in the present context is the risk of stigmatization, stemming from the fact that persons in the position of the applicants, who have not been convicted of any offence and are entitled to the presumption of innocence, are treated in the same way as convicted persons. In this respect, the Court must bear in mind that the right of every person under the Convention to be presumed innocent includes the general rule that no suspicion regarding an accused innocence may be voiced after his acquittal (see *Asan Rushiti v. Austria*, no. 28389/95, § 31, 21 March 2000, with further references). It is true that the retention of the applicants' private data cannot be equated with the voicing of suspicions. Nonetheless, their perception that they are not being treated as innocent is heightened by the fact that their data are retained indefinitely in the same way as the data of convicted persons, while the data of those who have never been suspected of an offence are required to be destroyed.” It went on to find: “125. In conclusion, the Court finds that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard. Accordingly, the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society. This conclusion obviates the need for the Court to consider the applicants' criticism regarding the adequacy of certain particular safeguards, such as too broad an access to the personal data concerned and insufficient protection against the misuse or abuse of such data. 126. Accordingly, there has been a violation of Article 8 of the Convention in the present case.” Thus Article 7 of the Charter will have at least a similar scope as

regards European Union databases containing personal data such as fingerprints, cellular samples or DNA.

The Stockholm Programme requests that the Commission “explore if and how authorities of one Member State could obtain information rapidly from private or public authorities of another Member State without use of coercive measures or by using judicial authorities of the other Member State”.<sup>76</sup> Similarly, it calls on the Commission to “examine how operational police cooperation could be stepped up, for example as regards incompatibility of communications systems and other equipment, use of undercover agents, and, where necessary, draw operational conclusions to this end”.<sup>77</sup> In carrying out these activities, the Commission will have to have regard to the European Court of Human Rights jurisprudence and ensure that its actions do not encourage or attempt to justify breaches of the individual’s right to privacy through exchange of fingerprints, cellular samples of DNA among law enforcement authorities where even the retention of those samples is contrary to Article 7 of the Charter.

## **A Bill of Rights for the People of Europe**

I will now move to the second point which I wish to make in this presentation. The Charter is not limited in its scope of application to citizens of the Union.<sup>78</sup> Indeed, few of the Charter’s provisions have a citizenship limitation and these are contained in chapter 5. Specifically limited to citizens of the Union are the right to vote and stand for elections in the European Parliament and in the municipal elections in the Member State where the citizens reside (articles 39 and 40); the full right of freedom of movement and residence (article 45(1)) and diplomatic and consular protection (article 46). However, even in this chapter which has the citizen as its title, there are very important rights which accrue to anyone in the European Union whether they are a citizen or a third country national. For example, article 41 contains a right to good administration. It is in the citizen’s rights chapter but it states “every person has

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<sup>76</sup> Stockholm Programme, OJ 2010 C 115/10

<sup>77</sup> Ibid at 15.

<sup>78</sup> Guild, E ‘The Variable Subject of the EU Constitution, Civil Liberties and Human Rights’ (2004) EJML pp. 381-394(14).

the right to have his or her affairs handed impartially, fairly and within a reasonable time by the institutions and bodies of the Union”.

Here every person means exactly what it says – not just citizens but everyone whether regularly on the territory of a Member State, irregularly present in the Union or anywhere in the world if his or her affairs require action by an European Union authority. The institutions and bodies of the Union well include authorities at the Member State level when they are carrying out European Union law. Thus the asylum seeker in a Member State is equally entitled to rely on article 41 of the Charter to request that his or her claim be dealt with in an impartial and fair manner and within a reasonable period of time because the asylum application must be dealt with in accordance with European Union secondary legislation.<sup>79</sup> This is perhaps a particular cogent example of the legislative enactment of citizenship in the widest form.<sup>80</sup>

T H Marshall, the British sociologist who was active in the second half of the 20<sup>th</sup> century still provides a valuable starting place to understand the meaning of citizenship. His work has been very influential because it provides a way of thinking about citizenship which escapes rather unsatisfactory ideas about race and nation which dogged 19<sup>th</sup> century Europe.<sup>81</sup> According to Marshall, citizenship describes a process of accumulation of bundles of rights by people. As people within a territory and under an authority claim bundles of rights and as those claims become realized so citizenship is created and enacted.<sup>82</sup> In his own work regarding the United Kingdom, he examined how civil rights were acquired in struggles in the 18<sup>th</sup> century by people in the United Kingdom followed by political rights in the 19<sup>th</sup> century with the gradual extension of universal suffrage and finally social rights in the 20<sup>th</sup> century.<sup>83</sup> This framework is particularly apt for an examination of European Union citizenship. If one follows the bundles of rights which people in the European Union have acquired through the European Union treaties as they have developed one

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<sup>79</sup> Most important for these purposes are the Qualification Directive 2004/83 and the Procedures Directive 2005/85.

<sup>80</sup> Aradau, C, J Huysmans & V Squires *Mobility Acts of European Citizenship: Towards a mobility turn in European Citizenship Studies* ENACT Working Paper FP7-SSH-2007-1-217504-ENACT/D3.1

<sup>81</sup> Marshall, T H *Class, Citizenship and Social Class* Doubleday, New York, 1963.

<sup>82</sup> E Isin and B S Turner *Handbook of Citizenship Studies* Sage, London 2002.

finds that there is a move from rights to work and for that purpose to move and live anywhere in the European Union, to political rights and more recently social rights wherever the individual goes. The 1957 European Economic Community Treaty provided for the free movement of workers to take effect from 1968, together with mobility rights for the self-employed and service providers. The Maastricht Treaty in 1992 created citizenship of the Union and swept into it the rights of residence of the economically inactive, students and pensioners which had just come into being by directives in 1990 and included political rights for European Union national migrants. As regards social rights, the social security coordination system which was put into place in 1961 and updated in 1971 has now received a face lift. A new European Union social security system much improved to protect European Union citizens and their families came into force on 1 May 2010 revolutionizing entitlements of people in the European Union to enjoy equality in social rights wherever they find themselves.<sup>84</sup>

In the European Union today, third country nationals enjoy European Union rights through a variety of instruments which have been adopted. These include, most importantly the Directive on long-term resident third country nationals (Directive 2003/109) which provides for a secure residence right and free movement for economic and other purposes across the European Union for (most) third country nationals who have completed five years lawful residence in a Member State.<sup>85</sup> The family reunification directive (Directive 2003/86) provides a right for third country nationals resident in the European Union to be joined by their family members; the students and researchers directives (Directives 2004/114 and 2005/71) provide for the admission and residence of third country nationals etc. Even the controversial Returns Directive (2008/115)<sup>86</sup> provides that Member States must either give residence permits to third country nationals or expel them.

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<sup>83</sup> M Bulmer and A Rees *Citizenship Today: The Contemporary Relevance of T H Marshall* UCL Press, London 1996.

<sup>84</sup> Regulation 883/2004 and its extension to third country nationals.

<sup>85</sup> Denmark, Ireland and the UK do not participate in the directives considered here.

<sup>86</sup> D Acosta Arcarazo 'Latin American Reactions to the Adoption of the Returns Directive' CEPS, Brussels 13 November 2009.

The expulsion of a third country national from the Union, however, will now also be subject to the Charter. The individual's right to respect for private and family life (article 7) has often been held by the European Court of Human Rights to found a right to protection against expulsion. For instance, in a 2006 judgment, the European court of Human Rights considered the case of a Turkish national, Ziya Uner who had gone to live in the Netherlands in 1981 when he was 12 years old to join his father who was living there. Ten years on, Mr Uner was convicted of a breach of the peace and later an offence of violence. After some further convictions (mainly for violent offences) the Dutch authorities made an expulsion decision against him. The question which went to the European Court of Human Rights was whether the expulsion of Mr Uner would be contrary to his right to private and family life according to Article 8 of the European Convention on Human Rights (mirrored in Article 7 of the Charter). The Court took the opportunity to clarify its jurisprudence. It stated: "57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, cited above; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yılmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of the marriage,

and other factors expressing the effectiveness of a couple's family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- whether there are children of the marriage, and if so, their age; and the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boutif* judgment:

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.” In applying these criteria to the situation of Mr Uner, the European Court of Human Rights held that his expulsion would be contrary to his right to private and family life guaranteed by Article 8 of the European Convention on Human Rights.

This jurisprudence must be applicable to European Union law now first and foremost through the Charter. Already, through the European Union’s secondary legislation on third country nationals it is clear that they are acquiring bundles of rights in Marshall’s citizenship sense. This is now further developed and extended by the Charter.

Almost all of the rights contained in the Charter apply not only to European Union citizens but also to third country nationals. Thus third country nationals acquire bundles of rights through the Charter in a manner which resembles that outlined by Marshall regarding the core meaning of citizenship. One can say that third country nationals in the European Union are entitled to enact citizenship in the European Union now via the exercise of Charter rights.<sup>87</sup> The gulf between the rights of citizens

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<sup>87</sup> Caglar, *A European Citizenship, the Third Country Nationals and Ruptures* ENACT Paper 5.1b, 26 January 2009.



of the Union and third country nationals has diminished with the Charter's move towards the equalization of rights for everyone in the European Union.

### **The Transformation of Rights**

Until the Charter, we have been accustomed to understanding fundamental rights as belonging to two quite separate universes. The first is that of national constitutional settlements.<sup>88</sup> Most constitutional doctrine includes not only the mechanisms by which governance is determined and carried out but also the Bill of Rights approach – constitutions include the rights of the citizens.<sup>89</sup> The Bill of Rights is a part of the national constitution and as such, it is the duty of the state authorities to protect it. Authorities beyond the state may or may not concur with any national Bill of Rights but this is irrelevant to the obligation on the state where the writ of the Bill passes to ensure the correct application of the rights. Alternatively, following the failures of constitutionalism to protect people in parts of Europe which were highlighted by the WWII, we have developed human rights through treaties entered into by states. Here human rights as contained in international (and regional) treaties are entered into by states (such as the ECHR by all European Union Member States). The state undertakes to respect and ensure the human rights contained in the international treaty for anyone within the state's jurisdiction.<sup>90</sup> The mechanism for determining the content of international human rights contained in treaties is firstly for national administrations which may vary among themselves as to the meaning and extent of some rights. Secondly, it is for national courts to decide what the meaning of an international treaty is in the context of the actions of national administrations. Sometimes, as in respect of the ECHR there is a court like the European Court of Human Rights which has been created to which an aggrieved individual can make a complaint if he or she has exhausted all national remedies and recourses. However, fully fledged courts are something of an exception in international human rights treaties. It is beyond the scope of this chapter to examine the United Nations Treaty Body system and its supervisory function in respect of international human rights

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<sup>88</sup> Grabenwarter C 'National Constitutional Law Relating to the European Union' in von Bogdandy, A & J Bast *Principles of European Constitutional Law* Hart, Oxford, 2010 pp 83 – 130.

<sup>89</sup> K Laenarts 'Constitutionalism and the Many Faces of Federalism' 38 *Am J Comp L* 205 (1990).

<sup>90</sup> But see Uerpman-Witzack, R 'The Constitutional Role of International Law' in von Bogdandy, A & J Bast *Principles of European Constitutional Law* Hart, Oxford, 2010 pp 131 – 168.

treaties. Suffice it to note that none of the Treaty Bodies have been allocated the name 'court'.

The Charter is neither a national constitution nor an international human rights treaty. Instead it belongs to the European Union legal order and depends for its interpretation and enforcement on the mechanisms of European Union law. In this regard it imposes obligations on state authorities which are not amenable to modification by those authorities. Its definitive interpretation is the preserve of the European Court of Justice to which any national court can turn for assistance in interpretation. But that interpretation when provided is binding on both national administrations across the Member States and national courts.

If one takes as the starting place, the Weberian state which is defined by a territory, people and bureaucracy which has established a claim to a monopoly over the legitimate use of violence,<sup>91</sup> the Charter reveals fundamental transformations in Europe. First, the Charter is the result of supranational negotiation, discussion and adoption. It has been ratified by all Member States via the Lisbon Treaty. But it is not the product of a national constitutional system of any one Member State. The power to create this Bill of Rights describes an authority which is not that of the Weberian state. Nonetheless, the Charter modifies the state authorities' claim to a monopoly over the legitimate use of violence. The example discussed above of the European Court of Human Rights' recent jurisprudence against the United Kingdom and Stockholm Programme gives some indications of the impact this will have on state authorities' claims regarding the legitimacy of the use of violence. The people to whom the rights in the Charter accrue cannot be limited by the act of any national authority. Thus for instance, one Member State's authorities cannot decide that the right to private and family life (Charter Article 7) will only apply to their own nationals.<sup>92</sup> They are required by the Charter to accept that these rights also accrue to nationals of any other Member State who happen to be within their jurisdiction. But they are also required by the Charter to ensure the respect for these rights as regards third country nationals who fulfil the jurisdiction rule. In this way the people

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<sup>91</sup>Weber, M G Roth, C Wittich *Economy and Society* New York, 1968

who are entitled to claim Charter rights are not the people of the Weberian state nor can they be limited to that group. Finally, the territory over which the Charter rights apply cannot be modified by any one Member State. The capacity of the state to determine that Charter rights will not apply on some part of the territory, as for instance the Australian authorities have done when they 'excised' Christmas Island which remains part of Australia but not for the purposes of applying for asylum.<sup>93</sup> Nonetheless, the authorities of the Member States are obliged to ensure the faithful delivery of Charter rights to all persons entitled to them.

What the Charter reveals, in the wider picture of the transformation which is the European Union, is the disaggregation of the elements of the Weberian state. Authority, territory and people no longer fit into a coherent single framework.<sup>94</sup> Instead people are entitled to rights which emanate from multiple sources and which are enforced through a variety of mechanisms, now most importantly for this discussion, the Charter of Fundamental Rights.

## Conclusions

In this chapter I have sought to outline the key changes which the Lisbon Treaty is bringing about for citizens of the Union. Among the most important is access to European Union fundamental rights through the legal effect which has been given through the Lisbon Treaty to the European Union Charter of Fundamental Rights. There are three main consequences:

- Citizens of the European Union now have a Charter of Rights which is legally binding and which their state authorities must deliver in accordance with their duty of good faith to the European Union;
- Third country nationals resemble ever more citizens of the Union through their inclusion as beneficiaries of Charter rights under the same conditions as citizens of the Union (with only limited exceptions);

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<sup>92</sup> For an interesting example of this see the discussion of the European Court of Justice's judgment in C-127/08 *Metock* in Minderhoud, P.E. & Trimikliniotis, N *Rethinking the free Movement of Workers. The European Challenges ahead*. Nijmegen: Wolf Legal Publishers, 2009.

<sup>93</sup> <http://www.immi.gov.au/media/fact-sheets/81excised-offshore.htm>

<sup>94</sup> S Sassen *Territory, Authority, Rights* Princeton University Press, Princeton, 2006.

- The Charter provides a new and potentially very important source of rights for people in Europe which cannot be modified by any one Member State's authorities on the basis of the inconvenience which those rights might constitute to them. There has been a disaggregation of authority and rights which will assist Member State authorities to have greater confidence in one another and people to have greater confidence in all European Union authorities.

The Lisbon Treaty changes the architecture of the European Union in many fundamental ways. One has the impression that the full implications of the changes are only just beginning to be understood both within and outside the European Union. While the European Parliament's enhanced powers have perhaps resulted in the most dramatic examples of the change, for instance when it withheld its consent in February 2010 for a proposed European Union – United States Agreement on data exchange, many other areas are subject to just as substantial change. The area of rights for individuals is one of these. If we understand rights as the building blocks of citizenship then we can see a sea change in the rights which are available to the individual in the European Union as a result of the Charter and an important shift in the identity of those entitled to claim these rights.

Further the linking together of the European Union's Charter, the European Convention and Court of Human Rights means that there will be a lock step approach between the two worlds – the European Union and the Council of Europe on the meaning and scope of rights. This must be good news for anyone living in the European Union or coming to it. The intersection of some of the most sophisticated rights protection systems in the world within an area where the rule of law is a fundamental value should result in better treatment of the individual. However, the test will be in the capacity of this promise to be realized across the Member States. Can the Charter deliver rights to Europe's most vulnerable citizens? For instance the Czech Roma: according to United Nations High Commissioner for Refugees, 54% of Czech nationals who applied for asylum in Canada in 2009 were recognized by the Canadian Immigration and Refugee Board as refugees in need of international

protection.<sup>95</sup> Can the Charter deliver its promise to Somalis seeking protection in the Netherlands? The European Court of Human Rights issued, in 2010, a series of requests for Somalis not to be removed from various European Union states back to Greece under the European Union's Dublin II Regulation (which allocates responsibility for asylum determination) using the European Court's of Human Rights Rule 39 procedure on the basis that the European Court of Human Rights wishes to examine their cases because it is concerned that from Greece the individuals might be returned summarily to Somalia without a consideration of their case on the merits and the current security situation in South and Central Somalia.<sup>96</sup> These are grave challenges before the European Union and its Member States. The realization of human and fundamental rights must go hand in hand and provide those in need the protection to which they are entitled.

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<sup>95</sup> <http://www.unhcr.org/pages/49c3646c4d6.html> table 12.

<sup>96</sup> Letter from Deputy Section Registrar, European Court of Human Rights 3 June 2010 to Ms A M I Eleveld ECHR-LE2.2R mod

## Pierre Lemoine

Executive Publisher &  
Editor-in-Chief of  
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### ELOGE DE L'ESPRIT PRATIQUE

Après deux opinions de responsables politiques, deux opinions d'éminents professeurs, il m'appartient d'exprimer un point de vue différent, un contrepoint. Je suis un journaliste européen, je m'occupe d'un média européen dont le rôle est d'être un relais entre les institutions européennes et les professionnels qui travaillent avec elles quotidiennement. L'avis d'un journaliste ne compte pas. Son rôle est de poser des questions, ce que je vais faire, en m'efforçant d'être pratique, au risque d'être éclectique. Cela aura le mérite, je l'espère, de faciliter la transition vers le débat avec la salle, afin que les questions soient aussi peu académiques que possible, aussi pratiques que possible.

En préambule, je précise que je suis citoyen français et européen, puisque que, comme la plupart d'entre vous, j'ai deux citoyennetés, l'une superposée à l'autre. La citoyenneté européenne m'a été attribuée parce que je possède la nationalité de l'un des Etats membres de l'Union européenne. Je n'ai pas la nationalité européenne. Je souhaite à mes petits-enfants et à leurs propres enfants la perspective d'une nationalité européenne.

Qu'est ce qui me permet aujourd'hui en mai 2010, six mois après l'entrée en vigueur du traité de Lisbonne, d'affirmer ma **citoyenneté européenne** ? Je me base sur quelques droits fondamentaux.

## 1. Droit de vote

J'ai le **droit de voter et d'être élu** aux élections municipales et aux élections européennes de l'Etat membre de résidence qui n'est pas mon Etat d'origine.

Ce droit est une innovation majeure du Traité de Maastricht, dont il faut malheureusement relativiser la portée puisque le taux de participation des « électeurs migrants » est très faible (sauf en Belgique). De plus, le **taux d'abstention aux élections européennes** de juin 2009 a atteint un nouveau record à 57 % en moyenne, 2,5 points de plus qu'en 2004. Le Parlement européen nous assure dans une étude post-électorale que les sentiments d'appartenance à l'Union européenne sont globalement en hausse, et que l'abstention manifeste une défiance envers la politique en général et non envers l'Union européenne en tant que telle.

Question : n'avons-nous pas quand même de souci à nous faire en ce qui concerne la notion, vécue, de citoyenneté européenne ?

## 2. Schengen, Espace de Justice, de Liberté, de Sécurité (JLS)

J'ai le **droit de circuler et de séjourner librement** sur le territoire des Etats membres : c'est l'espace **Schengen** qui a aboli les frontières intérieures de l'Union européenne en supprimant graduellement les contrôles aux frontières communes aux Etats signataires de Schengen, et qui comprend aujourd'hui 22 des 27 Etats membres de l'Union européenne, plus 3 pays associés, au total 25 Etats signataires..

Les accords de **Schengen**, qui ont déjà 25 ans, sont la traduction de la volonté de rapprocher l'Europe de ses citoyens, même s'ils ont été conclus hors du cadre communautaire, par le biais d'un accord de type intergouvernemental classique. La **lenteur de mise en route** les caractérise. Dix ans se sont écoulés (1985-1995) entre leur signature et leur début de mise en œuvre. Depuis l'ouverture progressive des frontières en 1993, dix-sept ans se sont écoulés. Et le goulot d'étranglement du trafic automobile est toujours présent à la frontière sur l'autoroute Bruxelles-Paris, obligeant les automobilistes à réduire leur vitesse de 120 km/h à 10 km/h, sans

raison apparente. Est-ce pour obliger à marquer une « minute de silence », à se souvenir des limites physiques qui nous séparaient, des antagonismes, des guerres ou des contrôles stériles qui se traduisaient par la question : « Rien à déclarer ? Alcool, cigarettes ? ». Je peste contre cette chicane aux frontières franco-belges, qui n'existe pas aux frontières germano-belges ou belgo-néerlandaises. Question : qui est responsable ? La Belgique ou la France, l'échelon régional, national ou européen ? Peu importe, nous sommes tous responsables de cet obstacle qui me gêne un peu en tant qu'automobiliste et qui me gêne beaucoup en tant que citoyen européen.

Cette remarque personnelle mise à part, le traité de Lisbonne modifie les règles juridiques concernant l'espace Schengen, en renforçant un des objectifs fondamentaux de l'Union européenne, celui d'offrir aux citoyens un « **espace de justice, de liberté, de sécurité** ». Justice, sécurité, asile et immigration sont une préoccupation majeure des Européens. Selon les Eurobaromètres, cette préoccupation arrive après l'emploi et les systèmes de retraite, mais bien avant la politique étrangère et de sécurité commune. Comme l'a calculé le professeur Jörg Monar, participant à la table ronde précédente, le conseil JAI (Justice et Affaires Intérieures) qu'on continue d'appeler JAI au lieu de son appellation nouvelle de JLS (Justice, Liberté, Sécurité), a adopté plus de 1.300 textes depuis 1999. Et l'énorme programme de Stockholm adopté en décembre dernier pour organiser la coopération des polices et des douanes, la protection civile, la coopération judiciaire en matière pénale et civile, les questions d'asile, de migrations et la politique des visas pour les années 2010 à 2014 ne comprend pas moins de 170 propositions que la Commission a juste commencé à convertir en plan d'action. Mme Malmström a du pain sur la planche.

Problème : il y a un décalage entre l'ambition européenne d'une part, et la capacité des Etats membres à transposer les nouvelles règles dans les législations nationales d'autre part. Sans compter les résistances naturelles des administrations nationales, comme de toute organisation humaine qui serait mal préparée, mal informée et donc méfiante. D'où un risque d'incompréhension et de rejet !

Que faire ? Erasmus obligatoire pour tous les magistrats et policiers ? L'ampleur des besoins de formation est gi-gan-tes-que et, puisque le traité de Lisbonne renforce le



rôle des Etats membres dans ce domaine, l'Union doit se préoccuper de leur faciliter la tâche.

### **3. Divorce**

Le divorce est en soi une expérience pénible. Les époux de nationalités différentes ou installés dans un autre pays européen que le leur doivent en plus affronter la jungle des lois nationales. La question divise aussi les Etats membres et cela depuis 2006, quand la Commission européenne avait produit une proposition législative visant à donner aux parties la possibilité de s'accorder sur le droit applicable. Partisans et opposants de cette réforme partagent l'Union européenne en deux. Le droit de la famille requiert l'unanimité au Conseil. Fin mars 2010, Viviane Reding, commissaire à la Justice et aux Droits fondamentaux, n'a pas hésité à ressortir la proposition ancienne de dix Etats membres de recourir à une procédure de « coopération renforcée ». Si cette coopération renforcée se concrétisait, ce serait une première dans l'histoire de l'Union européenne, les États membres ayant souvent manqué de volonté politique, alors que c'est juridiquement possible depuis le traité d'Amsterdam de 1997.

Question : le divorce transfrontalier bloquera-t-il encore longtemps l'Union européenne ? Le Conseil doit d'abord – à la majorité qualifiée - donner son feu vert au mécanisme de la coopération renforcée. Puis les dix Etats intéressés ou plus voteront leur projet de coopération renforcée à l'unanimité. Les autres pourront toujours changer d'avis et rejoindre les premiers ultérieurement. Les citoyens européens concernés auront le choix.

### **4. Initiative citoyenne**

Le traité de Lisbonne ajoute aux droits des citoyens une nouvelle forme de participation publique à l'élaboration des politiques de l'Union européenne : l'initiative citoyenne européenne. Un million de citoyens « d'un nombre significatif d'Etats membres » peuvent inviter la Commission à soumettre une proposition d'acte juridique à l'Union sur un sujet particulier. La Commission, qui a lancé une consultation publique en novembre dernier, a donné l'impression de vouloir limiter le

nouvel instrument. En fait, on nous dit que le projet de règlement préparé par le commissaire aux relations interinstitutionnelles, M. Sefcovic, cherchait à prévenir fraudes et abus et à éviter tout fardeau administratif inutile sur les pays. Conseil et Parlement ont, semble-t-il, bien avancé, nous laissant espérer un accord au Conseil en juin, un bouclage du dossier avant la fin de la présidence espagnole le 30 juin et une entrée en vigueur sinon le 1<sup>er</sup> décembre 2010, pour le premier anniversaire du traité de Lisbonne, en tout cas peu de temps après, début 2011.

Question : quelle sera la première initiative citoyenne européenne ? Un sujet sociétal comme l'interdiction du port du voile intégral, niqab ou burqa, au nom de la charte des droits fondamentaux ? Autre question : combien de citoyens de Pologne et du Royaume-Uni s'associeront aux prochaines initiatives citoyennes européennes, ces pays ayant les mêmes droits mais pas les mêmes obligations que les autres concernant les droits fondamentaux ?

J'arrête là mes questions.

J'ai le sentiment que la citoyenneté européenne, en 2010, présente encore un bilan mitigé mais je veux rester optimiste : elle reste à construire, par beaucoup de gestes pratiques, elle est le ciment de la construction européenne. N'est-ce pas aussi votre sentiment ?

## **IV. The New European Union Framework for confronting Global Economic Challenges**

Loukas Tsoukalis

Karel De Gucht

Enrique Barón Crespo

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## Loukas Tsoukalis

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### IN A CHANGING WORLD AND AN UNSTABLE NEIGHBOURHOOD

European integration started as an inward-looking venture: the fathers of Europe (there were no mothers at the time) began to lay the foundations for peace and reconciliation in Europe after the end of the Second World War. Global order was taken as given and shaped by external actors. Greater prosperity, through the elimination of economic borders, was added to the list of key objectives; and so was democracy when new members with fragile institutions later joined in. Europeanization thus acquired a much broader dimension.

The role of Europe as an external actor began with trade; it was part and parcel of the customs union. It gradually extended to other areas of policy, reaching all the way, albeit timidly, to a traditional foreign policy and defence. The legal and institutional basis for European Union external policy varies considerably from one area to the other, and coordination of different policies and instruments leaves much to be desired. True, there has been a great deal of the so-called spill over, but the experience of trade has proved difficult to transplant to other areas of policy. The European Union is not a power in the traditional sense of the term, nor is it, of course, a typical international organisation. It continues to defy classification, which may be one of its many attractions.

Europe has developed a comparative advantage in different forms of soft power, through trade and aid, as well as its support for multilateralism and the defence of global public goods, such as the climate. Civilian power was the term coined for Europe many years back; normative power is another term used now to denote an emphasis on values and rules rather than interests narrowly defined. The European Union constitutes in itself an attempt to move away from the old world of power politics.

There is, however, another less benign reading of Europe's collective role in the world. Europeans are trying to make virtue out of necessity, old style realists would argue. Europe continues to depend on the security umbrella of the United States provided through the North Atlantic Treaty Organization. Many European countries are at best thinking of a European role in global affairs on the model of Switzerland writ large. And there are those who confuse soft power with talking power. Europe does indeed a great deal of talking, often as a substitute for policy. Both descriptions are true: the description of Europe as a different kind of power offering an alternative model of governance in the global age, and also that of a still divided and often powerless entity resembling a non-governmental organization (NGO) in a world where power politics (and martial arts) remains a popular game. Both descriptions contain elements of truth in a complex and increasingly interdependent world. They are not mutually exclusive. In fact, they should not be treated as such by those who aspire to a greater European influence in a rapidly changing world.

### What has changed?

History books may decide that the period of American hegemony, following the collapse of the bipolar system established during the Cold War, was in fact remarkably short. As China and the other emerging economic powers begin to flex their political muscles, the United States, still more equal than others, is being forced to negotiate its way with other countries. Power becomes more diffuse in an increasingly multipolar world. And still a very much unstable world, with unresolved conflicts, failed states, nuclear proliferation, messianic ideologies, terrorism and organised crime, abject poverty and new waves of international migration, fierce competition for access to raw materials, and with a time bomb under the name of

global warming. The list with reasons to worry about in today's world is indeed very long. We should also know from history that transitions from one political order to the next have been rarely peaceful.

