

WHERE ARE THE LIMITS OF VERTICAL INTEGRATION?

Means, positions and approaches
toward the EU deepening.

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INTRODUCTION

However inexplicit at surface they may be, values and cultural background underlie the questions of vertical integration of the European Union. In a picturesque way the extensive literature on this topic refers to the integrationist process, which brings the Member States even closer, as *deepening*. First theories of the European integration that appeared in the late 1950s spoke of *spill-over*¹ – a concept that resonated with optimism of technocratic management of the West European politics after World War II. In the course of time political discourse of integration changed and the pivotal concepts were replaced with the *widening – deepening* dichotomy. These two processes run parallel to each other and render the European Union the result of their constant interplay. The one is being braked for the other one to proceed. As long as integration involved issues detached from citizens, decisions were made entirely at the intergovernmental level. The era of ‘permissive consensus’² of the 1950s and the 1960s, where the majority supported integration or had no opinion about their governments’ decisions in that matter, terminated long ago. Now, as decisions reached by the EU institutional framework have a tangible impact on the European Union citizens’ life, they – organized into civic movements or campaign groups – have come into political play. Demands for a more democratic Europe distorted the intergovernmental decision-making procedures and interfere with the process of deepening. If the European elites continued vertical integration regardless of public opinion, they would end up having an increasing number of citizens hostile to the EU. Yet, what about countries, where societies would tolerate moving further policies on the supranational level? Would their elites be willing to make a step forward and integrate more than members of the EU? The attempts to adopt a treaty resembling a constitution provoked such questions, because it revealed stark different currents in the European river. Could the disagreement over constitutional treaty be a juncture in the EU history? This is probably too early to answer such questions, but there have already emerged two groups, these pro and these opposed the Constitution. It would be of course an exaggeration to claim that members of these groups speak with one voice.

¹ Haas, E., *The Uniting of Europe*, Stanford 1958

² Lindberg, L., Scheingold, S. (1970) *Europe's Would-Be Polity: Patterns of Change in the European Community* (Harvard University Press; Harvard, Mass.)

The paper discusses the question of *vertical integration*, i.e. the process of “an ever closer Union”³, as it is present in national contexts, especially in regard to attitudes towards the Constitutional Treaty. After a brief theoretical introduction into the problem of deepening, where the basic concepts are outlined, the paper proceeds to discuss how different interests of various Member States meet and merge on the European level. Numerous actors pursue their visions, using different tools. Joska Fischer with his speech of May 2000 at the Humboldt University in Berlin ignited the engine that propelled the authors of the Treaty Establishing a Constitution for Europe. The political process was launched in Leaken in December 2001 and has yet not come to an end, since this document reifies certain federalist ideas, which are not acceptable for some political actors. Currently, it seems plausible to argue that a new document will be outlined thanks to the allied forces of the Trio Presidency (idea that itself is provided for in the Constitutional Treaty), i.e. Germany, Portugal and Slovenia. Yet, the amended text of a new treaty will depart much from the initial federalist-like design. What do the trade-offs related to the Constitutional Treaty can tell us about the limits of vertical integration?

Current positions of Member States on the question of the Treaty establishing a Constitution for Europe are only of temporary validity; therefore the paper attempts to go slightly beyond that issue and poses questions which underlie the nature of vertical integration. The endeavour is to briefly examine the major factors that determine the process of *deepening*: (1) approaches, (2) actors and (4) means. They constitute the background upon which the question of constitution (3) is examined. In conclusions, the paper offers not exact scenarios of possible developments, but rather a short outline of the direction towards which the EU will probably evolve. The results of the on-going debate will have to be reassessed during the forthcoming Presidencies. Deepening is, in the end, a never-ending process.

³ Article 1 of the EU Treaty

1. APPROACHES

One theory of European integration summarizes it in a rather pedestrian way, namely it uses the simile of a riding bicycle: once set in motion, it needs to keep on going so as not to make the cyclist fall. The cyclist could, of course, stop and quit the journey, or change the means of transport for that matter. Nonetheless, this picturesque comparison is meant rather to illustrate the process in which one move necessarily requires the next one in order to maintain the pace. When transposed onto the European reality, this comparison shows that the integration process results from a constant bargaining between the interests of horizontal (*widening*) and the vertical (*deepening*) integration. It is, obviously, not a regular and proportional movement. Yet, the European state of the art always remains the resultant of powers pulling the strings into various directions.

The term *deepening* covers the „reform [of] the main Community policies and the workings of the institutions to create a favourable context for new Member States to join the European Union“⁴. But there is something more to the functional side of the reform. Deepening expresses the political will of an „*ever closer union*“ among the peoples of Europe”⁵, which is inscribed in the article 1 of the EU Treaty. What remains in question, both in case of widening and of deepening, is the end product, or what is in the EU jargon referred to as *finalité politique*. The European Union is of an open-end nature, i.e. neither its political character of its institutions nor its geographical reach is determined forever. Vague as it is, the idea of an *ever-closer union* leaves the actors a great room for manoeuvre and they may construe the term in regard to specific context and moment. However, in the light of the European Union’s aspiration to become an influential actor in world politics, there emerges a need to eventually define its critical objectives.

Conceptions of horizontal and vertical integration derive not only from national interests of the Member States but they are also projections of deeply rooted theories and perceptions of the world. This section briefly presents ideas that underlie visions of the future and of objectives the European

⁴ http://europa.eu/scadplus/glossary/full_en.htm, 30.04.2007

⁵ http://europa.eu/scadplus/glossary/full_en.htm, 30.04.2007

Union should pursue. In each case only the extremes are described, while in fact Member States tend to take milder positions that fill the wide spectrum between the furthest points.

