

THE INSTITUTIONAL DEVELOPMENT OF THE EU

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Abstract: *The main institutional problem of the European Union is the difficulty of managing in a democratic manner a large and diverse community. There are several schemes, combining features of a more centralized and more efficient union and of a looser and more democratic alliance of independent members. The Lisbon Treaty doesn't solve the problem. The management of the EU continues to follow flexible, though informal, schemes.*

Key words: *European Union, institutional development, federalism, intergovernmentalism, "Core Europe" model, "Multy-speed Europe" model, 'Variable-geometry" Europe, efficiency, democracy, Lisbon Treaty*

The protracted and controversial ratification of the Lisbon Treaty revealed once again the main institutional problem of the European Union – the difficulty of managing in a democratic manner a large and diverse community. There persist (and will persist) the dispute between the supporters of a more centralized and more efficient union (some kind of “democratic empire”) and of a looser and more democratic alliance of (semi)independent members.

The initial notion of the European integration was the “United states of Europe”. A **federation** of European states had to bind politically and economically the post-war Germany, to set an end of its rivalry with France and to allow the survival of Western Europe during the Cold war. The political elites needed a federal Europe in the pursuit of political goals, which were after 1945 beyond power of any single European state, even of the victorious Great Britain or France.

“...The countries of Europe are not strong enough individually to be able to guarantee prosperity and social development for their peoples. The States of Europe must therefore form a federation or a European entity that would make them into a common economic unit.”¹⁹⁵

Moreover, the politicians of the smaller countries hoped to suppress through integration the ambitions of their great neighbors, first of all Germany.

The upsurge of the USA in the 20. century contributed much to the attractiveness of the federal model. One of the vital advantages of the USA was the huge and competitive domestic market, which the Europeans were keen to copy within the borders of a new kind of union. This consideration was valid in the 50-ies,

¹⁹⁵Jean Monnet , Speech to the French National Liberation Committee, 5 August 1943

but is still valid nowadays while facing the strong competition of the USA, Japan and China. On the contrary, the rivalry with Russia, the successor of the USSR, doesn't produce the same integrative effect today.

All variants of centralized integration (federation, confederation) reflect a determinist philosophy, which treats the political will as motor of the integration. This kind of philosophy does exist in France, paving the way for the policy of indicative planning (dirigisme) with its elements of social engineering. According to Charles Pentland "*...all federalists stress upon the primacy of the politics. The changes in the system depends less on the objective forces of the economy... but on the ability of the political elite to concentrate, control and use the means of power*".¹⁹⁶

The **federalists** share the opinion, that constituting the new construct (federation, confederation) alone should remove the obstacles to the successful development. It would be necessary to draw a treaty, able to combine good enough the different national interests and to foresee correctly the future development. Such a treaty shouldn't be altered too often in order to maintain a solid foundation of the union. Series of hampered und unfinished common projects (European Political Community, European Defense Community, Monetary Union) show, that the proponents of indicative planning overestimate the **willingness** of the national governments to transfer parts of their competences to intergovernmental institutions. Nowadays it's also clear, that it's impossible to foresee correctly the future development: there are several serious corrections of the constitutional treaties during the last 20 years: the Single European Act (1986), the treaties of Maastricht (1992), Amsterdam (1997) and Nice (2001), the failed Constitutional Treaty (2005) and the much disputed Lisbon Treaty (2009). As soon after any of these treaties passed their (sometimes difficult) ratification, both internal and external commentators began to criticize it and to hint at their inevitable correction in the nearest future. The **neofunctional** theory, developed further by Ernst Haas and Leon Lindberg, exercised (and still exercises) strong influence over the integration process. This theory described exactly the events in Western Europe in the 60-ies. Unlike other theories of integration, neofunctionalism is non-normative and tries to describe and explain the process of regional integration based on empirical data. The most important projects of the European Commission followed the scheme of the neofunctional spill-over, trying to transfer the unification process from one important social sector to the others. This model requires an institutional scheme, which ties the separate communities together more effectively, than the intergovernmental cooperation, limiting at the same time not too much the national sovereignty.

While the federalism focuses more on the final result of the integration, the neofunctionalism stresses more on the way of achieving it.

¹⁹⁶ Charles Pentland, "Enlarging the Security Community: NATO, the EU and the Uses of Political Conditionality," in *New NATO, New Europe*, ed. David Haglund, 78 (Boulder: Westview, 2000)

The **intergovernmentalism**, initially proposed by Stanley Hoffmann, rejects both the neofunctional spill-over concept and the idea that supranational organizations are on an equal level (in terms of political influence) as national governments. It refers to the decision-making methods in international organizations, where power is possessed by the member states and decisions are often but not always made by unanimity. In the context of the European Union, intergovernmentalism means that members of national governments take EU legislative and executive decisions amongst themselves, either by majority vote or by unanimity. It suggests that national governments should control the level and speed of European integration. Any increase in power at supranational level should result from a direct decision by governments.