If anything, the economic crisis has reinforced the trend towards multipolarity. China and others have become indispensable partners in trying to manage the crisis, the scale of which had not been seen since the Great Depression, the crisis that was made in the West and quickly turned global. It surely marks the end of an era. The globalisation model relying on the liberalisation of financial markets as the spearhead of global economic integration is being tested. Looking beyond the crisis, many people now realise that a global economy requires new forms of global governance and effective international institutions. In this rapidly changing world, Europe no longer occupies centre stage. This has moved elsewhere and mainly eastwards. The relative weight of individual European countries, measured in terms of population, income and trade, has been steadily declining for more than two decades; it can only go further down in the foreseeable future. Separately, European countries no longer count for much in the company of big powers, and they will count even less tomorrow. This is a hard reality to reconcile oneself with, especially when it concerns the old great powers of Europe.

In the next few years, the key challenge for Europeans will be to identify and collectively defend common interests and values in a world where size still matters a great deal. They also have a model, at least a collective experience, worth exporting to the rest of the world in search of new ways of managing global interdependence. As for their immediate neighbourhood, it includes several countries where poverty and instability make an explosive mix: a different kind of challenge for Europe as a regional power. Will unity prevail over diversity? The answer will surely vary from one policy area to the other, even from one case to the next. But we should be under no illusion. Lack of unity usually comes with a price tag: a divided, ageing and shrinking Europe with strategic irrelevance and decline. Europeans will need to address politically awkward (and often divisive) questions, including Europe's relations with the big powers and, most important of all, the United States. Relations with Washington still go through London, Paris, Stockholm, Athens and Riga rather than Brussels. The Obama Administration may be ready for a strong and reliable

European partner (not partners). But how many Europeans are ready for it? Illusions of different kinds of special relationships die hard; so do old habits of free riding. Admittedly, Eastern enlargement has complicated matters further.

Soft, and (why not?) smart power remains the privileged domain of collective European action. This is entirely consistent with the internal logic of European integration. Trade, finance, energy and climate are prominent examples. But action does not often match the rhetoric. European hard power follows a long way behind. As defence merges increasingly with security, many Europeans are still reluctant to invest in the European unity in this sensitive area. Some even think that the European is somehow incompatible with the Atlantic. The learning process is taking long: arguably, too long. In order to be able to defend effectively common interests and values we need to invest in the European unity in terms of money and institutions. Intergovernmental cooperation on its own can only deliver so much: we should have learned something from the experience of Europe's common foreign and security policy, with or without defense. There are political choices to be made with respect to common instruments and policies, as well as methods of reaching decisions internally and ways of being represented internationally. There is also the possibility of opt-out, even temporarily.

The new Treaty of Lisbon creates the conditions for more effective European presence on the international scene. After all, this has been one of its main *raison d'être*, though poorly communicated to those directly concerned, namely Europe's citizens. The Treaty of Lisbon is far from perfect; and it is only a framework. But this is what treaties are for. The contents of policies can only be decided later, and of course much will depend on the use made of new treaty provisions by the President of the Council and the High Representative, in cooperation with the President of the European Commission.

#### Coming to terms with the neighbourhood

Foreign policy begins with the neighbours, and Europe's neighbourhood is mostly poor and unstable. Successive rounds of enlargement have been the most effective foreign policy of the European Union. They have helped to export *Pax Europaea* to

an increasing number of countries on the continent and they have also acted as a convergence machine for the economic periphery of Europe. This is a record to be proud of. The big bang enlargement of 2004 and 2007, with the accession of twelve new members, has been the most daring, and also the most difficult. Successful transitions to democracy and the market are now going through a harsh test in some of the new members hit hard by the economic crisis. European solidarity is also being tested in the process.

At present, the appetite for further enlargement is limited: arguably, a sign of indigestion, which is certainly not helped by the economic downturn. The candidates in the waiting room include the countries of the Western Balkans and Turkey. The arguments for taking those countries in the European family are strong, although most of them still have quite some distance to cover before fulfilling the criteria for membership. The process of further enlargement will be long – it also appears to be highly unpredictable. It will require strategic decisions, which the European Union is not always best equipped to take; hiding behind the technical aspects of the *acquis* is often politically convenient. On the other hand, enlargement raises uncomfortable questions about internal cohesion, identity and borders, not to mention the budget and institutions. They are uncomfortable questions precisely because there is no agreement as to the answers to be given. Not surprisingly, many people try to avoid them. Yet, whether we like it or not, enlargement has become politicised, and there is no way back.

We know that all previous attempts to offer substitutes for full membership have not convinced any of the candidates. It is unlikely to be any different in the future. But if further enlargement proves to be a long drawn process at best, the European Union will be forced to devise intermediate stages, and link them with concrete benefits, for countries in the waiting room. We need to do much more in this area, starting with visas and measures affecting the younger generations. The emphasis on the adoption of European Union regulations, as a pre-condition for improved access to the European internal market, inevitably carries with it an economic cost for countries with lower levels of development. This applies to other associated countries with no prospect of membership, only more so. Exporting rules and regulations to neighbours and others is not always cost-free. It also sometimes verges on the



surreal when the European Union pretends that some partners have either the political will or the institutional capacity to apply some of those rules and regulations. Going beyond the technical or the strictly economic, are there many 'shared values' between Europe and various kinds of authoritarian regimes in the neighbourhood? And how far are we prepared to push 'conditionality' in our relations with countries that will not be candidates for membership in the near or even distant future?

The European Union often behaves as a regional power with global rhetoric. Its neighbourhood is highly diverse: a common policy applying to all countries should recognise this diversity, and hence allow for much needed flexibility in relations with individual countries. The Union for the Mediterranean and the Eastern Partnership are recent attempts to revitalise neighbourhood policies addressed to the South and to the East. The European Union would prefer a multilateral approach. Geopolitical realities though are likely to impose their own logic and limitations. There is a real risk that the gap between ambition and delivery will be once again uncomfortably wide. In the meantime, it would help if the European Union were to make better use of its economic aid to neighbours and more distant partners in the developing world.

European soft power has repeatedly hit against the hard rock of power politics in relations with the neighbours. The European Union now has a shared neighbourhood with Russia; it should not be treated as a zero-sum game. But how does post-modern Europe deal with post-imperial Russia? Does a common European foreign policy precede a common energy policy? In relation to Russia, the European answer so far seems to be neither! What kind of incentives should be offered to Germany (and others) in order to persuade it to integrate its bilateral relation with Russia within a common European policy? And what kind of assurances should be given to the new members who bring with them long and painful experience of what virtual sovereignty feels like? A package deal should not be beyond the capacity of European institutions and politicians. Europe needs to handle more seriously, and in a more united fashion, its relation with the big neighbour to the East: it will be a real test of Europe's power in the making.

On the other hand, turning the Mediterranean into an area of peace and prosperity depends crucially on the resolution of the Israeli-Palestinian conflict. The European

Union has for long been reduced to the status of a frustrated observer, making the odd token gestures, hoping that the United States will drive the two sides to a peaceful settlement, even when it was blatantly obvious they were driving in the wrong direction, while the carnage went on in the Middle East and Europeans paid for the buildings that were repeatedly destroyed and rebuilt. Europe is directly affected in many different ways. After all, it is all happening in its immediate neighbourhood. Europeans tend to underestimate the policy instruments at their disposal, including those that come under the category of soft power, perhaps because they are afraid of dirtying their hands and taking risks. Such may be the limitations of a timid (and often divided) civilian power. But those limitations come with a big price for Europe.

Coming of age for Europe as an effective regional and global power will require leadership coupled with a vision of Europe's place in a rapidly changing global order. The most powerful driving force may indeed prove to be a negative one, namely the fear of being marginalised in a world in which power becomes more diffuse but still very much unequally distributed – and in a neighbourhood which is still mostly poor and unstable.

**Karel  
De  
Gucht**

Commissioner  
for Trade



## THE NEW EUROPEAN UNION FRAMEWORK FOR CONFRONTING GLOBAL ECONOMIC CHALLENGES

Ladies and gentlemen,

There's a quote I heard Jean Monnet was fond of citing: "Everybody is ambitious. The question is whether he is ambitious to *be* or ambitious to *do*."

Europe certainly is ambitious. In this radically changing world, the centre of gravity of which is rapidly moving to the East and the scale of which seems to be getting smaller by the day, Europe wants to remain a major player. And it wants to be a major player because we sincerely believe that is the best way to guarantee our prosperity, to maintain our model of society, to defend and promote our values and interests both within the European Union and abroad. Because we have the ambition of leading the way where individual rights, democratic norms and individual dignity are concerned. That's quite an ambition, when you think of it. And we *should* be ambitious, we have every reason to be so and we have all it takes to make that ambition come true.

But we should realize, as Monnet and his generation so brilliantly did, that the ambition to *be* something should be followed by the ambition to *do* whatever is

necessary to achieve it. That coal and steel, rather than mere words and symbols, make that ambition realistic. That integrated markets and interacting people are what matters, rather than international get-togethers where we make lofty speeches about our ambitions. I believe that pursuing a successful trade policy is a vital aspect of us realizing our ambition.

We can't stress enough how crucial open trade it is to our prosperity and the competitiveness of our economies. We also need to stress time and again how indispensable trade is to our political and geopolitical role – to show that politically, so to speak, Europe can compete as well.

Now more than ever. At a time when, after the European Union has settled years of necessary but wearisome debate about reforming our structures, the outside world still doesn't understand how the European Union works and how they should work with the European Union. That is the time to show the world that it works, that the results on the ground are there, that they are important and make a difference in reality. And that for that reason, working closely with the European Union is still very much worthwhile.

Our European common trade policy lives up to this goal: it shows the world that we can speak with one voice and that we can play a leading role, even in difficult circumstances. With that voice, we have always pushed multilateralism in trade policy and we still do. Our *first best* option remains multilateralism, which means finding a balanced and satisfactory outcome for the Doha Development Round. I remain firmly convinced, in the age of globalised world, global solutions are optimal.

The Doha Round, it should be recalled, seeks to further liberalize trade in agriculture, industrial goods and services, impose further discipline on subsidies and other rules, and facilitate trade for less developed countries in keeping with the Doha aim of being a development round. The European Union, as the biggest economic bloc in the world, has always had a large part to play in these negotiations, which have some going on for nine years now. Since the summer of 2008, talks have stalled. However, just as we are not a cause to the blockage, in this phase of the negotiations we can sadly not provide the key to unblocking either. The package on the table in

2008 will not do for the United States, where especially in Congress the feelings towards trade liberalization are mitigated at best. Other negotiators are using the American intransigence so as not to have to adjust their positions either. And it is not clear what can be done to break the deadlock.

But what is clear is that the European Union is willing to think creatively and act constructively to make a deal possible when the window of opportunity does open up, as long as *constructive* does not simply equal *concessive*. The eventual outcome will have to be balanced and beneficial for all those around the table.

I'll be in Paris later this week, where in the margins of the Organization for Economic Cooperation and Development's ministerial meetings Doha will be much discussed. There we have another moment when the G20's ambition, expressed in Pittsburgh last year, to finalize Doha can be turned into a genuine plan, which means giving more guidelines and leeway for negotiators to work towards solutions.

As you know, the European Union has decided at the time when Peter Mandelson was Trade Commissioner that we cannot, in the absence of a Doha agreement, just sit on our hands as far as trade liberalization is concerned. Our economy needs to be better connected to emerging markets and especially in the aftermath of the crisis the world economy needs to keep moving on. Trade is too important a potential spur to economic efficiency, hence growth, for it to remain untapped. If multilateralism is stalled, bilateralism must open up that potential.

I have pursued that bilateral line vigorously, finalizing the Free Trade Agreement with Korea, opening negotiations with Singapore and launching the process with Vietnam, pushing the India talks to see whether an agreement can be reached still this year, closing deals with Columbia and Peru and, only last week, reopening negotiations with Mercosur. Not only am I convinced of the economic benefits, even necessity of these deals, I also know the impression this makes on our strategic partners. It shows them that the European Union works despite the constraints of our often difficult and complex operating methods. Despite the continuous flow of reports in the media that Europe is a spent force, these new deals are testimony of our ambitious and dynamism.

Note, for instance, the geopolitical significance of getting the Korea Free Trade Agreement ratified as soon as possible, at a time when the United States Congress is unwilling to move on a number of trade liberalization deals and when the so-called "noodle bowl" of Asian regional trade agreements is much lower in ambition and scope than ours.

If we want the European Union to stay at the forefront of international cooperation, both in economic and in political terms, trade policy is one of the areas to do it – and not the least.

That is both an opportunity and a challenge, not just to the European Commission but just as much to Member States and the European Parliament. They have always had a strong and, as a former Member of the European Parliament and Foreign Trade Minister I must add: very much legitimate desire to be involved in mapping out our trade policy. Now, after Lisbon, which grants to both a vital role in decision-making, they too must prove they want to *do* trade policy, to make it work in practice, to the benefit of our consumers and businesses *and* to underline our global leadership role.

Great ambition demands us to always keep in mind the bigger picture. We have a new framework for confronting global challenges, now's the time to use it to confront them head on. If not, our narrative on economic openness and competitiveness would be exposed as unrealistic ambition.

Ladies and gentlemen,

I must admit I'm not entirely sure about the Jean Monnet quote I started this speech with. I found a somewhat different version of it in French, which goes: *"Il y a deux catégories d'hommes: ceux qui veulent être quelqu'un et ceux qui veulent faire quelque chose"*.

If this is the correct version, if it specifically concerns categories of *people* rather than ambition in general, all I can say is I'm the type of man who falls into the second

category. I'm not too fond of being something, but I try to achieve things, make the most of the job that I do.

I was invited to lunch at the West Wing of the White House two weeks ago, which was impressive enough, but I only really enjoy it when I come out with some results. For me, it's not the history of the dining room but what's on the table that counts. About 100 days into my mandate, I'm happy to say there are some concrete results and plenty of promising work on the table.

I mentioned our role in keeping the Doha process alive. The bilateral and regional agreements I spoke about and others, such as the Economic Partnership Agreements we are in the process of negotiating with African, Caribbean and Pacific countries, can really make a change both for our economic potential and that of our partners.

We do hard work on tackling non-tariff barriers with our prime partners, such as through the Transatlantic Economic Council with the United States and similar trade dialogues with the Chinese and possibly in future, with the Russians and the Japanese. And we have teams working on market access for very specific sectors such as the automotive sector or Small and Medium Sized Enterprises.

For me, traditional diplomacy, economic diplomacy and politics have always been closely entwined. So I try to play my role in the bigger picture of the European Commission and European politics in general as well, working very closely with the European Parliament and Member State governments to achieve results. Otherwise, trade policy is doomed to be misunderstood and underrated.

I am confident, Ladies and Gentlemen, that by virtue of your professional and academic backgrounds you will be very much aware of your own role in the machinery of international relations, and that I can count on you to be the last to either misunderstand or underestimate the importance of the economic and political importance of international trade.

Thank you very much.

**Enrique  
Barón Crespo**

Jean Monnet Chair at the Universidad de Castilla La Mancha; Former President of the European Parliament; former Spanish Minister for Transport, Tourism and Communications



**ECONOMIC GOVERNANCE AND THE TREATY OF LISBON**

This paper will consider the Conference theme “the new European Union framework for confronting global economic challenges” as established in the Treaty of Lisbon in relationship with the draft proposal of Strategy 2020 presented by the European Commission. The question is whether and how the economic governance can be improved and strengthened with the entry into force of the Treaty of Lisbon.

In particular, the analysis will concentrate on the table “Europe 2020 Architecture (annex 2 of the proposal of the Commission p.31) that sums up the overall integrated structures establishing scope for the European Union policy priorities, including headline targets to translate into national targets to be reached by 2020. The articles of the Treaty mentioned on the table as basis on which the policies can be defined are the 121.2 that establishes the Broad Economic Policy Guidelines and 148 for the Employment Guidelines.

Both articles were already into force, the 121 since the Treaty of Maastricht that created the Economic and Monetary Union and the 148 in the Employment Title that was introduced in the Treaty of Amsterdam. Nevertheless, there are some innovations related to governance that are worth mentioning. First, the eurozone has got a proper place in the Treaty, with a recognition in the art.3.4° of the TEU” *The Union shall establish an economic and monetary union whose currency is the*



*euro*”, and art 9 recognises the European Central Bank as a one of the full- fledged institutions. In art.121.4, the Commission gets the power to address a warning to a Member State without prior assent from the Council in the case that its economic policies are not consistent with the broad guidelines of economic policy or that they risk jeopardising the proper functioning of economic and monetary union, and the Council can decide to make it public, all without taking into account the vote of the Member State concerned.

The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The European Parliament gets the power to adopt detailed rules on this matter with the Council, through the ordinary legislative procedure.

There is in the TFEU the development of the consecration of the Eurozone with a fully new chapter dedicated to *“provisions specific to Member States whose currency is the Euro”* that states in art. 136” that *“in order to ensure the proper functioning of economic and monetary union, the Council can adopt measures specific to those Member States whose currency is the euro for strengthening the coordination and surveillance of their budgetary discipline and setting out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union”*. This article becomes very relevant now after the Greek crisis has exposed a problem of lacking real economic convergence that is bound to invest also other Eurozone members.

The Eurozone’ s group arrangements are detailed in Protocol n° 14, that creates a Presidency for two and a half years, elected by majority vote. Moreover, there is a substantial advancement regarding the role of the Euro in international organisations in art. 138. *“In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission and upon consulting the ECB, is entitled not only to adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences”, and “may adopt appropriate measures to ensure unified representation”*. Only Member States whose currency is the euro shall take part in the vote with qualified majority.

In the Achilles's heel since the Treaty of Maastricht of the coordination of economic policy, the Lisbon Treaty has made small steps on multilateral surveillance: the Commission can send a warning without the Council's backing to the Member State that remains non binding; the Council can take its decision on a recommendation to the Member State without taking of the vote of the country concerned and the European Parliament sees its power increased through codecision. Last but not least, there is an elected trio: the President of the European Council, the President of the European Central Bank and the President of the Eurozone, all three elected presidents of European Union's institutions. They can be a powerful team, but there is a clear risk of cacophony, that can be seen when all three make statements on the € as a currency to the press at the same time (plus some distinguished members of the European Council). Moreover, the reality has evolved in a more rapid way: first, there is a functioning Monetary Union with the € as a single currency, second, the European Union is living its first economic crisis linked with the international one, but with internal imbalances in a monetary union where economic integration that has not grown in a parallel way.

For once, this Commission paper is not a new proposal of modification of the texts but discusses how to work with a decennial perspective in order to improve and strengthen the Economic and Monetary Union with a view to reaching the objectives defined in the article 3 of the Treaty of Lisbon as a matter of common interest. It adds a timeline till 2012 (in the annex 3. (p.32), committing not only the European institutions but also the Members States in a process that must involve the whole social fabric in each Member Country.

All these factors put the question of governance on the centre of the political stage. The success of this resurrected term in different languages shows that it is not only a question of Government. The old outdated term from the Middle Age used in French and Spanish and passed into English in the XIV century was equivalent to Government. Now it has a new life with a broader meaning. The European Commission established its own concept of "European governance" that refers to the rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability,

effectiveness and coherence. These five "principles of good governance" reinforce those of subsidiarity and proportionality". (White Paper on European Governance).

A rather neutral and inward looking definition, while the concept in principle goes beyond the institutional framework. "Governance refers to the process whereby elements in society wield power and authority, and influence and enact policies and decisions concerning public life, and economic and social development. Governance is a broader notion than government. Governance involves interaction between these formal institutions and those of civil society.» (The Governance Working Group of the International Institute of Administrative Sciences, 1996). The French and the Spanish definitions follow this path: **gouvernance** : Art ou manière de gouverner qui vise un développement économique, social et institutionnel durable, en maintenant un sain équilibre entre l'État, la société civile et le marché économique (Office de la langue française, 1999). Perhaps the frescoes of Lorenzetti in the Comune di Siena on "Buono e cattivo governo" are the more alive and state of the art definitions of the art of governance.

To introduce the cultural dimension is important for taking stock of the current situation of the Economic and Monetary Union in order to improve its functioning looking to the future. After a successful launching prepared through the process of convergence, it is living its first major crisis, due not only to the impact of the global one but indeed due to shortcomings of internal policies and inadequate convergence in economic structures.

The debate on the bail out of Greece has shown the different developments not only of the economies but also of the societies of the Member States. In a broad sense, there is a divergence of behaviour among the member countries that are in the Eurozone that can be partially explained through the classical Esopus's fable "the cicada and the ant" when the fundamentals are considered. The deficits of the commercial and payments balances and the level of public and private indebtedness that express the loss of relative competitiveness in several countries show that they were "busy singing". Others, in particular Germany, overcame the crisis of undergoing a painful process of restructuring with the Harz bills that have improved its competitiveness in a decisive way, "laying up food for the winter" with a week

domestic demand and enjoying the possibilities of the single market. All European Union countries cannot follow the Chinese path.

Now, the question is how to keep in step the different economies in order to overcome this crisis, there are several scenarios:

- To throw out of the € the laggards. This proposal has a certain echo in academic and political German circles. It is an invitation for suicide through an amputation of the whole Economic and Monetary Union. Moreover, there is not a clear split North-South; this is not the moment to come back to the dividing lines of the Reform. In the crisis of the growth and Stability Plan 2002/3 the treatment of Portugal for going beyond the 3% of fiscal deficit was not the same than for France or Germany. And now solidarity is in the article 2<sup>nd</sup> of the Treaty.
- To apply sanctions. Is the next step to the warning. They exist already in the Pact, but their implementation is not easy, and could be counterproductive for its procyclical effect. The clearest way would be to block funding from the European Union's Budget not related to individual rights. After an initial proposal of the Spanish Presidency, the German Government seems to be preparing proposals for a fresh new Treaty that would strengthen cooperation and impose sanctions against countries that threaten stability in the Eurozone.
- The economic government. Since Maastricht its definition and content have been highly controversial matters. The option considered in the above mentioned table is to develop the current Broad Economic Policy Guidelines in "integrated guidelines, establishing scope of the European Union policy priorities, including headline targets for the European Union to reach by 2020 and to be translated into national targets".

The problem is how to do it, without creating the impression that the Commission becomes a centralised government in a moment in which the Treaty of Lisbon has opened the door for a much bigger implication of the National Parliaments in the process of defining and shaping the European political process. Such a measure would be unacceptable from the viewpoint of its own sovereignty.

The distribution of competences has not changed: there exclusive competences, policy areas in which Member States have agreed that they should act exclusively through the European Union (customs union; competition, Eurozone monetary policy; common commercial policy.), shared competences and areas where the European Union may take only supporting, coordinating or complementary action.

This does not prevent the Member countries to improve coordination through measures, by a better synchronisation in their budgetary process. This means that political parties, industrial and social organisations must be proactive in drafting bottom up the future of the Union in the era of globalisation as a pioneer in the very competitive world of the G 20 multilateralism.

In this view, the proposed Timeline aims at getting a European New Deal based on a program of reforms and headline targets. The logic of the new institutional structure implies a pyramidal transformation putting the European Council as a governing body that takes decisions and crowns the whole process. The short experience of functioning of the European Union under the Lisbon Treaty upgrades in a clear way this growing historical trend. European Treaties are not ready-made inflexible structures, they are in a process of evolution since the late Treaty on the Coal and Steel Community, materials controlled today by Chinese and Indians.

In this process, constitutional conventions created by political compromises are part and parcel of the current framework. This explains how an institution like the European Council, born as such less than six months ago, has already an experience of 35 years of existence.

The behaviour of President Van Rompuy, after his maiden speech the past 7<sup>th</sup> of January in the Congress of the German CSU, is very instructive. After remembering the double legitimacy of the European institutions defining the “raison d’être” of the European Council in the capacity to link external events to common policy” and his own political role, “The permanent President is not meant to be a *Président*, nor is he meant to be only a *Chairman*”, the result of a legal and political compromise

between States that produces a synthesis allowing the Union to build both on the strength of the Member States and the qualities of the common institutions.

Looking to the future of the economy after the experience of the Lisbon strategy he stated: “we must find ways to enhance such shared commitment. This is especially true for the member-states who share the euro. Although every national government has its own responsibility for economic and social policy, the situation in one member-state affects all the others... Invisibly, our states are all tied together. We politicians do not often say it aloud to the public, but we all know it!. Stronger governance alone does not bring about a stronger economic performance for Europe.”

In fact, the two meetings of the European Council till now have been dedicated to deal with economics challenges. The strategy 2020 has been launched in the Council of March, with a special statement of the Eurozone. The key question will be how to implement a “robust framework for crisis resolution respecting the principle of member states' own budgetary responsibility”. The main challenge is making compatible the working of the European Council with the “methode communautaire” and the role of the European Commission, with an increased role of the European Parliament as colegislator and public stage.

Common Governance becomes the main challenge for Europeans. In the next decade, we know that the solution neither lies in drafting a New Treaty nor in complaining about the lack of interest or disaffection of the citizens. We must launch a strategy of growth that can enable the European Union to get rid of its indebtedness, to adapt and reform its social model to the greying demography and make the infrastructures (material and digital) and research investment necessities in order to be competitive. This means a more decisive and flexible budget, a European tax, Eurobond and a common representation. These points are not outlawed in the Treaty. So we have to thread very carefully in making the right choices that are decisive for our future and implementing them together and with the same spirit and dedication. The debate on the Strategy 2020 to be successfull has to involve all our societies and build a solid political consensus.

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### **THE NEW EUROPEAN UNION FRAMEWORKS FOR CONFRONTING GLOBAL ECONOMIC CHALLENGES**

As a starting point, the complexity of global challenges should be particularly stressed. In the last decades we entered into a new stage of development of economy and society, where all elements of socio-economic formation show qualitative changes. These affect the techno-structures, the socio-economic relations, the institutional and regulatory frameworks, the conditions and factors of economic development, the ideas and values. The basic elements are the information and communication revolution and the emergence of global integration. The major challenges are related to them, and as the responses are slow and unsatisfactory, the crisis phenomena, which we have been facing recently, are reflections of these deficiencies. I will try to raise some of the critical problems of this crisis, and refer to some of the European Union's reform and policy issues, which are related to them. The Lisbon Treaty offers new frameworks, but it is already clear that in certain fields it should be changed and extended. Economic challenges are broadly addressed by Europe 2020 Strategy. As the later one is not yet finalised, this discussion could give the possibilities for new proposals.

Besides the recent global financial crisis, we face an energy crisis closely connected with the pollution of environment, a broader regulatory crisis, and a social crisis. The

European Union and the member countries have to cope with some critical issues, like education, agriculture and ageing population.

The global financial crisis itself has a complex character. It is banking, a debt and liquidity crisis, and recently a crisis of public finances. These crises had different causes; they were based on information, regulatory, legal and moral deficits. The informational and analytical functions are extremely important from points of view of successful operation of any institutions. In relation to the financial crisis, the international institutions, governments and prognoses have totally failed. It is rare, that concerning a given phenomenon, there is such an uncertainty even among the best experts. Unfortunately, that was the case with the present crisis. There is a certain agreement about the origins and the nature of present crisis, but its forecasting and preparedness for it was disappointing.

The shortcomings of regulatory and legal systems are broadly analysed. The extreme greediness of some people played also an important role, but we should note that the consumer was a happy and enthusiastic accomplice of the banks. In history, the list of brilliant swindler and embezzlers is quite long. If the bank or even the high managers cheat their clients is a simple financial or criminal legal question. It is more complicated if the victim is the whole society. In this case, the identification of the criminal attitude is more difficult. The question is more complex, if we look at the general cultural and moral degradation characterising both the public policies (corruption) and the media (excessive commercialisation), and which phenomena have global connections.

The responses of international institutions and governments have been fairly contradictory. The banking crisis has been so far relatively successfully managed, but substantial resources should have been mobilised. Particularly public debts have greatly increased, and fiscal crises, which are largely a consequence of the above ones, in absence of proper treatments, threaten with very serious consequences. The necessary global regulatory frameworks are only in the process of shaping. The related recession was also hesitantly treated, and the role of the European Union was fairly limited (particularly due to lack of proper resources). The setting up of a support mechanism is a great step forward, which can be considered as a European



convergence fund, combining the functions of International Monetary Fund and International Bank for Reconstruction and Development, targeting nominal and real convergence as well. In terms of prevention, the encouragement for structural would be particularly important.

The financial crisis reached also the New Member States. The collapse of the banking system there, however, was also avoided. The big dependence (large share) on foreign commercial banks, finally turned out to be rather advantageous, than the other way around. In certain countries the main problem was a certain exchange rate “bubble”, but it has been kept so far under control. Credit and liquidity crisis, however, had paralysing impacts on real economy.