1.1 REALISM VS. IDEALISM. TO INTEGRATE OR NOT TO INTEGRATE?

By the shortest generalisation possible, the representatives of realism hold the view that international relations are characterised by anarchy and states act according to the principle of self-help. Thus, in practice there is no chance of supranational government, as states strive for power. Realists therefore are prone to perceive any integrationist movement in terms of regional hegemony, and deepening – as a threat of interference into sovereign state's domestic affairs. In case of the European Union the biggest and most populous Member States might be seen as such hegemonies by default. Although the idea of "empire by integration" is not often taken literally, there are occasions when – usually Germany's – activism is equalled with the will to gain influence in other states⁶. On the other side of the spectrum there is a group of approaches based on the idea that world politics should be governed by law and that states should behave rationally, meaning they should establish norms and practices of their conduct, which foster peace and democracy. Thus, the organizing principle is cooperation, which in turn leads to convergence of interests and political structures.

The (un)willingness to integrate is not determined by the country's size. Among the integration fans there are e.g. Italy, Spain, Portugal, Germany; other, like Poland, Sweden, Denmark or United Kingdom are afraid to lose sovereignty, whereas small countries, which otherwise would not have much impact win on leverage they would never achieve without participating in the EU (Luxembourg, Malta or Cyprus, the Baltic States).

⁶ for discussion see: Sverdrup, B.O., *Odysseus and the Lilliputians? Germany, the European Union and the smaller European States*, ARENA Working Papers WP 97/27

http://www.arena.uio.no/publications/working-papers1997/papers/wp97_27.htm#FOOTNOTE_1

Fears of German influence have been „analyzed“ in many brochures of the Polish nationalist group *All-Polish Youth* (cf. http://en.wikipedia.org/wiki/All-Polish_Youth), but also mentioned by Margaret Thatcher, *The New York Times*, July 20, 1990. *'Be Nice to the Germans'*

1.2 TECHNOCRACY VS. DEMOCRACY. HOW TO INTEGRATE?

These terms refer to the character of implementation of the integrationist ideas. Functionalism, theory that emerged in the 1960s, emphasizes the value of harmonization, coordination of various policies, which are managed by experts. Therefore, the focus is on delivering solutions rather than on political legitimization, however a supranational structure is not a precondition of this approach. Until the late 1980s, the process of deepening was characterized by technocratic mindset and integration was pursued at the intergovernmental level with little reference to the societies of Member States. Yet, the closer the EU came to the life of a normal citizen, the louder became the voices pointing to the *democratic deficit*.

The other mode of decision-making is democracy. The problem with democratic legitimacy, though, is that it entails plenty of latent and taken for granted assumptions. Following Max Weber's notion of *ideal type* we can see that democracy defined *of the rule of the people* has always been a utopia. Due to its vagueness, the concept of democracy itself is subject to manipulations and misunderstandings. One of such (false) assumptions is the existence of a united *demos* with common interest, other relates to the problem of *scope*, i.e. to the territory such decision-making process can be applied. Nowadays, this too often cited definition of democracy as the rule of the people should rather be replaced with the perception of democracy in terms of *democratic practices*. This consists in political and social values, which enable collective decision-making over wide territories.

Thus, the process of integration leads to tension between participation (democracy) and effectiveness (technocracy)⁷. The more actors are engaged, the greater the possibility that integration process slows down. *Diversity* will be rendering the EU less and less feasible to *unite*. There has never existed only one definition of democracy as there are many possible technocratic solutions. The struggle between these two modes of integration will also be shaping the EU. 'European Union' is often

⁷ Frank Pfetsch, APuZ, 10/2007, p. 22

described as a political actor *sui generis*. Thus, it seems that the democratization of the European Union will also have a character of its own.

1.3 INTEGRATION OUTCOMES: SUPERSTATE VS. INTERNATIONAL ORGANIZATION

The third pair of the different approaches concerns the desired outcome of integration. Two extremes are: *European superstate* or *international organization*. The first would be the realization of federalism; the other is merely a pragmatic cooperation of sovereign national states. Both would have clear borders and hierarchy of competences, the first would be the outcome of total deepening, the second is limited to inter-state cooperation.

Nowadays, the trend is however towards a third, i.e. *neo-medieval model* of organization⁸. It is the consequence emerging in situation when not all countries take part in all communitized policies. It is an open-end form that results from “various opt-outs and multi-speed arrangements”, it has “soft and never fixed [borders, where the] authority is dispersed”⁹. However, it is not mutually exclusive for elements of various political forms to coexist, or – more precisely – for the federal elements to be present within the neo-medieval model¹⁰. The idea of neo-medieval operates in political discourse in various forms:

- **variable-geometry/ concentric circles:** different forms and varying degrees of linking European states to the EU,
- **multi-speed Europe:** method of differentiated integration whereby common objectives are pursued by a group of Member States both able and willing to advance, it is implied the others will follow later

⁸ see the discussion in Jan Zielonka's *Enlargement and the Finality of European Integration* Harvard Law School; also: Wæver, Ole (1997), 'Imperial Metaphors: Emerging European Analogies to Pre-Nation-State Imperial Systems', in Tunander, O., Baev, P. and Einagel, V. (eds.), *Geopolitics in Post-Wall Europe: Security, Territory and Identity*, London, Sage, pp. 59-93.