To the end of the Cold War the European Community had already evolved toward some kind of federation. Among the achievements of the European integration the federalists count the directly elected European Parliament (est. 1979) and the prerogatives of the EC in economic matters: Custom union, Trade policy, Single market, Common policies etc. The strongest advocates of European federalism have been Germany, Italy, Belgium and Luxemburg, supported often by Spain, Portugal and Greece. Historically most strongly opposed to the federalism have been France and the United Kingdom and to some extent Denmark. Due to this opposition the Community remained an interstate system with no prerogatives in areas such as foreign policy and defense, taxation etc., while having some federalist characteristics.

The end of the Cold War allowed the enlargement of the EC both to the North and to the East, laying so on the table the problem of the effective rule.

Peter Glotz offered 1991 the model of “**Multy-speed Europe**”, combined with federation in an attempt to complement the advantages of the different concepts – creation of the so called “clusters”.¹⁹⁷ The European Union (since 1994) could survive as a community of 12, 15 or 27 countries, tied together at different levels. Multinational federations (in Western Europe, in Scandinavia, on the Baltic coast), independent states (Great Britain, Swiss) and loose confederations in South-eastern Europe could establish a system of different political density within the borders of a common economic area (the eurozone?). The refusal of some countries to give up their competences (security, foreign policy, currency) should be accepted, as well as the desire of others to integrate their potentials.

The European parliament offered 1992 its own long-term strategy for further institutional development. The document PE 152.242 foresaw a similar, but larger multilevel scheme of a “two (or rather three) - speed Europe”¹⁹⁸, bound up with federal, confederal and looser ties. Following this scheme, the EU should “strengthen and democratize its own institutional federal system”, preserving at the same time the core of a “system of **confederal** cooperation in

¹⁹⁷ Peter Glotz, „*Der Irrweg des Nationalstaats. Europäische Reden an ein deutsches Publikum*“, DVA, Stuttgart 1990,

¹⁹⁸ “The Future of the European Community: A Strategy for Enlargement”, PE 152.242/fin., European Parliament, 21 May 1992, <http://www.ucss.ge/EUp-05.pdf>

Europe”¹⁹⁹, including the Council of Europe and OSCE. The whole construct should consist of many “regional, specialized and ad-hoc confederations” and should ensure a stable foundation for the cooperation with the USA, Turkey, Russia and other post-soviet and Mediterranean states. It would be more flexible, efficient and pragmatic in solving problems, than a single international organization.

The mixed model of “Multi-speed Europe” with all its interpretations soon became a popular concept, often debated in European political circles, looking for a way to combine democracy and respect for the national interests with the efficient management of the expanding community. The reasons and actuality of the theory is that, the more diverse members enter the Union, the more difficult it becomes to reach consensus on various topics, and the less likely it is that all would advance at the same pace in various fields (economical, social, fiscal, military, decision-making, etc.). This concept includes two essential models of multi-speed Europe: “Core Europe” and “Variable geometry Europe”.

In the “**Core Europe**” model, a group of EU members, interested in further integration, transfer the already established integration scheme to new areas. Such a nucleus of members, for example among the six historic ones of the Treaty of Rome, wanting closer integration, would create their own federal institutions, nested inside the supranational union. It can be worded as a "federation inside a confederation".

Enhanced cooperation is the mechanism, which allows those 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 Member States concerned can thus move forward at different speeds and/or towards different goals. The general arrangements for **enhanced cooperation** were laid down by the Treaty on European Union (EU Treaty, Title VII) and related to both the European Union and the European Community. In principle, at least nine States must be involved in enhanced cooperation, but it remains open to any state that wishes to participate. It may not constitute discrimination between the participating states and the others and may not apply to an area that falls within the exclusive competence of the Community. Under the EC Treaty the initiative for enhanced cooperation is taken by the Commission at the request of the Member States concerned, whereas under the EU Treaty the initiative comes from the Member States. In either case, institution of enhanced cooperation is subject to a decision of the Council, acting by a qualified majority. Enhanced cooperation may also be pursued in relation to the common foreign and security policy (CFSP), except for military or defense matters.

The Treaty of Amsterdam incorporated the "enhanced cooperation" concept into the Treaty on European Union as regards judicial cooperation on criminal matters. The Treaty of Nice introduced major changes, aimed at simplifying the

¹⁹⁹ Ibid.

mechanism. In particular, a Member State may not oppose the establishment of enhanced cooperation as originally allowed by the Treaty of Amsterdam.