Most of the New Member States had a chance to introduce euro by the end of 2000s. Except for Slovenia and Slovakia this possibility was missed. It depended on proper economic policies and political determination. By many countries, it was a mistake to miss this opportunity. This can be corrected, and when they meet the criteria, the New Member States should join the euro-zone as soon as it is possible. It depends on their efforts, but also on more coherent European Union policies.

Governments reacted differently to the crisis of the real economy. The main measures were: launching infrastructural programmes cut in taxes and social contributions, old car replacement programs, support of small and medium companies etc. The results are also contradictory. The policies were rather Keynesian, instead on a Schumpeterian approach, namely when helping, focusing innovation and structural change.

In terms of techno-structures, the energy crisis is particularly serious or even dramatic. The recent information and communication revolution is the first technical revolution, which is not based on new energy resources. The lack of energy revolution means that hydrocarbons still dominated our fuel balances. In fact, the new technologies rather conserve the old energy structures (new oil and gas exploration and extraction technologies). The basic requirements towards any energy resources are that they should be cheap, clean and secure in supply. The present energy resources meet neither of them. Our present energy use is mainly

responsible for the environmental problems. In this light, our present structures of development simply unsustainable with our present energy uses, and they threaten with environmental disasters.

The main energy companies are fundamentally interested in maintaining the present structures. Unfortunately, this applies also to the governments as the oil and gas are the major sources of taxes. The role of a new type of intervention from the level of national governments and international institutions would be, therefore, of utmost importance. The major and final solution is to drastically change the structure of our energy consumption, and to shift towards new and renewable resources. For that the national governments, particularly of smaller countries are not powerful enough, and lack the necessary resources. The European Union responses have been so far not satisfactory either. The Europe 2020 has very broad approaches, but far not coherent and efficient. There are recommendations mostly for the national governments. Such vague formulations like: „new energy responses”, „increased use of re-newables”, „energy security”, increase of „energy efficiency”, „integration of markets” etc. are not satisfactory. The Union in this respect should play a more active role, particularly in mobilisation and concentration of funds and research efforts on new energy sources and infrastructure. I agree with recent proposal of Delors on developing ambitious economic instruments to finance common research and development on alternative energies. This is the key also for solving large parts of environmental crisis.

The globalization and particularly global integration have resulted in broad socio-economic structural changes, while there is a clear mismatch in terms of institutional and regulatory responses. Globalisation so far was a “negative integration” (Tinbergen), based on deregulation and liberalisation, while new necessary institutions and regulatory frameworks were missing. In fact, it raises the problem of the proper multi-level governance and development of its corresponding structures. The question goes beyond the frameworks of this presentation. But it is clear that fundamental reforms are needed in all levels from local to national, from regional and global ones, and what is important that their coherence and coordination should be also radically improved.

I think that we face a broad social crisis, which should be addressed, because otherwise we can have serious social and political consequences. This social crisis, on a large extent, is based on growing social inequities and insecurities. The social inequities are increasing among social groups (classes), regions and countries as well. It is so even if they can be proved only in terms of growing nominal income differences, while in real consumption the trends are far not unambiguous. Due to global competition, the insecurity of the future reaches broad strata of middle classes as well.

In all New Member States, great part of the society was negatively affected by transformation after 1989-90. The years of tolerance of difficulties faded away, and the social dissatisfaction and tension gradually increased. The “enlargement fatigue” characterizes both old and new members. Now, they are aggravated by the grievances of the present crisis. We can speak about a real social crisis, and it threatens with undesirable consequences (populism, growth of extremist forces, social conflicts). This is particularly disquieting as the new challenges and need for adaptation would call for fundamental reforms in the whole economy and society. Their delays would cost a lot and aggravate problems beyond the present proportions.

No doubt that the welfare state is in crisis. The welfare state is, however, an achievement of European civilisation, it is a European social value, which should be reformed, but not eliminated. New concepts and structures are needed. The present social systems are inefficient, wasteful, counter-productive and in many respect, even socially unjust. The present redistributive and protective welfare state should be replaced by a more competitive one, focusing on job creation, education, retraining, and instead of income transfers, provision a targeted and special services (in terms of preserving health, helping enterprising, particularly Small and Medium Sized Enterprises and self-care). At the European Union level more coordination is needed.

One of the crucial elements of the changes of the last decades is that knowledge has become major production factor. That follows from new technologies, and the knowledge based society is one of the main conditions of success in facing global

competition and challenges. The education and training have become strategic sectors. Reforms started, but with contradictory results (Bologna) and they are far not completed. Education is primarily a national business, but increased European Union roles and funds are needed beyond exchanges and mobility, in support of promotion of quality and new contents, methods, and exchange of experiences. On education Europe 2020 formulates detailed objectives, but with limited coherence. Radical reform would be needed in content, principles, institutions, and financing. The need for „research”, „network”, „entrepreneurial” university should be particularly stressed.

There are discussions and fears about food problems, but I do not think that we can speak about a food crisis. That does not mean that we could have serious shorter term market tensions. Globally, we have enough potential capacities to feed even manifold of the present world population. It is particularly the case in the light of genetic revolution, even if it is highly controversial, and not clearly analysed in terms of its consequences. What is, however, clear that the Common Agricultural Policy should be further reformed. No doubt, that the Common Agricultural Policy had robust impacts on modernisation and competitiveness of European agriculture. The reforms have made important changes, but even the future one could not be enough. I will quote one of colleges at Corvinus University, who pointed out that in the last decades European Union's agriculture had been loosing ground in global competition, and there was little chance to turn the trend. “It is worth examining whether the planned reform measures can improve the falling competitiveness of European agriculture, and if the planned agricultural reform of the Union offers adequate response to the latest global changes. The answers to these questions are rather negative.” (Csaki, 2009: 57) This prospect is unacceptable.

In spite of broad reforms, Common Agrcultural Policy still remained supportive and protective, an example of “negative” structural policies. Under the pressures for further opening and the conditions of growing global competition a more “positive” and competitive policy is needed. Agriculture should be supported, due to several social, economic and physical factors. Reform of Common Agritural Policy does not necessarily mean that financial support of the sector should be reduced. It rather should mean its restructuring. Resources should be spent on promotion of

modernisation, restructuring and facing global competition. The rural (regional) development and the social and environmental considerations should also remain central. The objectives of Europe 2020 towards a „high quality agriculture” is relevant and welcome, but the budget reform on totally new grounds, in fact not only for Common Agricultural Policy, but on whole, is sooner or later unavoidable.

The ageing population is considered a typical European problem. Personally, I am one of the accomplices of the affair. Normally, we should be jubilant, because we live much longer than people generations before. Absurdly enough, instead, it is a “problem”, particularly in social policy and fiscal terms. Of course, this approach is unacceptable and solutions, both on shorter and longer terms, should be found. At the end of the 19th century, the working life was 140.000 hours; people worked 70 hours per week, and roughly through 50 weeks a year and 40 years. Now, we work around 40 hours per week through 46-48 weeks and still 40 years. Due to long-term increase in productivity in a century the working life was close to be halved to 72-75.000 hours. But around 60 years of life expectancy, it meant relatively short pension time, while by closing to 80 years, it greatly lengthened. If we assume, that not in the far future the average life expectancy closes to 100 years, the case is much more so. It is clear that as a result of further increase in productivity, the length and number of working weeks can be further reduced. But the working years should be lengthened. Physically, it is not impossible that people work till 70 or even beyond, of course with diminishing work loads. The Green Book of the Commission on the issue thinks the same way.

It logically follows, that we have to restructure our working life, probably more consciously and radically than before. Present part-time jobs can become gradually full-time ones, and the “part-time working” could become as a rule. What is the minimum of the hours and number of working week is probably a question of level of productivity and also the structure and character of employment. It is clear that the increased “free-time” should not mean that people become idle. Activities of individuals could be greatly diversified and the borders between work and resting, between constraints of existence and hobbies could be blurred.

It is clear that the process takes longer time and it is constrained by globalisation. The drastic changes in working life occurred mainly till 1960-1970s, and by globalisation the process slowed down. Now, comprehensive policy changes are needed. Although, it is of utmost importance, the reforms of pension systems are not enough. The question assumes fundamental changes in education and training (life-long learning), employment, but also in taxation, social or immigration policies. Ageing is often considered as signal of “decline of Europe”. In this respect, Europe could and should produce rather a positive model for the whole world.

*Notes:* Csaki, Csaba (2009) Global, regional and local challenges in Hungarian Agriculture. Society and Economy, Vol. 31 No. 1.

## **V. The European Union as an international political and security actor**

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### THE EUROPEAN UNION AS AN INTERNATIONAL AND SECURITY ACTOR

It is extraordinary that the international role of the European Union is so well accepted in many respects, yet that this topic is one that still engenders intense and widespread debate both inside and outside the European Union.<sup>97</sup> No discussion on the European Union can for long avoid the international context, whether one is dealing with finance and economics, trade, human rights, migration, the role of religion, institutional reform, even national education policies and the provision of social services. Not only have we become accustomed to compare the European Union with other major global international organisations, and great powers like the United States or China, but the inter-connectedness of our world now means that

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<sup>97</sup> There is much recent work on the new structures and possibilities for the EU after Lisbon. See, for example, Antonio Missiroli, 'Implementing the Lisbon treaty: the external policy dimension', ( Bruges Political research papers, 14, 2010); Toby Archer, Timo Behr, Tuulia Nieminen (editors), 'Why the EU Fails: Learning from Past experiences to succeed better next time', (Finnish Institute of International Affairs, Report 23, 2010); 'Project Europe 2030: Challenges and Opportunities: A report to the European Council by the Reflection Group on the Future of the EU 2030' (2010). I am grateful to Graham Avery, Christopher Oates, and Professor Lorena Ruano for their comments on this paper.



virtually no policy area exists in a self-contained bubble. We live in a global debating chamber as well as a global market place.

So controversy surrounds **what** we, as members of the European Union, do as global actors, and the specificity of the policies we try to formulate: where should we stand with regards to the United States, to Russia, to China, India and South America. Should the European Union as an institution legitimise interventions and the use of force? Should we continue to expand the European Union? Can we find enough consensus within the European Union to allow us to take sides on the great issues of the day, whether in the Middle East, or Africa, or over climate change, for example? Indeed, can the European Union actually influence the roaring stream of global historical and strategic changes, or is the European Union condemned simply to reflect and respond to the actions of others?

Controversy also surrounds **who** should lead the Europeans in decision-making on these great issues. How far can we exploit or limit the partnership between member-states and the Brussels institutions? Should a member state publicly formulate foreign policies that may be at odds with the preferences of some of the other European Union member states? To what extent must we listen to the competing echoes of the past that run through our deliberations – whether these are our long-established trading patterns, or the fear of past dictatorships, of imperialisms, of religions? Does the European Parliament have enough legitimacy to insist upon specific policies overseas? Does the European Commission?

One of the reasons for this constant ferment is the nature of the European Union's own past. The founders created a crafty blend of intergovernmental cooperation, along with the supranational glue of the Commission and Court to protect the project, and carry the enterprise forward within the legal framework of the Rome Treaty. This of course is the long story that lays behind the Lisbon Treaty, which is only the latest in the series of modifications to the original treaty that was signed in 1957, memorably, by only six participating states, not the 27 member states of today. In the 1950s and beyond, the Community's global role was visible through its developing

trade policies, spearheaded and managed by the Commission. There was no serious aspiration for a joint and formalised foreign policy, let alone a military dimension to this policy. States made their own security and defence arrangements alone, and through smaller cooperative groupings and agreements, and the North Atlantic Treaty Organization. Indeed, getting on with each other was one of the main preoccupations of the European Community – and it was out of this preoccupation that the practical power of Franco-German cooperation was able to flourish by the beginning of the 1960s. We cannot forget the inheritance and memories of war in Europe that dominated the early years of the European Communities. The business of enlargement was the furthest that the member states went together in redefining the external role of the European Communities, when they carried through the cold war enlargements to the United Kingdom, Denmark, Ireland, Greece, Spain and Portugal. At the same time, it was becoming increasingly clear that the Community would not be completely left out of international politics. The emerging European Political Cooperation process (the germ of the idea of European foreign policy today) with its largely declaratory processes, and the role played in, for example, the CSCE process by the EC developed during the 1970s and 1980s is witness to this. Indeed, the artificial, cold war division of Europe was a constant reminder that the Rome Treaty institutional experiment did not in fact represent ‘Europe’, but only certain states on the continent.

As is well known, the European Union began cautiously to dip its toe into the world of security politics in the 1990s, even as the world around it was changing. The security vacuum created in part by the collapse of the bipolar system generated space for the European Union, as well as for the North Atlantic Treaty Organization, and the two decades after the cold war saw the beginnings of tentative attempts by the European Union to redefine its global image, both through institutional change (at Maastricht, Amsterdam and Nice), and through action on the ground (largely but not exclusively in the ex-Yugoslav region). The **who** question was also ever present: could Europeans fight under a European flag, not a national flag? The answer emerged, very cautiously, as yes, but with many caveats. Who were the major partners of the European Union? The answer also emerged, but with considerable caution – and that it was other international institutions, primarily the United Nations, but also other institutions on the ground (especially in the Balkans) that should form the bedrock of

policy making, as set out in the rather hurried European Security Strategy of 2003 (and its later update). The continuing presence of the North Atlantic Treaty Organization in the security equation has created the greatest sense of physical and military security, both because European states were using their own military resources rather poorly, but also given the memories of some of the newest wave of European Union member states from the East. Nevertheless, some of the most troubling institutional arguments were about the future military and political security role of both the European Union and the North Atlantic Treaty Organization, and behind that argument, lays the issue of Europe's relations with the United States.

Behind all this was the question of Europe's 'power' relations with the United States, but this was complicated by the shifting relations both with newly emerging powers, and also with the old cold war antagonists, Russia and China. After 2001, the questions shifted once again, as decision-makers turned their eyes once more to issues that had in fact been on the political agenda for a long time, but which now soared to the top of that agenda, and that was how to relate to religious divergences across the globe, and how to deal with terrorism and a new form of warfare that defied the traditional expectations and assumptions of inter-state war. There were, and still are, two major issues arising. The first is the fear that Western powers might have actually exacerbated and conflated real dangers, by acting precipitously, as some thought they had done in the early years of the cold war, thereby institutionalising a new other/ 'enemy' (the 'id' as the means to define the 'ego'). On this, we are not yet able to make a satisfactory judgement.

Second, and in a very real sense, the traumas of the beginning of the 21<sup>st</sup> century raised questions about our own, European identity, where it was, what it signified, and how it relates to material foreign policy interests, both in relation to the Balkan region, but also globally. If we Europeans cannot not figure out exactly **who** we are, - even as we are expanding our own institutional membership and emerging onto the world stage as a more effective power - then the question of **what** we can or should do remain as intractable as ever. It is not simply a matter of disagreements and uncertainties within the European Union over issues that range from the Iraq invasion, to immigration, internal security, neutrality, and relations with North Atlantic Treaty Organization (itself also expanding). It is also in part whether external policies

should be led by the European Union as an institution, or perhaps by groups of states, or even by individual member-states. Yet at the same time, it is also the case that those on the outside have to try to understand how institutions actually work if they wish to do business and politics with the European Union. The complex and subtle narrative of the European Union's identity does not make it easier for others to see the European Union's global role.

The Lisbon Treaty was in part designed to deal with this complicated issue about representation and the perception by others on the working of the Union. Whether the deal struck in 2009 solves this problem has yet to be fully tested. What is very clear, is that the European Union remains a hybrid, unique institution, and one that is neither truly state-like, although it is not like other international organisations either. In one respect the Lisbon Treaty has made the myriad of institutions that exist to manage European Union external affairs even more complicated. It requires a fresh look at the existing presidency system; the European Council and its new president; the role of the new External Service which will include officials not only from Council and Commission but also from all member states; and the European Parliament. The politics of compromise frequently does not deliver clear-cut outcomes, as every reading of Institutionalist theory warns: this has certainly been the case thus far for the external relations of the European Union since the Lisbon Treaty. While many of the disagreements do appear to be new – the hybrid role of the Union's new foreign policy supremo, for example, or the creation of a diplomatic service for the Union; as well as the new powers conferred upon the European Parliament in the construction and implementation of policy - in fact, many of the issues also reflect back a very long way. For the core energy that drives these debates still remains that of the tension between supranationality, inter-governmentalism, and national autonomy. It is extremely healthy, and clearly continues to reflect real aspirations and interests, as well as disagreements and internal power struggles. However, this does not of itself make for clearer external policies or a unified image of the European Union to the outside world. Yet it is with Lisbon that we shall live for quite some time. If the Treaty can ensure that Europeans continue to hang together, and to create a common institutional framework that avoids in the future those traumas of hard power politics and war that darkened the European history of the first half of the twentieth century, then it will be worth the effort.

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**THE EUROPEAN UNION AS AN INTERNATIONAL POLITICAL AND SECURITY ACTOR –A POST LISBON POLITICAL PERSPECTIVE**

Without making an exhaustive enumeration of the past achievements and failures of the European Union's foreign policy, I will take as a departure point the conclusion (fruits of my experience whilst Chairman of the Committee on Foreign Affairs of the European Parliament from 2007-2009) that the pre-Lisbon European Foreign Policy had neither adequate instruments, political ambition nor sufficient financial means, to give Europe a position on the international scene commensurate with its potential. The European Union's foreign policy has been an example of 'the smallest common denominator' system, overshadowing the general European interest, by the complex of national, often short-sighted interests and defensive bargaining. Today, with all multiple challenges that we, as Europeans must face (whether we like it or not), it is clear that the current status quo is unsustainable.

If we agree with the assumption that the European Union should be a strong international political and security actor, then the Treaty of Lisbon raises high expectations, as to the strengthening of its capacity regarding external action. It remains to be seen how those expectations correspond with the relevant provisions

foreseen by the Treaty. Are they sufficient to make Europe speak with one strong voice and act together?

### **Foreign Policy innovations in the Treaty of Lisbon**

The Treaty of Lisbon no doubt provides the European Union with instruments of a global actor but their efficacy depends on the legitimacy and the extent of the financial resources the European Foreign Policy will be provided with.

The creation of the institution of High Representative for Foreign Affairs/Vice-President of the Commission and the new diplomatic service (European External Action Service) are the main novelties of the Lisbon Treaty that raise hope for more coherent and effective external action. Their potential is high indeed. Some Member States seem somehow surprised, post-factum, that what they agreed and adopted, can actually result in radical changes in the European Union foreign policy-making and policy-shaping.

The success of the External Action Service will in fact depend on the fulfillment of a number of conditions:

1. The High Representative should be able to take true political action - for that aim she needs political deputies, a secretary general and his deputies would certainly not, provide sufficient political support to the High Representative, who will hence not be able to satisfy the need for a more politicized foreign policy, instead of an administrative follow-up of Council's decisions that we have observed so far. Having the Rotating Presidency Foreign Minister as the deputy to the High Representative comes from the spirit of previous treaties, not the Lisbon Treaty and does not allow for continuity and follow-up of political representation. Their lack of anchorage and competence with the External Action Service will further weaken this spurious solution. The European Union can only make an impact if it speaks with one voice and if it is equipped with appropriate instruments. We can undertake effective action only when it is legitimized by both the European and national parliaments acting at their respective levels and in accordance with their own mandates.

2. The European External Action Service is the new service that can give a second birth to the European Union Foreign Policy, but in order to provide it with sufficient legitimacy and credibility, it should fulfill the two conditions of political accountability and geographical representation.

### **Political accountability**

The Parliament in this area demands consultation and reporting duties of the High Representative/Vice President of the Commission towards the Parliament and the strengthening of democratic scrutiny rights of the European Parliament over the strategic programming of European Union external assistance instruments. It is clear that there should be some control over appointees to senior European External Action Service posts and strategically important political positions on the ground (Heads of Delegations, European Union Special Representatives). They should be heard by the relevant parliamentary committee before taking up their duties, so as to provide them with sufficient political legitimacy and authority. As regards budgetary control, prerogatives of the budgetary authority including the explicit right of discharge should be safeguarded; full budgetary transparency regarding the establishment plan of the European External Action Service should be guaranteed.

What is also necessary is efficient interinstitutional cooperation, especially between the Council and the European Parliament, it is therefore necessary to update and complement the existing Inter Institutional Agreement.

### **Geographical Representation**

As foreign policy is a matter of sovereignty for Member States, geographical representation is essential to assure a sense of ownership of the European External Action Service for all of the Union of 27, and for the Member States as stakeholders to identify themselves with the action of the service from the outset. Representation is therefore in the interest of a strong European External Action Service itself.

The European External Action Service should be staffed with the most competent personnel selected on merit, but on geographically balanced merit, these two being synergetic and not exclusive. Expertise is not geographically neutral; various Member

States can provide specialised knowledge of specific regions of the world (*f. e. expertise of Iberian diplomats in policy towards Latin America; expertise of Southern European diplomats in Mediterranean issues; a unique understanding of Eastern Europe by countries from the Eastern flank of the European Union*).

The development of a credible European foreign policy requires a common European diplomatic culture that can be formed only as a result of interaction between officials from all European Union Member States present in appropriate proportions in the service, including senior positions. This should be complemented by a truly common diplomatic education and training in a genuinely multinational format.

In order to be credible and respond to the expectations of European Union citizens, the EFP must be allocated resources commensurate with its objectives and specific targets. Therefore it is regrettable that as in previous years the European Foreign Policy budget is seriously under-funded. The new European Foreign Policy should be accompanied by a boosted budget; instruments without proper financing will disappoint. The European External Action Service cannot be budget neutral, a substantial increase is necessary.

### **The European Union Foreign Policy - Is there political will?**

Adequate instruments alone are not sufficient; the European Union Foreign Policy should be driven by political will, should be ambitious on the conceptual ground, making truly political decisions as to what kind of international actor it wants to be and the basic choices of what a truly European Foreign Policy should be implemented in the long term.

A lot will depend on political will. An example can be found in the external dimension in the domain of energy. The High Representative during her hearing made it clear that she does not wish for prerogatives in this matter. At the same time the Commission's proposal for a Regulation on the Security of Gas Supply (under the new Lisbon Treaty) did not mention even once the role of the High Representative as an actor during gas crisis situations with third countries and did not include any



element of foreign policy in a domain that is strictly conditioned by international developments. It was the European Parliament that put forward what should be obvious under the new Treaty. Instruments are not enough without the political will to fill them with content.

If the European Union is to be a global actor, what kind of actor should it become? The European Parliament wants the European Union to have a value-drive foreign policy which should underscore our foreign policy action. The European Union Foreign Policy must be underpinned and guided by the values which the European Union and its Member States cherish, notably democracy, the rule of law and respect for the dignity of the human person, for human rights and for fundamental freedoms, and the promotion of peace and effective multilateralism.

With political will and guided by European values, there is a need for some basic long-term actions for European Union Foreign Policy. Being intentionally selective, my list of urgent priorities embraces four areas:

***The European Neighbourhood Policy.*** We need to develop a true sense of joint ownership of both Southern and Eastern dimension of the European Neighbourhood Policy; the goal is to ensure a stable and democratic neighbourhood and prepare some of those countries for accession to the European Union; we need to make a circle of friends with the European Union and make them friends among themselves; the success of the European Neighbourhood Policy is therefore the test for post-Lisbon European Union Foreign Policy.

***Energy Policy.*** The European Union's strong energy dependence on third, often non-democratic countries may undermine the coherence, assertiveness and sustainability of its common foreign policy. We need a proper emergency management on Community level as well as an efficient implementation of the principle of solidarity foreseen in Article 194, otherwise gas and oil will continue to be used by third countries as a diplomatic tool.

***Military forces.*** The European Union should develop its military capabilities that could complement North Atlantic Treaty Organization's forces (one of the priorities of the

upcoming Polish Presidency of the Council); we need to address the problem of frozen and hot conflicts.

**Cyber Security.** Non-conventional threats to security necessitate methods to combat cyber terrorism. Estonia is currently the only European Union Member State to have suffered a full-scale cyber-attack, in April 2007 but the threat of cyber warfare is real and of genuine concern for European Security and Defence Policy. In this context, we need a framework concerning coordination of efforts and information sharing to ensure that major catastrophes can be averted in the future.

The European Union Foreign Policy has always suffered from a paradox: despite the massive support of European citizens (70%) for a more robust and unified external action, the Member States are reluctant to take a more ambitious approach in this area; as if the citizens understood better, that the challenges that we face can only be tackled together. However, the new Treaty might be on the verge of breaking this paradox. We have the public support, we will soon have more effective instruments, and what we need to conceptualise, is what we are going to do with it. It has to be done quickly, the world around us will not wait around for us to wake up.

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### **THE EUROPEAN UNION AS AN INTERNATIONAL POLITICAL AND SECURITY ACTOR AFTER THE TREATY OF LISBON: AN ACADEMIC PERSPECTIVE**

*“L’expérience de chaque homme se recommence. Seules les institutions deviennent plus sages: elles accumulent l’expérience collective et, de cette expérience, de cette sagesse, les hommes soumis aux mêmes règles verront non pas leur nature changer, mais leur comportement graduellement se transformer.”* Jean Monnet paraphrasing the Swiss philosopher Amiel

#### **Introduction**

In this paper I shall outline the most important provisions of the Lisbon Treaty when it comes to ‘external action’, as it is called in the treaty. This basically includes what we used to call ‘external relations’ (of the Community pillar) and Common Foreign and Security Policy (CFSP), including defence policy (of the second pillar of the Maastricht Treaty). Will the Lisbon Treaty improve the efficiency, democratic legitimacy “as well as the coherence of its external action,” as the mandate from June 2007 claimed it should? (Council of the European Union, 2007).

The ill-fated Constitutional Treaty would have replaced all existing treaties of the European Union by one new treaty. The Lisbon Treaty reverts to the classical method of treaty reform, amending the existing treaties. For that reason the treaty

that was signed in Lisbon on 13 December 2007, and which entered into force on 1 December 2009, is much more difficult to read than the Constitutional Treaty (Council of the European Union, 2004a and b). Luckily the consolidated version of the treaties incorporating the Lisbon Treaty, which was published in early 2008, is easier to read than the Lisbon Treaty itself (European Union, 2008). So in this paper I shall compare the 2003 and 2008 versions of the Union's Consolidated Treaties.

*Does 'External Action' need better institutions?*

If we focus on institutions it is because of the assumption that 'institutions matter.' This is the claim of many contemporary social scientists. If Common Foreign and Security Policy, an important part of 'external action', stays intergovernmental – or confederal – does it have the institutional capacity required to solve the problems it is supposed to solve?

In a concluding chapter to a book, I edited in 2003, I took a game-theoretical look at institutional requirements (Laursen, 2003).<sup>98</sup> I argued that if you face a Prisoners' Dilemma situation, i.e. a situation where there is a temptation to cheat or defect from an agreement, you need strong surveillance and enforcement institutions, basically 'pooling and delegation' of sovereignty as has happened in the first European Union pillar (terms from Moravcsik, 1998). If the Member States do not implement decisions in the first pillar 'defection' can be sanctioned by the Commission and European Court of Justice (ECJ). This possibility does not exist in Common Foreign and Security Policy. I also argued that strong institutions are required when you face distribution problems – known as Battle of the Sexes in game theory. If there is a distribution problem you need to find an equitable solution, possibly compensating the loser. Budgetary means and linkage strategies – bargaining exchanges – can be used to solve distribution problems. Brokerage by third parties, such as independent Community institutions, can sometimes assist the Member States in finding mutually acceptable solutions to distribution problems. On the other hand, there are some simple coordination problems where the different actors will get the same payoff and where there is no temptation to defect. Such situations do not require elaborate institutions – or regimes as they have been called by some

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<sup>98</sup> See also Laursen (2007).

International Relations (IR) scholars.<sup>99</sup> I argued that in such situations the so-called Open Method of Coordination (OMC) applied by the European Union in its so-called Lisbon Strategy to make the European economy more competitive should be sufficient. Needless to say, the question you can ask then is whether the problems dealt with by the Lisbon Strategy were simple coordination problems? If some of the problems were Prisoners' Dilemma or Battle of the Sexes problems then Open Method of Coordination would be inadequate to insure efficient and equitable solutions. Indeed, the 10-year period of the Lisbon strategy has now ended without much success! The strategy did not create real 'commitment institutions' (term borrowed from Mattli 1999).

If we try to use this kind of game-theoretic reasoning to Common Foreign and Security Policy we need to decide what kind of issues are faced by Common Foreign and Security Policy. Probably we find all the mentioned kinds of issues. Surely, there can be conflicting interests where Common Foreign and Security Policy cannot cope, such as the US-led intervention in Iraq in 2003. On the other side of the spectrum there may sometimes be harmony of interests or the European Union may face simple coordination games. Decisions even under Common Foreign and Security Policy's consensus rules will be easy in such situations.

The next question then is: how often does Common Foreign and Security Policy face Prisoners' Dilemma and Battle of the Sexes Problems, also known as 'collective action' problems. The answer is not easy because costs and benefits can be difficult to measure in foreign and security policy. But the wide-spread feeling that Common Foreign and Security Policy is inefficient suggests that Common Foreign and Security Policy decisions are often sub-optimal. It is known from alliance theory that partners are tempted to cheat by contributing less than average to common defence; so you can have 'free riding'. In fact, the financing of Common Foreign and Security Policy, especially defence policy, has been a difficult and controversial issue.