⁹ Zielonka, *Enlargement and the Finality of European Integration*, p. 7

¹⁰ Börzel T, (2001) 'Non-Compliance in the European Union: Pathology and or Statistical Artefact?', *Journal of European Public Policy*, 8(5): 803-24

- centre of gravity/ core Europe functional and/or constitutional deepening by a group of „willing“ and „able“ Member States, who might attract others to follow.

The abovementioned approaches are often (mis)used in the political discourse and applied by political actors dependently of political needs. Multi-level negotiations, during which miscellaneous theoretical approaches, visions and current interests meet, result in what is called lowest common denominator. When 27 countries participate in trade-offs during Council meetings (but also in the system called comitology¹¹), and are bound to make a decision unanimously, the outcomes is always a watered down consensus.

¹¹ where the Commission together with representatives of the Member States decide how to implement Commission's provisions

2. ACTORS

The political preferences of national elites, political actors such as parliaments or the European Commission as well as the public opinion on EU politics will be decisive for the speed and direction of deepening.

The European Commission can be regarded as representing the functional approach. It is committed to finding solution to global/regional problems (cf. the 2006 policy agenda: *Delivering results for Europe*)¹². Commission interests for an ever-closer Union, which would be necessary to solve global problems, are curtailed by accusations of detachment from citizens, who have not directly legitimized its competences. Similarly, stable are the interest of the European Court of Justice, which actually contributed to development of legal integration. ECJ takes the role of a policy-maker where treaty provisions are not clearly stated. Although none of the treaties provide for the active role of the ECJ, its workings is necessary for a coherent interpretation of the European *acquis communautaire*. European Parliament, representing the citizens, despite its ever increasing competences, has not been yet exerting much influence in the question of deepening. Thus, these are the Member States which determine deepening process to the greatest extent.

It seems impossible to assign Member States clear and stable positions on the issue of deepening, as governments in democracy are subject to constant changes. However, it has to be noted that each of them is open to the process of vertical integration, and the question is more about which areas should be moved to the supranational level. In order to gain more clarity the matrix proposed by Anne Faber may be introduced. She suggests that MSs may be divided into four categories according to whether they: 1) *want to* and 2) *are able to* deepen:

¹² cf. http://ec.europa.eu/commission_barroso/president/pdf/com_2006_211_en.pdf

1. The *will* is determined by “domestic political constellations and orientations (...), political “traditions” concerning EU politics and national views of Europe and the EU (...) [as well as] calculation of potential gains and losses from further deepening and widening”.¹³

2. the *ability* is contingent on „economic situation and position of the member state in the global economy (...), domestic political constellations (e.g. stable or instable government, popular satisfaction or dissatisfaction with the government, upcoming national elections...) [and] “fit” or “misfit” of projects for further deepening and widening the EU with national structures and policy objectives (in terms of institutional, administrative, political and cultural structures and conditions).”¹⁴

Basing on these factors, Faber¹⁵ distinguished four basic types of member states' behaviour in regard to deeper integration (as well as enlargement):

- the *avant-garde*: those who want to and can (deepen), have a “common visions of a strong, politically unified Union“;
- “les frustrés“: would like to participate in the process, but are not able to do it;
- *veto-players*: will act as veto players and build alliances against further deepening in case where they are strongly opposed to deepening/widening projects;
- (potential) *drop-outs*: actors who do not want to and cannot support further deepening, „may create confusion: who is still a member state of the EU and who isn't? “.

To discover Member States' tendencies towards in regard to the above mentioned types, it would be convenient to resort to an example. National position in regard to the Treaty establishing the Constitution for Europe may uncover some general trends.

¹³ Wessels, W; Faber, A., *Wider Europe, Deeper Integration? Constructing Europe Network*, Backgroundpaper Deliverable No. 'D 5', p. 16, http://www.eu-consent.net/library/Deliverables/D5_BackgroundPaper.pdf, 02.05.2007

¹⁴ *ibid*

¹⁵ *ibid*

For the sake of simplicity it can be assumed that these Member States, which completed the process of ratification of the Treaty Establishing a Constitution for Europe, are generally in favour of further deepening. Their political leaders and governments, weighing the costs of domestic politics and possibility of their being re-elected, decided to adopt the document. Ratification has been completed either by referendum (Luxembourg and Spain) or by parliament (Austria, Belgium, Bulgaria, Cyprus, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Romania, Slovenia; in case of Finland, Germany and Slovakia the process of ratification has been completed by national parliaments but not finalized due to some legal aspects¹⁶). This certainly does not automatically imply that all the above mentioned countries may be considered as *the avant-garde*, or more specifically – that they are supportive of constitution to the same extent. Belgium, Luxembourg, Italy, Spain or Portugal may favour an increasing grade of integration and harmonization of policies. Nevertheless, it would be far from true to claim that this group has the potential and is able to construct a coherent “vision a strong, politically unified Union”. For instance, there are differences in the perception of the determinants that would strengthen the European citizenship. Some countries hold the position that a formal codified constitution would enhance the feeling of ‘being European’ (Belgium – 44%, The Netherlands – 37% (NB. the country rejected the constitutional treaty), Estonia – 35%, and in Germany – 34%). At the same time populations of other MSs see the possibility of participatory democracy as the element strengthening European identity (e.g. Denmark – 50%, Ireland – 45%, Luxembourg – 45%, Malta – 40% and Sweden – 38%)¹⁷. Additionally, support for membership has dropped in some of the countries which ratified the Constitutional Treaty (in Hungary to 39%, Austria - 36%, Finland - 39%). Owing to this diversity, there may be attempts by some countries of this group to form an avant-garde, as the Italian politician Romano Prodi noted:

“For us, the voice of citizens from the countries that ratified the treaty in 2004 has to be valued the same as those from countries that have not. And that’s why Italy is not ready to pursue minimal common denominations at any cost.”¹⁸

¹⁶ Germany: the ratification has not formally been completed, i.e. not signed by the federal President due to an appeal to The Constitutional Court, Finland: Parliament sign the treaty, the procedure is pending; Slovakia: the ratification process has been completed by the Parliament, now, the treaty has to be signed by the President.

