What

The EU

Did

Next

Short Essays
For a Longer Life

Roderick Parkes & Almut Möller

Preface

A Fitness Regime for the European Union

It started the New Year at 53, hopelessly out of shape and in the midst of an existential crisis of such terrible complexity the Greek Gods would wonder whether they hadn't missed a trick or two. The poor old EU, battered from all directions – surely we should just give up on it.

A recent slew of media commentary predicts a coming generation of euronihilists who think in precisely this way. The youth of today, it is claimed, will reject the pro-European enthusiasm of their parents in favour of a destructive, devil-may-care attitude towards the European Union: if the EU is anyway doomed, they will reason, why waste time on it?

Happily, this diagnosis of burgeoning euro-nihilism is misplaced. Although the coming generation will probably never be truly enthu-siastic about their unlovely inheritance, they will not give up on it. Whatever carefree ideological excesses euroenthusiasm may have known, the coming generation simply cannot afford to re-place them with the carefree ideological exces-ses of euronihilism. The reason is as straight-forward as it is ugly: uncertainty.

An apocalypse that is certain and foreseeable has a liberating effect – we'd all gladly cast off the doomed pension scheme and dip our feet in the ever-rising sea. But so long as the future remains uncertain, the temptation of joyful nihilism will have to cede to something a lot less fun. Whilst there is still hope for the EU, there is no other op-tion but to fret about it. Turning the EU from liabi-lity into solution will be a hard grind, and one to which this collection of essays makes its own glum contribution.

We hope that this pamphlet will amount to a sort of austerity-programme for any flabby EU-think which crept in during more comfortable times. We set our authors a straightforward task: to revisit one undervalued strength of the EU, and to show how this might be better exploited to revi-talise a policy area of their choice. The resulting essays cover a lot of ground, but three themes crop up regularly.

If the European Union wishes to go from liabi-lity to solution, we believe it should adopt the fol-lowing fitness regime:

1. Less inconsistency, more flexibility

On paper, the EU stands out amongst other large international organisations because of its capacity for flexibility: it has the potential to move beyond rigid, rule-bound cooperation and narrow quid-pro-quos. Such is the degree of understanding and integration between its members that they should be able to take things on trust.

But if that's the theory, the reality is rather dif-ferent. Far from being flexible, the EU has be-come outwardly inconsistent and inwardly rigid: whilst the EU seems constantly to move the goal-posts for Turkish accession for example, the member states imprison themselves in an in-creasingly rigid constitution. It is an untenable situation in the current climate, and these essays show how the Union can achieve not only size and depth but also

5

flexibility in areas such as its constitutional policy (Almut Möller), Turkey policy (Nora Fisher Onar) and energy policy (Sami Andoura).

2. Less arrogance, more self-confidence

The EU articulates a set of normative values of the highest calibre. Human rights promotion, regional cooperation and social inclusion are all part of its canon. Yet, the reason it articulates these values is too often because it ought to believe in them, rather than because it actually does: the EU has made little effort to reconcile its values with political realities and interests. The result is a blindness to problems within the EU and an blithe tendency to lecture others.

In the current political climate, the Union's long lists of principles amount to nothing more than a suicide note. These essays show how the EU can go from being a shallow arrogant character, to an altogether more interesting and nuanced one. They run the gamut from the EU's Middle-East (Timo Behr), enlargement policy (Deniz Devrim and Jordi Vaquer) through to its social (Irena Cerović) and counter-terrorist policy (Toby Archer).

3. Less fantasy, more imagination

The feature which marks the EU out from all other international organisations, is its state-like qualities. These could be a real trump card in this uncomfortable global climate, where not just size but cohesion is key. Yet, at present such qualities owe more to fantasy than to reality: there is little appreciation amongst thinkers for just how difficult the vision of a cohesive, state-like EU would be to achieve. Indeed, if the

6 past months have shown anything, it is the limits of the cohesion between the 27.

If we wish the EU to take advantage of its state-like capabilities, then we face the wearisome task of harnessing different national traditions and interests. With a little more imagination, this is possible, whether it be in "better regulation" initiatives (Mirte van den Berge) economic policy (Cornelius Adebahr), foreign policy (Thomas Renard and Sven Biscop) or home affairs (Roderick Parkes).

Now that the distracting Sudoku exercise which is treaty reform is all but over, the EU must get back to the serious physical exertions of real politics. We trust that these short essays will make a meaningful contribution to that.

Brussels & Berlin, January 2011

Cornelius Adebahr

The Involuntary Union

European Economic Governance and the Union State

The political reaction to the economic crisis shows two things: First, in moments of great crisis, the nation-state is the first port-of-call. With economic stability at stake and large quantities of taxpayers' money needed to save the financial sector, no one asked for help from 'Europe'. Instead, everyone – from bankers to carmakers to citizens – counted on their respective governments to intervene. Second, national governments all too soon find out that, on their own, they cannot do much. They have to turn to 'Europe' – to their collective government institutions at the EU-level, the European Commission and the European Central Bank (ECB) – to manage the crisis.

"The process of European integration has long ceased to be a matter of choice. It has become an urgent necessity."

The initial prevalence of national governments in the resolution of the economic crisis was decried in some quarters as a 're-nationalisation' of the EU. Yet, the second reflex actually points to a much stronger Europeanisation of economic policy in the mid- to long-run. Because what the ongoing Euro crisis shows is that the process of European integration has long ceased to be a matter of choice. Rather, it has become an urgent necessity. Joint action to save individual economies like Greece's and Ireland's is vital for the survival of the Eurozone as a whole and with it for European integration. National politicians know this, and it is in fact the only thing that makes them ponder transfers of sovereignty in the field of economic policy that were unthinkable only a few years ago.

From 'integration of choice' to 'integration of necessity'

Until the fall of the Iron Curtain, European integration was above all a matter of choice. The member states joined forces voluntarily, without being compelled to do so by external forces. The main military threat – nuclear confrontation – was held in check by NATO, to which most of the states of the then-European Community belonged.

This 'voluntary union' was founded on economic opportunity, and was later supplemented by a desire to establish an external political identity and finally by the ambitious foundation of a European citizenry. The three pillars of the 1991 Maastricht Treaty reflect these three fields of integration:

1. Initially motivated by the need for reconstruction following the war, *economic integration* has made the creation of a Common European Market its rallying cry. This goal has seen the EU member states cooperate deeply on a whole range of policies from abolishing tariffs and harmonising production standards to promoting economic and social cohesion to, eventually, establishing a monetary union.

2. The gradual development of an *external political identity* was initially based on Europe's desire to demarcate itself from the United States in the context of the Cold War. With the beginning of the 'new world order' after the Second World War cooperation on foreign policy became institutionalized because the

7

Union now wanted to assume a greater international role.

3. The *freedoms accorded to European citizens* and the collaboration between police forces and judiciaries were initially constituted in positive terms, namely with the realization of the last of the Four Freedoms: free movement of people. The Schengen Agreement concluded in 1985 already laid the foundation for the disappearance of internal European borders. The Maastricht Treaty in turn introduced the concept of EU citizenship, which was automatically accorded to all EU citizens.

By the end of the 'golden age' of the 1990s, the general conditions governing European integration had dramatically changed. The EU members' voluntary efforts to integrate themselves and to create common goods had left them collectively vulnerable to international pressures that arose from the end of the Cold War.

1. The pressure of *international competition* now drives the Union's economic integration, not least because the EU's efforts to create the free movement of goods as well as internal market liberalisation have left the member states collectively vulnerable. Thus, when the Lisbon Strategy was launched in 2000, the EU set itself the goal of becoming the most competitive knowledge-based economic area in the world – on the one hand to win the race declared with the United States and rising powers such as China, India, Brazil, and Russia, and on the other to overcome Union's economic weaknesses stemming from a lack of resources and demographic decline.

8 2. In the area associated with the second pillar, *acute crisis management* has become the major driving force of integration. For one thing, it is previous cooperation on foreign policy as well as the EU's declared desire to be a global actor that have given rise to international expectations that the member states will act collectively. For another, the EU does of course face genuine (new) threats, as defined in the 2003 European Security Strategy, such as international terrorism, the spread of weapons of mass destruction, and failed states. This puts pressure on the EU to engage more intensively with regional conflicts in areas around its frontiers and beyond – from Central Africa to the Middle East to Central Asia.

3. Finally, it is the *protection of citizens* that dominates development in the former third pillar. The EU's previous desire to create a common good at the European level (free movement) left the member states vulnerable to transnational criminality and migration. Now, the vast majority of the measures being taken in this area are directed at ensuring security – from increased collaboration between police forces and judiciaries as a means of countering terrorist threats to the provision of consular support for EU citizens in non-EU countries. Rather than an increase in freedom, it is the issue of increased common security that motivates further integration, even at the cost of reduced freedoms for EU citizens.

Today, integration can no longer be seen as a matter of choice, but of necessity. Of course, member states remain free to accept or reject steps toward greater political integration, but they do so at their own peril. Increased integration is now in the vital interest of all (and not merely a preference of some) member states. In this respect, the next steps toward a more strongly integrated Union will not be based on federalist

"The resulting Union state will clearly differ from the kind of federal state that exists at national levels."

wishful thinking but on member states' interest in their own survival. The resulting Union state will nonetheless clearly differ from the kind of federal state that exists at national levels. Despite all the gloomy statements about the EU's imminent end, the developments throughout the economic and now Euro crisis indicate the potential for precisely this kind of increased consolidation.

'Economic governance': From wish-list to to-do

Although the EU has been a global economic power for more than half a century, it does not have a competence to set economic and employment policies. This responsibility has been retained by the member states, which merely coordinate their policies within a commonly agreed framework. The Union does have exclusive responsibility for other areas affected by the crisis, such as trade and competition policy, and (for those member states in the euro zone) currency policy. With regard to the internal market it shares responsibility with the member states.

The drawbacks of an incoherent division of authority were clearly illustrated by the EU's initial reaction to the economic crisis. Badly coordinated stimulus packages and strictly national rescue plans for stricken industries painted a sufficiently confusing picture of the Union. This did not come too much as a surprise, however, as there were neither the mechanisms in place obliging more economic cooperation, nor the money available at the EU level for decisive joint action (e.g. through a European-wide stimulus financed by the Commission). Moreover, the member states simply did not (yet) feel the vital need to coordinate their policies better.

> "The drawbacks of an incoherent division of authority were illustrated by the EU's initial reaction to the economic crisis."

Just like the crisis originated from the financial sector, it needed a financial crisis in Europe for member states to agree to more binding rules on economic policy. During the first culmination of the debt crisis in May 2010, member states agreed on immediate rescue measures (for Greece and for the Eurozone as a whole) as well as to set up a working group to develop further reaching proposals for new governance mechanisms in the Eurozone. The options considered by the so-called 'Van Rompuy task force' under the guidance of the President of the European Council ranged from a 'reinforced status quo' (an eventual observation of the rules of the Stability and Growth Pact) to much more advanced rules requiring a Treaty change (like the temporary suspension of voting rights of a member state in violation of Eurozone rules).

Ironically Germany, one of the most vocal opponents to any form of 'economic governance' until then, was now the one making the most far-reaching proposals. Its motivation was clear: to receive assurances of stricter and better-coordinated economic policies in return for the budgetary help provided. As long as the 'no bailout' clause of the Treaty could be taken literally (i.e. no financial transfers of any kind between Eurozone members), governments refrained from integrating their economic policies. Now that national taxpayers' money has been put to guarantee or directly support other member states, those on the giving end want to make sure to curb the irresponsible policies that led to the near-collapse.

In short: The price of the rescue is stronger control over the economic and budgetary policies of the country applying for help. Importantly, this control is exer-

9

cised by member states collectively (together with the ECB and the International Monetary Fund) – it is not communitarised. This points to an important change in the constitutive balance between member states and the Union. After all, the development of the EU does not take place on a continuum from intergovernmental cooperation to full and unreserved integration which can be set by the member states. Such thinking is a thing of the past, when integration took place by choice and not by necessity.

The European Union State in the Making

Under the crisis, the idea of a Union State emerges as the third way of integrating Europe. It is not the federal state that some fear and others seek. Rather, it is the extension of the 'Union method' (stipulated in the wake of the signing of the Lisbon Treaty) to a broader principle complementing the process of European integration. This would elevate the member states, via the European Council, to an integration driver in crisis-prone policy fields from outside the community competence such as public finances and energy security. Once government leaders have agreed on a course of action, they can choose the intergovernmental or integrationist route, involving the Commission – and, consequently, the Council and the Parliament – as they deem necessary. This way, a stronger involvement of member states does not end up as 're-nationalisation' but instead creates the necessary buy-in from governments for more integration.