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<sup>99</sup> For a good introduction to game theory and international institutions, see especially Stein, 1990.

*Table 1  
Nature of Issues and Institutional Requirements*

<b>Nature of Issue</b>	Conflicting interests/ pure conflict	Dilemma of common interests. Temptation to defect (Prisoners' Dilemma)	Coordination problem with distributional issues  (Battle of the Sexes)	Simple coordination problem. No distribution issue	Harmony of interests
<b>Institutional requirements</b>	Institutions to no avail. Institutions will probably not be created. Convergence of interests required	Pooling and delegation of sovereignty. Sanctions against defection	Pooling and delegation of sovereignty. Side-payments Budgetary means for compensation of losers	Open Method of Coordination (OMC) sufficient	Institutionalization not necessary. Parallel Unilateral action

Source: Adapted from Laursen (2003).

An important question arises: if the European Union has not been able to pool and delegate sovereignty in Common Foreign and Security Policy, is there any hope for an efficient Common Foreign and Security Policy? The only alternative mentioned in rational theory is leadership. Already Lindberg and Scheingold (1970) mentioned leadership as an important ingredient in an integration process. They saw the possibility of both national leadership (by Member States) and supranational leadership (especially by the Commission). In his comparative theory of regional integration Mattli (1999) singled out leadership as a decisive variable for successful integration. He focused especially on national leadership, singling out Germany as a regional paymaster in the European Union. There is also some recent research looking at the role of Community institutions in the grand European Union bargains (Beach, 2005) and the role of the Presidency in day-to-day decisions in the European Union (Tallberg, 2006). Both Beach and Tallberg based their work on the assumption that the European Union needs to overcome 'collective actions' problems. Community institutions and the Presidency can contribute to overcoming 'collective action' problems. This suggests that a combination of good institutions

and leadership from these institutions can contribute to efficient and equitable decisions in the European Union.

Beyond these rationalist institutionalist approaches sociological institutionalists would argue that development of a stronger collective identity in the European Union can also contribute to making it easier to solve problems. This may be the Lisbon Treaty's best hope when it comes to Common Foreign and Security Policy. Can the new European External Action Service (EEAS) for instance help create more common identity among our diplomats? How strong will such identity become and could it make a real difference?

### **The Lisbon Treaty**

The Lisbon Treaty retained most of the institutional changes of the Constitutional Treaty (de Poncins, 2008; Griller and Ziller, 2008; and Sauron, 2008). It amends the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEC), the latter being renamed The Treaty on the Functioning of the European Union (TFEU). All references to symbols of constitutionalism, including flag, anthem and motto, have been removed. Legislative acts will not be called laws and framework laws, but retain the old names of regulations and directives. The new post in the Constitutional Treaty of the Union Minister for Foreign Affairs has been renamed the High Representative of the Union for Foreign Affairs and Security Policy (HR). Nor does the new treaty explicitly say that Union law has primacy, although it will have such primacy based on case law of the European Court of Justice (ECJ) going back to the early years of European integration.

The Lisbon Treaty retains the provision proposed by the Constitutional Treaty for electing the President of the European Council "by a qualified majority, for a term of two and a half years, renewable once" (Art. 15(5) TEU). At the same time the European Council officially becomes an institution. The European Council will, among other things, determine "the strategic interests and objectives of the Union" for all its external action (Art. 22(1) TEU) thus in principle bringing external relations and Common Foreign and Security Policy together. The President of the European

Council will also be involved with external representation of the Union. The job description of the new post is not very detailed though.

### **External Action in the Lisbon Treaty**

The Lisbon Treaty formally abolishes the pillar structure. Common Foreign and Security Policy, the old second pillar, however will largely remain intergovernmental even after the formal abolishment of the pillar structure.

The old pillar structure created problems of coherence between external relations of the Community (1<sup>st</sup> pillar) and Common Foreign and Security Policy (2<sup>nd</sup> pillar). In the past only the Community had legal personality. The Lisbon Treaty attributes legal personality to the Union as a whole (Art. 47 TEU). So in the future the Union will also be able to enter into international agreements under Common Foreign and Security Policy. The new High Representative will deal with both external economic relations of the Union, in his/her capacity of Vice-President of the Commission, as well as Common Foreign and Security Policy issues, in his/her capacity of High Representative and as Chairman of the Foreign Affairs Council (Art. 27(1) TEU). This should be seen as an effort to increase coherence in external action in general.

The new TEU has a longer list of external action objectives than the previous treaties (See box 1). They are listed in the section on external action so they cover both external economic relations, including trade, development and humanitarian aid, as well as Common Foreign and Security Policy. Including this list in the new external action section of the treaty means for instance that the European Union will have to work to consolidate human rights in its commercial policy.

<b>Box 1: External Action Objectives</b>	
Treaty of Nice (consolidated)	Treaty of Lisbon (consolidated)
Common Foreign and Security Policy	External Action
<i>Article 11 TEU</i>	<i>Article 21 TEU</i>
1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security	(...) 2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in



<p>policy, the objectives of which shall be:</p> <ul style="list-style-type: none"> <li>— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,</li> <li>— to strengthen the security of the Union in all ways,</li> <li>— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,</li> <li>— to promote international cooperation,</li> <li>— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.</li> </ul>	<p>all fields of international relations, in order to:</p> <ul style="list-style-type: none"> <li>(a) safeguard its values, fundamental interests, security, independence and integrity;</li> <li>(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;</li> <li>(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;</li> <li>(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;</li> <li>(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;</li> <li>(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;</li> <li>(g) assist populations, countries and regions confronting natural or man-made disasters; and</li> <li>(h) promote an international system based on stronger multilateral cooperation and good global governance.</li> </ul>
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## Common Commercial Policy

Common Commercial Policy remains a central part of the Union’s external action. It has been an exclusive competence since the Treaty of Rome (original Art. 113). The Commission negotiates trade deals multilaterally within the General Agreement on

Tariffs and Trade (GATT) – and now the World Trade Organisation (WTO) - as well as bilaterally with third countries. Decisions can be made in the Council by a Qualified Majority Voting (QMV). The European Court of Justice has jurisdiction. In other words, the Community method is applied for commercial policy. Interestingly enough, the original article 113 did not mention the European Parliament.

The original treaty basically covered trade in goods. But some international treaties included matters where the Member States remained competent. They were so-called mixed agreements. For such agreements procedural rules were and remain more complicated. Such agreements, for instance, also may require national ratification. Sometimes the European Parliament has to be consulted. Sometimes it has a right of ‘assent’, now renamed ‘consent’ in the Lisbon Treaty.

The Uruguay Round extended the international trade agenda to include services and trade related aspects of intellectual property (TRIPS). The European Court of Justice in 1994 decided that these new areas were partly under national competence.

In the treaty reforms that followed there were efforts to extend the definition of trade to include services and intellectual property. They were included by the Treaty of Amsterdam, but decisions had to be by unanimity. The Treaty of Nice introduced Qualified Majority Voting for services and intellectual property rights. But “cultural and audiovisual services, educational services, and social and human health services” would still require unanimity (Art. 133 TEC).

The Treaty of Lisbon retains Qualified Majority Voting for services and intellectual property, and extends it to the new category of foreign direct investment (FDI). However, it retains unanimity for cultural and audiovisual services (“where these agreements risk prejudicing the Union’s cultural and linguistic diversity”) as well as social, education and health services (“where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them”).

Finally the Lisbon Treaty introduces the ordinary legislative procedure for commercial policy, thus giving the European Parliament a much stronger role in

commercial policy (Art. 207 TFEU). Making the European Parliament a co-legislator in commercial policy is one of the more important innovations of the Lisbon Treaty. The same happens in the area of the Common Agricultural Policy (CAP), the *bête noir* of the European Union for many Third Countries (Art. 43 TFEU, ex. Art 37 TEC).

<b>Box 2: Scope of and Decision-Making for Commercial Policy</b>	
Treaty of Nice	Treaty of Lisbon
<p><i>Article 133 TEC</i></p> <p>1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.</p> <p>2. The Commission shall submit proposals to the Council for implementing the common commercial policy.</p> <p>3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.</p> <p>The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.</p> <p>The relevant provisions of Article 300 shall apply.</p>	<p><i>Art. 207 TFEU</i></p> <p>1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.</p> <p>2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.</p> <p>3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.</p> <p>The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.</p>

<p>4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.</p> <p>5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.</p> <p>By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules. The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6. This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.</p> <p>6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.</p> <p>In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its</p>	<p>The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.</p> <p>4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.</p> <p>For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules. The Council shall also act unanimously for the negotiation and conclusion of agreements:</p> <p>(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;</p> <p>(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.</p> <p>5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.</p> <p>(...)</p>
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<p>Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.</p> <p>The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.</p> <p>7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.</p>	
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### **Common Foreign and Security Policy**

The Union's Common Foreign and Security Policy competence remains limited in various ways by the Treaty of Lisbon. According to Article 24 TEU there are 'specific rules and procedures' for Common Foreign and Security Policy. Unanimity will remain the normal decision rule. Adoption of legislative acts is excluded. And the European Court of Justice normally has no jurisdiction. There are two exceptions: The reference to Article 40 means that the European Court of Justice will "be empowered to referee disputes over the interface of the Union's general authority and its specific authority relating to the Common Foreign and Security Policy" (Siebersson 2008, p. 180). The other exception concerns restrictive measures involving individuals. The Maastricht Treaty had introduced procedures for adopting sanctions involving both Common Foreign and Security Policy (the political decision) and the Community (the actual sanctions, often involving trade measures). These sanctions were aimed against states. This created a problem for sanctions against individuals, so-called 'smart sanctions', which the European Union may want to use against terrorists (see Wouters et al., 2008, p. 193). The Lisbon Treaty has a new article that allows restrictive measures "against natural or legal persons and groups

or non-State entities” (Art. 215(2) TFEU). Article 275 TFEU gives the European Court of Justice jurisdiction to review the legality of such restrictive measures against natural or legal persons. This is a very technical change, but an important one.

Common Foreign and Security Policy is not listed in the treaty’s lists of either exclusive or shared competences. One of these lists mentions common commercial policy as an exclusive competence of the Union (Art. 3(1) TFEU). Development cooperation and humanitarian aid are mentioned among shared competences (Art. 4(4) TFEU). Common Foreign and Security Policy is mentioned separately as a competence without giving this competence a specific name (Art. 2(4) TFEU).

These various provisions of the new treaty show that despite the formal abolishment of the pillar structure there is still an important difference between external (economic) relations, falling under the old 1<sup>st</sup> pillar, and Common Foreign and Security Policy, the old 2<sup>nd</sup> pillar. The Member States were not ready to extend the ‘Community method’ to the latter. So a *de facto* special Common Foreign and Security Policy pillar will remain.

### **Box 3: Common Foreign and Security Policy competence**

*Article 24 TEU*  
(ex Article 11 TEU)

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

Although the basic decision rule for Common Foreign and Security Policy is unanimity, there are possibilities of some decisions being made by Qualified Majority Voting. Of the four possibilities for Qualified Majority Voting mentioned in the treaty three already existed previously. The new one is the one where the High Representative of the Union for Foreign Affairs and Security Policy proposes a decision following a 'specific request' from the European Council (see box 4).

#### **Box 4: Decision making in Common Foreign and Security Policy**

##### *Article 31 TEU*

(ex Article 23(1) TEU)

1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),
- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,
- when adopting any decision implementing a decision defining a Union action or position,
- when appointing a special representative in accordance with Article 33.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

5. For procedural questions, the Council shall act by a majority of its members.

The treaty also includes so-called 'constructive abstention', which was introduced by the Amsterdam Treaty. Only those member states voting in favour of a decision are committed. Those abstaining, and explaining why, in a declaration, are not committed but accept that the decision commits the Union (Art. 31(1) TEU).

The idea that the Council can make implementing decisions by Qualified Majority Voting is not new, but the Member States have so far hesitated to use this possibility. In Article 31 TEU the possibility is linked with a so-called 'emergency brake'. A state that has 'vital' reasons for opposing a decision can request that the decision be moved from the Council to the European Council for decision by unanimity. There is a tightening here since it used to be 'important' reasons under the Treaty of Nice (United Kingdom House of Commons 2008, p. 42). On the other hand, the article in question also includes a bridging clause – or *passerelle* - whereby it can be decided by unanimity in the European Council to move some area of Common Foreign and Security Policy decision making, beyond the four listed, from unanimity to Qualified Majority Voting. This does not include defence matters, though. So all in all, a complex set of rules. Most likely unanimity will remain the norm. But pressures for decisions in a Union of 27 or more member states could produce situations where the Chair will decide for a vote by Qualified Majority Voting – the way it eventually happened after the Luxembourg Compromise of 1966.

Let's add that the United Kingdom secured two Declarations during the IGC 2007, nos. 13 and 14, which stress the intergovernmental nature of Common Foreign and Security Policy. Declaration 13 says that the creation of the office of the High Representative and the establishment of an External Action Service "do not affect the responsibilities of the Member States as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations." Declaration 14 specifically mentions the Security Council of the United Nations and says that the Common Foreign and Security Policy provisions of the treaty "do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament." So Common Foreign and Security Policy has really been ring-fenced by the treaty.



The new High Representative for Foreign Affairs and Security Policy (HR) shall conduct Common Foreign and Security Policy and be a Vice-President of the Commission. This has been referred to as double-hatting. Since he or she will also chair the Foreign Affairs Council (Art. 18(3) TEU) the High Representative will arguably have three hats. The position is a major innovation. The new HR should become a central figure in the external (economic) relations as well as foreign and security policy of the Union. Some turf battles with the new permanent President of the European Council as well as the President of the Commission can be expected. Further there will also be a General Affairs Council to be chaired by the rotating Presidency. Much will depend on the personalities of those appointed, and whether some memorandum of understanding about the roles is worked out or develops.

**Box 5: High Representative for Foreign Affairs and Security Policy**

*Article 18 TEU*

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.
2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The High Representative shall preside over the Foreign Affairs Council.
4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

The HR will be assisted by a new European External Action Service (EEAS) composed of officials from the Council Secretariat, the Commission and seconded from Member State Foreign Ministries. This is another important innovation. Details of the arrangement are currently being worked out. The European External Action Service is expected to reduce duplication and facilitate the development of a more effective external policy of the European Union (United Kingdom's House of Parliament 2008, pp. 63-66). Notice however that the provisions on the European External Action Service are to be found in the treaty section on Common Foreign and Security Policy, not in the general section on 'external action'. So how much of a

coordinating body will it be? How much can it contribute to consistency between the different components of 'external action'? In this connection it worth mentioning that the current post-Lisbon Commission still has a Commissioner in charge of trade policy.

In accordance with the logic of the treaty the existing Commission Delegations in third countries and at international organisations will become European Union Delegations. Diplomatic missions of Member States are required to cooperate with Union Delegations (Art. 32 and 35 TEU).

**Box 6: European External Action Service**

*Article 27*

(....)

3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

The instruments of Common Foreign and Security Policy used to be joint actions and common positions, introduced by the Maastricht Treaty, and common strategies, introduced by the Amsterdam Treaty. The distinction between the three could sometimes be difficult in practice. The Lisbon Treaty instead talks about general guidelines and decisions. This at least is a simplification.

**Box 7: Change in Common Foreign and Security Policy Instruments**

Nice Treaty (consolidated)

*Article 12*

The Union shall pursue the objectives set out in Article 11 by:

- defining the principles of and general guidelines for the common foreign and security policy,
- deciding on common strategies,
- adopting joint actions,

Lisbon Treaty (consolidated)

*Article 25*

(ex Article 12 TEU)

The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting decisions defining:
  - (i) actions to be undertaken by the Union;

<ul style="list-style-type: none"> <li>– adopting common positions,</li> <li>– strengthening systematic cooperation between Member States in the conduct of policy.</li> </ul>	<ul style="list-style-type: none"> <li>(ii) positions to be taken by the Union;</li> <li>(iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);</li> </ul> <p>and by</p> <ul style="list-style-type: none"> <li>(c) strengthening systematic cooperation between Member States in the conduct of policy.</li> </ul>
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The basic budget provisions of the Lisbon Treaty for Common Foreign and Security Policy remain the same as those that existed previously. Administrative expenses will be charged to the Union budget, while operating expenses normally will be charged to the Union budget, “except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise” (art. 41(3) TEU). Financing military and defence operations can thus potentially be a problem. The Lisbon Treaty tries to help by adding provisions for urgent financing, including the setting up of a start-up fund.

#### **Box 8: Budget provisions for Common Foreign and Security Policy**

##### *Article 41 TEU*

(...)

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:

- (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
- (b) the procedures for administering the start-up fund;
- (c) the financial control procedures.

When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

## Common Security and Defence Policy (CSDP)

Common Defence and Security Policy (CSDP), which used to be called European Security and Defence Policy (ESDP), gets a more prominent place in the new treaty. The basic definition does not change much, but there is now a new emphasis on operational capacity including both civilian and military assets.

<b>Box 9: Scope of CSDP</b>	
Treaty of Nice (consolidated)	Treaty of Lisbon (consolidated)
<p data-bbox="112 430 257 454"><i>Article 17TEU</i></p> <p data-bbox="112 454 548 710">1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.</p> <p data-bbox="112 710 548 997">The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.</p> <p data-bbox="112 997 548 1133">The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.</p>	<p data-bbox="560 430 660 454"><i>Article 42</i></p> <p data-bbox="560 454 968 821">1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.</p> <p data-bbox="560 821 968 1077">2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.</p> <p data-bbox="560 1077 968 1393">The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.</p>

The so-called Petersberg tasks, defined at a meeting of the Western European Union (WEU) in 1992, and included in the European Union treaties by the Amsterdam Treaty, are extended to include joint disarmament operations, post-conflict stabilisation as well as “fight against terrorism, including by supporting third countries in combating terrorism in their territories.” Both civilian and military means can be used.

<b>Box 10: Extension of 'Petersberg' tasks</b>	
Treaty of Nice (consolidated)	Treaty of Lisbon (consolidated)
<p><i>Article 17</i> (....) 2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.</p>	<p><i>Article 43</i> 1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.</p>

The emphasis on operational capacity has led to the establishment of a European Defence Agency. In fact, this agency was established in 2004.

<b>Box 11: European Defence Agency (EDA)</b>
<p><i>Article 42</i> (....) 3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy. Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as "the European Defence Agency") shall identify operational requirements, shall promote measures to satisfy those</p>

requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

### **Flexibility Provisions in Common Foreign and Security Policy and Common Security and Defence Policy**

The Lisbon Treaty will introduce more flexibility in Common Foreign and Security Policy, including Common Security and Defence Policy. This is an important aspect of the treaty.

First, the Lisbon Treaty allows for ‘enhanced cooperation’ in all areas, including Common Foreign and Security Policy and Common Security and Defence Policy (Art. 20 TEU). The Treaty of Nice did not allow for ‘enhanced cooperation’ in defence. Establishing enhanced cooperation will require a minimum of nine Member States (Art. 20(2) TEU), against eight previously. Enhanced cooperation in Common Foreign and Security Policy, including Common Security and Defence Policy, further requires unanimity in the Council (Art. 329(2) TFEU).

#### **Box 12: Enhanced cooperation in Common Foreign and Security Policy**

*Art. 329(2) TFEU*

(...)

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union’s common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information. Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.

The Lisbon Treaty also introduces the new concept of ‘permanent structured cooperation’ in the defence area. This is considered an important innovation by many observers (e.g. Angelet and Vrailas 2008). Contrary to ‘enhanced cooperation’

it does not require unanimity to be established, but a Qualified Majority Voting. The idea is that Member States with greater willingness and capacity in the area of defence 'shall' go together in some kind of closer cooperation of a more permanent kind. This cooperation is geared towards increasing the military capabilities of the Member States and thus the Union.

#### **Box 13: Permanent Structured Cooperation**

*Article 42 TEU*

(....)

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46 [established by Qualified Majority Voting, but governed by unanimity among participating states]. It shall not affect the provisions of Article 43 [concerning tasks].

'Constructive abstention' mentioned above, and which is not new, can also be seen as a kind of flexibility, but more *ad hoc*.

More importantly, for the expanded Petersberg tasks, the Lisbon Treaty mentions the possibility of entrusting "the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task" (Art. 44 TEU). Such a group is often referred to as a 'coalition of the able and willing.'

#### **Box 14: Entrustment of task to a group of states**

*Art. 44 TEU*

1. Within the framework of the decisions adopted in accordance with Article 43, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

All in all there are now a number of flexibility provisions which can be applied in the areas of Common Foreign and Security Policy, and Common Security and Defence Policy.

Flexibility arrangements can be seen as a way to get around unanimity requirements in the treaty. Needless to say joint action by all members will be a stronger

manifestation of common identity and solidarity and may well in many situations be more efficient.

### **Mutual Defence and Solidarity**

A somewhat controversial new mutual defence or mutual assistance clause has been added to the treaties by the Lisbon Treaty (Art. 42 TEU). The language can resemble the collective defence articles of the Western European Union and North Atlantic Treaty Organization's treaties. Notice the provisos though. The obligation of assistance "shall not prejudice the specific character of the security and defence policy of certain Member States", read non-aligned Member States. Further, commitments must be consistent with North Atlantic Treaty Organization's commitments, a stipulation considered important by the more pro-Atlantic Member States, including the United Kingdom.

#### **Box 15: Mutual assistance clause**

*Article 42 TEU*

(....)

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Finally, we should mention the new mutual solidarity clause, which is part of the TFEU. This deals with terrorist attacks against Member States or natural or man-made disasters in Member States. The article asks for solidarity and mobilisation of all instruments, including military resources. This is the Union's response to events like 9/11 in general and the terrorist bombings in Madrid and London in particular.

#### **Box 16: Mutual solidarity clause**

*Article 222 TFEU*

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including



the military resources made available by the Member States, to:

- (a) – prevent the terrorist threat in the territory of the Member States;  
– protect democratic institutions and the civilian population from any terrorist attack;  
– assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;
  - (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.
2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

## Significance of Changes

If 'institutions matter,' as claimed by many social scientists, the Lisbon Treaty should be expected to produce more efficiency and legitimacy as well as more coherence and effectiveness in the Union's external action. The theoretical reasons for this are the following:

1. The extended use of the so-called ordinary legislative procedure involving the European Parliament more should in principle produce more 'input' or procedural legitimacy.
2. The increased use of Qualified Majority Voting in the Council should increase efficiency, which in turn may also be good for legitimacy to the extent that grid-lock can be avoided or at least be reduced ('output' legitimacy).
3. The new double or triple-hatted High Representative should bring more coherence to external action. The European External Action Service and European Defence Agency are important new agencies that should help increase the capacity for external action, by providing information, analysis and increased capabilities.
4. If the Member States are willing to use Qualified Majority Voting the possibilities are there in the treaty, also for Common Foreign and Security Policy, although still normally based on preceding unanimity in the European Council, where the Union's strategic interests are defined. In the end much will depend on the political will of the Member States. As long as unanimity dominates you have 27 veto points in European Union-27,

and you will have more in the future as the Union will move on and accept more new Member States.

5. The new permanent President of the European Council may also be able to give the European Union more continuity and direction.

The European Union is promising much in its treaties. The list of objectives, values and good intentions is long. But the Member States have ring-fenced Common Foreign and Security Policy in the Treaty. It remains intergovernmental. So the discrepancy between rhetoric and action will most likely remain considerable. Those who favour increased capacity for international action of the European Union can hope that there will be a convergence of interests among the Member States. Interaction, actor socialisation and learning processes may gradually produce collective European identities among foreign policy decision-makers in Europe, which in turn may affect interests. But the rationale of collective action will then still have to be communicated to the European publics in a convincing way.

The Lisbon Treaty has also increased the possibility of some Member States going ahead without waiting for the laggards. Flexibility, multi-speed integration, in various forms, have contributed to the integration process in the past, so why not in other areas, including Common Foreign and Security Policy in the future? Schengen cooperation started among a small group of five states. Today it involves most Member States. Economic and Monetary Union (EMU) did not include all Member States at the outset, but the number of participating states has increased since 1999, when the single currency was introduced, and more Member States are expected to join in the coming years. This is why the increased possibility of flexibility in Common Foreign and Security Policy may also turn out to be a useful tool in the future.

In the area of defence in particular we know that things will only move once France and the United Kingdom have agreed and preferably Germany has joined. Then other Member States may follow. The development of a common defence policy, made possible by the Treaty of Maastricht, only started after the historic meeting of minds at the Franco-British summit at Saint Malo in 1998 (see for instance Howorth 2007). Then things suddenly moved very fast. But it may be that a kind of plateau has been reached now and that further incentives and instruments will be needed.

The Lisbon Treaty has added to the toolbox, but it cannot change the constraints of domestic politics. National leadership is also required.

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### **THE EUROPEAN UNION AS AN INTERNATIONAL POLITICAL AND SECURITY ACTOR**

China's view on the role of the European Union has always been positive, even during the Cold War era. In the 1970s and 1980s, the European Community was regarded as the Second World and China's semi-ally fighting against the Soviet Imperialism.

After the end of the Cold War, many Chinese believed that the trans-Atlantic alliance would have problem due to the collapse of the Soviet Union and the European Union would become more independent, and a pole in a new multi-polar world.

From 1995 to 2003, the European Union-China relations developed very rapidly and smoothly. The European Union became the number one trade partner of China and both sides started to talk about the European Union-China comprehensive strategic partnership. Because of two unsolved issues in the European Union-China relations, the Arms Embargo and full market economy status, the European Union-China relationship has problem after 2005, especially in 2008 when China postponed the 11<sup>th</sup> European Union-China Summit during the French presidency. The global financial crisis had also a negative impact on China's perception of European Union as a global player.

How to look at the European Union as an international political and security actor from a personal Chinese perspective?

## **1. The European Union is a global economic power with certain limitations**

The European Union is the biggest economy in the world in terms of total GDP and trade. And the Euro is the second most important currency. But for many Chinese the European Union is mainly a global trade power instead of an economic power because the European Union is a single market without a single economic or even monetary policy. The global financial crisis shows clearly the weakness of the European Union as a global economic power. There is no real European Union role in G-7, G-8, G-20, and International Monetary Fund (IMF).

## **2. The European Union is an international political actor from the non-traditional perspectives**

When we talk about the traditional political actor in world politics, we are thinking of the nation-state. The world is still a Westphalia system with the nation-state playing a dominant role. The European Union as a supranational plus inter-governmental institution plays more important role than any other non-state actors.

Many people talk about the European Union as a soft power or a normative power or a linkage power. But many Chinese prefer to consider the European Union as a social power.

A social power means that the European Union provides different kind of models for international politics, as well as political and social development for others.

For example:

### ***(1) The European integration model***

The European integration is the most successful one in the world. It provides not only economic prosperity and security in Europe, but also a good model for regional integration. Most of the regions in the world would like to learn from the European integration experiences. Most importantly, the European integration provides a new



model of international relations which should go beyond the Westphalia system in the future.

**(2) *The neighbourhood policy model***

In terms of the external relations the European Neighbourhood Policy is also very successful. The European Neighbourhood Policy can be summarised as a regional plus bilateral approach. It provides a good example for the emerging powers, such as China and India to deal with their neighbours. The China's neighbourhood policy is inspired by the lessons learned from Europe.

**(3) *The multilateralism model***

The European integration itself can be regarded as a multilateral process. And the European Union is also the most active advocator of multilateralism. It has a great influence on other countries in the world, especially China. China followed the unilateralism and bilateralism for many years before the 21<sup>st</sup> Century. In the past 10 years, multilateralism became more and more popular in China. The European Union made contribution to this tendency in China.

**(4) *The development assistance model***

The European Union is the number one provider of development assistance to the developing world. It has made a great contribution to the world development. It also set a good example for other developed countries. But one thing that some other countries may not like to follow, that is the conditionality of the development assistance. Anyway, it is a debatable issue.

**(5) *The social welfare models***

In the 1950s and 1960s, the Soviet or Chinese socialist model were quite attractive for the developing countries. After the end of the Cold War, due to the collapse of the Soviet Bloc and the reform of China, the European social state-Capitalism is more attractive for the developing world, especially the transition countries like China. China would like very much to learn from the European models of social capitalism, democratic socialism, welfare state, and so on.

We can see that all these models are relevant to China's external relations and social and political development. That is one of the most important reasons why the European Studies in China have developed so fast in the last 10-15 years. We are learning from Europe and the European Union.

It seems to me that the European Union as a social power is more important than the European Union as a soft or civilian power. In Chinese understanding, soft power and civilian power are all related to weak power.

### **3. The European Union is a security actor in Europe but not international**

In terms of security actor, the European Union is a security actor in Europe. It is the European integration and enlargement that makes Europe the most secure region in the world. But talking about the European Union as an international security actor, it is still troublesome.