¹⁷ Special Eurobarometer, *The future of Europe*, QA 20

¹⁸ <http://euobserver.com/9/23984>, 01.05.2007

But the question remains which MS would be willing to join the group, since others do not necessarily call for realization of ideas:

“I think that our policies should not be driven by theories of where the EU should be heading. Europe's vocation is to be engaged in enhancing peace and stability (...). We believe that rapid implementation of the principles of the Treaty is truly important for carrying out the further enlargement as well as effective functioning of the Union.”¹⁹

These MSs held a meeting in Madrid in January 2007, during which the Spanish prime minister declared:

“It is preferable to come at the present crisis in the Union with a daring proposal rather than a minimal one, which would inevitably lead to a minimalist accord which would be found wanting.”²⁰

Despite numerous discrepancies among these 18 countries as regard the future of Europe, they reinforced their will not to introduce any substantial changes to the agreements achieved earlier and inscribed in the Constitutional Treaty.

The other group consists of nine countries, where the ratification process either failed (France, The Netherlands) or has been suspended. Here the situation is analogous as in the first group: motives that drive political actors are diverse, just as the attitude towards deepening.

FRANCE

France – the first country to reject the Constitutional Treaty – is hesitant about future deepening. Once, part of the engine that was triggering the EU integration, the French population is divided and in general would like to act towards the promoting of “social Europe”. These societal rifts are also reflected in the support for EU membership, which lies at 50%, and for the idea of constitution, which appeals to 56%. Even the leading parties, the Conservative UMP and the Socialist Party, were not united on the

¹⁹ Estonian Ministry of Foreign Affairs: www.vm.ee/eng, 30.04.2007

²⁰ <http://www.euractiv.com/en/agenda2004/friends-constitution-want-maxi-eu-treaty/article-161233>, 01.05.2007

issue of constitution. Political positions of leaders resonates public opinion's indecisiveness. Minimizing the content, Nicolas Sarkozy (UMP) opts for "a slimmed-down treaty that could be adopted by parliamentary vote" and would like to revive the leading role of France, whereas Ségolène Royal (the Socialist Party) would like to extend it by "adding a protocol emphasising the EU's ambitions in social policy"²¹. Front National (Jean-Marie Le Pen) perceives deepening as an instrument to create a European Federal State, and thus strengthening Brussels against France. After Sarkozy's victory in the presidential elections 06.05.2007, the European Commission President Jose Manuel Barroso expressed his hopes that France under the new leader will „play a central role in European politics and [that] there can be no strong Europe without a European France".²²

THE NETHERLANDS

Despite the fact, that The Netherlands was the second country to reject the Constitutional Treaty in a referendum, the general attitude both of the government and of the society towards the EU is positive – the last Eurobarometer survey revealed that 72% of the population support the country's membership in the EU and 59% support the idea of constitution.²³ Christian Democrats (CDA) and Conservative Democrats (VVD) did not want to hold a referendum, whereas Labour Party (PDA), Socialists Parties and the Greens supported the procedure of ratification consultation. In relation to deepening, the Dutch were afraid of three main issues²⁴: loss of sovereignty (Jan Marinijssen, Socialist Party: "the Netherlands would become an impotent province"²⁵), the speed of integration and enlargement (in fact the constitutional campaign had an anti-Muslim undertone), the high amount of the country's financial contribution to the EU. The Dutch would like to see more Europe in the areas of countering terrorism, (82%), environmental protection (81%), energy (74%); the support of communitization is weaker in case of asylum, (56%), agriculture (47%), justice affairs (41%). At the same time ideas of a common foreign

²¹ <http://news.bbc.co.uk/1/hi/world/europe/3954327.stm>, 23.04.2007

²² http://www.eubusiness.com/news_live/1178481601.73, 07.05.2007

²³ Eurobarometer 66, p.32

²⁴ Centrum für angewandte Politikforschung, <http://www.cap-lmu.de/themen/eu-reform/ratifikation/niederlande.php>, Wenige Tage nach dem französischen Nein lehnten auch die Niederländer mit großer Mehrheit die Verfassung ab, 02.05.2007

²⁵ <http://www.wsws.org/articles/2005/jun2005/neth-j04.shtml>, 01.05.2007

minister or deepening in terms of defence are generally rejected (respectively: 44% and 52% against)²⁶. Recently, the Dutch Prime Minister, in a meeting with Tony Blair, refuted the possibility of a new treaty and spoke of a “diluted treaty with institutional changes”²⁷. Both of them agreed that – owing to the intergovernmental nature of such a new treaty – the requirement of a national referendum would become irrelevant. Simultaneously, there are Dutch MEPs who prefer the Treaty of Nice as the starting point for new negotiations²⁸. Even if the current government will compromise on a text of a new „diluted treaty with institutional changes”, the Dutch position might be revised after the 2008 elections. The country’s position might to some extent be contingent on the support for extreme right Geert Wilders and the radical left Socialistische Partij, who are the biggest adversaries of the constitution, and of deepening.