This next step in European integration does not come without Treaty change, though. Rescuing near-insolvent member states through a mixture of Community and nationally pooled

10

> "The next Treaty will not be formally 'establishing a European Union State'. Yet, it is likely to implicitly have this effect."

funds and including severe austerity plans negotiated with the government in question, has already tested the legal and political limits of all actors involved: Of members states (think of the Greek or Irish governments, or the German Constitutional Court) and the ECB (think of the unorthodox monetary policies pursued in the crisis such as buying government bonds) as much as of the Union itself (think of how the Lisbon Treaty's provision on emergency assistance needed to be stretched to fit the case of potential sovereign default). That's why, regardless of the Lisbon ratification drama or the current turmoil in some of the member states, European politicians do not come around adjusting the EU's legal basis for this new internal balance.

The next Treaty will almost certainly not be formally 'establishing a European Union State' given the sensitivities among governments and citizens alike about state-like qualities of the EU. Yet at current trends, it is likely to implicitly have this effect. Either way, member states have one crucial task – beyond accepting their own new role: They urgently have to explain to their citizens why 'more Europe' does not represent the end of the nation state but that further integration of this kind is instead vital to their very survival.

Dr. Cornelius Adebahr is a political scientist and entrepreneur based in Berlin, working on European and global affairs.

Thomas Renard & Sven Biscop

The Strategic Union

Rising to the Multipolar Challenge

Academics are, of course, always right. So it's tricky when they disagree. For some of them, Brussels is a new Rome, the capital of a novel kind of superpower which rules over a large territory, and extends its influence well beyond its borders. Surprisingly, this view is not confined to the "Brussels bubble". It has been developed by prominent scholars across Europe and elsewhere, including the US and China. For other authors, by contrast, the EU is a new Atlantis, a mythical power invented and debated among élites (Plato in Ancient times, Schuman and Monnet 60 years ago). Its international reach – not to mention influence – stops at the Schuman roundabout. Unsurprisingly, this view is spread worldwide.

> "Greying, shrinking and complaining all the time, Europe is an old lady."

These two visions are undoubtedly too extreme. There is no Emperor in Brussels commanding a legio (EU battlegroups?) to protect the imperial limes (the EU-27 territory?) against the Barbarians (from Russia, China or the Middle East?). Europe is too divided, too Byzantine in a way, to become a new Rome. On the other hand, the European project is far from a myth: in 60 years, Europe has gained nothing less than peace and prosperity, two concepts that most earthlings can only aspire to. Save an extraordinary rise of sea levels due to climate change, the EU is too real to become a new Atlantis.

What kind of power is the EU then? And how is it coping with its international environment, more particularly with the great and emerging powers which are fundamentally reshaping our world? This article offers a short reflection on how the EU can actively shape and adapt to the coming world order instead of passively resigning itself to irrelevance and marginalization.

A Declining Europe…

All this talk about Atlantis and Rome obscures the rather more mundane reality of Europe's position in the world: greying, shrinking and complaining all the time, Europe is an old lady. The international crisis (financial first, then economic, social and political) only accelerated the trends of a declining Europe vis-à-vis emerging powers. It is not difficult to illustrate the relative rise of new powers, such as China, India or Brazil. In terms of GDP for instance, the BRIC (Brazil, Russia, China and India) economies (by far dominated by China) have risen from 7 per cent of the global economy in 1995 to over 20 per cent today at Purchasing Power Parity (PPP). During the same period, the EU's share remained more or less stable essentially thanks to successive enlargements rather than to its own dynamism. In the political realm, emerging powers increasingly share centre stage with established powers, as illustrated by the Copenhagen climate conference. The rise of new powers vis-à-vis the old West (to paraphrase a famous American Secretary), is also palpable in the fields of defence (either looking at military budgets or involvement in

11

peacekeeping operations for instance), culture (think about the rapid expansion of Bollywood or the worldwide mushrooming of Confucius centres), or science & technology (as shown by the UNESCO Science Report 2010).

The relative decline of Europe was further accelerated by the global crisis. Indeed, European countries are facing a difficult recovery, with negative growth rates in 2008-2009 and positive but low rates in 2010. At the same time, China has been maintaining a growth rate above 6 per cent even during the worst of the crisis. And, when he was still Brazil's President, Lula was bragging that his country "entered the crisis last and exited it first". Dynamic economies are slowly but surely replacing Europe – and tomorrow maybe even the US– as the engines of the global economy. In the field of aid and development as well, one of Europe's strongholds in terms of external action, China and others have emerged stronger from the crisis as their share of aid to developing countries increased relative to that of developed countries.

The story is not only about surging rivals. The EU is also undergoing an internal crisis. The near bankruptcy of Greece and Ireland, and the debates on (the lack of) European solidarity were nothing less than an alarm bell for the EU: solidarity is not merely about rhetoric, and it does not come cheap either. The words solidarity and solitary are suspiciously similar, and the crisis reminded us how easy it is to jump from the former to the latter. If anything, the crisis triggered more Europe but less Union. The Europe emerging from the crisis looks more divided, more multipolar, at the precise moment that the changing international environment and the implementation

"Whereas the other global powers are playing chess, the EU is playing ping-pong."

of the Lisbon Treaty should push the EU towards more unity. This is certainly a worrisome trend.

Yet, the EU has overcome many crises in the past, and the chances are good that it will overcome this one as well. Some might see this as wishful thinking of course, but let them answer this: what other choice do we have? Without the EU, Europe ceases to exist at the international level and falls into oblivion. Just like Atlantis.

…Versus a Rising European Union?

It might take years, maybe decades, for the world to become truly multipolar and for the BRIC countries, or any other combination of countries, to share global power with the US and (perhaps) the EU. What is certain though is that the drivers of change are in place and that Europe is no longer in the driving seat.

European member states already struggle to deal with emerging powers bilaterally. As the relative weight of individual European states continues its inexorable decline, it will become increasingly difficult (if not impossible) for them to position themselves as significant partners to China and the likes. Member states like France, Germany and the UK are simply too small to deal with continent-like powers. It is a bitter pill which European leaders have resisted swallowing ever since former Belgian Minister Paul-Henri Spaak made out his prescription: "Europe consists only of small countries – some of which know it and some of which don't yet". The more we move towards a multipolar world, the more Europe will need to offer a unipolar front, which can only be embodied by the EU.

The world is increasingly led by new forces – emerging powers. The EU itself needs to become a driving force to remain a significant actor on the

12

international stage. The EU has not dealt well with these new forces, particularly as they show a certain mastery of divide and rule. The EU has no strategy to deal with global powers and is more reactive than proactive in its external action. As Brig-Gen. (R) Jo Coelmont said, whereas the other global powers are playing chess, the EU is playing ping-pong. What the EU fundamentally needs therefore is to develop truly strategic partnerships with today's and tomorrow's great powers. As Van Rompuy rightly pointed out: "We have strategic partnerships; now we need a strategy". Such partnerships can only take place within a broader vision for foreign policy, i.e. within the framework of a Grand Strategy.

"The EU must make sure to establish dialogues rather than cross-monologues with its strategic partners."

The 2003 European Security Strategy (ESS) operates at the level of grand strategy, but it is incomplete. It tells us how to do things – in a holistic, preventive and multilateral way – but it doesn't really tell us what to do. Member States have been half-hearted about translating the ESS into clear objectives. A true Grand Strategy is needed. Starting from the EU's vital interests, it would define the foreign policy priorities which the EU will achieve through its holistic, preventive and multilateral approach, making optimal use of the post-Lisbon institutions. What are the key issues on which the EU wants to be a game-changer?

Partnerships for a Strategic Union

It is widely accepted that the EU stands where it is today partly thanks to its enduring alliance with the American superpower. As the world becomes more globalized and more interconnected, the EU will be increasingly confronted with the other emerging powers – a confrontation that can lead either to cooperation or competition. Given that these states need one another if they are to cope with issues as crucial as climate change, nuclear proliferation and sustainable development, cooperation should be privileged over competition. This is why it is so important to develop our strategic partnerships with emerging powers today: it takes time to build sustainable trust among partners.

What makes a partnership "strategic"? First, a strategic partnership must be comprehensive, in order to allow linkages and tradeoffs between various policies. Second, it must be built upon reciprocity, short of which it cannot be deemed a partnership at all. Third, a strategic partnership has a strong empathic dimension, which means that both partners share a common understanding of their mutual values and objectives. Fourth, a strategic partnership must be oriented towards the long-term, which is to say that it is not put into question by casual disputes. Finally, a strategic partnership must go beyond bilateral issues to tackle (with the potential to solve) regional and global challenges, because that is its true raison d'être.

Based on those standards, how strategic are the EU's "strategic partnerships"? Among the current ten strategic partnerships (with Brazil, Canada, China, India, Japan, Mexico, Russia, South Africa, South Korea, and the United States) probably only the US-relationship qualifies as a true strategic partnership. The others are, variously, not comprehensive (e.g. India), not oriented towards global issues (e.g. South Africa) and not based on reciprocity and empathy (e.g. Russia and China).

What then would be the next steps to make those partnerships truly strategic?

13

– The EU must become a truly strategic partner itself, speaking with one voice and carrying one message whenever possible (starting with areas of EU exclusive competencies and slowly expanding beyond), or at least speaking in harmony and carrying complementary and coordinated messages (particularly true for areas of shared competencies). Our relationship with China and Russia has too often shown that the EU stops where national interests begin.

"Strategic partnerships are precisely a blueprint for a smart use of the EU's power."

– The EU should make sure to establish true dialogues on key regional and global issues with its strategic partners, rather than the often observed cross-monologues – when both parties speak but do not listen to each other. This would for instance include coordination mechanisms ahead of and within multilateral forums, as well as a multiplication of high-level and sectoral dialogues at the bilateral level.

– The EU and its strategic partners should start deepening their cooperation on issues where they already share a common vision. Indeed, successful cooperation will create positive dynamics with a potential for spill-over into other areas of cooperation. For instance, the EU and China could deepen their cooperation in the Gulf of Aden to ensure security for maritime transportation (which is so important to both economies) with a potential for more cooperation in the field of security and defence in the future.

– Last but not least, we should massively invest

14 in efforts to bring European society closer to the societies of our strategic partners. A truly strategic

partnership implies the building of bridges and the tearing down of walls between our communities. What makes a partnership truly strategic is not common interests (in this regard, even our partnership with the US is not strategic) but instead mutual understanding and, in times, common understanding of the world. Bridges can take the form of parliamentary exchanges, civil society dialogues, education exchange programmes or cultural events.

In short: as the world is increasingly driven by new forces, the relative power of Europe is rapidly declining. However, this power is not entirely lost: it could be transferred to and pooled at the EU level. The EU is a "potential power" more than an emerging power because we still need to convince the member states to play collectively. It is not a power comparable to that of Europe in ancient times though – some call it "normative power", others "civilian power" or "soft power" – but it is a power nonetheless. At the end of the day, what truly matters is not how much power you have or what kind of power you are, as the US is now experiencing the hard way in Iraq and Afghanistan, but it is how you make use of that power. Strategic partnerships are precisely a blueprint for a smart use of the EU's power.

Thomas Renard is Research Fellow and Prof. Dr. Sven Biscop Director of the "Europe in the World Programme" at Egmont – Royal Institute for International Relations, a Brussels-based think tank.

Roderick Parkes

The Unromantic Union

Give and Take in Home Affairs

After a year of muddling through, the EU will try to put its new institutional machinery to good use in 2011. In the blue corner, Herman Van Rompuy is aiming to ace the financial and geopolitical situation. Eyeing him from the other blue corner, Jose Manuel Barroso will try to regain the initiative on issues such as the internal market. Given the current political climate, the pair faces a tall order: no matter how many presidents the EU produces, none has been keen to admit to the depth of tension and difference between member states.

Indeed, most treaty reforms have aimed at bypassing the differences between members. The perpetrators of these reforms have slyly blended out the divisions between the EU's members, and romanticised the Union as a body with not only the size but also the cohesion of an international actor like the US. The approach has been a failure, and a new perspective is needed. European policymakers could usefully view the differences between members as a source of strength and spend their time dealing with them in an imaginative way. Some examples from Home Affairs.

The politics of commonality

Member governments have famously viewed Brussels as a resort for mere 'comma politics' – an arena for phrasing regulations and for arguing over the positioning of punctuation, not a place with its own political inner-life. Political thinkers in Brussels have returned the favour, not always giving the member governments the attention they deserve. Sitting in Brussels' brutal glass towers, and with EU provinces such as Germany, France and the UK a distant abstraction, Eurocrats have seldom appreciated the real depth of the differences between the members let alone their competing interests. They talk instead of commonalities.