Firstly, the European Union has the military capabilities to be the international security actor. In terms of military budget, the military personnel, and even the nuclear warheads, the European Union-27 as a whole has ranked top of the world, together with the United States, Russia and China. But the European Union has no capacity to be the international actor because you have no common security strategy beyond Europe.

Secondly, because of the first point, the European Union plays very little role in global and regional security outside Europe. The European Union can not play a more active role in the United Nations Security Council than France and United Kingdom. No one is sure about the real role of the European Union in Iran and North Korean nuclear issues. Africa used to be the backyard of Europe, but it seems that the European Union has no interests or capacity to play an important security role in the continent.

Thirdly, the European Union could play an important role in non-traditional security areas such as energy security, climate change. But the European Union has not played significant role yet.

All these related to one key point, i.e. lack of the coherent European Union policy.

Many people, including Chinese welcome the enforcement of Lisbon Treaty. We hope the Lisbon Treaty will open the windows of opportunity for the European Union to have a more coherent foreign policy. But even according to the Lisbon Treaty, there is foreign policy of the European Union and foreign policy of Member States. We hope Madam Ashton will work harder to bring these two together in the future.

**Dennis  
Kefalacos**

Editor of  
NewEurope



### **A POLITICAL UNION WITHOUT A...TREATY**

Towards the end of May 2010 the European Parliament held the Global Jean Monnet – ECSA World Conference with general theme, “The European Union after the Treaty of Lisbon”. On the second day of the conference the morning session was devoted to an issue under the title, “The European Union as an international political and security actor”.

On this occasion session editor was the new editor of New Europe, Dennis Kefalacos author of this article. A lot was said and analyzed about the new Lisbon Treaty and its weak base for a real show of European Union’s international, political and security presence. Let us see how it evolved.

The Session was opened by Ms Anne Deighton, Jean Monnet Chair, Professor of European International Politics and Fellow of Wolfson College at Oxford University, as Chairperson. Then Mr. Robert Cooper, European Union Commission for Foreign Affairs and Security Policy Director, spoke and his lead intervention was devoted mainly to the role of Europe after the end of the Cold War. He observed that up to that day Europe did not actually played any important role in international political affairs. Being a technocrat he praised what the Union did later on in some cases of success, as in Kosovo and the Operation Atlanta off the Somali coasts against the

pirates. He regretted however the impotency of the European Union to play a decisive role in the Bosnia War. In conclusion he said that the European Union's strong point is the way...it is.

Then it was the turn of a politician, Mr Jacek Saryusz-Wolski, Member of the European Parliament and former Chair of its Foreign Affairs Committee; former Minister for European Affairs of Poland; Chairman of the Board of the College of Europe in Natolin; former Jean Monnet Professor at the Collegium Civitas in Warsaw, who appeared a bit skeptical - not sceptic - about the division that the Lisbon Treaty introduces, in the institutional representation of the European Union (three presidents, high representative). Later on however he concluded that history will praise the role of the European Union as a whole.

Then it was the turn of professor Finn Laursen, Jean Monnet Chair, Canada Research Chair in European Union Studies and Director of the European Union Centre of Excellence at Dalhousie University, who "cut" vertically into the changes brought about by the Lisbon Treaty with surgical accuracy. He concluded, that the new institutions which have been created by the Treaty, really matter.

The second speaker in the academic part of the session, was Mr. Xining Song, Jean Monnet Chair at Renmin University in Beijing, P.R. China; Senior Research Fellow at the Comparative Regional Integration Studies Programme of the United Nations University in Bruges, who briefly described that the European Union is neither a political nor an economic single power and alleged that the European Union comes on its own only when it is about...trade. Not even in wider economic matters. This is why he concluded that China discusses politics and economics only with the United States. No surprise to hear something like this from a loyal Chinese economist, who thinks that his country's "grandeur" will be served best, just by avoiding to negotiate with anybody else but the only super power left in the world. What would he say now that Foreign Secretary Hilary Clinton, during the last meeting of The Association of Southeast Asian Nations (ASEAN) told the Chinese that the United States will be the "umpire", deciding on the differences between the nations in and around the Sea of China?

The session editor at the end of the session briefly presented the above summary but he observed that no one in the panel had raised the issue of the world wide repercussions of the European Union's role, in relation to the financial developments in the crucial months of April and May 2010 to arrest the devastating effects of the credit meltdown. He said that Eurozone by intervening in the crisis as an independent entity, instantly became a major political power and a cohesive one. This happened when its members put on the table 1 trillion euro mechanism in order to save fellow members in need, amidst the then ranging uncertainties. This author also observed that this kind of money is not of the "trade" or "economic" kind. It is simply political money. In connection with this, he explained that all members of the Eurozone will also be obliged in the future to submit their draft state budgets to the European Commission. Only after the budget is cleared by Brussels, will it be eligible to be discussed and approved by national Parliaments. Undoubtedly this new procedure creates completely new political scenery in Europe that only blind political analysts cannot see.

And all this happened in the brief period of some weeks, towards the end of April and the beginning of May 2010. Decisions taken then by the European leaders actually led the whole affair ways outside any institutions the Lisbon Treaty provides for. What the European Union heads created then and we have now in our hands, is a deeply political unification of the Eurozone. "The next few years will surely surprise us in many respects because the European Union is just about to create a brand new deeply political internal environment with major international "repercussions", concluded the session editor.

#### The background

Let us analyze however the wider conjuncture in the spring of 2010. By early April, only a few months after the European Union managed to set off its new Lisbon Treaty, it found out to its dismay that it could not offer a solution to the new indebtedness problem in some Eurozone member states, starting from Greece. The reason for this was that the new Lisbon Treaty do not provide for something like a base for sharing financial responsibilities between member states, as the never ratified Constitutional Treaty did, but it was rejected by the French and Dutch voters in referendums. In order to overcome this problem the European Union discovered

that the Lisbon Treaty had a implicit provision foreseeing help to member states in cases of natura or man-made disasters. This vague reference however could not create a solid ground for substantial economic help reaching one trillion euro. Everybody knows that when it comes to trillions everything is political.

Financial markets though could not wait for the European Union to find legal solutions to the issue of how one member of the European Union could help the other, in order to avoid altogether a highly contagious illness called, credit default. The continuation of this story is known by now to anybody. The one trillion financial help mechanism of the European Union put a stop to the assaults against the weak parts of the Eurozone chain.

Unfortunately the entire world is still trying to recover from the credit melt down, firstly detected in the American real estate market. The Wall Street investment banks continued to invest there and sold to the entire world financial products based on toxic real estate United States values. Naturalny, in the end everything collapsed and the thirty trillions dollars invested in this market turned to be for quite some time just numbers in some computer systems. The United States, Britain and some European countries have spent anything between 10 and 13 trillions of dollars in order to save the western financial system. In doing this all the major Western governments went deeply into debt.

Towards the same end to save the system, central banks lent freely to practically bankrupt banking systems on both sides of the Atlantic Ocean, at almost zero interest. And all this to the benefit of those who had initially created the problem, the investment banks. The public opinion and the working classes however got furious about this and punished the American President Barack Obama, the British Labor Party and the German Chancellor Angela Merkel in every election that took place during the past months. Politically, there is no government in the west to feel secure. In realisty, it is questionable if the western political and financial systems will be able to cope, if last springs' rallies of protesters in Athens are imitated in other European and American cities this autumn. The game may become at any moment very dangerous for everybody. The severity of the situation was manifested when in relation to the credit crisis in the south of Eurozone last spring, the American

President did not hesitate to directly intervene and ask blatantly the German Chancellor Angela Merkel not to wait another minute and put the money on the table. The French President Nicola Sarkozy did not need any “push” to this direction, because he was already pressing Merkel for such a thing in the first place. The money to save the Eurozone was one trillion euro and markets celebrated the relevant announcement on Monday the 10<sup>th</sup> of May. Unfortunately they lost faith hence. At this point it must be reminded that this trillion euro will be used to help any Eurozone country facing insurmountable state indebtedness problems. The application and in many ways the experiment started with Greece. But zeroing deficits is not at all an easy task.

This last country in order not to collapse politically and socially is continuing to create state budget deficits, as does France, Britain and even Germany. And they are covered in this by market and central bank finance. In any case the European Union tries to convince the world that Eurozone state budgets will soon be sound and the Union will see to that. This means that state budgets will be approved first by the European Union Commission and then be introduced to national parliaments. There is nothing more explicit than this, to signal an actual political...union where the economy counts a development nobody wanted to hear of two years ago.



## VI.Closing Session-Conclusions

Jan Truszczyński  
Luís Miguel Poiares Maduro  
Guido de Marco  
Androulla Vassiliou  
Helena Tendra-Wlaszczuk

## Jan Trzuszczński

Director General for  
Education and Culture of  
the European Commission



Excellencies,  
Ladies and gentlemen,

Welcome to the Closing Session of the 2010 Global Jean Monnet Conference. I can assure you that I will be brief – I realise that we are all somewhat exhausted after such intense two days and, most importantly, we have three particularly distinguished speakers on our panel.

The topic of this Conference – “The European Union after the Treaty of Lisbon” – was a logical follow-up to the previous Jean Monnet Seminars and Thematic Reflection Groups on the theme of the European Union's constitutional future. And in the good tradition of Jean Monnet Conferences, your discussions have clearly identified our achievements, but also the challenges ahead of us. And you have also underlined the complexity of the matters before us.

To me, it did not come as a surprise to read that the Report by the Group on the Future of the European Union 2030 presided by Felipe Gonzalez explicitly thanked the Jean Monnet Network for its input. And let me mention in this context that the 17 Jean Monnet contributions to the Gonzalez Group are available for consultation on the website of Directorate General Education and Culture.

There can be no doubt about it: the academic community has a crucial role to play in helping us move the European integration process forward. The discussions of the past two days have underlined the benefits of intellectual exchange between academics and policy-makers in a global and multilingual spirit of dialogue and mutual respect. Our Conference did not only benefit from the input by speakers and participants from around the world, it also highlighted the enriching practice of multilingualism. And it is certainly appropriate to thank our skilful interpreters for their work in these past days.

Ladies and gentlemen,

This Conference has shown that you are continuing to play your constructive role both by raising the levels of knowledge and awareness about European integration in your daily teaching activities and by offering helpful paths for the European construction's future development.

As such, you are providing a clear demonstration of the great value of the Jean Monnet Programme in its various parts. I am thinking not only of the Jean Monnet Modules, Chairs and Centres of Excellence, but also of the work of our esteemed institutions such as the College of Europe and the European University Institute that are now also rightly integrated in the Jean Monnet Programme. As the new Director General for Education and Culture, I am proud to count this prestigious Programme among my files.

Ladies and gentlemen,

Before Mrs Vassiliou will close the meeting, we have the privilege to listen to two eminent speakers. The first speaker is Professor Luís Miguel Poiares Maduro. He is a distinguished lawyer and former Advocate General at the European Court of Justice. Professor Maduro now holds a Joint Chair at the Robert Schuman Centre and the Department of Law of the European University Institute where he also directs the Global Governance Programme.

The second speaker, Professor Guido de Marco is the former President, Deputy Prime Minister and Minister of Foreign Affairs of the Republic of Malta. As a renowned statesman and diplomat, he also served as President of the United Nations General Assembly. Currently, Professor de Marco holds a Jean Monnet Chair at the University of Malta.

May I now ask Commissioner Vassiliou to give the closing speech of the Conference.

Ladies and gentlemen,

Before closing the Conference, I would like to ask Ms Nathalie Nicaud to once again demonstrate her outstanding talent and bring this Conference to a musical ending.

**Luis Miguel  
Poiares Maduro**

Professor of European Law at the European University Institute; Co-Director of the Academy of International Trade Law; former Advocate General at the European Court of Justice



**PASSION AND REASON IN EUROPEAN INTEGRATION<sup>100</sup>**

Let me start by explaining the, perhaps mysterious, title of this lecture. The title is derived from a metaphor, inspired by Dante's Divine Comedy, that I use to explain what makes a successful democracy. At the start of the Divine Comedy Dante presents himself at an existential moment of his life, much as the European Union is itself today. He is then guided through the different levels of hell and purgatory until the doors of paradise by Virgil (the roman poet, representative of reason). But we are told that Virgil, being only endowed with reason, cannot enter paradise. So, who welcomes Dante into paradise? Beatrice, the love of his life, who died in her youth. In this metaphor, Dante offers us a lesson about life but we can also use it for democracies: all successful democracies need the right mix of passion and reason.

By passion, in the context of a democratic political community, I understand the individual preferences that feed the political space supportive of democracy. By

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<sup>100</sup> This is an edited transcript of a larger version of the lecture delivered at the GLOBAL JEAN MONNET / ECSA-WORLD CONFERENCE 2010 "The European Union after the Treaty of Lisbon", Brussels, 25-26 May 2010. This lecture was initially delivered as a *Forum Constitutionis Europae* Lecture at Humboldt University on 10 February of 2010. Previous versions were presented at several other institutions. The author is grateful for all comments received.

reason I refer to the rules and processes which govern, define and constrain the democratic process, so that its decisions take into account all costs and benefits.

I cannot get into the details of this relationship between passion and reason in democratic constitutionalism in general. For the purposes of this lecture I will limit myself to state that one of my assumptions is that one of the main functions of constitutionalism is that of installing reason into a democracy. I will briefly highlight some examples of how it works.

I conceive constitutionalism as an instrument of rationalization of democracy. In my view, it shapes democratic reason in at least three ways. Firstly, constitutionalism defines the scope of democratic participation and, in reality, one of its original purposes was that of broadening inclusion in democracy. Constitutionalism determines whose (and what) costs and benefits should be taken into account in democratic decisions. In other words, constitutionalism determines who must have a voice and his or her interests taken into account in democratic deliberation. It defines the jurisdiction for measuring democracy. Secondly, constitutionalism requires democracy to balance the scope of participation with the intensity of impacts of democratic decisions. Democracy is not simply about counting heads. It is also necessary to take into account the differentiated impact that different decisions may have on different people. Constitutionalism requires balancing the scope of participation (the degree of inclusion) in democratic decisions with the intensity of participation and the differentiated costs and benefits imposed by different decisions on different groups and people. Thirdly, constitutionalism is also an instrument of rationalization of democracy and it helps to create the conditions for a free, informed and intersubjective democratic discourse.

As stated before, this is not, however, a lecture about the general relationship between democracy and constitutionalism. My purpose today is to highlight how the project of European integration is, to a large extent, a project of further rationalization of national democracies and both the benefits and risks that entails.

European integration was shaped by the Second World War and the conscience, brought by the later, of the risks involved in excessive national political passions.

Gradually, a project of interdependence would also become an instrument of mutual inclusion. In relation to this, a new form of discipline emerged on the politics of the states. This concern, with the rationalization of national politics, is part of the genetic code of European integration and has been embodied in the systemic identity of the European Union and its legal order. European Union law is an instrument of further constitutionalization of national democracies and changes their rationality. It is shaping national democratic reason.

Let me identify three ways in which European Union law exercises this function of rationalizing national democracies and, in doing so, can be seen as improving national democracies.

First, European Union law redefines the scope of participation in national democracies so as to correct outbound democratic externalities. Let me explain what I mean by this concept. National democracies often – and increasingly so, I would argue – take decisions that impact on interests outside their borders. There is, in these cases, an asymmetry between the scope of participation in certain national democratic decisions and the communities of those that are affected by those national democratic decisions. The European Union can be understood as creating a political link between the different national political communities whereby they mutually bound themselves to open their democracies to the affected interests of each other citizens. In other words, European constitutionalism promotes the inclusion in national democratic decisions of the interests of all European citizens. In so doing, it helps correcting outbound democratic externalities.

In other words, European Union law forces national political processes to internalize, in their decision-making, affected out of state interests. This requires more than equal treatment under the national law. It requires equal consideration of those interests by national political processes. There are many examples. I will limit myself to give you one of the most traditional of all: the case law of European Court of Justice on the free movement of goods regarding national product requirements. Rules such as the German beer purity law or the Italian vinegar or pasta requirements reflected national traditions on the production and consumption of those goods. In all these cases the Court of Justice rejected that such national

traditions could justify restricting the sale of goods from other Member States produced according to different standards. Member states can no longer regulate by simply looking at their domestic traditions of production and consumption. They must take into account different traditions and forms of production because their national regulations are now impacting on a broader European market and affecting a larger scope of interests that European Union law deems worthy of representation.

In the previous example what European Union law does is expands the scope of the interests to be taken into account in national democracy. But European Union law also redefines the scope of national democracy in a rather different way: by extending its reach and authority. In the first case, European Union law expands the scope of representation in national democracy. In the second case, it expands the scope of the application of national democracies. It does so to correct inbound democratic externalities. The other side of the growing democratic asymmetry that I mentioned before: in this case, national democracies see their policy choices being put into question by transnational processes that they cannot control.

The most obvious examples are those where European Union law helps correcting collective action problems or cross-border externalities between the Member States, such as those increasingly involved in tackling many of the most pressing environmental, immigration, financial, fiscal and criminal problems. But it is broader than this. It also regards the emergent transnational forms of power that evade the control of national democracies but impact on their policy choices. In several instances, European Union law can be seen as reinstating the authority of national democracies over those transnational forms of power. Consider, for example, the role played by financial agencies rating national debts or the market power of big multinational companies and the extent to which, in some instances, States may depend more on them than they do depend on some States. But the example I want to give is, again taken from a classic area of European Union law, and linked to one of the most popular of human activities: football... It involves what may well be the most popularly known case ever to be litigated before the European Court of Justice – the Bosman case. As you may remember, this was a case where the European Court of Justice stated, among other things, that the imposition of transfer fees in the case of football players that had ended their contract with another football team



amounted to a violation of the free movement of workers. Those rules were the rules of national football associations that implemented the rules of the Union of European Football Associations (UEFA) and the International Federation of Association Football (FIFA). What is interesting to note is that many lawyers, in different Member States, had argued that such rules were incompatible with their domestic rules on the right to work and the freedom of contract. Yet all challenges under national law were destined to fail. UEFA and FIFA consistently refuse to be submitted to any state jurisdiction arguing that the autonomy of their sports legal regime excludes their rules from control under state laws. Moreover, whenever confronted with such possibility by a state legal order, they often threaten that state with the exclusion from international competitions. This explains why national challenges to the Union of European Football Associations and the International Federation of Association Football's rules are rarely, if ever, successful: no legislator or judge wants to be responsible for the exclusion of his or her country and clubs from international competitions.... In the Bosman case, even if UEFA and FIFA tried to claim before the European Court of Justice that this issue was outside the jurisdiction of the court, not only did they accept that jurisdiction but complied with the outcome. The reason is simple: UEFA and FIFA could not threaten the European Union with exclusion of all its States and clubs from international competitions... How would European competitions or even the world cup look like without Germany, England, France, Italy, Spain, Portugal, the Netherlands and so on. The balance of power between the transnational associations of football and public authority shifted once the issue was moved to the European Union from the national level. In this instance, such move reinstated the sovereignty of the States (albeit collectively), instead of eroding it. European Union law allows the values of our national legal orders to be reinstated into transnational processes of power. It re-empowers national democracies and therefore corrects what I defined as inbounded

In the previous two examples European Union law reshapes national democratic reason by correcting two different types of democratic asymmetries. In the first, national democracy is the creator of democratic externalities. In the second, it is the victim of such democratic externalities. There is a third dimension of European Union law's role in shaping national democratic reason. European Union law also operates,

in many instances, as an instrument of self-discipline that states can be said to have imposed upon them. In this case, European Union law improves national democracies even from a purely domestic perspective. Since national constitutions are not always fully successful in their project of rationalization of national democracy, external rules and processes may be necessary as an additional layer of constitutionalisation for the internal benefit of national democratic processes. In the same way that we often need external commitments in order to effectively pursue our own preferences (such as enrolling in gym classes in order to guarantee that we actually go to the gym...) so do the States. European Union law helps correcting democratic malfunctions that cannot be corrected with purely domestic instruments.

A first example, regards instances of capture of national political processes by concentrated interests. There is a well known area of European Union law that can be seen as challenging and controlling risks of capture of the political process by concentrated interests. I am thinking of the state aids regime. As it is well known, the Treaty prohibits state aids, subject to several possible exceptions to be assessed and authorized by the Commission. Such prohibition is often justified by the aim of preventing distortions of competition in the internal market between undertakings established in different Member States. But, in reality, the prohibition of state aids does not prevent all such distortions of competition and arguably not even the most serious of such distortions. Sometimes, the prohibition of State aids can even operate so as to prevent a distortion of competition from being corrected. Consider the following example. State A imposes on all its companies a 20% tax, while state B imposes a 15% tax. This does not amount to a state aid, under European Union rules, since it is not a benefit granted to an undertaking or a particular economic sector but a general tax measure. However, if state A offers to give a tax rebate of 5% to a certain category of undertakings that constitutes a state aid. That is so even if, de facto, such tax rebate would actually serve to equalize the tax burdens of that group of undertakings of state A with those of state B. What explains this? The *prima facie* explanation is that the fact that states have different taxation rates cannot be considered a distortion of competition since it is a simple consequence of the different exercises by states of the tax powers retained by them. Different general taxation regimes between states affect competition but are not considered a distortion of competition (at least for the legal purposes of the state aids regime). But

the important question is why should we then consider that there is a distortion of competition when the exercise of a state's tax power takes the form of a selective tax measure that actually put its companies in equal conditions of competition with those of another State? Why can a State use its financial resources to support its companies through general measures but not through selective ones? Why can it give a competitive advantage to all its companies but not to only some of them? Why is selectivity a key element for determining the existence of a state aid? In other words, why should a State be able to provide lower taxes in general or use its money, in many different ways, to provide general competitive advantages to its companies (such as better infrastructures, a more qualified workforce etc.) but not be authorized to provide selective state aids? In fact, it is the idea that States can and do provide a variety of advantages to companies established in their territories that has led the United States' Supreme Court to traditionally authorize state aids under the so call market participant doctrine (which has recently, however, come under challenge). States interfere with market competition in a large variety of ways, many of which by using state resources. Why to prohibit some of them?

The reason, in my view, is to be found in the fact that selective measures correspond to instances where the political process is much more susceptible to capture by concentrated interests. When the benefit of the state intervention is highly concentrated on a company or group of companies and the costs are dispersed among the rest of the people, the later have little interest and knowledge of the measure and its costs while the former have a strong incentive to act so as to obtain the benefit. Instead, that is not the case with general taxation and other measures of a general type. In these instances, both the costs and benefits of the measures tend to be disseminated allowing a higher degree of trust in the political process capacity to balance all affected interests.

The control that European Union law imposes on state aids can, therefore, be seen as an instrument of external discipline self-imposed by the states to thwart instances of likely malfunction in their political processes that cannot be domestically prevented. European Union law on state aids is in fact aiding the states.

Another example of self-discipline, and one that has been the subject of increased attention in recent months, is linked to the constraints imposed by European Union law on national budget deficits and public debt. I am not going to discuss in here if the system currently enshrined in the Treaties and the stability and growth pact is effective and how it could be improved. My purpose is simply to highlight how budget deficits and high levels of public debt can correspond to instances of democratic malfunction in national political processes justifying the European Union's role. Instances where the pressing needs of today's electoral cycles may lead the political process to take short-term decisions without fully considering future consequences. Notably, the control exercised by European Union law on national public debt and budget deficits can be seen, among other things, as correcting a problem of intergenerational democracy. The freedom to do things that the current members of the political community acquire by incurring large budget deficits may limit the democratic freedom of deliberation for future generations. I say may, because, in effect, budget deficits may also bring benefits for future generations depending on how productively the money is used. The democratic problem remains however: one generation decides for another (particularly, because we cannot give for certain that the current members of a political community will decide basing on the interests of the future members of that political community instead of their own immediate needs). This can be presented as a democratic malfunction, a democratic externality in generational terms. Also, in this case, European Union law can be presented as an instrument of external constitutional control on national democratic processes.

European Union law exercises many other such forms of external constitutional discipline and reform over national democratic processes. It questions, for example, what we could refer to as national legislative path-dependences. It is not uncommon for national legislation to remain in place, even when the original reasons justifying its adoption no longer apply, because it has created a community of vested interests and a set of social practices resistant to change. When European Union law, either by virtue of legal challenges to those rules or by virtue of a shift in the level of decision-making, requires a renewed justification for those policies it often reawakes national democratic deliberation on those issues. It requires national political processes to rationalize again those policies and, in so doing, it frequently makes clear that they are, in fact, no longer worthy of support. It even happened for certain

national policies to have been challenged under European Union law and upheld by the Court but still lead to policy changes. The simple fact that they were challenged and promoted the debate at national level led to a renewed democratic deliberation.

To conclude from all said so far: European Union law reinforces, but also reshapes, national democratic reason. Having, however, presented a rather positive perspective of the role of European Union law and European integration on democracy, you might wonder what explains the traditional claims of democratic deficit and the crisis of European constitutionalism that many see reflected in the failure of the Constitutional Treaty. To a certain extent, European constitutionalism has become a victim of its own success. The extent to which this project of reason has granted political and legal authority in the European Union is such that it has increasingly limited the space for politics at national level without offering an appropriate alternative at European level. It is increasingly perceived, no longer as a form of constitutional discipline or reason on the politics of national passions but as a form of politics without passion. Or, in the view of others, it is the instrument of a particular passion; a structurally ideologically biased project.

I want to be clear. The problem is politics and not what is more often discussed under the label of the traditional democratic deficit. Both the classical account of the European Union democratic deficit, which has focused, for example, on the lower role of the European Parliament and the non-sufficiently majoritarian character of the European Union, and the usual democratic defense of the European Union, which has focused on the many democratic inputs from which the European Union benefits (from national governments, and their supervision by national parliaments, to the European Parliament; from increased majoritarian decision-making to the technical quality of the deliberative process or output legitimacy) miss the point. The problem is not so much the institutional mechanisms for democratic input coming from the State and European Union levels. The problem resides in the way in which the European Union affects the political space without having yet managed to reconfigure that political space either at the national or the European level. There is an asymmetry between the political impact of the Union and the nature of its politics.

This tension, which is often expressed as a tension with national democracy, has increased with enlargement in two rather different ways. First, new Member States tend to be among those who are more resistant to European Union intrusion. This is perhaps a natural consequence of being recent democracies, perceiving the Union has restricting their newly conquered space for self-governance and democratic deliberation. At the same time, for older Member States, the enlargement has changed the balance of power in the internal market regime of competition among legal orders. It has led to increased claims of challenges to their social and economic models. This explains why the democratic deficit rhetoric, which existed for several years but was to a large extent restricted to an elite, has finally spilled over to the public opinion and is expressed in clearer opposition to some European Union policies. It has conquered the public opinion because it is capable of being presented to this public opinion in terms of possible policy outcomes with which they disagree or that they fear.

Perhaps there are these different fears that, more than anything else, explain the failed ratifications of the Constitutional Treaty. It is difficult, if not impossible, to identify exactly what led to the failure of the Constitutional Treaty. Was it a challenge to the idea of a formal constitution? To the content of that specific constitutional treaty? Or was it a challenge to the constitutional developments already undertaken by the Union? Likely, it was the consequence of a coincidence of opposing wills. But if many possible variables explain the current constitutional crisis the consequences of enlargement appear clear in this context. Enlargement interacts with this constitutional crisis by creating a paradox. Enlargement increases the polity asymmetry of the Union because it increases its economic, social and political diversity. This reduces the empirical conditions supporting the process of integration (notably in terms of cohesion and mutual-trust). But, at the same time, enlargement requires enhanced integration so that the Union can continue to be effective in a context of an expanded number of Member States. This feeds some of the constitutional challenges faced by the Union but also presents an opportunity to redefine the European project so as to meet those challenges. I will highlight four of those challenges.

The first challenge arises from the increased tension between, on the one side, the policy impact of the European Union and the expectations that it creates in its citizens and, on the other side, its existing policies and politics. There are two ways in which this manifests itself. The first one is that citizens have expectations with regard to the Union that the Union cannot, in light of its current competences and means of action, fulfill. If one looks at the Eurobarometer surveys we discover, perhaps surprisingly perhaps not, that among the preferential goals and policies indicated by citizens as those from which they expect more from the Union are matters such as economic growth, social solidarity, promotion of peace and democracy in the world and fighting crime and unemployment. All areas in which the European Union either has no competences or only limited instruments to intervene. It is this disparity between what the Union can do and what citizens expect that leads them to develop an almost schizophrenic perspective of the European Union that always reminds me of an anecdote told at the end of Woody Allen's movie Annie Hall. There is this couple that goes out for dinner in New York and spends the entire meal complaining of how bad the food is. "It is terrible, the worst food we ever had." "Yes, it is uneatable but, more importantly, the portions are so small..." When I hear some people talking about the European Union I'm often reminded of this anecdote.