THE CZECH REPUBLIC

Although the authorities come across as euro-sceptic, the Czech society is not as adverse towards European Union as some of the political leaders are. The outspoken critic of any further deepening, President Vaclav Klaus, opposes “forms and methods of the European integration, which change the original integration into unification” and notices that “we need less of vertical regulations, harmonizations and standarization (...) and less EU-institutions in Brussels”²⁹. Representatives of the current government, though, do not match the president’s extent of negative attitude. Deputy Prime Minister Alexandr Vondra denied blocking the upcoming negotiations, emphasizing that the Czech Republic accepts that “the constitutional text, as it was signed, is the basis for negotiation (...) and that it is ready to take part in the search for a consensus so that everything will be ready in 2009”³⁰. It seems therefore plausible to argue that Czech reluctance is directed mainly towards any moves that might suggest the EU is developing into a federal state. After the recent meeting with the German Chancellor

²⁶ *ibid*

²⁷ *cf.* <http://www.euractiv.com/de/zukunft-eu/blair-balkenende-abgeschwacher-vertrag-statt-verfassung/article-163205>, 01.05.2007

²⁸ Positive developments towards agreement on new European treaty, but difficulties and reservations remain, http://www.senado.es/unioneuropea/prensa/N63_17a23abril2007.pdf, 30.04.2007

²⁹ Klaus, V., *Demokratie, nicht Postdemokratie* FAZ, 23.03.2007, no 70, p. E6

³⁰ Richardi, F., *A Look Behind The News, Positive developments towards agreement on new European treaty, but difficulties and reservations remain*, Agence Europe, 18.04.2007, <http://www.senado.es/unioneuropea/eu.html>

Merkel, president Klaus welcomed the fact, that the Berlin Declaration, celebrating the 50th anniversary of the EU, does not oblige MSs to seek a “constitution” but instead mentions a “new treaty”. Klaus would also like to re-open the debate on the division of competences between the EU and the Member States as well as the voting procedures in the Council, which favours the biggest Members³¹. The Charter of Fundamental Right should also be deleted from the new document, according to the Czech President. The Czech government presents a milder criticism and probably will not block ratification of a new treaty as long as it gets rid of any federalist semblance. It pleads for the term European Foreign Minister to be deleted, whereby it supports the idea to merge the functions of the EU high representative for the CFSP and those of the European external affairs commissioner.

POLAND

Current state of affairs is characterized by a certain antagonism. The government is known as an articulated euro-sceptic. Not only the governing coalition parties (Law and Justice, Selfdefence, League of Polish Families), but until recently even the oppositional party (Civic Platform) clung to the parole “Nice or death” in defence of the vote distribution system in the EU Council agreed in Nice³². This demand to retain the Nice voting system in Council³³ to support Poland’s mightier position in the Council has been replaced with that of the “Penrose square root law”. This is a mathematical formula developed by a British mathematician, Lionel Penrose, in the 1940. It has been suggested as a possible rule of vote distribution already in 1998 and 2004. In 2004 scientists from the Jagiellonian University in Kraków worked out a proposal, namely that “the voting weight of each member state should be allocated proportionally to the square root of its population, with decisions passed by the Council of Ministers if the sum of weights of the countries voting in favour of a motion exceeds 62% of the total weight”³⁴. Director of the Poland's EU integration office Ms Osniecka-Tamecka implied that if the

³¹ <http://www.euractiv.com/en/constitution/poland-czech-republic-get-tough-eu-treaty-talks/article-163252>, 30.04.2007

³² see more <http://www.warsawvoice.pl/view/3562/>, 30.04.2007

³³ under the Nice Treaty Poland has 27 votes, as compared to Italy, Germany, UK and France, having 29, the current Constitutional Treaty provides for only 38 votes for Poland as contrasted with Germany's 82.

³⁴ Karol Zyczkowski, Wojciech Słomczynski and Tomasz Zastawniak, Physics for fairer voting, physicsweb.org, <http://physicsweb.org/articles/world/19/3/6>, , 30.04.2007

system as it is provided for in the Constitutional Treaty will not change, Poland may “take the last resort” and block the preparations of a new revised treaty.

Polish society attitude towards the Constitutional Treaty is rather positive (63%)³⁵, Poles are satisfied with the country’s membership (62%) and would like to see further areas managed on the European level (e.g. social system, energy security, foreign policy). These opinions are shared by the Polish government, which would like to see more Europe, but mainly the areas which does not threaten the country’s sovereignty in the realist terms, and in which they could pursue their interests (energy security, defence).

DENMARK

Referendum in this country is obligatory and after it has been indefinitely postponed, the Danish government is waiting for the final result of the reflection period and efforts by the German Presidency to revive the deadlock. “The Danish government’s position is that a new Constitutional Treaty should be agreed and in place before the 2009 European parliamentary elections”³⁶, declared Prime Minister Rasmussen. Denmark’s society perceives its membership in the EU in positive terms (74%)³⁷, yet according to the same Eurobarometer study, 35% rejects the idea of constitution. Therefore, in order to avoid a referendum, the government will probably support a new mini treaty, which does not require a referendum. It depends, though, on how strong the opposition of anti-European actors will be – the Danish Folk Party may be decisive as it is a coalition partner of the present government.

IRELAND

As the greatest Euro-optimist, Ireland has a generally positive view on further deepening. In spite of reservation regarding the lack of reference to Christianity and military neutrality, the support for the

³⁵ Eurobarometer 66, December 2006

³⁶ http://www.eubusiness.com/news_live/1169575210.69/, , 30.04.2007

³⁷ Eurobarometer 66

Constitutional Treaty reaches around 56%³⁸ and Ireland ranks as the top country judging the EU membership as “a good thing” (78%). The governing parties Fianna Fail and Progressive Democrats, firmed up by the oppositional Labour Party, Fine Gael as well as the Greens, support the Constitutional Treaty. Only Sinn Fein rejects the treaty that otherwise is viewed as “a good document, which Ireland would like to see ratified and implemented”³⁹. Prime Minister Bertie Ahern proclaimed the constitution “the right choice for Ireland”. Therefore, even though the ratification process has been stopped, Ireland participated in the Madrid meeting of the 18 countries, which already adopted the treaty.