One result of this way of thinking has been a certain flabbiness in estimates of what the EU is capable of doing: when discussing the scope of EU activity, it is simply asked where the 27 states might usefully cooperate. It is seldom asked whether the EU will be able to overcome the differences between them – or indeed use these differences in an imaginative way.

The gap between aspiration and reality has increasingly been bridged by the 'institutional statement': in successive treaty reforms, changes to decision-making procedures have purported to create 'common' (foreign policy), 'European' (security policy) and 'effective' (home affairs) policies. These changes have reduced the scope for member governments to make the differences between them felt – by diminishing formal veto powers for example. But this effort to blend out the differences between the member states – an effort in which the member states themselves have been more than complicit – has not been a flying success.

> "Most treaty reforms have aimed at bypassing the differences between members."

15

For one thing, the perpetrators of such reforms ignore the necessity of ensuring that the new institutional rules are exercised in a proper spirit. The member states have continued operating under consensus, for example, even when treaty rules have removed formal veto powers. For another thing, the EU's special charm may well lie precisely in the differences between its members. By blending these differences out, policymakers no longer have to think imaginatively about making the most of them. Whatever the case, there is growing discontent at the disparity between declaration and reality.

The politics of difference

If all this flabby Eurothink sounds dire, the alternative has not proved much better. In 2009, grouchy member states made something of an 'institutional counter-statement': the Lisbon Treaty brought the governments back in. They had clearly been irked by the sneaky way the processes of widening and deepening had been turning minor EU policy commitments made one year into policy behemoths a decade later, and wished to regain control over their collective future. With their reform of the European Council, the capitals were aiming at a kind of strategic intergovernmentalism—a setup in which the heads of state and government set the long-term political parameters for a whole range of EU activities.

Although this shift met with much wailing and beating of breasts from Europhiles, it actually seemed to mark a positive new step in the EU's development. This move would surely force the

16 Eurocrats to deal more imaginatively with differences between the Union's members, but also force

"The Lisbon Treaty brought the governments back in: with their reform of the European Council the capitals aimed at creating a kind of strategic intergovernmentalism."

the member governments to deal more constructively with the EU, right? Wrong. Lisbon's reaffirmation of government power has so far proved less a positive confirmation of the EU's powerbase than a source of stagnation. Whilst much weight is certainly now being given to the differences and tensions between the members, little imagination let alone positive spirit has been in evidence.

And yet, the prize is clear. If states no longer feel in control of the long-term development of the EU, they can no longer commit to it unequivocally. The reform of the European Council offers a chance to increase their control and thus their engagement. In policy areas like home affairs, where the European Council has gained important new formal powers, the addition of a more robust governmental level might, for example, be a source of political impulses which the Commission alone simply would not have the clout to propose let alone deliver. The task then is to ensure that the governments' attempts to regain control are constructive.

In this, the onus lies with Barroso and Van Rompuy. If they wish to see this intergovernmentalist crust develop as a useful addition to the classic community method, they will have to offer governments more clarity about the EU's strengths and limitations. The EU of 2011 can no longer be viewed as an EU to be applied to any area and capable of achieving what the member states do, only on a grander scale. It must be a Union that recognises the differences and tensions between the member states.

An unromantic union

Whatever their vision for the future of the European Union, the duo of Van Rompuy and

Barroso must explain how we can get to it from the current reality. That reality is a conglomeration of 27 often competing states involved in deep but discrete pockets of activity, and joined by an impressive but limited modus operandi for cooperation. The pair's agenda for 2011 will have to be one in which the diversity of the members are recognised, and the very specific strengths of the EU as a modus operandi are put to more targeted use. The romance of state-building has no place there.

Solidarity in the esoteric union: Such esoteric values as trust, solidarity, mutual responsibility and neighbourliness are supposed to underpin EU cooperation, and can be used rhetorically to justify cooperation in almost any area. If these cohesive values were really in place, it would certainly set the EU apart from international organisations and make it very much more than the sum of its parts. Unfortunately, these values do not exist independently of national interests. In home affairs, EU bodies such as Frontex, the agency for protecting the Union's common borders, have foundered precisely because of this kind of wishful thinking. Frontex's architects wrongly assumed that the member states felt a serious degree of solidarity towards one another.

The key strength of the EU setup, and the one which sets it apart from all other forms of cooperation, is rather different: unlike other international organisations, its unusually robust institutions can provide a structure with which to mimic such values as solidarity and mutual trust. By translating altruistic values into quid-pro-quo arrangements between the member states, the EU's strong institutions can give the members the faith to engage in virtual solidarity, plastic trust, pseudo

"The EU of 2011 can no longer be an EU applied to any area and can achieve anything. It must be a Union that recognises the differences and tensions between the member states."

neighbourliness. Policy problems where such values should become the EU's speciality – a higher form of cooperation for a higher form of problem.

The EU's new 'asylum support office' is a case in point. This body has the task of promoting 'burden-sharing' between the member states when accepting and dealing with refugees to the EU. It would be a mistake to think that this office will be able to tap into some kind of pool of unlimited solidarity between the members. The office could, however, create a quid-pro-quo arrangement, by which all members gain from showing a kind of virtual solidarity to one another. This would simply require the office to identify the different kinds of burden-sharing of interest to the members. States in the south and east, for example, demand practical burden-sharing when dealing with influxes of migration over the EU's external border. As a quid pro quo for receiving help, they could be persuaded to better implement the EU's common minimum rules on asylum – a form of burden-sharing of interest to northern and western members which tend to have higher standards.

Labour migration and international competitiveness in the diversity union: The emphasis on commonalities has also led the EU to mimic large states like the U.S., whose success lies in a mixture of not merely geographical size but also political cohesion. This rationale certainly underpins home affairs. The recent EU 'Blue Card', introduced in order to attract immigrant labour to the EU, sought to emulate large integrated labour markets elsewhere. Certain desirable forms of immigrant would be offered access to EU-wide

17

labour markets. Now that the Blue Card is finally being translated into national legislation, it looks set to be a flop. Given the differences between them, the member states were simply not prepared, or able, to integrate themselves to the degree necessary.

A more imaginative approach would have asked not how the EU can ape larger states elsewhere but how it might do something different. Its quality as a consortium of different, often competing, countries gives the EU its most remarkable structural advantage. This is a fact ignored in the Blue Card. The EU, with its different languages, regulatory regimes, histories, cultural links could never compete on the same terms as the integrated labour market of the U.S. when it comes to attracting immigrants.

"Whatever their vision for the future of the EU, the duo of Van Rompuy and Barroso must explain how we can get to it from the current reality."

If the member states had instead made use of this diversity, however, they would have better exploited their advantages. Immigrants are attracted to a destination by a whole range of factors including language, regulatory regime and historical links. Each of the individual member states can compete with the U.S. on at least a handful of these factors. Instead of seeking to homogenise its members, the EU offers a means to put the variety to concerted use. The EU could have offered an umbrella for member states with a similar competitive advantage to work together, target specific third countries, and perhaps even offer access to each other's labour markets for well-qualified immigrants.

Visa liberalisation in the more modest union: The strong insistence on the commonalities between the member states, has led the EU's work astray in other ways too. Inaccurate thinking

18

about what the EU can achieve has seldom been corrected and the resulting policy approaches continue to develop, year on year, unchecked. Unfortunately for those European home affairs officials dealing with relations with the outside world, EU foreign policy is a case in point. The strong insistence on the commonalities between the member states gives rise to the idea that the EU will develop quickly into a serious geopolitical player: the Union will be able simply to replicate the member states' foreign policy structures on a grander scale and pool the 27's collective clout.

This is an assumption which appears to inform the Lisbon Treaty. It is one which falls short of reality. The resulting capability-expectations gap in external relations has created an odd situation whereby EU home affairs increasingly substitutes for foreign policy.

The creation of the Schengen Zone certainly has serious regional implications, and gaining preferential access to it is high up on the list of many a non-EU state – not least countries in the so-called Eastern Partnership. Yet, merely because the Schengen Area, and most particularly the question of the liberalisation of Schengen visas, has foreign policy implications does not mean that it should be treated as a core tool of foreign policy. Visa liberalisation is primarily a tool of EU home affairs, and can be offered to neighbouring states as an incentive to reform their own justice and home affairs sectors or indeed to create common goods, including free movement throughout an extended area. In all this, the foreign policy implications – relations with Russia, free movement as a means of creating cultural exchange with Eastern partners – would have to be taken into account.

Yet, to treat visa liberalisation not as a tool of home affairs with important foreign policy implications, but rather as a foreign policy tool making up for the lack of other EU capabilities in external affairs, is a recipe for disaster. For one thing, the EU increasingly finds itself committing to visa liberalisation for reasons of foreign policy which, from a home affairs perspective, are risky. The reaction of a number of EU interior ministries following the liberalisation of the visa regime towards the Western Balkans was a case in point: feeling that liberalisation had been offered too soon, they threatened to reintroduce visa restrictions. This in turn undermines visa liberalisation even as a tool of home affairs, with the EU member states seeking to leverage permanent home affairs reforms in neighbouring countries by reference to incentives that suddenly look altogether temporary. For another thing, it is unclear whether visa liberalisation really should have emerged as the core interest and priority of so many of the Eastern Partners. Many of these countries, from government level to civil society, still struggle to identify their own national interests and are highly dependent upon the EU to tell them what this interest is. They do not see the potential risks associated with visa liberalisation, let alone the other forms of foreign policy engagement which they might expect from the 27.

In short, what is called for in the present political climate is a return to first principles and a serious spring clean of romantic thinking. This should be treated as a spur to the further development of the Union, rather than as a dampener. After all, readiness to adapt to the changed circumstances of the 21st century would be a sign of political maturity from the European Union rather than a sign of flagging commitment to its goals, structures and values.

Dr. Roderick Parkes is the head of the Brussels office of the German Institute for International and Security Affairs (SWP). This essay was first published in an earlier form with the Federal Trust for Education and Research in London.

19

Irena Cerović

The Learning Union

EU Social Inclusion Policy

Addressing social exclusion always requires a dual approach: facilitating the economic participation of vulnerable groups on one side, and ensuring fundamental human rights standards on the other. Yet the fine line at which human rights end and economic rights begin is, naturally, a core political dividing line and as such endlessly fluid. The European Union's forays into social policy have focused heavily upon those aspects of social inclusion on which all member states can agree – increasing equality between men and women in the labour market, empowering persons with disability, or alleviating deprivation due to living circumstances such as family failure. EU social inclusion policy broadens the traditional definition of income-based poverty in a way that allows for some kind of consensus over social policy matters among the member states.

It is widely assumed that the EU's eastern enlargement makes the achievement of social objectives even more difficult. Enlargement not only increases the range of problems represented in decision-making, but also the number of voices discussing them. Furthermore, the existence of impoverished and socially excluded ethnic minorities in the new member states has exposed the EU to new and divisive problems of social diversity. Yet, what the "old" member states often forget is that their colleagues in new members and in states that have not yet acceded

"The existence of socially excluded ethnic minorities in the new member states has exposed the EU to divisive problems of social diversity."

may also be capable of bringing solutions to the table. If the Union wants to bring meaning to its weak social policies, its willingness to learn from them will be very valuable. Learning from these states, however, requires the "old" members to admit that they face similar problems of their own.

Unity in a New Kind of Diversity

As with all "soft" EU policies, the joint objectives, targets, and measures agreed within the scope of EU social inclusion policy remain lowest common denominator. The vast diversity of historical legacies among the different member states when it comes to citizenship rights, welfare provision and all those subtle balances between collective and individual rights, mean that discussions over anything perceived as belonging to the contingent of social policy will always be contentious.

In order to increase the chances of consensus, social inclusion has therefore been tightly linked to the Union's economic objectives. Greater participation of the deprived, vulnerable, or the marginalised in the labour market both contributes to growth and reduces social spending. Yet, social inclusion is inextricable from such fundamental principles as human rights, equality of opportunity, and non-discrimination – all of which are core EU values. By emphasizing these two ideological supports, the Union has been able to develop the Open Method of Coordination (OMC) in the hope of identifying successful solutions to

20

enhance the participation of certain groups – women, persons with disability, the young – without impinging on member states' sovereignty in policy areas in which these solutions are implemented: education, healthcare, or welfare provision.

Until relatively recently, however, the EU has not seen the need to elaborate in depth inclusion-mechanisms for groups living in poverty due to their specific ethnic or national makeup. Few EU citizens – the Traveller Community in Ireland and the UK are a notable exception – could be thought of as discriminated against or excluded on grounds of ethnicity. Traditional minorities, remnants from the collapse of pre-World War I empires, have native motherlands within the EU and often live in some of the most affluent regions of the Union – such as Austrians in northern Italy. Even with the unprecedented influx of migrant workers from across the globe over the last several decades, immigration rules ensured that citizenship rights have been very difficult to attain, thus putting little pressure on member states or the EU to come up with well-designed policies for dealing with an extended set of economic or social rights of the new minorities.