The second way in which we can see this tension between the existing policies and politics of the European Union and its policy impact and the expectations that it generates has to do with the fact that the European Union is perceived by citizens as shaping the economic and social model of Europe without the corresponding policy instruments or political debate. This is a consequence, for example, of the well known gap between negative integration (economic integration through national markets deregulation: elimination of national measures restrictive of free movement) and positive integration (economic integration through Community wide re-regulation: adoption of harmonized legislative measures by the European Union political process). The limits imposed by European integration on the pursuit of traditional functions of governance at the national level are not compensated by the potential for European Union intervention to perform those functions. The Union does not yet have the capacity to perform those functions of governance but neither does it have the political discourse that could support the emergence of those functions. The consequence is that the process of European integration is seen not

simply as challenging the capacity of States to perform those functions of governance but, more broadly, challenging those functions of governance themselves. For some, the process of European integration challenges the conception of the welfare state that has been at the core of our national political communities. Others, notably Jurgen Habermas, perceive that challenge as resulting from broader global processes and, instead, conceive the European Union as an opportunity to respond to that challenge and protect the values of the welfare state required for the subsistence of political communities and civic solidarity. In this case what would be required is a promotion of a political discourse at the European Union on those issues and, furthermore, a broader discussion on the nature of the European Union social contract, clarifying the forms of civic solidarity on which the European polity ought to be based.

In order for the European Union to answer this first challenge, it needs to redefine its policies and upgrade its politics. I have been arguing for some time now, that this, less than institutional reform per se, should be the priority in the Union constitutional debates.

The second challenge comes from the increased majoritarian character of the European Union, both with regard to the expansion of majority voting and with regard to the expansion of proportional representation to the population. Using Hirschman categories of exit and voice, Joseph Weiler has famously described how States accepted the supremacy involved in the supranational character of European Union law in exchange for a high degree of relative power in the decision making process. It was a system of allegiance based on voice. The increased majoritarian character of the Union decreases the relative voice of States (or, at least, some States). As Hirschman had noticed, albeit in a different context, when exit is no longer possible and voice is low what assures allegiance to a particular system is loyalty. This is the case with traditional national political communities where citizens feel bound even by decisions of the majority with which they don't agree. One of the first priorities of the current constitutional reform should therefore be that of establishing the conditions for political loyalty of the all European citizens towards the majoritarian decisions of the Union. This requires, first of all, a majoritarian system that is, at the same time, capable of guaranteeing the protection of minorities and, above all, the prevention of



permanent and insulated minorities (*net losers*). This requires mobility between the majority and minorities (that those one day in the minority may be part of the majority in the other) and a deliberative system that tends to disseminate voting power and prevent the aggregation of individuals in rigid majorities or the creation of pivotal players. This limits, at the same time, zero-sum decisions (since those which compose a majority know that they can, in the next deliberation, be part of the minority and have, therefore, an incentive to internalize some of the interests of the losing minority).

Furthermore, political loyalty also requires instruments of civic solidarity, to be promoted by some forms of redistribution and clearer criteria of distributive justice (to be conceived on the basis of European citizenship more than along national lines). This must be linked, in turn, to a reform of the Union's own resources so as to link those resources to the wealth, generated by the Union and no longer to State transfers to the Union. Again, I have been arguing for a long time that, more than institutional reform, this may be the most important discussion the Union needs to have. It does not necessarily need to be linked to a larger budget but to a different way of funding it and making use of it. Therein, more than in the institutional reforms undertaken in the Constitutional and Lisbon Treaties, it resides the real opportunity to improve the role and legitimacy of the Union in its relationship with its citizens.

The third challenge has to do with what I call the tension between normative constitutionalism and political intergovernmentalism in the European Union. Law in the European Union is constitutional. It is now commonly accepted that the European Union has as its foundation a constitutional system of law. It is ruled by constitutional rules and principles. But politics remains intergovernmental. Policy decisions continue to be, in spite of the enhanced role of the European Parliament, a product of intergovernmental bargaining. More importantly, they continue to be often framed in intergovernmental terms. National governments aggregate the preferences of their citizens and European Union policies strike a balance between those aggregated preferences. But European Union rules are then applied as such to European Union citizens. This is in tension with many aspects of constitutionalism. First of all, it interferes with the mechanisms for political accountability of both national governments and the European Union. National governments sometimes

simply transfer unpopular decisions from the national to the European level as a way of transferring the political costs for those decisions.

More importantly, it raises deep questions as to the extent of constitutionalism in the European Union. When States negotiate national quotas for certain products, often trading the interests of some of their producers for the interests of others (as in any international negotiation), can the producers from a particular state claim that they are being discriminated against because they are less well treated than those in another Member State? We have several other examples of this tension outside national quotas regimes too. Think of the famous litigation by German importers on the banana Common Agricultural Policy's regime or a case, where I was Advocate General, involving subsidies for sugar production based on a notion of deficit production areas that had been negotiated in such a way as to, de facto, exclude Italian producers without a reasonable justification. In all these cases, European Union institutions have claimed the necessity to concede a broad margin of appreciation to the European Union legislator precisely because of the nature of its process of deliberation that often, as common in intergovernmental negotiations, involves trade-offs between States. In reality, we are asked to derogate from the true standards of constitutionalism in order to respect the intergovernmental nature of European Union decision-making. Whether or not cases such as those I mention involve discrimination is a question that requires a broader answer on the character of European constitutionalism. The extent, for example, one ought to defer to a unanimous decision of the Member States in the Council balancing the different national interests but challenged by a particular individual depends on whether we conceive the legitimacy of the deliberative process in that case as ultimately intergovernmental (in which case it is for each State to balance the interests of all its nationals and a unanimous decision has a particularly legitimating force) or constitutional (in which case the direct political link between the Union and its citizens takes precedence over that of the State and what counts is how the decision impacts on European citizens independently of the agreement of their respective States even if the measure appropriately balances all national interests).

The adoption of constitutionalism as the form of power for the European Union would entail a clear preference for constitutionalism as the appropriate hermeneutic

framework for addressing the legal and political conflicts of the Union. But this would require a profound change of the character of its policies. They might still be the product of intergovernmental decision-making but they would need to be framed in truly genuine general and abstract terms, taking the European citizen as their point of reference. They should not balance between national interests but between European citizens' interests.

The fourth and concluding challenge that I want to address is that of the borders of the European Union. Enlargement is the best example of the philosophy of inclusion that defines, to a great extent, the process of European integration. But the paradox is that over-inclusion may also become a threat to the process of integration.

St. Tomas of Aquinas once said that if all are my friends then no one is my friend. Having friends entails differentiating. A successful political community is also found on preferring our own. It requires, on one hand, the internal identity that is linked to an epistemic community among the citizens. A political space, an Agora. But it also requires the external identity: a certain degree of closure so as to guarantee the stability and differentiation of that epistemic community. Let me make something clear however. I do not think that differentiation and closure should be a function of either cultural or religious borders. But I do think that the Union needs to define what is the degree of closure necessary for the success of its project (or projects) of integration. It needs to determine the empirical bases necessary to support its different economic and political ambitions. This does not imply a preference for or against current candidates to accession. On the contrary, it requires that whatever choices need to be made, they must depart from such an analysis on the institutional and policy changes necessary to cope with the accession or the different possible levels of integration.

The current challenges faced by the Union put it, as Dante, in an existential crisis. It has to either readjust its policies or the expectations it creates. It must depart by redefining its policies and politics so guarantee the conditions for proper political accountability at national and European level and create the conditions for substantive communication with its citizens. Such policies and politics must also be

capable of promoting an epistemic community among European citizens. Only this will feed some passion into the reason of European integration.

## **Guido de Marco**

Jean Monnet Chair at the University of Malta; former President and former Minister of Foreign Affairs of Malta



## **EUROPE AFTER LISBON**

It is a pleasure for me to address the Conference for Jean Monnet Chair holders to discuss Europe after Lisbon.

It is a pleasure for me to be flanked by Commissioner Vassiliou, whom I met years ago as First Lady of Cyprus when her husband, George Vassiliou, was the President of that country.

One can predictably say that for the next decade the European Union shall be run in terms of the Lisbon Treaty. Unless something extraordinary happens during the coming ten years, the structure of the Union will be that as perceived in the Lisbon Treaty.

It will certainly be a Union of sovereign States, who are prepared to pool their sovereignty in important factors of their relationship. In particular, the sovereign States have agreed to work within a single market, a single currency, as applicable to all those European Union States that have accepted or are bound to accept, the

euro as their single currency and agreed to have a common foreign and security policy, in particular, insofar as relations with other countries are concerned.

This distinction has to be drawn between the Union which has a single market, a single currency, but a common, as against a single foreign and security policy, which, as a result of this commonality of foreign and security policy, tries to act together following the spirit of common understanding to render the Union the possibility of acting together insofar as defense, security and foreign affairs are concerned. It is perhaps in this context that foreign and security matters reflect the sovereignty of the nations within a context of a commonality of purpose.

The European Union, has, within the Charter of Fundamental Rights, enacted provisions which manifest that the Union is the trustee of fundamental human rights for Europe and beyond.

This is set out in the preamble which states, *“The peoples of Europe in creating an even closer Union among them, are resolved to share a peaceful future based on common values conscious of its spiritual and moral heritage. The Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It bases the individual at the heart of its activities by establishing the citizenship of the Union, by creating an area of freedom, security and justice”.*

As can be seen from this important declaration, which reminds one of the values which chartered the course of Europe after two World Wars and determined that these values are held in trust by the European Union as fundamental for its philosophical thinking and the common bond between the countries of the Union.

The notion of trust is at the basis of the countries forming part of the Union. Moreover, the principles underlining the human values determine the country's belief in those fundamentals which are shared by the people concerned and give to the Union the recognition of the rights, freedom and principles, as set out in the Lisbon Treaty. It is opportune to mention that these fundamentals start with human dignity and it is with pride that in the Lisbon Treaty, we reassert what was stated before in

the political declaration made at the Summit of Nice on the 8<sup>th</sup> December 2000, namely that human dignity is inviolable. It must be respected and protected.

The chapter on human dignity reasserts the right to life and that no-one shall be condemned to the death penalty or executed, as well as the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment and the prohibition of slavery and forced labour.

The European Union reasserts again the freedoms to which a person living in any State of the Union is entitled. As well, the right to be equal before the law and that solidarity entitles the protection, inter alia, of the rights of collective bargaining and action. It reasserts the right to fair and just working conditions, the right to family and professional life, the right to social security and social assistance, the right to health care and that the Union's policies shall ensure a high level of consumer protection.

The European Union as the trustee of human rights for the individual shall endorse such rights and ensure their protection throughout this space of freedom and social justice.

The Union having had the necessary approval by its members to the Lisbon Treaty must look ahead. It must look ahead with the awareness that the future of any nation cannot be built unless the rights of the individuals are preserved and protected.

The Union must be a force for peace and it can within the context of being a political power with a political message, ensure that the Union in its political presence throughout the world, consolidates its positive policies which create the right surroundings for peace and justice to prevail. It is in this context that the European Union looks at its neighbours in order to determine that a policy of peace prevails.

The European Union after Lisbon has to ensure its presence in the Mediterranean, being these countries that are in the immediate surroundings of its frontiers. In 1995, the European Union, together with its Mediterranean neighbours, established what was known as the Barcelona Conference. This evolved into the "Union pour le

Mediterranée', having as its particular value, that of having a linkage between Europe and the Mediterranean. The main purpose thereof is the factor of getting Europe and the Mediterranean closer together, politically, economically and socially.

We cannot and we will not accept policies, beliefs and strategies which render a hostile approach between the European Union and its Mediterranean neighbours. We do not believe in a clash of civilizations. Europe is the product of cultures and does not accept these conflicts.

When speaking of the Mediterranean, we necessarily have to face the problems of the Middle East, in particular the issues resulting from the Palestinian and Israeli conflict. We do believe that in order for this negative situation to be solved, the decisions taken by the United Nations have to be followed and maintained by both sides. Until and unless there is peace and understanding in the Middle East, there cannot be peace in the Mediterranean.

It is in this context as well that we believe in a two-State solution between Israel and Palestine. Europe cannot be passive in the Middle East problem but it has to, through its moderating effect, the diplomatic experience and historical presence in this region, assert its willingness to mediate between the parties and bring about that determination to ensure that peace becomes the legend of the region and the ideal of those who live in the region.

As far back as 1975, at the Helsinki Conference, Malta asserted the principle which then became known as the Mediterranean basket, that there can be no peace in Europe unless there is peace in the Mediterranean and that there can be no peace in the Mediterranean unless there is peace in Europe. This principle accepted during the times of the cold war, becomes even more relevant today, when the cold war has ended.

The Union cannot absent itself from the political and from the global economic crisis which is asserting itself both within and outside the European Union. The recent economic problems facing a member of the Union have been felt as problems affecting the single currency of the Union itself and the international economic crisis,



affecting international relations have proven to be issues affecting the world economic community. The present crisis of the Euro has created some prophets of doom. This was to be expected. But we have to have faith in the Euro. It is our currency. It is our people's currency. In time we have to have an economic policy for Europe. Nor can the Union accept children dying of hunger in the world; the scarcity of water and food, bringing about the death of so many and the loss of dignity for so many thousands.

We look at the Union with a sense of pride, at the fact that through Erasmus, so many of its young people from our Universities are getting to understand each other through their movements in other cities and other countries of Europe. We are building, slowly but surely, a new European generation, which is looking at Europe as at its own larger country. It is this European ideal which we have to mature.

We don't have to see the European ideal as something deprived of any idealistic content. We have to give to every citizen of Europe, that great sense of belongingness to Europe. Europe is not just a cupboard love affair.

Europe, a united Europe, is peace, is progress, is solidarity. Europe is our maison commune. When the Prime Minister, Dr. Giorgio Borg Olivier, saw Malta becoming a member of the Council of Europe, he said that this was for Malta, a return home. This is what we want to achieve and what we have to achieve, that belonging to this European Union is a return to our common home.

It is not just attending another European Conference. It is bringing, as we are doing here, our Universities together, our intellectuals together, our people together. Jean Monnet observed that perhaps it would have been better to base the new Europe on a community of cultures rather than on a community of coal and steel, thinking that through this community of cultures, it would have been easier to build up a European awareness, a commonality of thinking, a better understanding of the future.

It is in this context that we, holders of the Jean Monnet chair, believe in the future of Europe. It is this Europe that we want to transmit and translate to our students, to our nations.

It is this European ideal that we want to see that it becomes a part of our everyday life without being taken for granted.

It is this Europe that we want to transmit to future generations, "*Ut vivat, crescat et floreat*", that this Europe, lives, grows and flourishes. This is our objective.

## **Androulla Vassiliou**

Commissioner for Education,  
Culture, Multilingualism and  
Youth



### **CONCLUDING REMARKS**

Excellencies,  
Ladies and gentlemen,

From what I have witnessed here yesterday, and from what I have heard from my collaborators on the afternoon session, the 2010 edition of the Global Jean Monnet conference confirms the traditional openness, courage and brilliance of your debates.

It also confirms my delight to take responsibility of the Jean Monnet Programme at this moment in time.

Over the past decade, the Jean Monnet Action has been reinforced and successfully transformed into a programme. The Jean Monnet network has also expanded to include 62 countries on the five continents. In addition, while the 2010 selection is not entirely finalised yet, it is already clear that six new countries will be added to the network, bringing the total number to 68.

I have reviewed the Lifelong Learning application figures for this year. I was glad to see that the demand for Jean Monnet support continues to be high among universities. We've had 555 Jean Monnet applications, which represents a 10%

increase compared to 2009. Once again, the Jean Monnet Action proves to be a success story in our Lifelong Learning Programme.

But the success of our programme is not measured in quantitative terms alone. The independent experts who assess the applications stated that the quality of the Jean Monnet projects is simply “outstanding”.

We can only be pleased with such a healthy and dynamic picture. And this comes on top of the highly praised work of institutions such as the European University Institute and the College of Europe – which have found their place as part of the Jean Monnet Programme.

Of course, I am aware that we owe these results also to the constant support of the European Parliament. Members of Parliament know well the crucial role played by the Jean Monnet professors in Members States, the candidate countries, and the rest of the world.

I want to thank the Members of the European Parliament who have participated in our conference for their unfaltering support.

Ladies and gentlemen,

These are testing times for Europe. Today we are tackling financial, economic and social challenges of unprecedented proportions. But when this crisis is over, Europe will still have to find answers to the big questions of our time.

I am thinking of Europe’s competitiveness in the integrated global market, unacceptably high levels of unemployment, and ageing populations.

I am also thinking of Europe’s access to more secure and cleaner sources of energy and – linked to that – to climate change and the preservation of our natural environment.

Finally, I am thinking of the voices that have tried to shed doubts inside our European home. These negative and demagogic views are to be rejected, because you will agree with me that our testing times call for more solidarity and mutual responsibility inside the Union. These global challenges will have an impact on large numbers of people in Europe and around the world.

It is not difficult to predict that our children and grandchildren will have to cope with changes at an unprecedented pace.

I have no doubt that the Jean Monnet network will continue to make a significant contribution in our collective effort to tackle these challenges.

I am saying this because of your tried and trusted capacity to identify innovative paths of action and of explaining the benefits Europe to its citizens.

Because it is clear that the situation calls for new ideas to leverage the potential of 50 years of integration and its many achievements.

And it is also clear that the European Union that has emerged from the Treaty of Lisbon remains in great need of accurate explanation and of a frank debate open to all our fellow Europeans.

I am convinced that – if we are serious about these tasks – leaders, media, and associations need the input of the Jean Monnet network at local, national and international level.

Ladies and gentlemen,

Now I would like to say a few words on the crucial contribution of education and training to the new European economy. I will do so in light of the current economic and financial developments and of the Europe 2020 strategy.

I have read with great interest the conclusions of the Jean Monnet Conference that was held on this subject in Madrid last January. Let me quickly outline three elements that seem crucial to me in this regard.

The **first point** is the need for a combined approach that can find a way out of the current economic and financial crisis while it prepares our societies for the longterm challenges of the future, such as demographic or climate change.

I think we all agree that the exit from the crisis should be the point of entry into a sustainable, social market economy.

In the smarter and greener economy we need to prepare, prosperity will come from innovation and from a better use of our resources, and knowledge will be the essential input.

The Europe 2020 strategy confirms the centrality of knowledge and innovation for growth, employment, social inclusion and sustainable development.

I would like to stress that the overarching strategy of the European Union for the decade gives a much broader role and visibility to research, education, and training than has been the case in the past.

This is good news for scholars and educators like you; there is a strong sense in which your contribution will be crucial to the success of the strategy.

I want to encourage you to make an extra effort to go beyond the walls of your universities and reach out to people who do not normally attend their courses.

I would like to encourage you to build new bridges towards civil society actors such as business, labour unions, and NGOs. Out of this flows the **second point** that I want to underline: the need to unleash Europe's innovative and creative potential.

We need to rethink our education systems and multiply the links with the labour markets; we need to enhance mobility and boost our societies' most dynamic forces. At the Madrid Conference, you have underlined the vital role of universities and especially the importance of campuses of excellence.

I think that the Jean Monnet professors – working through the Jean Monnet Centres of Excellence and the worldwide links between them – could play a leading role in the future development of these campuses, which I see as firmly rooted in Europe and open to the world.

The **third and final point** I want to stress is about the financial resources that will be needed to achieve these goals. If we want to create new sources of growth, we need to invest in people and their skills; we need to devote sizeable resources to high-quality education and skills development.

I am aware of the difficult budget decisions Member States are debating due to the crisis, but I would like to send a simple message to the wider political arena.

I call on Europe's governments to resist the temptation of cutting public expenditure in education and training at this juncture.

Certainly, if we are to achieve the ambitious target set by President Barroso of giving all young Europeans the chance to spend a part of their educational pathway in other Member States by 2020, we must harness other sources of investment, alongside reinforced European Union budgets for its education and training programmes.

However, reducing investment in our systems of learning risks damaging Europe's long-term prospects and should be avoided. The current crisis is a powerful argument for more and more effective investment in education, training, youth and culture at all levels.

Ladies and gentlemen,

I would like to thank you all for your constructive engagement during these two days.

I look forward to meeting you again as we continue to follow the path towards a Europe of solidarity, peace and prosperity first traced by Jean Monnet.

Thank you.

**Helena Tendera-  
Wlasczuk**

Jean Monnet Chair and  
Coordinator of the Jean  
Monnet Centre of Excellence  
At Cracow University of  
Economics

## **Excused Absence**

### **IS THE EUROPEAN UNION WITH THE LISBON TREATY BETTER EQUIPPED TO FACE GLOBAL CHALLENGES? THE PROBLEM OF ENERGY**

#### **Introduction**

The main aims and objectives of the European Coal and Steel Community, were integration of the energy market, equal and free access to common energy resources and security of energy supply. The problem of energy supply and energy security became one of the most important global challenges. At the same time, the main goal of the European Energy Policy which is common policy in energy supply for sustainable development of the European Union has not been achieved. The aim of this paper is to examine the energy security of the European Union at present, to focus on main trends in energy consumption and demand until the year 2030 and to answer if the European Union after the Lisbon Treaty is equipped to create European Energy Community.

#### **History of the European Energy Policy**

The starting point for establishing the European Energy Policy came in 1986 when the Internal and the Energy Markets were created among the Member States. Since the moment of signature *the Single European Act* initiated the progressive working on integration in the area of energy. The main goals of building the coherent energy market were formulated in the working paper about internal energy market in 1988.



Year 1992 brought „*The General explaining memorandum*” which launched the liberalization of energy.

Later on the following documents were crucial for the further development of the Internal energy Market:

- In 1995 *The Green Paper – Towards a European strategy for the security of energy supply* with it's main goal: access to coherent European energy policy
- In 1995 *The White Paper - Energy for the future: renewable sources of energy* specified the reform of energy sector
- *Treaty of Amsterdam* which defined some necessary elements of the energy policy, such as the eliminating quantitative limitations, using the principle of freedom of economic activity and the free movement of services in reference to energy companies, ensuring the equal rights in the energy sector by the competition principle and the harmonizing the laws, which guarantees the free movement of services and goods
- The multidirectional working programme for the energy sector in 1998-2002
- *The Green Paper – A European Strategy for Sustainable, Competitive and Secure Energy*, (2006) which confirmed sustainability, security of supply and competitiveness as the three energy objectives of the European Union. In this document six specific priority areas were discussed:
  - Complete the internal electricity and gas markets,
  - Security of supply and solidarity among Member States,
  - Sustainable, efficient and diverse energy mix,
  - Tackling climate change,
  - A strategic energy technology plan,
  - A coherent external energy policy<sup>101</sup>.

It was broadly thought that the European Union should build up its profile in international energy negotiations, notably by developing an external energy policy with a common voice for the whole European Union. There were also calls to

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<sup>101</sup> COMMISSION STAFF WORKING DOCUMENT, *Summary report on the analysis of the debate on the green paper "A European Strategy for Sustainable, Competitive and Secure Energy"*, Brussels, 16.11.2006, SEC(2006) 1500.

incorporate energy policy objectives into all areas of the European Union's external relations, including trade policy.

The concept of European Union energy dialogues with major producers was generally endorsed, subject to clarity between the relative roles of the European Union and Member States. These dialogues should not only deal with supply issues, but also with environmental, climate, social and trade issues. The need for a new initiative with energy consuming nations was also emphasised.

The European Union should give support for proposals to develop new partnerships with new suppliers, including Africa, the Caspian basin and Latin America. However, the need to combine this with good governance was considered essential.

In the Green Paper there was also a general support for the European Union's energy initiatives with its neighbours, notably the Energy Community Treaty and its possible extension, as well as closer energy relations with key transit countries.

Currently, after over 20 years of creating common energy policy the main priorities in this area are:

- ensuring the smooth functioning of the internal energy market
- developing ambitious economic instruments to finance common research and development projects on alternative energies
- deepening and structuring cooperation in Europe-wide energy networks
- setting up oil and gas purchasing groups to facilitate procurement from foreign suppliers, thereby strengthening and focussing the European Union's foreign policy in this field<sup>102</sup>

## **Energy in the European Union – statistics**

Energy production in the European Union does not satisfy its consumption. In 2007 energy consumption in the European Union was covered by its own resources only

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<sup>102</sup> Sami Andoura, Leigh Hancher And Marc Van Der Woude, *Policy Proposal by Jacques DELORS - Towards a European Energy Community: A Policy Proposal*, Notre Europe n 2010.

in 46.9%. That year the European Union produced 58.87% of necessary solid fuels, 17.4% of oil and 39.7% of gas. Only the internal production of nuclear energy was sufficient for the European Union's needs.

According to the above numbers, the most important problem is oil and gas supply from external resources. i.e. from imports. This problem also concerns solid fuels but to a smaller extent.

### **Energy import dependences**

Over half of energy fuels consumed by the Member States comes from imports. The highest import dependency of the European Union concerns oil (e.g. 82.6%), a bit lower import dependency exists in consumption of gas (e.g. 60.3%) and solid fuels (e.g. 41.2%) in 2007.

The level of energy import dependency in the Member States differs considerably. Member states which have no natural energy resources are 100% dependent on imports. For example Malta has no energy fuels at all, Poland, Greece and Bulgaria have no oil production, Lithuania, Estonia, Sweden, Finland and Luxembourg import 100% of consumed gas and The Netherlands, Austria, Portugal, Denmark and Luxembourg have no solid fuel production.

On the other hand, some Member States produce energy from its natural resources and are even able to export part of it. For example, Denmark produces gas and oil over the level of internal consumption, The Netherlands export oil and Poland and the Czech Republic export solid fuels.

The main energy supplier of the hydro energy is Sweden, 25% of internal energy consumption. And the main suppliers of the nuclear energy are France (38,6%), Lithuania (37,8%), Sweden (35,7%), Hungary, the Czech Republic and Bulgaria - over 10%.

## **The Lisbon Treaty regulations on energy**

The Lisbon Treaty states that the energy issues fall within competence both the European Union and Member States. In the context of establishment and functioning of the internal market and with regard to the need to preserve and improve the environment, European Union's energy policy shall aim, in a spirit of solidarity between Member States, to:

- ensure the functioning of the energy market
- ensure security of energy supply in the European Union
- promote energy efficiency and energy saving and the development of new and renewables forms of energy
- promote the interconnection of energy network

(TFEU, Title XXI, art.194.1)

### **Trends on the energy demands to 2030**

Analysys on the trends on the energy in the following years show that the demand for energy will keep growing. The European Union's total import dependency on energy in 2030 will reach 67%, which means 22 percentage points grow in comparison to the year 1990. The highest increase in imports will concern solid fuels (increase from 18% to 63%). Import dependency ratio for gas will almost double and is probably going to reach 84%. As to oil, in 2030 the European Union will import 95% of the demand, which will make Member States strongly dependant from the third countries.

The European Union already imported almost 47% of its energy needs in 2007, its imports will reach 67% in 2030, with relatively 95% of its needs in oil and 84% in natural gas. In order to diminish its import dependency on energy, Member States are obliged to implement some limitations, such as generating 12 % of its primary energy and 22% of electricity from renewable sources by 2010 and cutting down its primary energy consumption by 20% through increasing efficiency by the year 2020.

One of the main problems concerning energy in the European Union is securing the supply of oil and gas from the third countries. Europe is dependant on importing gas

from other countries. According to the International Energy Agency – annual demand on gas is 550 bln m<sup>3</sup> and in 2030 will increase to 770 bln m<sup>3</sup>.

**Conclusions:**

- After the Lisbon Treaty there is still the lack of consistency in Europe's current energy policy.
- Existing energy policy lacks credibility and legitimacy. Compliance by Member States and major players is an issue.
- Europe's energy policy has been properly formulated, but the challenges of climate change and energy deficit require immediate reactions.
- European institutions have low capability to develop a real energy policy and the European Energy Community. The Lisbon Treaty does not allow the European Union's institutions to equip themselves with the legal instruments required to achieve the necessary policy objectives.
- The High Representative plays a crucial role in the coordination of the Member States' foreign policy but does not have competence over the energy policy. The problem of energy has always been more political than economic issue. That is why the High Representative should play the core role in negotiating access to the secure and sustainable external energy sources, constructing the truly common energy policy and the European Energy Community.

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# **IS THE EUROPEAN UNION WITH THE LISBON TREATY BETTER EQUIPPED TO FACE THE FINANCIAL CRISIS? THE CASE OF GREECE**

**(Helena Tendera – Właszczuk in cooperation with Piotr Malec)**

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## **Introduction**

Period stretching from 2007 toward late 2008 and especially in mid-September 2008 saw global economy being affected by the crisis not seen for more than a generation. The crisis was followed by the most serious economic recession. The magnitude of the crisis is unprecedented.