“Concentric circles” is a variety of the Core Europe model, most preferred by French and German politicians. This concept involves a Europe made up of subsets of states which have achieved different levels of integration. It is not confined just to the integration structure of the European Union. Some talk of "the circle of shared law" (the Union's Member States), “the adjacent circle" (the countries outside the Union waiting to join it) and "more select circles" for the purpose of greater cooperation (the currency circle, the defense circle and so on). Recently many observers share the vision of a Union, consisting of Core (Member States tied closer by enhanced cooperation), Inner periphery (Member States able, but not interested in closer integration, such as Great Britain or Ireland) and Outer periphery (Member States not able to keep in step with the others, such as Bulgaria).

'Variable-geometry’ Europe is the term used to describe the idea of a method of differentiated integration which acknowledges that there are irreconcilable differences within the integration structure and therefore allows for a permanent separation between a group of Member States and a number of less developed integration units.

This model, by contrast, does not involve a single group of countries pushing ahead across the board, but rather multiple groups being established for different policy areas. For example, one group of countries may decide to integrate further in the area of taxation; another group may decide to integrate further in the area of defense, another in the area of a public prosecutor, etc. The advantage of this model is that it is easier to create agreement, since the Core Europe model requires a single group of countries which are across the board interested in further integration, while the "Variable geometry model recognizes that countries have differing policy interests and concerns.

The Core Europe model could be implemented by creating parallel institutions, for example a "European Federation" to exist alongside the "European Union", as a sort of inner core. Such an approach would not work for the Variable geometry model, since not one set of parallel institutions would be needed, but rather one per a group. Rather, Variable geometry would be approached through using the existing EU institutions, either via the use of the current closer cooperation provisions in the EU Treaties, or a future strengthening of those provisions (such as that proposed in the failed EU Constitution and then put forward into the Treaty of Lisbon).

“Europe 'à la carte” is a British notion of the Variable-geometry model, which refers to the idea of a non-uniform method of integration which allows Member States to select policies as if from a menu and involve themselves fully in those policies; there would still be a minimum number of common objectives.

The two waves of enlargement (1994, 2005) burdened the institutional scheme of the EU beyond its limits, but didn't solve the problem in favor of one or another concept. French governments (but not necessarily French voters)

adopted recently some federalist ideas, supported by some new Member States like Hungary, but other new Member States like Sweden, Poland or the Czech Republic have taken on the roles of opponents to a more centralized Union. Despite the raising weight of the European parliament and the gradual replacement of the unanimity with the majority vote in the Council of the European Union, the EU is still not a federal system, despite some claims to the contrary.

Having some federalist characteristics, the European Union *de facto* has so far adopted the Variable geometry model. The major difference is that at the moment variable geometry occurs as a "special case", only for certain very major Treaty-level policy issues. The enhanced cooperation treaty provisions are a means to normalize variable geometry and make it available to most policy areas. There are several examples of this flexible scheme:

- The Euro zone with 16 EU member-states and seven more in ERM II on track to joining. All but two states (Denmark, United Kingdom) have agreed by treaty to join but at least one of those treaty signatories (Sweden) has made no further steps to do so.
- The Schengen area Treaty leading to a common border for all but two EU states (United Kingdom and Ireland) includes at the same time three non-EU members - Norway, Switzerland and Iceland. It is often asserted that Ireland only reluctantly agreed to stay out of the treaty to avoid creating a physical border between the Republic and Northern Ireland because the UK had refused to sign.
- Other initiatives limited to some states, such as the European Defense initiative.

The Laeken declaration of December 2001 committed the EU to improving **democracy, transparency and efficiency**, and set out the process by which a constitution aiming to achieve these goals could be created. Let's see how the **democracy** should be strengthened:

- First, the Treaty of Lisbon added more power to the Parliament. A consultative body at the beginning, it shares now almost equal legislative and budgetary powers with the Council (except a few areas where the [special legislative procedures](#) apply). The [European Commission](#), the executive body of the EU, becomes more accountable to the Parliament. The latter approves the candidates for Commissioners one by one, no more *en block*. Although the Parliament *de jure* has not [legislative initiative](#), it does have it in a *de facto* capacity either: it asks the Commission to draft such legislation, and as the Commission is following Parliament's proposals more and more.
- Second, the Treaty of Lisbon allows national parliaments to study legislative proposals made by the European Commission and decide whether the measure has to be reviewed (if incompatible with the principle of "subsidiarity").

- Third, one million of citizens have the right to ask the Commission to draft legislation through petition.

Through direct-MEP elections the citizens of the Member states really get more control over decisions, concerning their trivial round, at least on paper. However, the citizens don't seem to appreciate positively the rising power of the EP: the overall turnout has fallen at each European election in the last 30 years, reaching its lowest level in 2009 – 43%. Although the Treaty has not passed ratification at that time, the ongoing changes have been announced and widely discussed. The elected according to national law MEP shouldn't act as national representatives, but as members of the “Socialists”, “Conservative”, “Liberal” and other “Internationals”, while the citizens still direct their demands to the national legislative and executive bodies. The latter can be set under pressure through meeting, demonstrations etc. in national capitals, if needed; to organize a protest meeting in front of the building of the EP in Brussels is a rather abstract idea.