This situation is rapidly changing: not only are there growing numbers of young, second-generation Turkish, Kurdish, or Indian immigrants with EU citizenship populating European schools, but the enlargements of 2004 and 2007 have confronted the Union with a phenomenon hitherto confined to former Eastern Europe: that of large ethnic minorities – most notably, the Roma – living in poverty in what are already the least well-off corners of the EU. This fact has not gone unnoticed by the European Commission, which has over the last two years initiated a number of policy discussions, reports, and recommendations targeted specifically at the Roma population. Yet, although still limited, the data provided by member states on the exclusion of this group from major social systems indicate extensive discrimination across the EU.

Inclusion in a Time of Crisis

In the time it took for European leaders to come to terms with enlargement fatigue, institutional reform, and the relief that the wave of cheap east European labour proved less earth-shattering to the "old" member states than some feared, the world had been hit by the global economic crisis. The contrast with the preceding 15 years was clear. These had been characterized by the momentum of the end of Communism and by economic prosperity. Back then, human rights promotion had been elevated to an ideology and in some instances even rose to become a cornerstone of European and foreign policy, with leaders across the EU deliberating sanctions when the far-right Jörg Haider entered Government in Austria in 2000. The dual rationale supporting the EU's efforts against social exclusion had been robust, even if the bloc had not made ambitious use of them.

The rise of anti-Islamism since the terrorist attacks of September 11, coupled with economic hardship and massive job losses, don't provide fertile ground for overhauling social inclusion in a way that would more effectively take account of the EU's new marginalized ethnic communities. Politically, it will be increasingly difficult for member states to address these issues. And without significant political support and much clearer links between other existing mechanisms, the current

"In the area of social inclusion, 'Europe 2020' has yet to produce any truly innovative solutions."

21

OMC framework will not allow for stronger EU action in the field. Implementation of EU social initiatives will be entirely in the domain of member states, with the EU still hesitant to define new competences for itself in this politically delicate area.

The political juncture is, of course, not wholly adverse. The economic crisis has, for example, reinforced the more utilitarian backbone of social inclusion. As reflected in the Europe 2020 strategy, EU leaders seem to be clear about the need to dramatically improve the participation of vulnerable groups in economic life, including ethnic minorities: given Europe's demographic trends, it would be difficult to fathom how the EU's economic goals, particularly in employment, would be achievable if large chunks of the population remain on the fringes of society, contributing little while draining social budgets. Yet, this strengthening of the economic rationale is a mixed blessing and may come at the cost of the EU's pursuit of inclusion as a human right.

It is unsurprising then, that in the area of social inclusion, Europe 2020 has yet to produce any truly innovative solutions – indeed, at this point, it seems to be offering more of the same or similar. While a new emphasis on the Roma is clear, no institutional arrangements that would strengthen or supplement the existing OMC mechanism are apparent. What few additional EU powers there are refer primarily to combating racism and xenophobia in the domain of racially motivated violence and inciting ethnically-based hate; however, concerning the key points of access to education, housing, healthcare, and employment, the procedures for monitoring member state practices are insufficient to ensure that declared principles become reality.

22

"The enlargement process holds some valuable lessons."

Stepping up in Education

Among the areas key to achieving the inclusion of the EU's new minorities, early access to equal education is the absolute priority. The 2008 decision of the European Court of Human Rights on racially segregated schools in the Czech Republic is just one example of the seriousness of the problem – even for a "new" member state, it took a (non-EU) judicial ruling to order an end to the practice of "special" education of the Roma in schools for children with developmental disability.

Happily, thanks to the diversity of practices among member states, to the overwhelming advances in educational statistics as well as to the existence of large-scale comparative studies, there is scope for peer learning and exchange of information on successful implementation mechanisms.

But it is not only political pressures to reduce spending which cloud this potential. The current OMC provides a messy playing field. On the EU-level, numerous projects continue to generate very specific recommendations for reforming education systems. They only occasionally find their place in joint policy targets. At the same time, the vast number of actors involved, the decentralization of education in many member states, and the still nascent collection of segregated data on education achievement, all contribute to the difficult translation of principle into practice.

Although he EU cannot (and should not) impose specific education policy designs, the OMC does need to be significantly intensified in this area. The identification of best practice should remain on the agenda, but the OMC needs to go beyond this. The rationale is not only economic: insisting on the link between inclusive education and economic competitiveness is certainly a sel-

ling point, but the process of adapting to a very new reality is painstaking and requires an honest confrontation with the failures of one's own system in aspects that have long been considered "resolved" in Europe. This can only be achieved if the human rights perspective is also taken into account.

With the current economic and political backdrop, this will take something much firmer than the voluntary commitment to peer learning. It is time actually to bring to life the array of documents stressing the commitment of member states to equality and non-discrimination and to begin monitoring their implementation in education systems.

> "The Roma Inclusion Decade was set up in a way that has ensured very tangible results on the ground."

Learning from the Backyard

Fortunately, the EU is quite familiar with the mechanics of scrutiny and conditionality required to achieve real results in this field – only, it will never be able to fully implement them internally. The enlargement process holds some very valuable lessons, some of which the Union could find a way to disseminate to all its current members.

The eastern enlargements brought not only new minorities, but also the membership of countries with significantly more experience of this form of social inclusion. The vast majority of states that joined the Union in 2004 and 2007 are taking part in the Roma Inclusion Decade, a project set up in a way that has ensured very tangible results on the ground. Indeed, Commissioner Laszlo Andor's current initiatives for getting new kinds of structures in place at the EU-level are strikingly similar to what has already been achieved in many countries of Southeast Europe, some of which have joined the EU, some of which are quite far from EU membership.

Perhaps surprisingly, the political drive that was required for the Decade project to come to life had much to do with the lack of clarity concerning the demands of EU enlargement. Political leaders in accession countries viewed Roma inclusion as a pre-condition for becoming fully "European". And, in the process, they surpassed many "old" member states. Suddenly aware of this mismatch, some 2004 accession countries considerably decreased, at least initially, their efforts within the Decade once they joined (a repeat of this was avoided in 2007 both by the EU having already placed the Roma issue higher on the agenda, and by the Decade itself having established some momentum in Southeast Europe).

Certainly the EU cannot have the same kind of leverage over its member states that the World Bank or the United Nations Development Programme (and, most of all, the EU) have over the impoverished countries of Southeast Europe. However, some crucial elements of the enlargement experience can surely be integrated into the EU's internal policies, both through the OMC in education and in the overall approach to non-discrimination concerning all vulnerable ethnic communities in Europe, including second-generation immigrants facing difficulties with integration.

The involvement of civil society representing minority groups is an essential component. Through the Roma Inclusion Decade, participating countries' governments are obliged to work on a par with Roma organizations at every step, and each official government report has been accompanied by a shadow report developed by civil society. The European Union itself is highly dedicated to this form of participative exchange – however,

23

the EU mostly works with large European networks, which does not ensure that a similar approach to civil society is taken within member states. In many member states, particularly those with an egalitarian tradition emphasizing individual human rights and those where minority representation is ensured mainly through ethnic political parties, this form of minority civil society does not exist, and EU-support should be directed towards strengthening this voice in particular.

In addition to its participatory approach, the Decade project holds other potentially valuable lessons for the EU. One is that the policy coordination involved requires more than mere information exchange between the different countries and policy sectors involved (education, healthcare, housing, and employment). While these mechanisms are far from perfectly developed in Decade countries, relevant OMC tools would benefit from a closer inspection of existing coordination within the Decade, as well as from an open mind about extending some of it to other member countries and different beneficiary groups.

The task of integrating and ensuring equal participation of minorities that face exclusion and are subject to a variety of linguistic and cultural barriers is far from easy. The countries of Central and Southeastern Europe which embarked on the process (at least concerning the Roma) continue to face difficulties no different from those faced by EU member states with a considerably longer democratic tradition. It takes a great deal of strength to admit to racial inequalities in one's society. However, the "beacon of hope" that the EU represents for countries knocking on its doors already has the policy tools required to deal with the new challenges. It has only to muster the nerve to speak about them – and to learn from others.

24

Irena Cerović is a political analyst and a Programme Co-ordinator at the Belgrade Fund for Political Excellence in Serbia.

Almut Möller

The Flexible Union

Rethinking Constitutionalism

In times of uncertainty, people and governments want clarity. This desire stretches to the EU too, and there have been demands for a greater sense of finalité and purpose in its constitutional setup. But with this pressure, one of the major assets of the European integration project will be threatened: its capacity for adaptation. If those great fans of sui-generism and open-ended finalité, the Founding Fathers, were still around, how would they secure the European Union's flexibility?

Adaptability is a major asset

The Community of six was founded in the 1950s to overcome the antagonism of Europe's nation states. Without a master plan and without the comfort of a precedent, the Community started off with the courageous approach of pooling sovereignty and creating institutions jointly administered by its members. And it brought sustainable peace to a war-ridden continent.

From the very beginning, different philosophies about the objective of the integration project made it nigh on impossible to conceive a fully-fledged institutional setup. But this conceptual openness later became one of the major strengths of the European institutional experiment. Its inconclusive finalité turned out to be both a necessity and an asset. The member states kept in their hands the power to change and to transform the system when and where they agreed it was necessary.

"One of the major assets of the European integration project is threatened: its capacity for adaptation."

Adaptability has been part of the Union's DNA and provided the basis for major achievements over the last decades: the member states were able to respond to growing demands in foreign and security policy as well as home affairs by establishing new modes of cooperation with the Maastricht Treaty. By adapting the institutional and procedural makeup in a series of difficult treaty reforms in the 1990s, the Union has managed to integrate 12 countries and to work with almost twice the number of members. The constitutional innovations crafted within the Union provided for answers to the Cold War and the new post-Cold War era. It was not easy. Moreover, it is becoming harder. The Union is now challenged to provide answers to the unknowns of globalisation.

But today, member states fear the open-ended finalité, which previously proved such a boon. And they are nervous about the prospect of any new round of treaty reform because the European Union has become notorious for its constitutional deadlocks. The painful intergovernmental conferences of Amsterdam and Nice; the agony of the draft constitutional treaty and its eventual failure; the lukewarm second attempt ratified eventually as the "Lisbon Treaty" – they all have reduced the appetite of the Union's governments for treaty change.

The Lisbon drama discredited the positive notion of treaty change as a means of institution-

25

al innovation. Its ratification after three negative referendums carries the stigma of having been pushed through against the popular vote. Treaty change has become associated with disrespect for democracy and with new powers transferred to the Union's institutions which governments and citizens across Europe are increasingly rejecting. Right now, the political climate for adaptability could hardly be worse.

Yet, current events show that adaptability is just what is required. The Euro crisis has put the integration project per se into doubt. It has urgently revealed the need for the Union to once again adapt its rules and procedures, only one year into the signing of the Lisbon Treaty. And one can be sure there will be more adaptations needed in the future. How can these opposing trends be reconciled?

"Constitutional law alone cannot provide the Union with the flexibility it needs."

Flexibility through constitutionalism?

In order to preserve the Union's adaptability, governments have always put great emphasis on treaty reform. As the Union is by nature a community of law, amending the treaties has so far been the key to adapting the system. The first major overhaul of the treaties was adopted with the European Single Act in 1986. But over successive treaty reforms – Maastricht, Amsterdam and Nice – the members realized the limitations of Intergovernmental Conferences (IGCs), the tool used for treaty reform. With the Lisbon Treaty, they therefore provided for new treaty-revision procedures.

These new procedures include: the possibility of the European Council amending Part III of the Lisbon Treaty, so long as the decision does not lead to a shift of competencies (Art. 48(6)

26

TEU); a "general passerelle" that allows the European Council to shift voting requirements from unanimity to qualified-majority voting (QMV) in certain areas, or to decide to adapt a decision-making procedure from a special procedure to the ordinary legislative procedure (Art. 48(7) TEU); and a number of specific passerelle or passerelle-type provisions throughout the Lisbon Treaty.

However, all of these provisions require a unanimous vote in the European Council, meaning that vetoes by individual member states are possible and may slow down the pace of change and adaptation.

Indeed, despite these innovations, the Lisbon experience has turned treaty change into a highly politicized issue. Governments played down the need to reform the Union's currency regime in late 2010, suggesting it only needed a limited amendment that did not require referendums in member states.