Crash on the financial markets, caused by the crisis on United States' mortgage market, met in time with a general cooling in the world economy, which was expected as a result of the business cycle. Negative influence of the crisis on the world economy could be directly seen in the fall of global demand. The mechanism worked as follows: as the consequence of financial liquidity loss, commercial banks began limiting issuing of the credits for the economic entities and individual consumers. This caused the fall in money supply to the markets. The further consequences included arising difficulties in payments between the market participants, loss in mutual trust, limiting production and investments by the enterprises and limiting consumption by the society. Decreasing demand caused the

increase in unemployment rate, which was followed by the further fall in the purchasing power of the population.<sup>103</sup>

The paper examines how the global financial crisis has effected the European economies, especially the GIPSY countries. The paper also discusses the Lisbon Treaty and its role in facing the financial crisis in the European Union.

## 1. The financial crisis and its tension in the European Economies

There are three factors by which the financial crisis influenced the real economy:

- First, by the interconnections between financial markets: crash which began in the United States reached the banking sector in the European Union, mainly in Great Britain and Euro zone, causing obstruction in the economic activity as a result of the limited money inflow to the market. This slower inflow of money influenced also the less developed European economies, in which financial sectors were not so much affected by the crisis at the beginning (“the snowball effect”).
- Second, by the fall in mutual trust on the market and decrease in global demand, caused also by limiting the amount of consumer credits.
- Third, by the crash of global trade as a result of decrease in global demand.<sup>104</sup>

Economic performance in the European Union member countries will be examined in this paper by the following indicators:

- real GDP growth rate
- unemployment rate
- budget balance
- public debt.

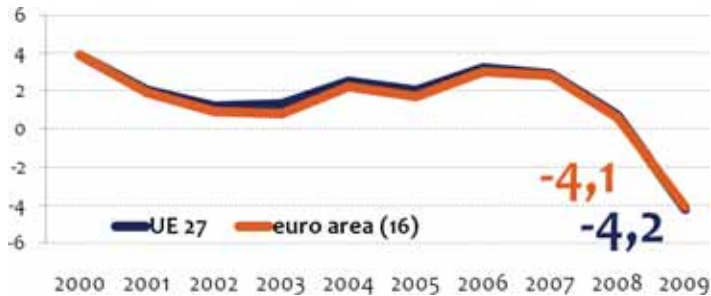
The real GDP growth rate in 2009 in the EU 27 was -4.2 and in the Euro zone -4.1. By the end of 2008 over half of European economies were already in the state of

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<sup>103</sup> The Polish Ministry of Economy ‘Influence of the crisis on the global financial market on the GDP and industrial production in the EU with the special focus on Polish manufacturing industry’ (*„Wpływ kryzysu na globalnym rynku finansowym na PKB i produkcję przemysłową Unii Europejskiej ze szczególnym uwzględnieniem sytuacji w polskim przemyśle przetwórczym”*), Warsaw, February 2009, pp. 3-4.

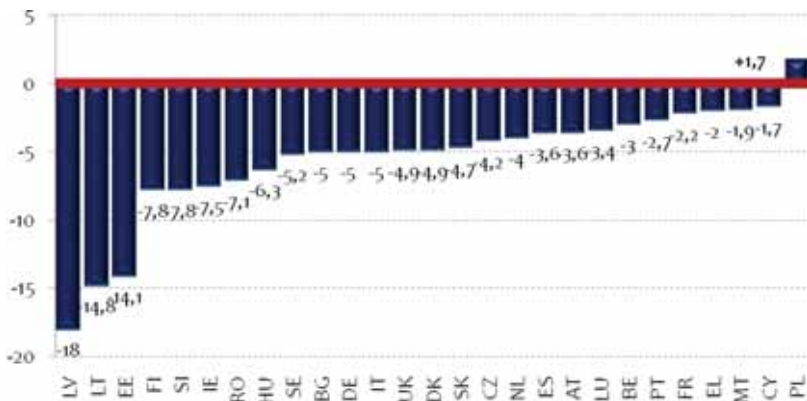
<sup>104</sup> European Commission (2009), Directorate-General for Economic and Financial Affairs, “Economic Crisis in Europe: Causes, Consequences and Responses”, EUROPEAN ECONOMY 7/2009, Luxembourg 2009

recession (Latvia, Lithuania, Estonia, Finland, Slovenia, Romania, Ireland, Hungary, Bulgaria, Denmark, Sweden, Great Britain, Italy, Germany and Czech Republic). The performance in 2009 differs by countries: from -18 in Latvia, -14.8 in Lithuania and -14.1 in Estonia to +1.7 in Poland. See graphs 1 and 2.



**Graph 1. Real GDP growth rate**

Source: Eurostat



**Graph 2. Real GDP growth rate in 2009**

Source: Eurostat

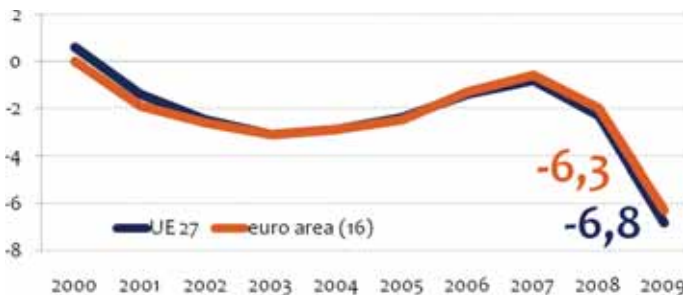
In the second half of 2008 the worsening of the situation on the labour markets could be seen in the European Union and this situation became even more serious in the following year. Unemployment rate increased from 7% in 2008 to 8.9% in 2009 (in Euro zone 7.5% and 9.4% respectively). This situation was clearly visible in the



countries especially touched by the recession e.g.: Baltic States, Ireland, Spain. According to the forecasts of the European Commission made in spring 2009, the unemployment rate in 2010 is going to reach 11% in EU 27.

During the above mentioned period all the Member States experienced an increase in the unemployment rate e.g.: Germany (from 7.1% to 7.6%), Luxembourg (from 5.2% to 6%) and Malta (from 6.2% to 7%). The highest increase in the unemployment rate appeared in Latvia (from 10.2% to 22.3%), Estonia (from 6.5% to 15.2%) and Lithuania (from 6.4% to 14.6%).

Another issue is the problem of deficits in the national budgets of the Member States. The ratio of the general government deficit to GDP exceeded the reference value, which is 3% of GDP and the situation both in the EU-27 and in the Euro zone is getting worse. The deficit for EU 27 was -6.8% of GDP in 2009 and for the Euro zone -6.3% of GDP for the same period. The highest deficit aroused in Ireland (-14.3%), Greece (-13.6%) and UK (-11.5%). The lowest deficit among the Member States appeared in Sweden (-0.5%), Luxembourg (-0.7%) and Estonia (-1.7%). See graphs 3 and 4.



**Graph 3. Budget balances (% of GDP)**

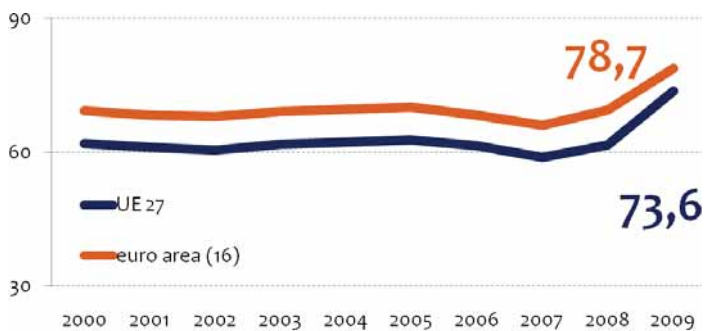
Source: Eurostat



**Graph 4. Budget balances in 2009 (% of GDP)**

Source: Eurostat

The ratio of government debt to GDP in 2009 exceeded the reference value, which is 60% of GDP, both in the Euro zone (78.7% of GDP) and in EU 27 (73.6% of GDP). Member States with the highest public deficit in 2009 were: Italy (115.8% of GDP), Greece (115.1%), and Belgium (96.7%). The lowest public deficit appeared in Estonia (7.2% of GDP), Luxembourg (14.5%) and Bulgaria (14.8%). See graphs 5 and 6.



**Graph 5. Public debt (% of GDP)**

Source: Eurostat



**Graph 6. Public debt ( % of GDP)**

Source: Eurostat

20 out of 27 Member States and 13 out of 16 Euro zone countries are subject to an excessive deficit procedure. Only 3 out of 16 Euro zone countries, i.e. Luxembourg, Cyprus and Finland and only 4 out of 11 non Euro zone countries, i.e. Denmark, Sweden, Estonia and Bulgaria are not subject to the procedure.

The deadlines for the correction of the excessive deficits are: 2012 (for Belgium, Greece, Poland and Latvia), 2013 (for Germany, Italy, France, Spain, Austria, Netherlands, Portugal, Slovenia, Czech and Slovak Republics) and 2014 (for Great Britain and Ireland).

**2. The state of public finances - deficit and level of debt – in the GIPSY countries**

This paper focuses on the Mediterranean Countries: Greece, Spain, Italy and Portugal (so called GIPSY countries). The economic performance of those countries was even worse than the EU 27 in total. In 2008 its GDP per capita (EU 27 = 100) was: Greece 94.3, Spain 102.6, Portugal 76 and Italy 101.8. Real GDP growth rate in 2009 was -2% in Greece, -3.6% in Spain, -5% in Italy and -2.7% in Portugal.

The budget balance in 2009 was -13.6% of GDP in Greece, -11.2% in Spain, -5.3% in Italy and -9.4 % of GDP in Portugal. The estimated values for 2011 are: -12.8% for Greece, -9.3% for Spain, -5.1% for Italy and -8.7% of GDP for Portugal.

The public debt in 2009 in Greece was 115.1% of GDP, in Spain 53.2%, in Italy 115.8% and in Portugal 76.8%. The estimated values for 2011 are: 135.4% of GDP in Greece, 74% in Spain, 117.8% in Italy and 91.1% of GDP in Portugal.

In 2008 the external balance of goods and services was -10.5% of GDP in Greece, -7.3% in Portugal, -6.8% in Spain and -0.2% in Italy.

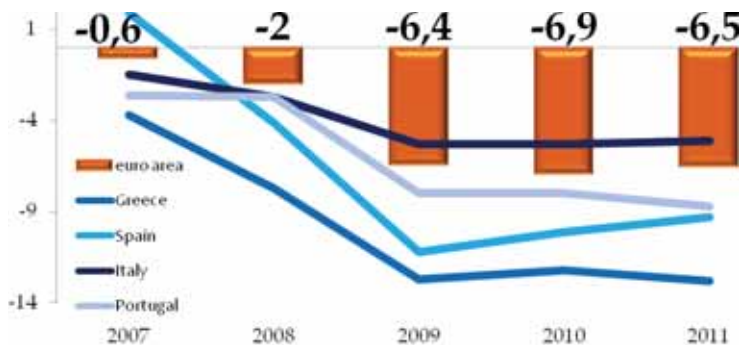
The private final consumption was very high: 71.2% of GDP in Greece, 65% in Portugal, 58.7% in Italy and 57.3% in Spain. While the governmental final consumption was 20.3% of GDP in Portugal, 19.7% in Italy, 18.3% in Spain and 16.7% in Greece.

The labour productivity per hour (where the United States = 100) in all GIPSY countries was lower than the average in the Euro area (83.8). It reached 79.2 in Spain, 71.2 in Italy, 61.4 in Greece and 44.1 in Portugal. Only Spain had higher labour productivity per hour than the EU 27 average (75.3).

Gross national savings (as % of GDP) was also lower in the GIPSY countries in comparison to the other Member States. In Spain it reached only 19.8% of GDP, in Italy 15.8%, in Portugal 8.6% and the lowest was in Greece 5%. In the same time e.g. Latvia had its gross national savings as high as 27.6% of GDP.

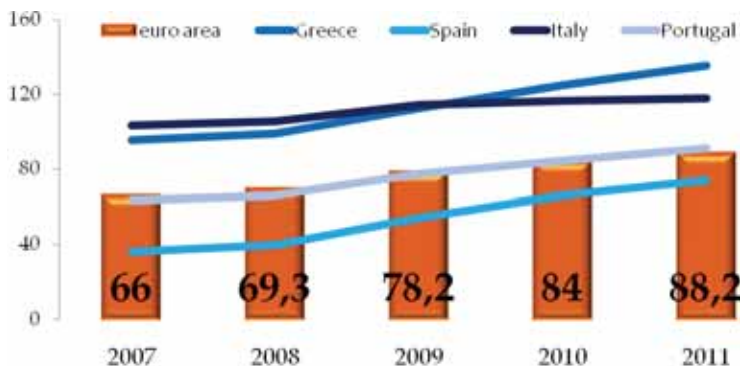
The GIPSY countries were placed far in the second half in the ranking of the employment rates in 2008, with 58.7% for Italy, 61.9% for Greece, 64.3% for Spain and 68.2 for Portugal. In this ranking Denmark reached the highest employment rate (78.1%).

For more details see graphs 7 to 15.



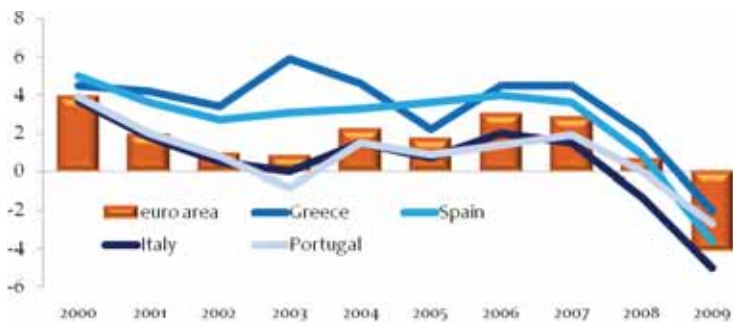
**Graph 7. Budget balances in the GIPSY countries (% of GDP)**

Source: Eurostat



**Graph 8. Public debt in the GIPSY countries (% of GDP)**

Source: Eurostat

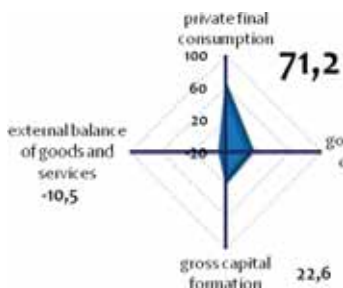


Graph 9. Real GDP growth rate in the GIPSY countries

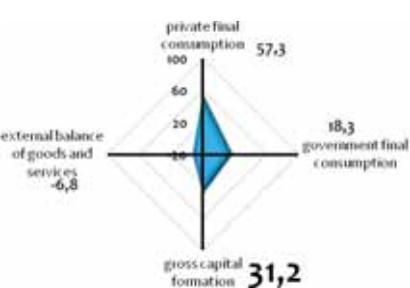
Source: Eurostat

## EXPENDITURE COMPONENTS % OF GDP, 2008

### GREECE

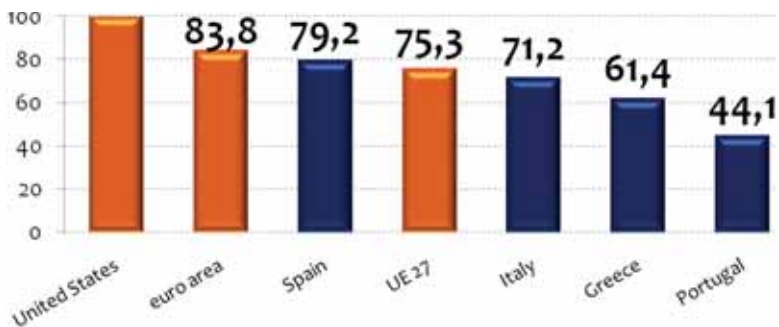
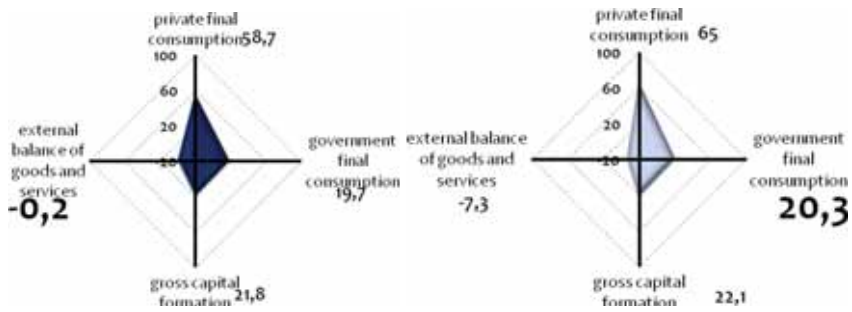


### SPAIN



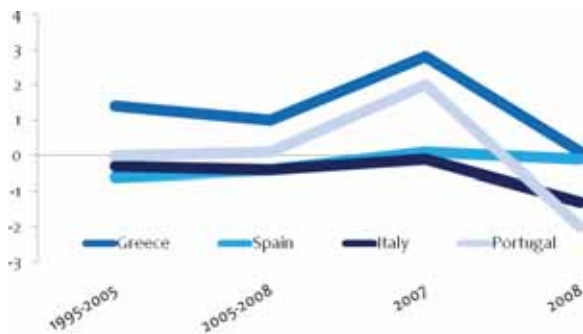
### ITALY

### PORTUGAL



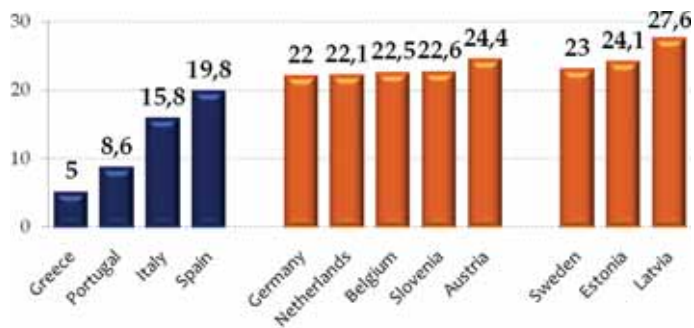
Graph 10. Labour productivity per hour (as % of United States, USA=100)

Source: Eurostat



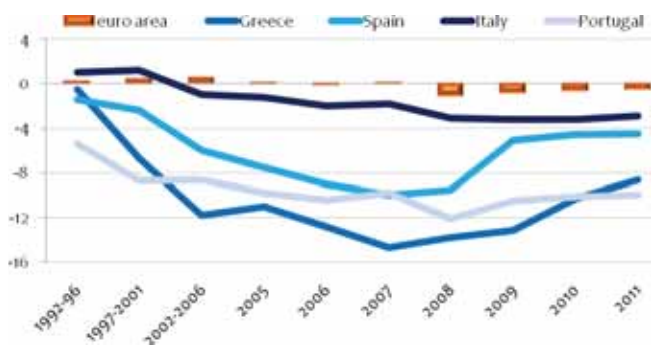
Graph 11. Total factor productivity growth in the GIPSY countries

Source: Eurostat



**Graph 12. Gross national savings (as % of GDP)**

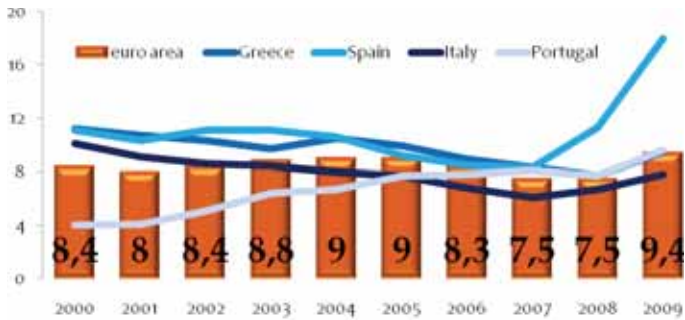
Source: Eurostat



**Graph 13. Current account balance (as % of GDP)**

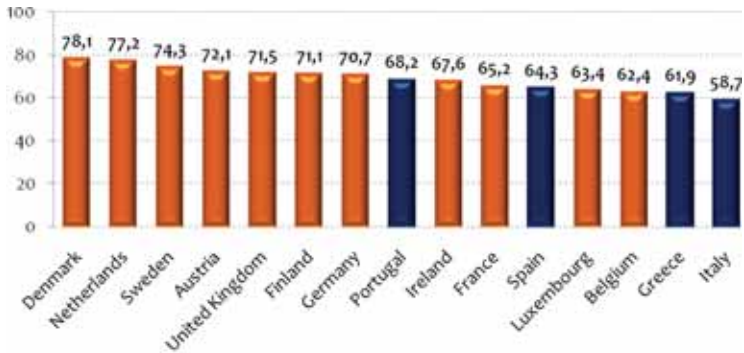
Source: Eurostat





**Graph 14. Unemployment rate in the GIPSY countries (%)**

Source: Eurostat



**Graph 15. Employment rate in the GIPSY countries in 2008 (%)**

Source: Eurostat

### 3. The Stability and Growth Pact (SGP)

The Stability and Growth Pact aims to ensure the sustainability of public finances in the Member States. They require European Union countries not to exceed a government deficit ratio of 3% of GDP and a government debt ratio of 60% of GDP. It provides procedural steps for the correction of excessive deficit in case one or both of these references values are breached. The convergence criteria are analyzed jointly and all must be fulfilled with none of them being treated as superior to others.

The Stability and Growth Pact obliges countries to maintain sound budgetary position.

Analyzing the present situation in the Member States it is clear that:

- The Stability and Growth Pact, created to prevent insolvency and liquidity risk, has failed.
- More transparency in the public finances is necessary.
- The Maastricht criteria, especially the debt ratio, have played less of a role in practice.
- The accession of Greece to the Euro area was a political and not economy-based decision. See point 5: Structural and financial weaknesses of the Greece economy.

#### **4. The Lisbon Treaty – title VIII**

*The Treaty on the Functioning of the European Union, article 5* brings the wider possibility of economic policies co-ordination (employment, social policy) under *Broad Economic Policy Guidelines*.

In the field of the economic governance the Lisbon Treaty implements two important modifications to the existing procedures: *Multilateral Surveillance Procedure (MSP)* and *Excessive Deficit Procedure (EDP)*. This are new instruments which are strengthening position of the Commission.

Article 119.3 of the Lisbon Treaty states that: ‘...activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments’. And the article 126.1 of the TFEU underlines that: ‘Member States shall avoid excessive government deficits’. When it refers to Greece, since 2001 Greece has not had sound public finances and has not avoided excessive government deficits.

In the article 121.1 of the TFEU it is written that ‘...Member States shall regard their economic policies as a matter of common concern...’ and in the article 121.3 and 121.4:

‘...the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Union as well as the consistency of economic policies with the broad guidelines’, ‘...the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned’. Unfortunately insufficient effectiveness in the activities of the Commission and the Council can be seen.

Article 122.2 of the TFEU states: ‘...where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned...’. But the situation in Greece has neither been caused by natural disasters nor is beyond its control, that’s why the financial assistance granted to Greece is against the rules of the Lisbon Treaty.

In the article 123.1 of the TFEU it is written: ‘...overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States in favor of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments ...’. Also the article 125.1 of the TFEU stresses that: ‘...The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State...’ and ‘...a Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State...’ Taking into account the above mentioned articles, the rescue package granted to Greece is against the rules of the Lisbon Treaty. On the other hand, up to the *principle of solidarity*, a Member State can expect to receive support when faced the extraordinary financing difficulties.

## 5. Structural and financial weaknesses of the Greece's economy

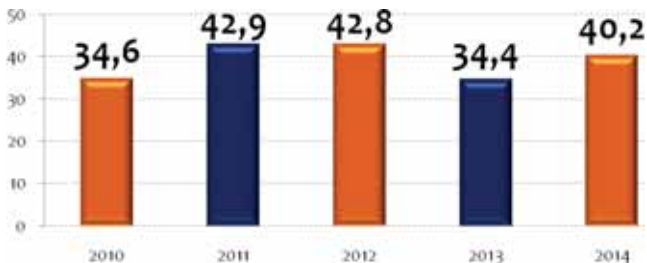
The performance of Greece's economy will be focused on the following aspects:

- Financial weaknesses
- Economic weaknesses
- Social weaknesses
- Institutional weaknesses
- Knowledge-based economy gap

### a. Financial weaknesses

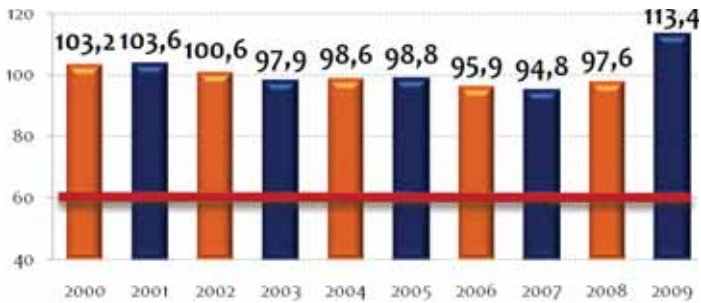
The fiscal situation criterion for the Euro zone member country, which is government deficit to GDP and government debt to GDP have not been fulfilled since 2000. The ECB and the European Commission assessing a country's fulfillment of the convergence criteria take into account not only the current level of the ratios but also examine either the ratio has declined substantially and continuously and reached a level that comes close to the reference value. But it is not a case of Greece. The excess over the reference value was never exceptional or temporary.

In 2000 the Greece's budget deficit was -3.7% of GDP, in 2004 -7.5% and in 2009 -13.6% of GDP. The public debt of Greece was 103.2% of GDP in 2000, 98.6% in 2004 and 115,1% in 2009. At the same time the estimated borrowings needs of Greece are 34.6bln of Euros in 2010 and 42.9 in 2011. See graphs 16 to 18.



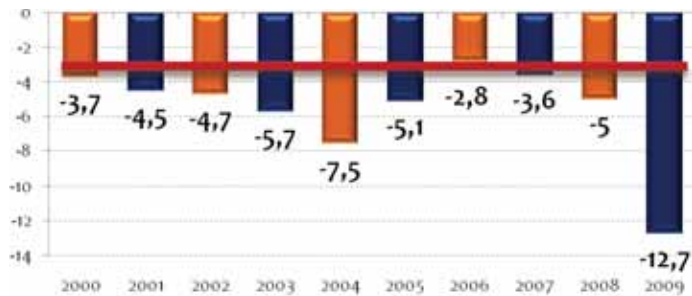
**Graph 16. Estimates of the borrowing needs of Greece (debt and interest rate) in billions of euros**

Source: International Monetary Fund



**Graph 17. Public debt of Greece (% of GDP)**

Source: Eurostat



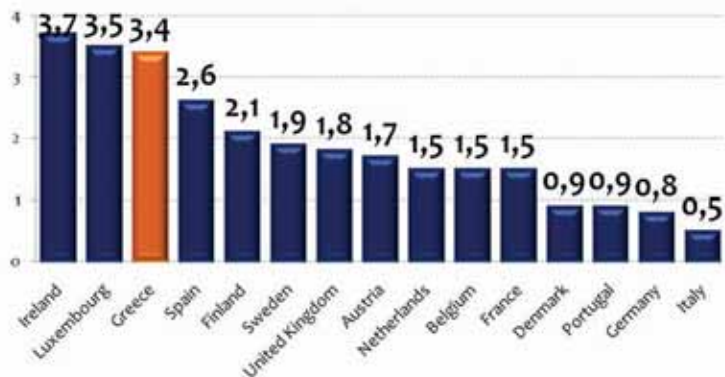
**Graph 18. Greece budget deficit (% of GDP)**

Source: Eurostat

**b. Economic weaknesses**

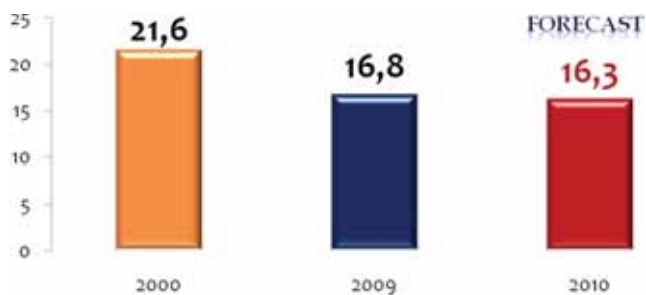
In the years 2000 – 2009 the average of real GDP growth rate was high and reached 3.4%. In the same time the investment rate was decreasing from 21.6% of GDP in 2000 to 16.8% in 2009. The forecast for 2010 shows the same tendency (16.3% of GDP). The household expenditures per inhabitant since 2000 was growing much faster in Greece (30%) than in the EU 15 (10%).

The shadow economy among the UE 15 is the strongest in Greece. The Greece's economy is relatively closed economy with 0.5% share in the EU 27 external trade in 2008. See graphs 19 to 22.