PORTUGAL

Portugal, second of the trio Presidency (team presidency), is determined to reach a consensus on the text of the new treaty in the second half of 2007. It will be their priority during the country's chairmanship of the Council. In 2005 the Parliament changed Portuguese constitution in order to allow the society to decide directly over the Constitutional Treaty and therefore the ratification process has been postponed until the situation gets clear. To express their support, representatives of Portugal participated in the Madrid meeting of the friends of Constitution. Numbers speak for themselves: 50% perceive Portugal's membership positively, 60% does not oppose European constitutional treaty. Prime Minister Jose Socrates, together with his Italian and Spanish counterparts, called for enhancement of the Constitutional talks⁴⁰.

UNITED KINGDOM

The lowest support (36%) among all MSs for the European Union membership summarizes the negative attitude towards “an ever-closer union”. Since the Labour Party supported the Constitutional Treaty, in 2005 the lower chamber of Parliament ratified the document. However, after the negative results of referenda in France and the Netherlands, the process was stalled – not surprisingly – as only about

³⁸ Eurobarometer 66, p.35

³⁹ <http://news.bbc.co.uk/1/hi/world/europe/3954327.stm>, 25.04.2007

⁴⁰ <http://www.einnews.com/portugal/newsfeed-jose-socrates>, 01.05.2007

40%⁴¹ of the population are in favour of constitution. In questions of possible deepening, the government gives precedence to resolving relevant issues and problems of world politics (setting new priorities in the field of energy security, foreign and defence policy) over the question of deepening the integration process. To overcome the impasse Prime Minister Tony Blair prefers to get rid of the constitutional character of the new treaty and to “present it as a document that is amending the 2001 Nice Treaty”⁴². Both Blair and its successor Gordon Brown „would only agree to a “mini-treaty”. However, British Conservatives spoke of referendum across Europe strongly dislike the current resuscitation of the European constitution. Civic groups and many politicians dismiss the idea of deepening, believing that it “is being fundamentally undermined by the single currency, the proposed EU Constitution, and the drive to create a Brussels-based system”⁴³.

SWEDEN

The present government, constructed after the elections of September 2006, is made up of four parties (Moderata samlingpartiet, Centerpartiet, Folkpartiet liberalerna, Kristdemokraterna). The so called "Alliance for Sweden" seems rather favourable of the idea to continue the process of ratification once there is a clear road-map (it might be presented by the German Presidency on the Brussels Council in June). Social democrats and civic parties, which form the alliance, opt for keeping of the most important provision contained in the Constitutional Treaty and plea for Europe “delivering result”⁴⁴. However, the Green Party would prefer a new treaty strengthening the rights of citizens and environmental policy. Together with the Left Party, they raise doubts about the democratic legitimation, and dismiss ideas of deepening in the areas of foreign and social policy. Decisive role may also be played by the younger EU-critical generation of political leaders, who recently published a letter saying that “in future treaty-negotiations, the Swedish government should resist any additional transfers of

⁴¹ Eurobarometer 66

⁴² http://euobserver.com/9/23921?rss_rk=1, 02.05.2007

⁴³ see e.g. <http://www.democracymovement.org.uk/>, 24.04.2007

⁴⁴ http://ec.europa.eu/commission_barroso/president/pdf/com_2006_211_en.pdf, , 30.04.2007

powers to the EU level, until the unnecessary competencies⁴⁵. Therefore, the debate on Europe in Sweden may bring about even stronger euro-scepticism.

Among the Member States, which have not ratified the Constitutional Treaty there are countries that might belong to the group of the *avant-garde* (Portugal, Ireland). On the other hand, political situation and moods of the public opinion might in the future turn countries like Sweden and the United Kingdom into possible *opt-out*, France seems not be the case, but the cleavages between political leaders and their voters suggest it approaches the *les frustrés* category. Other countries play the *veto*-role to in order to pursue their *raison d'état*.

PUBLIC OPINION AND CIVIC MOVEMENTS

As 2006 Eurobarometer: *Future of Europe* survey suggests European citizens of all Member States see various perspectives of deepening. When the respondents were asked what they would „consider to be most helpful if anything, for the future of Europe⁴⁶“ over 50% (47% in the old, and 74% in the new MSs) saw the solution in ‘comparable living standards’, whereas only 25% perceived common constitution as the answer to Europe’s crisis. A similar question: “what is the best way to strengthen European citizenship?”⁴⁷ revealed that only 27% of respondents perceive the Constitution as a Europeanizing factor. The idea of an EU President, who would be selected in direct election at national level appealed only to 16%. The same survey asked in which areas „more decision-making should take place at a European level or on the contrary that less decision-making should take place at a European level“⁴⁸. The majority was eager to see ‘more Europe’ in areas of international affairs and

⁴⁵ <http://www.openeurope.org.uk/media-centre/bulletin.aspx?bulletinid=54>, 02.05.2007

⁴⁶ the choice was limited to six areas: common language, clearly defined borders, comparable living standards, common army, common constitution (QA11, Eurobarometer, The future of Europe)