This low-key approach illustrates why the – in some ways remarkably successful – European Convention is unlikely to be re-convened any time soon. Within 18 months, the Convention drafted a comprehensive constitutional document, and the forum was widely considered as a more efficient and transparent revision procedure compared to the IGC model. Even though this method is formally laid down in the Lisbon Treaty, it is very unlikely in the current political climate that governments will embark on a new, substantive treaty round of the kind that would trigger a Convention. Such a defensive approach to treaty change does not leave much breathing space for institutional ideas, let alone change.

Of course, the option of simplified treaty change laid down at Lisbon was not the first effort formally to open scope for adaptability. Over the

years, a growing number of forms of "flexible" or "differentiated" integration have been permitted under the treaties. EU governments adopted formats such as enhanced cooperation and permanent structured cooperation to allow groups of member states to move ahead in a respective field, provided a number of criteria are met and the group remains open to stragglers. It has not been a wild success. Enhanced cooperation was created at Amsterdam in 1997 and since then was only applied once to the relatively niche area of divorce law in 2010. Permanent structured cooperation was only adopted with the Lisbon Treaty and there are still many open questions concerning member states' commitment to make it work as well as to details of its implementation.

In short, in the EU of 27 it has become very difficult to adopt treaty amendments and to steer them through ratification. Member states are therefore likely to avoid anything but the lightest of constitutional changes and will instead stretch the Lisbon Treaty provisions to their limits. Yet, the forms of flexible action permitted under the Treaty are not just unwieldy but unpopular. Governments, Commission and Parliament all have reservations about the prospect of an "acquis différencié". Constitutional law alone cannot provide the Union with the flexibility it needs.

Soft law: Conducive to healthy flexibility

"Hard" forms of flexibility of the kind sketched above have thus become ever more difficult to exploit. Happily, "softer" arrangements such as the open methods of coordination (OMCs) offer an alternative. Yet, these too entail drawbacks. The Union's hard constitutional framework provides the background for the 27 member states to

"The flexible Union requires a political climate that allows for and nourishes adaptability."

interact in a formalised and predictable manner under a common umbrella. A steadily expanding Union faced with growing centrifugal forces and internal pressures depends to a great extent on a solid legal foundation. Constitutionalism serves as glue. In practice, softer forms of cooperation have undermined the Union's legal coherence as well as its efficiency.

The OMCs illustrate the point. Applied since 2000 in a disparate range of areas in which hard law was not available, they have failed to achieve their potential – indeed, have rather become table-filling exercises for European and national administrations without a real impact. In principle, the informal OMC approach should help overcome member states' resistance to hard legislation while responding to an agreed and growing demand of coordination and learning. But at the same time it almost seems as if an overall discomfort about experimenting with flexible instruments has prevented the Union and its members from setting up OMCs that are sufficiently clear with regard to their respective objectives, procedures and results.

Successful OMCs will probably be even harder to set up than successful hard measures, and should not be seen as a political shortcut. Yet, for member states under pressure to take action and without the time to do the usual laborious groundwork of formal cooperation, this is precisely what they have become. The potential costs of lazy soft arrangements – fragmentation, a lack of clarity and even ineffectiveness – may pall into insignificance when member states feel the need to cooperate at speed. More drastically, member governments might even favour informal arrangements outside the treaties to the Union's consti-

27

tutional rules and cumbersome soft tools. With 2005's Prüm Treaty (so-called Schengen-II) and the recent defence deal between France and the UK, groups of member countries are already concluding deals outside the Treaties. If this trend continues, it could have a major impact on the future role of the Union's constitutional law. As the number of informal or extra-EU agreements grows, the constitutional identity of the Union as a "Rechtsgemeinschaft" (community of law) alters.

A political climate that nourishes flexibility

With both its hard and soft tools apparently misfiring, it sounds as if the EU has reached something of a dead-end. But that is only because of the focus of the analysis so far: what counts is not the rules themselves, but the spirit in which they are exercised. The EU may be a "Rechtsgemeinschaft" – a characteristic that accession countries learn the hard way –, but the Union is more than a mere set of rules. It is a political project. And if the political backing for the Union is missing it is hard to imagine its legal order succeeding. Neither formal nor informal rules alone can guarantee the future adaptability of the Union. The flexible Union requires a political climate that allows for and nourishes adaptability. How can the member states get there in the current political constellation that is characterized by a new level of mistrust and the temptation to return to the nation-state?

Political action in the Union cannot function without trust and good faith between governments. It is a truism, certainly; but one which the 27 governments seem to disregard. Yet, this spirit of trust and good faith is particularly neces-

28

"Europeans must be ambitious and cultivate the Union's character as a laboratory for postmodern state solutions."

sary for flexible solutions to function well: without it, flexible solutions will simply be exploited as an easy shortcut where bad faith and dissent would otherwise block consensus – or indeed they will not be used at all. In order to rediscover the Union's capacity for flexibility, governments therefore need to work on improving these underlying political conditions.

Firstly, the member governments should view the flexible forms of political cooperation available to them from a different perspective. Governments have most often used formats such as OMCs or extra-Treaty cooperation where disagreement between governments and hostility from publics make other, more formal action difficult; or, in the case of enhanced cooperation, governments used it to threaten unwilling member states. That is a misuse. These flexible solutions should instead be exploited when these are better suited to the policy challenges at hand than more formal EU formats. In other words, these tools should be used less in response to difficulties within the Brussels bubble, and more as an enrichment of the EU's policy repertoire when dealing with policy challenges on the ground. How, for example, can OMCs be used imaginatively as an alternative to hard law where formal harmonisation would have deleterious side-effects? Under what circumstances can cooperation outside the scope of the treaties (à la Schengen-I) or enhanced cooperation actually add to the common good in a way that EU-wide means cannot?

Secondly, with greater trust and faith between them, the Union and its members should also be able to overcome their fear of using flexible formats such as enhanced cooperation and permanent structured cooperation. After all, the EU's

failure to make use of such tools often lies in member governments' fear that these would encourage permanently exclusive clubs and a Union of insiders and outsiders. With such fears allayed, the governments would instead be able to concentrate on more strategic questions related to these formats, such as how to employ them without jeopardising the clarity and coherence of the EU. After all, the "acquis différencié" has already become more of a reality than it is widely assumed.

Thirdly, when seeking to innovate further forms of flexibility, the member states must free themselves from the taboos that have plagued past institutional reforms. This means resisting the temptation to pursue intergovernmentalist or "Community" solutions because of a sentimental attachment to one or the other and a misplaced idea that one necessarily means more nation-state and the other more Europe. That also means acknowledging that institutional change can often best achieve flexibility not by reducing the scope for disgruntled parties to block decision-making (shifts to QMV, for example) but by building the political spirit behind cooperation. More thought should be given as to how institutional change can create a feeling of trust and mutual responsibility between member states.

Above all, to show a sign of the vitality of the Union, Europeans must be ambitious again and cultivate the Union's character as a laboratory for post-modern state solutions. As the Founding Fathers would surely recognise: the Union of tomorrow will only thrive under a flow of futuristic ideas.

Almut Möller is a political analyst based in Berlin. She is the head of the Alfred von Oppenheim Center for European Policy Studies at the German Council on Foreign Relations (DGAP).

29

Deniz Devrim & Jordi Vaquer

The Democratic Union

Strengthening Democracy in the Wider Europe

The EU has grown from a small and rather introspective club of six to a project which truly embodies a dream of European integration. Other institutions such as the Council of Europe or the Organisation for Security and Co-operation in Europe (OSCE) simply do not have the same potential for democratic transformation let alone for removing barriers between European countries. Most remarkably, the European Union exerts such influence despite the fact that its membership does not comprise the whole of Europe: only 27 of the 50 countries in Europe are member states. By remaining open to enlargement and engaging with all its neighbours, the Union has come to symbolise the desire for democracy and modernisation of European populations – at a time when democracy is otherwise in retreat in Wider Europe.

"The EU is losing the ability to shape its geographical context according to its values."

Our vision for the European Union is thus of an actor which builds on this potential to become an anchor for democracy and the rule of law amongst both its member states and all other countries of the European space.

This paneuropean vision has had several formulations in the past, from Charles de Gaulle's 'Europe from the Atlantic to the Urals' to Mikhail Gorbachev's 'Common European Home'. Since 2003, 'Wider Europe' has been the term of choice. Initially it was a narrow term, referring to the European Commission's vision for the neighbours which the EU gained after the 2004/2007 enlargements. Increasingly, as in this essay, it is used to describe an entire geographical and political space – one that includes all 47 members of the Council of Europe plus the three that are excluded for political reasons (Belarus, Kosovo and the Vatican). This essay describes how the EU can shift its policies of democratisation from that of the narrow EU documents to this broader vision – a vision which is both humbler and more ambitious.

Democracy in retreat throughout Europe

Today, democracy in Europe is practically taken for granted. Twenty years ago, a wave of democratisation swept from the Adriatic to the heights of the Pamir. It foundered in places, in particular as conflicts erupted in the Western Balkans and parts of the post-Soviet space. Yet, peacemaking and peacekeeping progressively ceded their place as the EU's main policy instrument in its neighbourhood. Enlargement policy – either in its original form or in the denatured, weaker form of the European Neighbourhood Policy (ENP) – came to the fore. With this, EU-standards – ranging from democracy, the rule of law and a mild version of capitalism to the technical regulation of a myriad of issues – were all set to prevail throughout the region. This created the illusion of a unipolar Europe in which EU-driven political reform was a given.

The Russian-Georgian war of 2008 put paid to this illusion. Russia – still firmly outside the en-

30

largement-driven transformation processes – came to view these as a direct challenge in its "near abroad". With newly assertive actors on the continent, in particular a resentful Russia and a booming Turkey, the EU may soon find itself offering just one of a number of models in its neighbourhood. Add to this a serious financial and economic crisis which threatens the pillars of European integration and seriously undermines the EU's standing, and suddenly, the idea of an EU-ised Europe in a progressively Europeanised world sounds like a wild dream. Indeed Ivan Krastev and Mark Leonard have identified what they call 'the spectre' of a multipolar Europe. That 'spectre' threatens the EU's capacity to achieve on its own the goal of bringing peace and stability, let alone democracy, to the continent. The evolution of most former Soviet republics certainly suggests that the EU is losing its power of attraction and transformation and, even in the Western Balkans, threats to democracy and stability persist.

It is indicative of the gravity of the situation that, even within the EU, high democratic standards cannot be taken for granted. Besides traditional worries about the democratic deficit of the Union's institutions and their distance from citizens, a new wave of dissatisfaction with national governments and political parties has erupted in the wake of the worst economic crisis to hit Western Europe in decades. The health of democracy is questioned by the rise of single-issue and populist parties, by the mainstream parties that partially adopt their agendas, as well as by the erosion of the separation of powers, by high levels of resilient corruption and by a decrease in the diversity and independence of the media in EU member states.

"It is indicative that within the EU high democratic standards cannot be taken for granted."

Challenged by other powers and increasingly unable to lead by example, the EU is losing the ability to shape its geographical context according to its values. The EU, by treating the domestic politics of its members as issues beyond its competence but at the same time extensively monitoring the political scenes of candidates and potential candidates, is incurring an obvious contradiction: asking more from candidates than from members. What is instead required is an approach that is both more humble and more ambitious. The EU should become humbler by abandoning its ideas of a unipolar European transformation, but more ambitious by involving a greater geographical spread for the EU and its values.

Neighbours or Europeans?
From Neighbourhood to Wider Europe

The EU's efforts to promote stability and democracy in Europe have been inherently unipolar. Seldom has the Union viewed itself as part of a Europe in which other countries and organisations can play a role in ensuring a value-based stability. This is unsurprising given its past successes. Through enlargement, the Union has been able to transform numerous societies, achieving both democracy and economic growth. Yet, this golden age is gone.

In an attempt to replicate its enlargement successes without having to combat the trenchant enlargement fatigue in the EU, the instruments of enlargement policy were picked up in the European Neighbourhood Policy. It was hoped that, despite the lack of an accession perspective, the EU could stimulate stabilisation, conflict resolution and political and economic reform in neighbouring

31

countries. Today, the limitations of using the methods of enlargement policy without explicitly granting an accession perspective have become clear. Conflicts in some of the EU's neighbours are either stagnant (Transnistria, Nagorno Karabakh) or have actually worsened since the launch of the ENP (Abkhazia, South Ossetia). It is becoming clearer that a détente of deep-rooted hostilities needs specific approaches that cannot be developed by the EU alone.