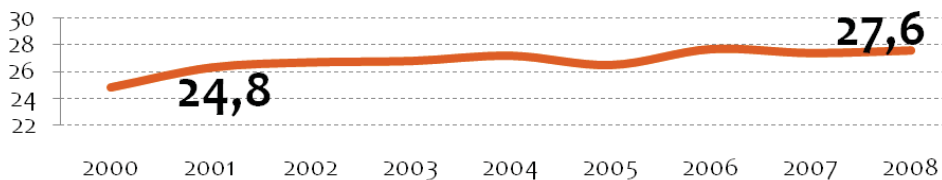
Graph 19. Real GDP growth rate (average 2000-2009)

Source: Eurostat



Graph 20. Investment rate in Greece (% of GDP)

Source: Eurostat



Graph 21. German contribution to the extra EU 27 trade (share in the European Union exports, %)

Source: Eurostat

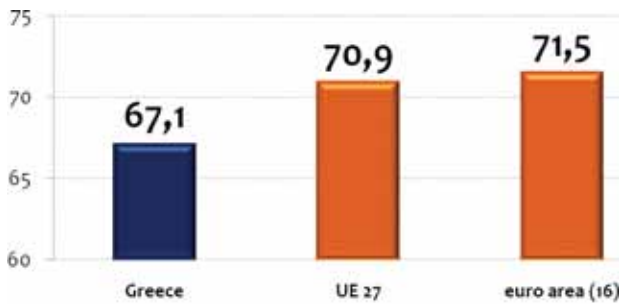


**Graph 22. Greece contribution to the extra EU 27 trade (share in the European Union exports in %)**

Source: Eurostat

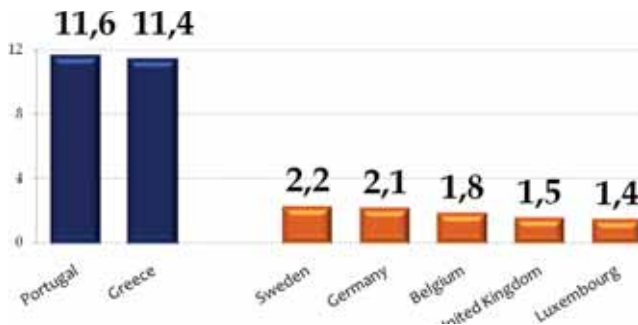
**c. Social weaknesses**

The activity rate in 2008 in the EU 27 was 70.9%, in the Euro area 71.5% and in the same time in Greece only 67.1%. Gender gap in EU 27 was 13.7 % and in Greece 26.3%. Employment in agriculture in Greece was very high and reached 11.4%. See graphs 23 and 24.



**Graph 23. Activity rates (%)**

Source: Eurostat



**Graph 24. Employment in agriculture (%)**

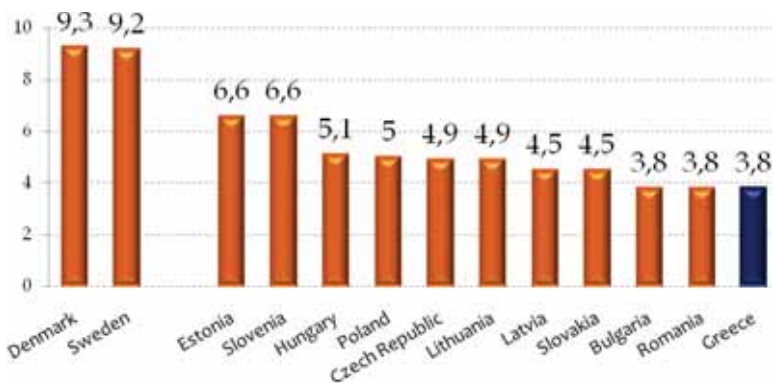
Source: Eurostat

#### **d. Institutional weaknesses**

The Transparency International Corruption Perception index (1 is maximum, 10 means no corruption) shows, that corruption in Greece is very high (3.8), as high as in Romania. More than 13% of Greeks resorted to giving “*fakelakia*” (or little envelopes) in 2008, paying an estimated €750 million in bribes to public and private officials in 2008, which is €110 million more than the previous year. Each Greek family paid an average of 1,450€ in bribes.

The view that corruption is a major national problem is most widely expressed in Greece. Eight out of ten citizens totally agree with the statement and further 17% tend to agree. See graphs 25 and 26.





**Graph 25. Corruption Perception Index**

Source: Transparency International



**Graph 26. 'Corruption is a major problem in our country'**

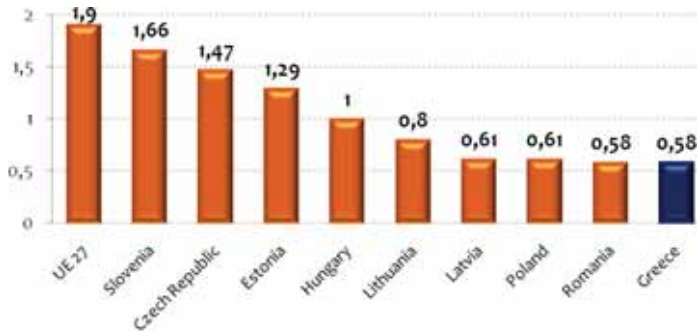
Source: Eurobarometer

#### **e. Knowledge-based economy gap**

The growth drivers like high investments into R&D, ICT can be an important reason for diverging economies development. The R&D expenditures as % of GDP in 2008 in the EU 27 was 1.9%, while in Greece it was only 0.58% of GDP (the same as in Romania).

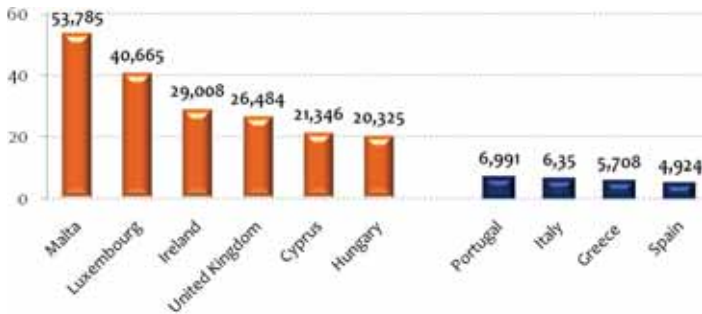
High-tech export in Greece was only 5.7% of total export while in Malta 53.8% and in Luxembourg 40.7%. Employment in knowledge-intensive service sectors was 25.3% in Greece and in the same time in Sweden 47.8%.

In Greece the percentage of individuals aged 16-74 who have never used the internet is 53%, while in the EU 27 is 30%. The households with internet access at home are 38% in Greece and 90% in the Netherlands. See graphs 27 to 35.



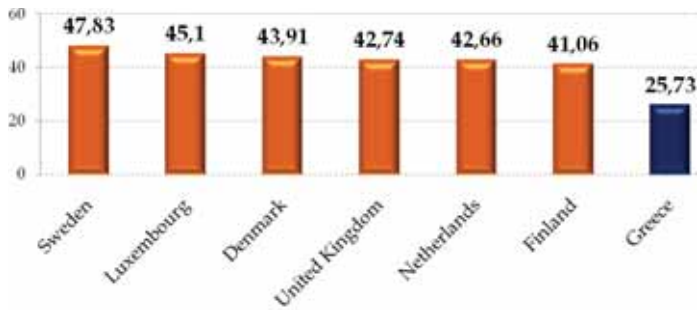
**Graph 27. R+D expenditure (% of GDP)**

Source: Eurostat



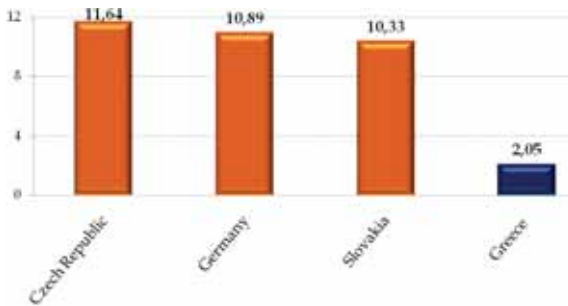
**Graph 28. High-tech exports (% of total exports)**

Source: Eurostat



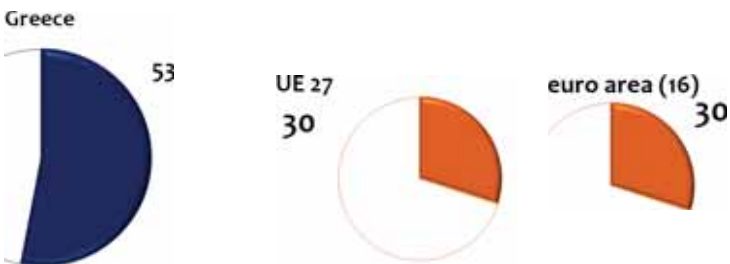
**Graph 29. Employment in knowledge-intensive service sectors (%)**

Source: Eurostat



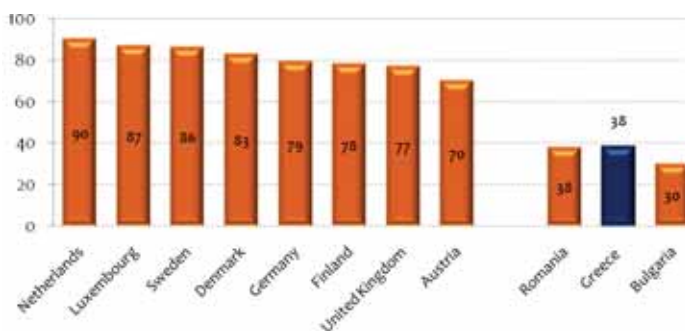
**Graph 30. Employment in high-and-medium technology manufacturing sectors (%)**

Source: Eurostat



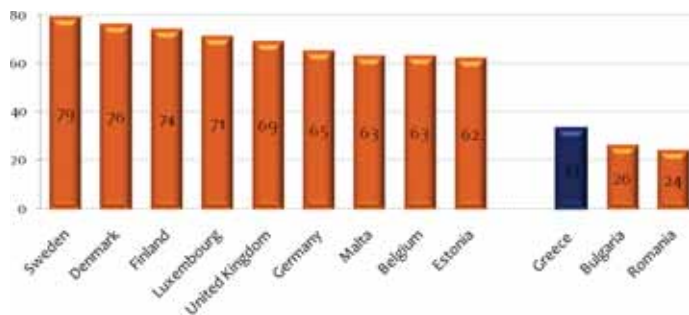
**Graph 31. Individuals who have never used internet ( % of individuals aged 16-74)**

Source: Eurostat



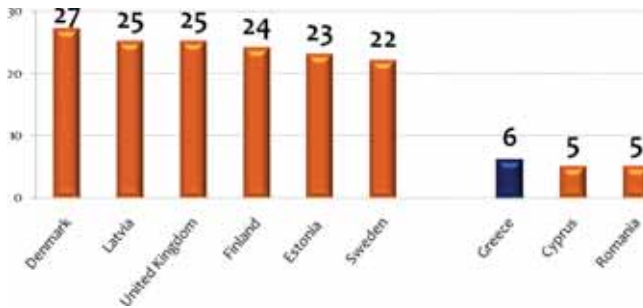
**Graph 32. Households having internet access at home**

Source: Eurostat



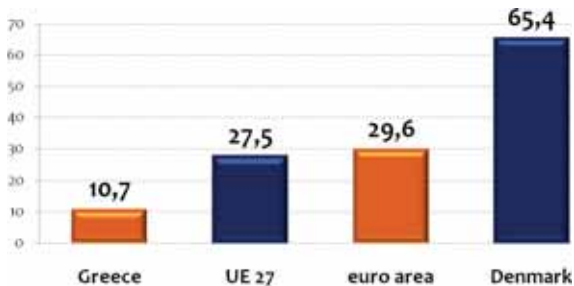
**Graph 33. Households having broadband connection**

Source: Eurostat



**Graph 34. Individuals using internet for online banking**

Source: Eurostat



**Graph 35. Individuals using internet for interacting with public authorities**

Source: Eurostat

## 6. Arising questions

Looking at the economic situation in the European Union shown in this article, there are some questions arising.

First, does the European Union have to choose between the solidarity of the member countries and stability of the Euro zone? Where is the balance?

Second, are more political or economic decisions required for the long term sustainability of public finances of the Member States and the European Union?

And third, what are the new institutions and instruments required to deal with the crisis in the Euro zone: European Monetary Fund (EMF), common Euro-bond market or maybe a new treaty? Is the European Union ready for changes?

## **Conclusions**

The situation in Greece can have a strong negative spill-over effect and the adjustment process will be long and difficult in this country. The same problem occurs also in Portugal, which is a relatively closed economy with low savings rates. There exists an arising solvency problem.

Imbalance between the centralized monetary policy and the economic policy instruments occurs at the national level. Effective monetary policy requires enhancing rules and institutional arrangements.

The Euro zone is a fragile construction not better equipped with the Lisbon Treaty to face the financial crisis, so the new solutions are urgently needed. Among the possible scenarios there is a fiscal union versus possibility of quitting the Euro zone. But the expected costs and benefits of exit from Euro zone should be calculated and the fiscal adjustment is not sufficient for the long term sustainability.

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- *CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION*
- C 115/96 EN Official Journal of the European Union 9.5.2008

# ANNEXES

Programme of the Global Jean Monnet ECSA-World Conference 2010:  
The European Union after the Treaty of Lisbon

Programme de la conférence Jean Monnet Jean Monnet ECSA-Monde 2010:  
L'Union européenne après le Traité de Lisbonne



# PROGRAMME OF THE GLOBAL JEAN MONNET ECSA-WORLD CONFERENCE 2010

## THE EUROPEAN UNION AFTER THE TREATY OF LISBON

European Commission, Directorate General Education and Culture, Jean Monnet Programme

European Parliament

Brussels, 25-26 May 2010

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### Tuesday, 25 May 2010

- 8:30** Registration of the participants
- 09:15 - 10:30** [Opening session and presentation of the 2010 Jean Monnet Prize](#)
- Moderator:* **Mr Jan Truszczyński**, Director General for Education and Culture at the European Commission
- Musical opening:* «Ode To Joy» (Beethoven, Ninth Symphony) by Ms **Nathalie Nicaud**, Soprano
- Keynote speeches:* **Mr José Manuel Barroso**, President of the European Commission  
Ms **Doris Pack**, Chair of the Committee on Culture and Education of the European Parliament
- 10:00 – 10:30 2010** [Jean Monnet Prize](#)
- Presentation of Prize: **Ms Androulla Vassiliou**, Commissioner for Education, Culture, Multilingualism and Youth
- Jury Co-Presidents: **Mr José-Maria Gil-Robles**, President of the European University Council for the Jean Monnet Programme; Jean Monnet Chair and Director of the Jean Monnet Centre of Excellence at the Complutense University of Madrid; former President of the European Parliament; President of the Former Members Association of the European Parliament; President of the Jean Monnet Foundation
- Mr Enrique Banús**, President of the European Community Studies Association (ECSA)-World; Jean Monnet Chair, Dean of Humanities, Director of the Charlemagne Institute for European Studies and Director of the Masters in Cultural Management at the International University of Catalonia in Barcelona

SESSION 1:  
10:30 - 12:30

## Institutional balance and interinstitutional cooperation

*Chairperson:*

**Mr Fausto De Quadros**, Jean Monnet Chair and Professor of Public Law, European Law and International Law at the Faculty of Law of the University of Lisbon

*Lead interventions:*

*Political perspective:*

**Mr Maroš Šefcovic**, Vice-President of the European Commission with responsibility for Inter-Institutional Relations and Administration

**Mr Richard Corbett**, Advisor in the Cabinet of the President of the European Council; former Member of the European Parliament and former Vice-Chair of its Committee on Constitutional Affairs

*Academic perspective:*

**Mr Jörg Monar**, Director of European Political and Administrative Studies Department at the College of Europe; Jean Monnet Chair of Contemporary European Studies at the University of Sussex

**Ms Lucia Serena Rossi**, Jean Monnet Chair and Director of the Interdepartmental Center on European Community Law at the University of Bologna

*Session editor:*

**Mr Ferdinando Riccardi**, Editorialist of Agence Europe

**12:00 - 12:30**

Debate

## LUNCH

**12:30 – 14:00**

Standing Lunch at the European Parliament's Members Restaurant

SESSION 2:  
14:00 – 16:00

## Fundamental rights and European Union citizenship

*Chairperson:*

**Ms Jacqueline Duteilh de la Rochère**, Jean Monnet Chair and Director of the Centre of the European Law at the University Paris II - Panthéon-Assas

*Lead interventions:*

*Political perspective:* •

**Mr Iñigo Méndez de Vigo**, Member of the European Parliament; President of the Administrative Council of the College of Europe; Chairman of the European Parliament Delegation to the Convention drafting the Charter of Fundamental Rights; former member of the Praesidium of the European Constitutional Convention

**Mr Aurel Ciobanu-Dordea**, Director responsible for Fundamental Rights and Citizenship, Directorate General for Justice, Freedom and Security at the European Commission

*Academic perspective:*

**Mr Dusan Sidjanski**, Special Adviser to the President of the European Commission; Founder and Emeritus Professor at the Department of Political Science of the University of Geneva; Honorary President of the European Cultural Centre in Geneva  
**Ms Elspeth Guild**, Jean Monnet Chair of European Migration Law at the Radboud University of Nijmegen; Visiting Professor at the London School of Economics and Political Science and at the College of Europe; Teaching Fellow at King's College London; Senior Research Fellow at the Centre for European Policy Studies; Partner at Kingsley Napley solicitors

*Session editor:*

**Mr Pierre Lemoine**, Executive Publisher & Editor-in-Chief of Europolitics

**15:30-16:00**

Debate

**SESSION 3:**

**The new European Union framework for confronting global economic challenges**

**16.00 – 18:00**

*Chairperson:*

**Mr Loukas Tsoukalis**, Jean Monnet Chair at the University of Athens; President of the Hellenic Foundation for European and Foreign Policy; Special Adviser to the President of the European Commission

*Lead interventions:*

*Political perspective:*

**Mr Karel De Gucht**, Commissioner for Trade  
**Mr Enrique Barón Crespo**, Jean Monnet Chair at the Universidad de Castilla La Mancha; Former President of the European Parliament; former Spanish Minister for Transport, Tourism and Communications

*Academic perspective:*

**Mr Stefan Griller**, Jean Monnet Chair and Head of the Research Institute for European Affairs at the Vienna University for Economics and Business; President of ECSA-Austria  
**Mr Tibor Palánkai**, Jean Monnet Chair and Director of the European Studies and Education Center at Corvinus University of Budapest; President of ECSA-Hungary

*Session editor:*

**Mr Tim King**, Editor of EuropeanVoice

**17:30 – 18:00**

Debate

**DINNER**

**19:30**

Conference dinner at the Hilton Hotel (Boulevard de Waterloo)

**Wednesday, 26 May 2010**

**SESSION 4:** The European Union as an international political and security actor

9:30 – 11:30

*Chairperson:* **Ms Anne Deighton**, Jean Monnet Chair, Professor of European International Politics and Fellow of Wolfson College at Oxford University

*Lead interventions:*

*Political perspective:* **Mr Robert Cooper**, Director General for External and Political-Military Affairs at the Council of the European Union  
**Mr Jacek Saryusz-Wolski**, Member of the European Parliament and former Chair of its Foreign Affairs Committee; former Minister for European Affairs of Poland; Chairman of the Board of the College of Europe in Natolin; former Jean Monnet Professor at the Collegium Civitas Warsaw

*Academic perspective:* **Mr Finn Laursen**, Jean Monnet Chair, Canada Research Chair in European Union Studies and Director of the European Union Centre of Excellence at Dalhousie University  
**Mr Xinning Song**, Jean Monnet Chair at Renmin University in Beijing, P.R. China; Senior Research Fellow at the Comparative Regional Integration Studies Programme of the United Nations University in Bruges

*Session editor:* **Mr Dennis Kefalacos**, Editor of NewEurope

**11:00 – 11:30** Debate

**11:30 – 12:30** Closing session

*Moderator:* **Mr Jan Truszczyński**, Director General for Education and Culture at the European Commission

*Speakers:* **Mr Luís Miguel Poiares Maduro**, Professor of European Law at the European University Institute; Co-Director of the Academy of International Trade Law; former Advocate General at the European Court of Justice  
**Mr Guido de Marco**, Jean Monnet Chair at the University of Malta; former President and former Minister of Foreign Affairs of Malta  
**Ms Androulla Vassiliou**, Commissioner for Education, Culture, Multilingualism and Youth

*Musical closing:* «Ode To Joy» (Beethoven, Ninth Symphony) by Ms **Nathalie Nicaud**, Soprano

**LUNCH**

**12:30 – 14:00** Standing Lunch at the European Parliament's Members Restaurant

## PROGRAMME DE LA CONFERENCE JEAN MONNET ECSA-MONDE 2010

### L'UNION EUROPEENNE APRES LE TRAITE DE LISBONNE

Commission européenne, Direction Générale de l'Education et de la Culture,  
Programme Jean Monnet

Parlement européen

Bruxelles, 25-26 mai 2010

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#### Mardi 25 mai 2010

Parlement européen, salle P3C050  
Bâtiment Paul -Henri Spaak

**8:30** Accueil des participants

**09:15 - 10:30** Séance d'ouverture et remise du prix Jean Monnet 2010

*Modérateur :* **M. Jan Truszczyński**, Directeur général de la Direction générale de l'éducation et de la culture à la Commission européenne

*Ouverture musicale :* «Hymne à la Joie» (Neuvième Symphonie de Beethoven) interprété par Mme **Nathalie Nicaud**, Soprano

*Interventions :* **M. José Manuel Barroso**, Président de la Commission européenne  
Mme **Doris Pack**, Présidente de la Commission Culture et Education au Parlement européen

**10:00 – 10:30** Prix Jean Monnet 2010

*Remise du Prix:* **Mme Androulla Vassiliou**, Membre de la Commission européenne en charge de l'éducation, la culture, le multilinguisme et la jeunesse

*Co-Présidents du Jury :* **M. José-Maria Gil-Robles**, ancien Président du Parlement européen, Président du Conseil Universitaire Européen pour le Programme Jean Monnet; Chaire Jean Monnet et Directeur du Centre d'Excellence Jean Monnet à l'Université Complutense de Madrid; Président de l'Association des Anciens Membres du Parlement européen; Président de la Fondation Jean Monnet  
**M. Enrique Banús**, Président de l'Association Européenne d'Etudes Communautaires (ECSA)- Monde; Chaire Jean Monnet, Doyen d'Humanités, Directeur de l'Institut Charlemagne d'études européennes et Directeur du Mastère Gestion Culturelle à l'Université Internationale de Catalogne à Barcelone

SEANCE 1 :  
10:30 - 12:30

## Equilibre institutionnel et coopération interinstitutionnelle

*Président :*

**M. Fausto De Quadros**, Chaire Jean Monnet et Professeur de Droit Public, Droit Européen et Droit International à la Faculté de Droit de l'Université de Lisbonne

*Interventions :*

*Perspective politique :*

**M. Maroš Šefcovic**, Vice-Président de la Commission européenne, en charge des relations interinstitutionnelles et de l'administration

**M. Richard Corbett**, Conseiller au Cabinet du Président du Conseil européen; ancien Membre du Parlement européen et ancien Vice-Président du Comité des Affaires Constitutionnelles

*Perspective académique :*

**M. Jörg Monar**, Directeur du Département Etudes Politiques et Administratives Européennes au Collège d'Europe; Chaire Jean Monnet à l'Université du Sussex

Mme Lucia Serena Rossi, Chaire Jean Monnet et Directrice du Centre Interdépartemental de Droit communautaire européen à l'Université de Bologne

*Modérateur :*

**M. Ferdinando Riccardi**, Editorialiste à l'Agence Europe

12:00 - 12:30

Débat

DEJEUNER

12:30 – 14:00

Déjeuner au Restaurant des Membres du Parlement européen

SEANCE 2 :  
14:00 – 16:00

## Droits fondamentaux et citoyenneté européenne

*Présidente :*

**Mme Jacqueline Duthel de la Rochère**, Chaire Jean Monnet et Directrice du Centre de Droit européen à l'Université Paris II Panthéon-Assas

*Interventions :*

*Perspective politique :*

**M. Iñigo Méndez de Vigo**, Membre du Parlement européen; Président du Conseil d'Administration du Collège d'Europe; Président de la délégation du Parlement européen auprès de la Convention pour la rédaction de la Charte des Droits Fondamentaux; ancien Membre du Praesidium de la Convention européenne

**M. Aurel Ciobanu-Dordea**, Directeur en charge des Droits Fondamentaux et de la Citoyenneté à la Direction générale de la Justice, de la Liberté et de la Sécurité à la Commission européenne

*Perspective académique :*

**M. Dusan Sidjanski**, Conseiller Spécial du Président de la Commission européenne; Professeur Emérite et Fondateur du Département de Science Politique de l'Université de Genève; Président Honoraire du Centre Culturel Européen de Genève.

Mme **Elsbeth Guild**, Chaire Jean Monnet de Droit Européen des Migrations à l'Université Radboud de Nijmegen; Professeur d'Economie et de Science Politique à la London School of Economics à Londres et au Collège d'Europe; Professeur au King's College de Londres; Chargée de recherche au Centre d'Etudes de Politiques Européennes; Avocate associée chez Kingsley Napley

*Modérateur :* **M. Pierre Lemoine**, Editeur délégué et Rédacteur en chef à Europolitique

**15:30–16:00** Débat

**SEANCE 3 :** [Le nouveau cadre européen pour affronter les défis économiques mondiaux](#)

**16.00 – 18:00**

*Président :* **M. Loukas Tsoukalis**, Chaire Jean Monnet à l'Université d'Athènes; Président de la Fondation Hellénique de Politique Européenne et Etrangère; Conseiller Spécial du Président de la Commission européenne

*Interventions :*

*Perspective politique :* **M. Karel De Gucht**, Membre de la Commission européenne en charge du Commerce. Enrique Barón Crespo, Chaire Jean Monnet à l'Université de Castilla La Mancha; ancien Président du Parlement européen; ancien Ministre espagnol du Transport, du Tourisme et des Communications

*Perspective Académique:*

**M. Stefan Griller**, Chaire Jean Monnet et Directeur de l'Institut de Recherche pour les Affaires européennes à l'Université d'Economie et des Affaires de Vienne; Président d'ECSA Autriche

**M. Tibor Palánkai**, Chaire Jean Monnet et Directeur des Etudes Européennes et du Centre d'Education de l'Université de Corvinus de Budapest; Président d'ECSA Hongrie

*Modérateur :* **M. Tim King**, *Rédacteur en chef au European Voice*

**17:30 – 18:00** Débat

DINER

**19:30** Dîner officiel à l'Hôtel Hilton  
38 Boulevard de Waterloo  
1000 Bruxelles

## Mercredi 26 mai 2010

Parlement européen , salle P3C050  
Bâtiment Paul -Henri Spaak

SEANCE 4 : L'Union Européenne comme acteur politique et de  
sécurité au niveau international

09:30 – 11:30

*Présidente :* **Mme Anne Deighton**, Chaire Jean Monnet; Professeur de  
Politique Internationale Européenne et membre du Wolfson  
College à l'Université d'Oxford

*Interventions :*

*Perspective politique :* **M. Robert Cooper**, Directeur général pour les affaires  
extérieures et politico-militaires au Secrétariat général du  
Conseil

**M. Jacek Saryusz-Wolski**, Membre du Parlement européen  
et ancien Président du Comité des Affaires Etrangères; ancien  
Ministre des Affaires européennes de la Pologne; Président de  
la Fondation du Collège d'Europe à Natolin; ancien Professeur  
Jean Monnet au Collegium Civitas de Varsovie

*Perspective académique :* **M. Finn Laursen**, Chaire Jean Monnet, Chaire de Recherche  
sur les Etudes européennes au Canada et Directeur du Centre  
d'Excellence d'Etudes de l'Union européenne à l'Université de  
Dalhousie

**M. Xinning Song**, Chaire Jean Monnet à l'Université de  
Renmin de Pékin, Chine; Chargé de Recherche principal du  
Programme d'Etudes comparatives de l'intégration régionale à  
l'Université des Nations Unies du Collège d'Europe

*Modérateur :* **M. Dennis Kefalacos**, Editorialiste au NewEurope

11:00 – 11:30 Débat

11:30 – 12:30 Séance de clôture

*Modérateur:* **M. Jan Truszczyński**, Directeur général de la Direction  
générale de l'éducation et de la culture de la Commission  
européenne

*Interventions :* **M. Luís Miguel Poiães Maduro**, Professeur de Droit  
européen à l'Institut Universitaire Européen; Co-directeur de  
l'Académie de Droit commercial international; ancien Avocat  
Général de la Cour de Justice Européenne



**M. Guido de Marco**, Chaire Jean Monnet à l'Université de Malte; ancien Président et ancien Ministre des Affaires étrangères de Malte

Mme **Androulla Vassiliou**, Membre de la Commission européenne en charge de l'éducation, la culture, le multilinguisme et la jeunesse

*Clôture Musicale :*

«Hymne à la Joie» (Neuvième Symphonie de Beethoven)  
interprété par Mme **Nathalie Nicaud**, Soprano

## **DEJEUNER**

**12:30 – 14:00**

Déjeuner au Restaurant des Membres du Parlement européen







European Commission

**The European Union after the Treaty of Lisbon:  
Visions of leading policy-makers, academics and journalists**

Luxembourg: Publications Office of the European Union

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