So abstract remains the possibility to bring pressure on the Commission for drafting legislation: one year was enough to unite one million of voters for banning the GMO, but this is just the beginning of the same complicated procedure, involving Commission, Council and Parliament and the outcome depends on the same political considerations, mentioned above.

The abstinence of the citizens could be explained with the short period of validity and the lack of information, but also with the controversial way the Treaty was trusted upon. The voters in Ireland (the only ones with the right to express their opinion on the Treaty), also the voters in other small countries, received this message: they are not competent enough to judge of complicated political problems.²⁰⁰ Next time the political elites will seek and find way to work their will despite the public opinion.

Obviously, in this case the elites sacrificed the democracy in favour of the efficiency. The Treaty itself changed the legal basis of the Union in the same direction:

- After 2014 the number of the Commissars will be reduced to 18. There is a widely shared conviction (first expressed by S.N.Parkinson²⁰¹), that executive bodies, consisting of more than 20 members, don't work effectively. Maybe that's right. Despite of the notion, that Commissars aren't (or shouldn't) be representatives of the member-states, but custodians of the common interests, the resistance against this change (not only in Ireland) showed the fear of losing national representation in the executive of the EU.

- The Treaty of Lisbon extends the areas where it is allowed decisions to be taken under qualified majority (QMV) in comparison to the Treaty of Nice that required unanimity for these cases. The Treaty envisages the

²⁰⁰ Many Irish voters have voted “against” without having read the text of the Treaty, so the critics. But the same applies to the supporters of the Treaty too.

²⁰¹ See “Parkinson's Law”,

"double majority" system (55% of the member-states, representing 65% of the population) for the QMV which according to all member states, better reflects the true size of populations. In practice, the Council usually targets unanimous decisions and QMV is often simply used as a means to pressure compromises for consensus. The larger countries can now easier persuade smaller countries to accept their point of view while seeking unanimity. Adding weight to the larger countries contributes to the dynamic of the internal development. We should not forget that the most revolutionary ideas for further integration originate from the larger member-states, and this means not only the "Franco-German motor": for example the Single market (the economic foundation of the Union) is to a great extent a British idea.

- Another step towards higher efficiency is the downgrading of the rotating Council presidency. The rotating Council presidency was quite effective for a community up to 12 member-states. But for the enlarged EU the lack of coordination between each successive six month presidency hindered the development of long-term priorities. The best solution would be to abandon the rotating presidency at all, but there was a strong opposition to downgrading the rotating presidency, with Sweden claiming it would disengage member states (especially the smaller ones) from feeling actively engaged in running the EU. In order to rectify the situation, the idea of trio presidencies were put forward, where groups of three successive presidencies cooperated on a common political program.

Much hope was granted to the new posts: the long-term President of the European Council (who should de facto replace the rotating presidency) and the High Representative of the Union for Foreign Affairs and Security Policy. So far the High Representative has been taking on roles previously guarded by the presidency country's foreign minister and the European Council president has begun acting on finance policy; the most important policy area left to the rotating presidency.

Latest events show, that so far neither the President of the Council, nor the President of the Commission, but the French president (Nicolas Sarkozy) and the German Chancellor (Angela Merkel) remain the Union's dominant powers. Germany and France alone convinced the rest of the EU that soon after the protracted and controversial ratification, the bloc's main treaty must be changed to avoid future financial crises in the eurozone. The proposed change is small redaction of the text, concerning the qualified majority: a proposal should pass if 2/3 of the countries miss a certain deadline to announce their positions. This proposed redaction overturns the principle of the qualified majority: it means that 1/3 of the countries (the bigger ones) would be able to impose their opinions. Despite the initial opposition the "Franco-German motor" acted once again as "**Core Europe**", trying to extend a "**concentric circle**" of "**enhanced cooperation**" in the area of economic governance, covering at least the eurozone.

The Lisbon Treaty doesn't contribute much to lessen the difficulty of managing in a democratic manner a large and diverse community. The institutional scheme allows a little bit more efficiency. As far as democracy and transparency are concerned, the progress remains questionable. Having in mind the prospects of further enlargement, we can assume that differences of view on many internal, foreign diplomatic and military issues (just to mention the Common Agricultural Policy, the Turkey's bid for membership or Russia's partnership) would consolidate the conviction, that a centralized and federal European Union seems impossible. A flexible institutional scheme of the EU (whatever the name, "**Multi-speed**" or "**Variable-geometry**") has few alternatives.

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