It is not just that the failure to offer an accession perspective neuters these policies: moves towards a one-size-fits-all policy for ENP are also at the heart of many of these failures. Here too, a lack of trust and consensus between EU members is to blame. The inclusion of the Arab countries and Israel (all explicitly denied an EU accession perspective) in the same policy as the post-Soviet neighbours reflected the demands of those EU members that champion a proactive Mediterranean policy, fearing the neglect of the South in favour of the East. In the event, this choice to group Eastern and Southern members together has not served as a stimulus for the South, nor has it made the Central and Northern EU members any more interested in what happens in the South. It has, however, frustrated countries with EU-membership aspirations, such as Ukraine or Georgia, by clumping them together with distinctly anti-Western regimes such as Libya and Syria. EU policy towards Moldova is put on a par with EU-Lebanon relations rather than policy towards, say, Albania.

Moreover, it is not just the EU's internal limitations which should push the 27 to adopt a less unipolar and altogether more inclusive ap-

32

"The Union is part of a Europe in which other countries and organisations can play a role in ensuring a value-based stability."

proach. The EU is not the only regional power to lay claim to a neighbourhood. Russia and Turkey also talk about their neighbourhoods – and they are referring to a similar geographic zone as the EU. As with previous ideas of a 'sphere of influence', the 'neighbours' are reduced to objects rather than viewed as actors in their own right. With its misplaced unipolar approach, the EU simply encourages such thinking. It has been suggested that European security in the overlapping neighbourhoods could be managed through a 'Concert of Powers'-style Trialogue including the EU, Russia and Turkey. Ukraine, a country of 48 million people, would thus become a mere object of political negotiation. Such a Trialogue would probably adopt a 'value-free approach', heralding an acquiescence to the increasing violation by a number of European countries of their commitments to democracy. The model of a Russian-style 'sovereign democracy' is an attractive alternative to elites who prefer an unlimited use of power and the support of the Kremlin over the niceties of messy and often inefficient democratic mechanisms.

Reinvigorating enlargement policy

The other aspect of the Union's more inclusive approach to democracy and stability would actually lie in an ambitious understanding of EU enlargement policy. After all, the EU can only truly reduce the potential for competition with countries, if it reinforces the perspective of their accession to the Union. And it can only avoid the creation of 'spheres of influence', if it offers proper scope for membership throughout Wider Europe. Even if Russia and other countries are not interested in EU accession, by holding out the possibi-

lity of membership, the EU shows that it is open to creating common goods. Since the last enlargement round, the EU has somehow contrived to turn its enlargement policy into something approaching a policy of exclusion. The Union needs to reinvent it as a policy of inclusion.

If it is to have a coherent strategy, the EU must clarify the enlargement debate along three principles:

1. Europe extends as far as the members of the Council of Europe, plus those countries currently excluded for political reasons, as well as others that may be recognised as independent in that same space in the future.

2. Within such geographical limits, any country prepared to meet the Copenhagen criteria, which can be reinforced if necessary, should be eligible for enlargement.

3. Unlike the EU accession perspective, which must be maintained under all circumstances, both the conditions for achieving an accession perspective and the negotiation processes are reversible. Reversals can only be justified by a failure to meet the respective criteria.

What should a Wider Europe project deal with?

If these are the political conditions for a successful Wider Europe policy, what should this actually deal with? Wider Europe is, by definition, a project that cannot be initiated by the European Union alone. It requires the involvement of governments of the entire European space and, ideally, their societies, too. The EU should be ambitious in its formulation, proactive in its implementation and generous in sharing the leadership with non-EU partners. The positive elements of enlargement and neighbourhood – the bilateral dimension and

"The Union needs to reinvent enlargement as a policy of inclusion."

the action plans – should be maintained, and initiatives such as the Northern Dimension, the Baltic and Danube Macroregions and the Black Sea Synergy should be part of it. Additionally, there are at least four areas that could consolidate a Wider Europe:

1. A renewed debate about security in Europe is overdue. To this end, the EU should engage not only with Russia, but with Turkey and all other European states (as well as providing for some form of participation for the USA). The imperative of avoiding competition for influence in an overlapping neighbourhood and achieving peace and stability means that the EU has to open new spaces for collaboration. Rather than a comprehensive treaty as proposed by President Medvedev in 2008, any security dialogue should proceed topic by topic, improving the climate with achievements in specific issues, such as non-conventional threats, joint military missions, missile defence, conflict resolution or the treatment of partially or non-recognised independent territories.

2. The key to revitalising the European Union's image and influence in the Western Balkans was the facilitation and eventual liberalisation of the visa regime - despite the unsustainable, unfair and counterproductive exclusion of Kosovo. The Western Balkans have shown how conditionality and technical rigour can deliver a mutually profitable result as well as a tangible improvement for citizens. The Eastern Partnership countries have indicated that visa-free travel is a priority for them, one of the few rewards to offer their populations as they undertake EU-inspired reforms, even without a clear membership perspective. Turkey and Russia also attach high priority to this issue.

33

Roadmaps for visa liberalisation should therefore be progressively offered to all countries in Europe. The maintenance of a strong technical focus will ensure that the process is not captured by inward-looking EU debates and polemic domestic agendas, and visa-free movement within Europe can thus be achieved in a fair manner. No other step would bring the idea of a Wider Europe closer to the citizens.

3. The quality of democracy in Europe is currently addressed in two separate debates. The first concerns worrying phenomena inside the EU such as populism, corruption and the disconnect of politicians from their voters. It is largely societal and has little institutional consequence. The other debate involves an extremely strict and intrusive form of conditionality for EU accession candidates to a lax sort in the case of Russia. Connecting both strands in a Wider European context is likely to be unpopular amongst EU governments. But it could revitalise the role of the Union as well as of pan-European organisations, and link them directly with civil society in pursuit of a European project in times of growing Euro-pessimism. This means engaging in pan-European debates that affect EU countries and non-EU countries alike (for instance on Roma issues or on the rights of Muslim communities) and in universal issues such as the independence of the judiciary, corruption, homophobia and freedom of the press.

4. Finally, the EU should rethink the way it sees itself in the European context. A less unipolar approach, underpinned by a more open enlargement policy, would certainly be a start. But the idea of securing Europe solely via enlargement (let alone neighbourhood) policy is not going to

34

succeed. A clear statement on the geographic scope of the EU confirming the membership potential of all European countries subject to a strict but fair conditionality should be accompanied by the unequivocal respect of the Union and its members towards other freely chosen courses of action. Given that the EU-27 make up a large proportion of the OSCE and the Council of Europe, these institutions represent important platforms for EU member states' own diplomacies to step in should the EU's rigid negotiating formats frustrate the Union's European partners.

In short: the Union's approach of dividing Eastern and South Eastern Europe into neighbours and future candidates, giving Eastern neighbours ambiguous perspectives, and of dealing with Russia along the lines of separate EU policies at the expense of a comprehensive Wider Europe vision is less and less sustainable. It is, moreover, less likely to succeed as the EU becomes less attractive and no longer offers the only desirable future for all European countries. Neighbourhood policy, if thoroughly reformed, could of course be maintained for the Maghreb and Middle East. But only a Wider Europe could help reinvigorate European integration, reactivate enlargement as a viable policy, stabilise the European continent, and anchor Turkey and Russia to the European space as well as reconnecting with EU citizens in a call to strengthen democracy throughout the continent.

Deniz Devrim is Associate Researcher at, and Dr. Jordi Vaquer is Director of the Barcelona Centre for International Affairs (CIDOB).

Timo Behr

The Substantial Union

Recasting the EU's Middle East Policies

The EU does not have the strength of its own convictions. Nowhere is this clearer than in its policies towards the Middle East. On the face of it, these conform to the highest normative standards – promoting economic development, political freedom and regional cooperation. In reality, they represent the lowest common denominator. Rather than defining its own strategic vision and meaningful priorities for the region, the EU has allowed its policies to be captured by narrow national interests and caveats, while subjecting its broader strategic disposition to the shifting tides of US politics. As a result, the EU's approach towards the region has been fragmented and contradictory and tends to focus on short-term security concerns. The creation of the European External Action Service (EEAS) provides the EU with a new tool to conduct strategic planning. The EU needs to use this tool to define a more coherent vision and strategy for the Middle East – one befitting its long-term strategic interests. To do so, the Union will need to break with some long-standing taboos and adjust its policies to the new realities in the region.

"The EU's approach towards the region has been fragmented and contradictory and tends to focus on short-term security concerns."

Dysfunctional European principles

Ever since the end of the Cold War, the European Union's relations with the Middle East have been based on a relatively clear set of principles.

The first and most prominent of these has been the EU's firm support for a negotiated solution to the Arab-Israeli conflict. Inspired by the optimism that resulted from the signing of the Oslo Accords in 1993, the EU constructed many of its policies for the entire region around its support for a two-state solution. While making the two-state solution its key strategic priority, the EU limited its engagement on this question to supporting US-led negotiations – preferring the role of a 'payer' to that of a 'player'. This strategy proved successful as long as negotiations moved forward, but provided the EU with little control once the peace process began to falter.

A second cornerstone of the EU's policies has been its commitment to a project of region-building that joins the EU with the other countries of the Mediterranean littoral. Starting with the European Community's Global Mediterranean Policy of 1972, this project has come in different shapes, from the Euro-Mediterranean Partnership to the Union for the Mediterranean. However, throughout these various guises, the underlying purpose of the Euro-Mediterranean project has remained the same: opening the countries of North Africa and the Levant to European trade, investment and ideas. While the Mediterranean project was welcomed by regional elites, it regularly fell foul of regional realities and failed to generate broad popular support.

35

Another determining feature of EU policies has been throughout the region an emphasis on short-term regime stability over democracy. Intimidated by the experience of the Iranian Revolution and the Algerian Civil War, the EU has adopted a 'reform through interdependence' approach: it accepts the narrative of autocratic Arab rulers which argues that an overdose of reforms would threaten the fragile blossoms of Arab democracy and would empower Islamic radicals. The purpose of this strategy is to lock autocratic Arab regimes into close bilateral relations and encourage them to gradually pursue top-down reforms in the misplaced hope that these will help to gradually 'grow' democratic constituencies.

A final feature has been the firm support the Union has given to the United States as balancer and security provider in the wider Middle East. Assuming a commonality of interests in a 'stable' and open Middle East, the EU has been willing to defer to Washington on most strategic questions concerning the region. This strategic dependence has meant that the EU has largely abstained from taking unilateral initiatives and has been willing to compromise its views for the sake of transatlantic harmony. The US-led invasion of Iraq for the first time demonstrated the limitations of this alliance.

While throughout the 1990s these principles provided a workable formula for EU action, in the post-9/11 climate they appear more and more dysfunctional: time for a two-state solution is running out; the EU's new Union for the Mediterranean has proven an abject failure; the strategy of interdependence has failed to deliver reforms; and the Iraq War has demonstrated a deepening strategic divide with the US. The deep-seated political changes occurring in the Middle East demand a new approach. But they also provide a chance for the EU to redefine its regional role.

"The Mediterranean is no longer a 'Euro-Mediterranean lake'. On the contrary, it has become a 'global crossroads'."

The Middle East as a global crossroads

In the Middle East and North Africa, the regional balance of power has been transformed over the last decade. Despite the EU's best attempts, the Mediterranean is no longer a 'Euro-Mediterranean lake'. On the contrary, it is now widely accepted that the Mediterranean has become a 'global crossroads', where European money and ideas no longer rule supreme. The Middle East has also become more multipolar, and the region's cultural and political centre of gravity is shifting towards the more conservative countries in the Gulf. While the US-led invasion of Iraq has unbound an Iranian juggernaut, radical non-governmental actors such as Hamas and Hezbollah are playing a central role, the oil-rich and economically dynamic countries of the Gulf have gained in influence and a rising Turkey is claiming a leadership position.

This more multipolar international order has meant that the US and the EU are no longer the only game in town. Ironically, while the US's military commitment to the region has grown immensely over the last two decades, the limits of American power are now becoming painfully evident. Whether it concerns Iraq, Iran or the Middle East peace process, US power alone is no longer sufficient to bring about sustainable long-term solutions. The EU for its part is forced to compete with Chinese, Gulf Cooperation Council and even Latin American investors in its own Mediterranean backyard, while a more self-confident and independent-minded Turkey has not been shy to turn

36

its back on EU policies and positions when it sees its interests at stake.

Middle Eastern politics are also about to be transformed by a string of political successions. In the coming years, a number of key countries such as Egypt and Tunisia will go through a process of political transition as their ageing autocratic rulers retire from political life. While most are expected to directly bestow political power on their heirs, this transition is loaded with new risks and uncertainties and the possibility of major calamities can no longer be excluded. In preparation, most of these countries are now closing the space for political contestation and reversing hard-won democratic and political reforms, further worsening the domestic situation.