⁴⁷ the choice was limited to 6 areas: European social welfare system, European Constitution, Being able to vote in all elections organised in the Member State where you live, President of the European Union directly elected by Member State citizen, replacement of national income tax by a European income tax, European Olympic team; there were also a relevant percentage of two spontaneous answers: None of these (12%) and do not want to be a European citizen (8%)

⁴⁸ the choice consisted in 13 areas: fight against terrorism, promotion of democracy and peace in the world, fight against organised crime, Cooperation in the field of research and innovation, protection of the environment, prevention of major health issues, Ensuring continuous energy provision, Ensuring food safety, Equal treatment of men and women, Ensuring

world politics, where the policy issue was of transnational character. Thus, strengthened cooperation would be welcomed in the areas of counteracting global terrorism and organized crime (80% and 75% respectively), promotion of democracy and peace (77%) or research and innovation (74%). In regard to domestic policies (social and economic) the numbers of people advocating more Europe were significantly lower.

Thus, what the Europeans expect from the EU is not a vision of being united in a national-like state, but rather effective solution of global/regional problems. Of course to achieve that a certain level of further deepening is inevitable.

economic growth, protection of agriculture, protection of social rights, fight against unemployment (QA8, Eurobarometer, The future of Europe)

3. CONSTITUTION OR CONSTITUTIONALIZATION?

After the political spur given 2000 by Joska Fisher in his speech at the Humboldt University, the question of deepening has in many discussions been equalled with that of the possible European constitution. However, constitution as an act that establishes the fundamental rights and principles, power competences and political organization of a polity/community, would not imply that the process of an *ever-closer Union* has been accomplished. A Constitution on the European level is often perceived as completion of the final stage of the federalist idea. Nonetheless, many legal experts together with European scholars⁴⁹ argue that the European Union and the European Communities have already developed a constitution of sorts. The EC and the EU do not only have a *material* constitution, i.e. norms that regulate the polity, but they also have been constructing a *formal* one: principles and rights provided for in legal documents. This is not to suggest that the EC and the EU possess a constitution in the form as it is present in state system. Rather, one can speak of ongoing *constitutionalization* process, in which both the Treaties (primary law) and the rulings of the European Court of Justice, regulations and directives of the Commission (secondary law) are the determining factors. Constitutionalization consists in creation and consolidation of legally binding fundamentals of legitimacy and sovereignty control in a community. As such, it emphasizes the continuity and the open-endedness of the process (cf. *finalité politique*). Nonetheless, the process resulted in emergence of two basic principles of the European legal doctrine:

- **direct effect:** it enables EU law to be invoked in national courts,
- **supremacy of the EU law over the national law.**

These principles – usually found in a state constitution – were not automatically accepted by all Member States⁵⁰ and the doctrine developed over many years. Currently, all future members are obliged to accept the legal system of the EU. Following this line of argumentation the EU can be understood as having an uncodified constitution, consisting of several different sources (Treaties, ECJ

⁴⁹ cf. discussion in Simon Hix, *The political system of the European Union*

⁵⁰ cf. Mbaye (2001), Boerzel 2001 in Simon Hix, *The political system of the European Union*

rulings and Commission regulations). Therefore in this light, the question whether the EU should or should not have constitution should rather be formulated: what kind of constitution does EU need and can afford?

In legal terms the document prepared by the European Convent and signed by the IGC in October 2004 remains a *treaty* (could a constitution in the formal codified sense have 448 articles, 36 protocols, 2 attachments, 50 explanatory notes?). Why then did the European decision-makers, in case of this treaty, prompted to use terminology that is typical of state? It gave the impression the European Union was transforming into a state. The European Union, after the Nice Treaty, needed another document to tackle new problems that either have not been resolved in Nice or arouse in relation to enlargement. Yet, the proponents of federalism sought to insert a symbolic wording, which might imply the EU is transforming into a state. Once the ratification process stagnated, the European decision-makers set off to reflect upon feasible solutions of the deadlock. The adoption of a double-track approach envisaged that countries willing to ratify the Treaty were invited to do so, whereas politicians and the wider public would be consulted on how to reconcile the proponents and opposition. The recent grappling over the text of the Berlin Declaration, which should give a new momentum to EU development, shows that the degree of acceptance for further deepening is contingent on how the ideas and proposals are presented. Moreover, it seems possible that – to save the key elements meant to facilitate the working of EU-27 – the federalist symbolism will be deleted from the new treaty.

The recent constitutional debate and the lack of an influential transnational federalist movement suggest that the process of an ever-closer union will assume a form of soft constitutionalization. Thus, deepening of integration will be carried out by means of secondary law described below, and legal interpretation by the European Court of Justice, rather than by introduction of *hard constitutionalization*, i.e. in form of a new treaty-constitution. Vertical integration is also being supported by the so called *living constitution*⁵¹, which includes all practices and behavioural modes in which the European Union is working.