The closure of these regimes challenges basic principles of EU policy. Faced with a reversal of political reforms throughout the Arab world, the EU's strategy of 'reform through interdependence' is in dire need of revision. Not only has this strategy proved to be ineffective in encouraging the kind of regional stability the EU craves, but it also places the EU on the side of Arab autocrats and against their people. And as opposition parties, especially of an Islamist orientation, see their political aspirations dashed, there is an increasing likelihood that some of them will re-radicalize and return to violence.

Recasting EU policies

For these reasons, the EU urgently needs to adopt a more activist and interest-driven policy that takes on the new regional and international realities. Failing to do so, the EU will at best be faced with growing irrelevance in Middle East affairs; at worst it risks being drawn into a new

"EU needs to acknowledge that favouring interdependence over reform has carried few results beyond making the EU ever more dependent on a few ageing autocrats."

cycle of violence and instability in the region that is no longer likely to stop at the water's edge but will affect its own domestic security. When adjusting the EU's Middle East policies to regional realities, European policy-makers will have to start by asking themselves some difficult questions about what kind of future regional order they deem both desirable and feasible.

It has now become a cliché to argue that the EU above all desires a stable neighbourhood. But what kind of stability does the EU want? The stability of the police baton allowing a small western-oriented Arab elite to dominate the disenfranchised masses, or the kind of stability resulting from democratic structures and processes? It is true that the emergence of new regional players such as China with purportedly less interest in reforms has humbled the EU's ability to pursue the latter. But does that mean that the EU should adopt a Chinese development model? This model neither fits the EU's particular set of values, nor does it take into account the ever-closer connection between stability in the wider Middle East and Europe. The EU also has unique incentives to offer that China does not necessarily possess, including trade, regulatory frameworks, education and immigration.

Keeping this in mind, the EU needs to acknowledge that favouring interdependence over reform has carried few results beyond making the EU ever more dependent on a few ageing autocrats. Therefore, the EU should place reforms back at the centre of its regional approach. It should consider doing so by for example emphasizing the reform component of its advanced status agreements; creating a multilateral envelope

37

within the European Neighbourhood Policy dealing with democracy and human rights; supporting human rights activists in the region; and engaging more systematically with moderate Islamist parties to prevent them from turning their back on what could become a more democratic process.

In the same vein, the EU should also revisit its region-building policy in the Mediterranean. The Mediterranean is no longer the Europeans' "mare nostrum". Acknowledging this development does not imply dropping the EU's region-building project altogether. But the Union should widen it to the countries in the Gulf. The growing integration of trade, energy and investment-links across the region means that a more comprehensive EU policy addressing the broader Middle East is now being called for. This implies adjusting the scope of the EU's policies and a remodelling of the ENP and the Union for the Mediterranean to include a wider set of countries.

Finally, the EU needs to realize that US power and credibility in the Middle East is being severely tested. The Obama Administration faces two simultaneous stop watches – one on the Arab-Israeli peace process and another one on Iranian nuclear proliferation. If it fails on either, the US image in the region will be permanently tainted. It is in the EU's clear interest to support the US administration's efforts on both issues. However, the EU also needs to acknowledge that the current domestic situation in the US is hampering the administration's ability to act. While this implies that for now the EU should do everything possible to support the efforts of the Obama Administration, it needs to start planning for a future be-

38

"The Union should widen its region-building policy to the countries in the Gulf."

yond a US-mediated settlement. This might involve making the difficult decision of either unilaterally recognizing a Palestinian state based on the 1967-borders, or dropping the two-state solution from its agenda altogether. Similarly, the EU ought to think about the consequences of living with a nuclear Iran.

The EU also has to acknowledge that in the long run its interests in the region will diverge even further from those of the US on a variety of issues, including migration, climate and energy. As Washington's attention shifts to the Pacific and US dependence on Middle Eastern oil declines, more significant differences will emerge including over the importance of political reforms and regional stability. While, for the US, the Middle East remains merely one geopolitical piece in the global jigsaw puzzle, for an ageing and demographically declining EU, the people of the Middle East have become an indelible part of itself. This means that in the long-run a US-dominated Middle East is neither a foregone conclusion nor necessarily a first-order interest for the EU.

Recasting EU policies along these lines will be no easy feat as it requires breaking some long-standing taboos buttressed by vested national interests and personal networks. This is why the newly created European External Action Service ought to take the lead by formulating a more comprehensive EU strategy for the region that is rooted in a shrewd understanding of the Union's own long-term interests and a keen appreciation of the emerging realities of the Middle East. Given the considerable problems surrounding the creation of the EEAS this might seem unlikely. However, To secure for the EU a modicum of influence in the Middle East, a more independent and interest-driven European policy is really the only option.

Dr. Timo Behr is a researcher at the Finnish Institute of International Affairs in Helsinki.

For further reading:

Edward Burke, Ana Echagüe, Richard Youngs, Why the European Union needs a 'broader Middle East' policy, Fride Working Paper 93, February 2010

Alastair Crooke, The Shifting Sands of State Power in the Middle East, Washington Quarterly 33:3, June 2010

Susi Dennision & Anthony Dworkin, Towards an EU Human Rights Strategy for a Post-Western World, European Council on Foreign Relations, September 2010

Kristina Kausch, Managed Successions and Stability in the Arab Word, Fride Working Paper 104, November 2010

Nora Fisher Onar

From Inspiring to Declining Union?

Europe at the Tipping Point and the Turkish Solution

In the 1990s, the EU had the best story in town. This was a function of the core idea, the wildly inspiring notion that former nemeses could embark upon a journey based on mutual benefit, but also on celebrating the commonalities and unique dignity of each partner. The formula, Menon and other analysts claimed, was the most formidable mechanism for 'managing difference peacefully ever invented'. Europe which had twice in living memory brought itself to the brink of disintegration and which no longer commanded the unassailable position it enjoyed in the nineteenth-century, appeared well-equipped to manage the challenges of the twenty-first. For Europe had turned its diminishing hegemony in the global arena into an asset by responding with exciting, new forms of transnational co-operation.

> "In the 1990s, the EU had the best story in town. In Turkey too, that story proved irresistible."

The EU-ropean story resonated in a world of increasingly complex interdependencies where power is measured as much by banks as by tanks. American commentators compared Europe's 'Kantian paradise' to what many deemed an excessive reliance on hard power in Washington. After all, American interventionism would fail to secure the transformation of either Afghanistan or Iraq. But the European story of 'normative' or 'civilian' or 'soft' power resonated so loudly that a dozen accession countries and their hundred million citizens sought to remake themselves in Europe's image. The EU experiment in regional integration was likewise studied with great interest as a model of best practice by organisations in Asia, Africa, and Latin America.

Turkey Inspired

In Turkey too, the European story proved irresistible. It was the embodiment of what Turkish reformers since the mid-nineteenth century have called 'contemporary civilization' – the cutting edge in political and economic governance. It was so powerful that significant segments of Turkey's old, secularist establishment cooperated with the rising and EU-friendly pro-religious counter-establishment in the early 2000s. In the same period, army leaders gave the green light to European integration, signing off willy-nilly on their own marginalisation. As striking was the sight of the Justice and Development Party's (AKP) rejecting its Islamist and anti-Western roots to tout the European idea as a panacea for Turkey's problems. The party went on to pursue intensive Europeanising reforms during its first term (2002-2007), enacting a veritable legal revolution and a partial social revolution that has yielded vibrant public debates.

Yet, those in Turkey who believed that democratisation and pluralisation would culminate in EU accession were belittled by sceptics as naïve. They were told that the EU, for all its inclusive rhetoric, was a parochial club whose members nurse an insuperable hostility/phobia towards Muslims masked by a flimsy multiculturalism. Others, recognising that 'Europe' is not monolithic, offered

a more subtle version of the argument. They suggested that even if Social Democrat and Green overtures were in good faith, the anti-Turkish populism of the Centre- and Far-Right would forever stymie Turkey's membership aspirations. Still others questioned the demand-side of the EU process. They attributed ulterior motives to the AKP and its embrace of a European story that, after all, provided leverage against the staunchly secularist military and judiciary. The assumption was that once these institutions were neutralised, the party would drop the European project.

"Today, the contrast to the jubilant soft-power narrative of the 1990s could not be more dramatic."

Yet, during its first term, the AKP appeared undeterred. It had little to lose and everything to gain. If it succeeded in consolidating Turkey's economic and political liberalisation along European lines, it would reap unprecedented domestic gains and international acclaim. These would accrue to both Turkey and the EU in a post-9/11 context where the Muslim world, but also frustrated citizens across the developing and developed worlds, longed for a counter-thesis to the aggressive civilizationalism they saw emanating from Washington. Meanwhile, if the AKP failed, it would at least have cast the ball in Europe's court – and sure enough, as Turkey made rapid progress towards meeting the Copenhagen Criteria in the first half of the 2000s, the EU forgot its taboo on culturalist arguments against Turkish accession. An impassioned debate ensued in which the focus shifted to the future of Europe itself. The debate about Turkish membership became a debate about the future of Europe.

Declining Union?

Such sentiments coalesced in a political crisis which further undermined the cogency of the EU-

ropean story of the 1990s. A major component of the new zeitgeist is a visceral awareness of an emerging post-European – even post-Western – era. This has given rise to what Frank Furedi describes as a new Malthusianism – the view that the locus of creativity and productivity has shifted definitively to other regions of the globe. The contrast to the jubilant soft-power narrative of the 1990s could not be more dramatic. The prevailing pessimism is striking not only because it is arguably premature, but because it may become a self-fulfilling prophecy.

Yes, Europe faces structural challenges in numerous areas such as demographics, unemployment, growth, and energy dependency and a concomitant crisis of its welfare state(s). But the EU continues to have the world's largest economy (and is recovering faster from the recent crisis than expected, with modest growth rates of 1.7 percent registered in 2010). It has a large, skilled labour force concentrated in the high added-value service sector, and a system of governance that – though unwieldy – may better suit a globalizing world of transnational threats and opportunities than any other form. Above all, Europe can dust off its story – of mutual recognition via mutual benefit – which galvanized actors across the world only a decade ago.

The fatalism with which the diagnosis of decline is being received is thus all the more disturbing. Because if Europe is facing a 'tipping point', a critical transitional moment from relative decline (vis-à-vis previous glory and the still formidable if humbled United States) to absolute decline (vis-à-vis rising powers in an increasingly multi-polar world), there is no empirical reason to consign the continent to the abyss. Yet, rather than display the

41

innovativeness with which Europeans have reacted to crises in the past, it looks like many within the public and political classes alike simply wish to shore up remaining assets in a defensive last stand and live out a quiet retirement until inevitable obscurity.

Turkish Solution?

Yet, for almost every one of Europe's problems – from the imperative to diversify oil and gas supplies, to the need to balance blue- and white-collar immigration, to the necessity of finding a hundred million young people to carry Europe forward – there is a Turkish solution. Many argue that Turkey has found its feet at a time when the EU is wobbling. From cosmopolitan Istanbul to rising provincial hubs across Anatolia, optimism is palpable. Following IMF-instituted structural reforms, Turkey has averaged six percent growth and attracted up to 20 billion dollars investment per year, up from a scant billion in the 1990s. The country is climbing the ranks of the G20 and expected by some analysts to have the world's 10th largest economy by 2050. It is also manoeuvring intensely to become an energy hub capable of transmitting vast quantities of gas and oil to Europe from diverse sources in Russia, the Caucasus, Central Asia, and the Gulf. Meanwhile, the country is radiating an unprecedented power of attraction in cultural terms, exemplified by the fascination with Turkish soap operas displayed by some 80 million viewers from Fez to Skopje to Riyadh.

Likewise, at the level of foreign policy, bi- and multi-lateral engagement of formerly hostile neighbours has led to exponential growth in

42

regional trade and blossoming relations. Instruments of the new foreign policy include conventional diplomacy as well as cultural, educational, and business-oriented initiatives. The clout these engender is spurring Turkey to seek a role as a desecuritising actor and mediator in its multiple regions. Such a path, especially with regard to the Middle East, is laden with pitfalls as attested to by the recent fallout in relations with Israel. But it also promises important dividends for Turkey and its partners.

> "The task to Turkey and the EU is to reframe increasingly acrimonious relations in the name of mutual benefit."

The prospect of a more confident, more assertive Turkey is perturbing to some in the West because it suggests Ankara will no longer subordinate its own interests to those of its allies. This, however, should not be read as Turkey 'turning its back' on the West. This would ignore the possibility of multiple trajectories. And there are elements of continuity as well as rupture in the new Turkish foreign policy. One element of continuity is a western orientation. This is structural – a function of geography, such that Turkey's commitment to the West may be exclusive (as was the case during the Cold War), or co-exist with other commitments (as is the case today). In this respect, the pragmatic AKP should remain cognizant of the fact that its newfound soft power is intertwined with the country's (incomplete) transformation along European lines. As such, both the party and Turkey's comparative advantage lies not in turning away from Europe but in acting as a bridge, a translator, and a mediator between multiple worlds. A renewed commitment to Europe would also assure those in Turkey concerned for their westernised lifestyles, forestalling further polarisation of the society and permitting the consolidation of a democracy that will be the truly enduring source of Turkish power.