⁵¹ Olsen J. P., *Organizing European institutions of governance. A Prelude to an Institutional Account of Political Integration*, ARENA Working Papers, No WP 00/2, Oslo 2000, p. 7

4. MEANS

It is difficult to predict, where the process of soft constitutionalization may have its limits. In the Maastricht Treaty the EU applied the goal of an “ever closer union” as the ultimate norm of the EU polity⁵². This reflects the open-end character of the EU and provides for the possibility of moving policy areas in the communitized first pillar. All other spheres may, upon certain procedures, undergo the process of their convergence. The frequency of meetings and grade of cooperation between politicians, civil servants, national committees make them all prone to a certain degree of harmonization. When the Member States do not agree to move a policy into supranational level, a watered down procedure of integration may occur. In the course of time, many of such deepening techniques have been developed:

- **Open method of coordination (OMC):** sometimes referred to as a soft coordination policy is a procedure in which Member States set common objectives, but the competences that provides for the means through which these objectives will be achieved remain entirely within the state. Such coordination does not envisage (at least not at the beginning) creation of common rules and institutions, but aims at converging of respective national policies. OMC emerged during the Lisbon Council 2000.
- **Other coordination procedures include *inter alia*:**
 - ◆ best practices: are established in the course of comparisons made between Member States, in which certain indicators and benchmarking are applied;
 - ◆ common strategies: constitute a plan with short-term, middle-term and long-term objectives, which then should be implemented in national and regional politics;
 - ◆ interinstitutional agreements.
- **Passerel clause:** is a clause that allows for the replacement of unanimous voting in the European Council with qualified majority voting procedure.

⁵² S. Hix 2005, *The political system of the EU*, p. 135

- Qualified majority voting (QMV): system of voting in the Council of Ministers employed in certain policy areas (the tendency to use this method is slowly increasing), decision is arrived at when a given number of qualified votes in favour is cast.
- Enhanced cooperation: allows these countries of the Union that wish to continue to work more closely together to do so, while respecting the single institutional framework of the Union, the general arrangements for enhanced cooperation are laid down by the Treaty on European Union (EU Treaty, Title VII)⁵³
- Opt-out: regulations which enable a Member State not to take part in a certain communitized policy area.

Special category of means that allow a country to pursue its national interests is the institution of Presidency. It gives the opportunity to advance particular goals, among them, the goal of further integration and visions on the future of Europe. Countries advocating a deeper integration will pose questions and set their Presidency agenda in such a way that promotes their goals, and by the same token, Member States, whose population is reserved towards the idea of further deepening, will keep a low profile on that matter. As the reflection period has come to end and the previous presidencies of Austria and Finland (whose levels of support for the European vision are on the decrease) did not struggle much to revive the idea, whereas Germany Presidency is now doing its best to resuscitate the project. Chancellor Merkel is determined to make progress in the preparations for a new European treaty, which would replace the constitutional project, while preserving its basic fundamental text.

To that end German authorities try to arrive at a compromise over “substantial components” in a series of negotiation with Member States’ governments. National position of the Member States, as presented above, suggest that the future document will be deprived of the word “constitution” and any terminology that might imply to the that end. At this stage it seems that Member States *en bloc* will not be in the position to adopt a European Constitution. Applying the semblance of a “constitution” gave the

⁵³ http://europa.eu/scadplus/glossary/enhanced_cooperation_en.htm, 29.04.2007

impression that the EU would become a super-state, a vision that is not pursued by any government. Together with this word other terms would be deleted:

- “European minister for foreign affairs”, (but the competences of High Representative and vice presidency of the Commission will probably be merged),
- “European law”;
- removal of references to EU symbols,
- if the future treaty will not include a preamble, the problem of reference to “Christian roots” will automatically disappear.

Although as the supremacy and direct effect of the community law exist *de facto*, some governments would like to remove an explicit reference of the primacy of Community law over national laws in the text of future treaty. Moreover some governments (Czech Republic, United Kingdom) want to cut off the Charter of Fundamental Rights, leaving only a cross reference to its legal status. Majority of Member States governments opt for preserving new institutional mechanisms as they were introduced in the Constitutional Treaty, among them is the extension of majority voting to other areas. A matter of contention is the voting system, which Poland is still opposed to. An explicit reference to the European Union's social dimension would be a bow towards other countries, like France. Moreover, as already indicated in the Berlin Declaration of 25th March 2007, a new text will probably point to the EU “new challenges”: energy, climate change, and immigration policy. A new proposal speaks of introducing enlargement “criteria”, however there is still no broad consensus over their formulation.

The intensive workload of the German Presidency and personal contribution of Ms Merkel to push the EU forward should bear fruits. The new treaty will be the result of intergovernmental negotiations rather than of a wide public debate, although attempts to this end have been made by the Commission. During the European Council 21-22 June 2007 negotiations on the new treaty should be opened and thus establishing priorities for an Intergovernmental Conference. Its work may be completed by the end of the year and the ratification process could set off early in 2008. If it proves so, the new treaty could enter into force before the June European elections 2009 during the Czech Presidency.

5. CONCLUSIONS

What kind of picture does emerge from the presentation of the setting, actors and the recent struggles over the constitutional treaty? The European Union emerges a polity where the interests and attitudes of actors check and balance themselves. The trend is not conducive to a single treaty which would replace all existing ones. States that want “more Europe” and would like to continue vertical integration may choose the option of strengthened cooperation. Resorting to mechanism of opting in or opting out will probably lead to what scholars call a neo-medieval empire. When applied to deepening this would mean that development of the EU inclines towards the idea “European Union of projects”. However, the approach so far has favoured the culture of compromise, which inevitably resulted in the lowest common denominator character of decisions. Will some Member States break off and pursue a variant of deeper integration? If dissatisfaction of some Euro-optimist Member States with the new treaty will prove too strong, we might expect Europe of two-speeds which will be united by projects in the area of global issues like energy security, environmental protection or counteracting terrorism.

Fifty years of the European integration constituted a gradual synthesis of enlargement and deepening. With the increasing number of Member States the trend of vertical integration is leaning towards a certain form of variable geometry, where some countries decide to deepen their cooperation in certain sectors, whilst other prefer to retain their national competences. As the complexity of interests and positions in regard to the Constitutional Treaty proved, the probability of an EU-27 superstate is now marginal.

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