The task then is to reframe increasingly acrimonious relations in the name of mutual benefit which, in turn, may allow for both the recognition of commonalities and celebration of differences. This may not require accession in the conventional sense – it could be achieved by developing a new approach to enlargement which transcends the zero-sum logic of member/non-member. For, whilst it is politically impossible for any Turkish policymaker to renounce the prospect of full membership, in fact, Ankara may not wish to cramp its newfound style. Its current foreign policy activism, for example, would be constrained by the need to coordinate initiatives with 27 partners. The recent NATO deal hammered out in Lisbon which ensures Turkey's ongoing commitment to the Alliance whilst acknowledging its differentiated interests in its own sphere of influence is a promising precedent in this regard.

In the case of EU-Turkey, a revamped relationship could build on a logic of 'gradual' or 'graduated' integration and membership. This would entail negotiating in stages so that Turkey could actively participate in EU institutions and decision-making, but would not possess a veto until the final stage. It entails a guarantee of eventual membership to generate the political will necessary for reforms, bargaining, and concession-making, but buys time for both the EU and Turkey to put their houses in order. Such an approach would also help publics in both the EU and Turkey become comfortable with the prospect of Turkish membership. As a recent in-depth, cross-time analysis of European citizens' views on Turkey shows, for all the noise about religious and cultural sources of ambivalence, ultimately, a utilitarian, cost-benefit logic prevails in public thinking on

> "A revamped relationship could build on a logic of 'gradual' or 'graduated' integration and membership."

Turkish membership (see Canan-Sokullu and Kentmen). A 'graduated' approach would allow citizens to experience the benefits of meaningful integration before plunging from flirtation to marriage. There are abundant precedents. After all, within the framework of *integration*, the logics of 'variable geometry' or 'multi-speed' Europe have permitted member-states to participate actively in EU affairs without compromising either their national interests or the evolution of the Union.

Meanwhile, the notion of 'special partnership' with its suggestion that Turkey serve as a permanent, second-rate buffer state between the EU and the Middle East should be discarded as unrealistic and counterproductive. Rising Turkey has no incentive to play this role, and insistence on the demeaning formula only compels Turkey to envisage its relationships with Europe and the Middle East in either/or terms, to the detriment of all.

Whether EU politicians can rise to the challenge will depend on whether they recognise that the tipping point from relative into absolute decline does indeed loom but that it is not inevitable. To reverse the tide requires both pragmatism and soul-searching rather than scapegoating. It also demands interrogating shortcomings in extant conceptions of belonging, citizenship, and democratic participation, rather than disenfranchising those who are different.

Unfortunately, the trend today appears to be in the opposite direction. In societies once proud of their pluralism and tolerance, the far-right is rising. Mainstream figures increasingly seek to co-opt such platforms. This can only backfire in an EU where over fifteen million Muslim Europeans are settled for good. Policies like the recent French

43

law establishing a precedent for stripping natural-ised immigrants of their citizenship are deeply disturbing in this respect. They amount to a betrayal not only of the EU promise of the 1990s, but the humanist, enlightened tradition of equal and inviolable rights of man and citizen given to the world by the French themselves.

The projection of insecurity onto the vulnerable is a feature of all societies where the collective pie is shrinking. But it could hardly be more belittling to the European idea, nor more disruptive to Europeans' ability to project their preferences on the world. The great irony is that many within and beyond the Union would like to see this projection succeed, a testimony to the power of the European story. Re-engaging Turkey by re-framing the enlargement/integration process through the prism of 'graduated' integration may give that story a new lease on life.

Dr. Nora Fisher Onar is an Assistant Professor at the Faculty of Political Science and International Relations at Bahçeşehir University in Istanbul and a Visiting Fellow of the Centre for International Studies at the University of Oxford.

For further reading:

Ebru Ş. Canan-Sokullu and Çiğdem Kentmen, 'Turkey in the EU: An Empirical Analysis of European Public Opinion on Turkey's "Protracted" Accession Process', in Armağan Cakir (ed), A Sisyphean Story: Fifty Years of EU-Turkey Relations (1959-2009), (London: Routledge, 2010).

Beril Dedeoğlu and Seyfettin Gürsel, 'EU and Turkey: The Analysis of Privileged Partnership or Membership', BETAM, Available at: http://betam.bahcesehir.edu.tr/en/archives/666/eu-and-turkey-the-analysis-ofprivileged-partnership-or-membership_final.

Frank Furedi, 'Meet the Malthusians Manipulating the Fear of Terror', Available at: http://www.frank-furedi.com/articles/malthusians-20060627.shtml.

Cemal Karakaş, 'Gradual Integration: An Attractive Alternative Integration Process for Turkey and the EU', European Foreign Affairs Review, Vol.11, No.3, 2006.

Mark Leonard and Ivan Krastev, The Rise of 'Herbivorous Powers'?, European Council on Foreign Relations 24 October 2007. Available at: http://ecfr.eu/content/entry/commentary_gallup_poll_results.

Anand Menon, Kalypso Nicolaidis, and Jennifer Walsh, 'In Defence of Europe – A Response to Kagan', Journal of European Affairs, Vol.2, No.3, 2004.

Mirte van den Berge

The Delivery Union

How the 27 Strengths of the EU Can Lead to Better Regulation

"In times of crisis return to your strengths and develop them further" – these days, that could be a line to inspire the unemployed, recession-struck business sectors, or even our nearly bankrupt financial institutions. The addressee is in fact the European Union. The EU is faced with numerous crises – the banking crisis, economic crisis, Euro-crisis, legitimacy crisis. Confronted with such an array of problems, the EU should focus on its core strength: its ability to deliver benefits to European citizens, businesses and governments via EU law- and policy-making in its core policy areas, such as those related to the Single Market. This cannot happen without the active commitment of its 27 members.

> "The EU must encourage member governments to represent their interests not less but better."

But nowadays, member states are criticized for an increasingly narrow focus on their national interests not only in traditional bastions of inter-governmentalism, but also in the former Community policy areas. In some circles, this emphasis on the national interest is criticized as a block to the closer union of the 27 members needed if the EU is to respond to global challenges. Words such as 'reactionary' and 'backward' are being bandied about. Yet, such arguments about a mutual exclusivity between the national interest and the European one are lazy, and obscure attention from the wearisome task of bringing European integration into line with national realities. The challenge for the EU is to put an end to negative and obstructive nationalism by coming up with imaginative and sensitive means of making European action out of 27 national interests. In order to do so, the EU must encourage member governments to represent their interests not less but better.

The negative and defensive emphasis on national interests is in large part a consequence of states' failure to judge the consequences of EU regulatory proposals. In every member state there have been examples of EU legislation becoming politicized after adoption – with national effects that were not foreseen by civil servants or national ministers during the negotiations, and that were overlooked by national parliaments. These failures, picked up as examples of 'bizarre' EU regulations in the national media, cause the current reflex of member states to take a negative and blocking attitude to their national interests during negotiations. If member states would simply provide better input and make better use of the instrument of Impact Assessments – currently viewed as a bureaucratic tool of the European Commission - to assess likely effects of new regulatory proposals at home, national governments would slowly gain confidence to bend the defensive focus on national interests.

The EU: Not an end in itself

In the level and scope of integration, and particularly in the voluntary commitment of its member

45

states to the pooling of sovereignty, the EU is a unique entity. It is worth reminding ourselves of this because what makes the Union remarkable also makes it fragile: integration is not something that happens despite the member states but because of them. In order to ensure that the member states remain committed to this process and the EU itself, the Union needs to readjust its policy and law-making in order to produce rules that can be effectively implemented and are truly enforceable – policies that fit the national contexts they will have to function in.

> "The defensive emphasis on national interests is a consequence of states' failure to assess the impact of EU regulatory proposals."

It is, however, increasingly difficult for the enlarged EU to make policy and agree on legislation given the diversity of national lawmaking contexts and administrative cultures. The range of EU competences has also expanded rapidly. And the results of policy-making have been challenged on all levels thanks to the increasing globalization of markets and of policies. Many of the challenges the EU faces today are both horizontal, requiring coordination across different policy areas, and vertical, in the sense that they need to be addressed within a multilevel governance structure.

Particularly since the recent eastern EU enlargements, member states have been confronted with the negative effects of EU regulation in two distinct ways. On the one hand there are the EU policies that have had adverse national effects either because EU-level legislation itself did not match national realities or because the European Court of Justice has been called upon to interpret vaguely stated legislation and has altered the intended impact of the regulation. On the other hand, democratically elected national governments have increasingly experienced the

46

restrictions the EU level poses on their national policy initiatives.

Better Regulation initiatives

The EU itself recognizes that some of its policies have had adverse effects and have not been correctly implemented or adequately been enforced by the member states. In recent years there has been increased awareness of the fact that regulation is not an end in itself and that there is often no such thing as 'one solution fits all'. Efforts from both the EU institutions and member states are therefore needed to ensure that EU rules negotiated in Council and EP are consistent with national realities.

Already in 2002 the Commission launched the Better Regulation programme to improve the quality of its law-making and to improve the regulatory environment for businesses, citizens and public administrations. The current programme has a threefold focus: 1) promoting better regulation tools at the EU level, notably simplification, reduction of administrative burdens and impact assessment; 2) working more closely with member states to ensure that better regulation principles are applied consistently throughout the EU by all regulators; and 3) reinforcing the constructive dialogue between stakeholders and all regulators at the EU and national levels.

The Better Regulation programme received a relatively robust political backing both from within the Commission and from the Member states. Yet the programme strongly depends on the integration of this horizontal objective in all new initiatives and by all actors involved in EU policy-making. Recently the term 'smart regulation' was coined by Barroso II to signal the renewed commitment

of Commission and broadened focus of the programme to the whole policy cycle.

Looking at the different tools and approaches within the better regulation framework, it is the impact assessment (IA) system that could contribute most to ensure that national interests and domestic implications fact-based consideration in the earliest stages of EU law- and policy-making. In general, all major policy initiatives of the Commission are subject to an impact assessment in order to assess the economic, environmental and social impact of new legislation or policy initiatives in the process of policy formulation. The assessment is made at the level of the Commission services responsible for the proposal, with input from other Directorates General involved, and the IA undergoes a quality check by a special Impact Assessment Board (IAB), currently under the Commission's Secretariat General. Although the IAB has increasingly shown its independence and autonomy, some still argue the quality check should be done by an outside independent body, and others disregard the results of the IAs claiming that political concerns outweigh the proclaimed goal of evidence-based policy-making. Although the IAs are designed for internal use by the Commission, they also aim at facilitating the decision-making process in the Council and European Parliament, especially when the original Commission proposal is significantly altered in the decision-making stage.

Improving national input and use of impact assessments

While the system of impact assessments was introduced in 2002, it is still a work in progress. Besides the question of the functioning of the IA system within the Commission, its main obstacles

"Impact Assessment tools must be improved to strengthen evidence-based policy-making."

are related to the lack of reliable data provided by member states and the lack of interest in the outcomes of impact assessments during decision-making between Council and Parliament. The member states, and thus the Council, perceive the impact assessments as a bureaucratic Commission procedure with little relevance for their decision-making process. A recent report of the European Court of Auditors shows the limited commitment of the Council and Parliament to themselves using IAs. This contradicts their inter-institutional agreement and political declarations.

This could however be changed if the Commission were able to base its assessments on more quantitative input from the member states. This would increase the relevance of the impact assessment and would enhance the extent to which IAs can be used for evidence-based policy-making. Further improvements would be made if the member states were more active in including the results of the IAs in the process of defining their national position and if the Council and EP would make use of the possibilities to assess the impacts of Commission proposals substantially altered during the decision-making process.

The success of the whole Better Regulation programme greatly depends on the Council, and thus the member states, streamlining Better Regulation in the law and policy-making process. A horizontal objective like better regulation illustrates that member states' internal coordination of EU policy-making needs to be stepped up. The national structures in place to deal with EU policy-making are too often founded on classic diplomatic structures developed for international organizations. In fact, the member governments are

47

involved in multi-level governance. And given the range of policy areas dealt with on the EU level, the result is often domestic fragmentation and a struggle for coordination.

An improvement will require efforts in four distinct ways. First and foremost, better coordination and interaction between policy fields – an end, in other words, to the national fragmentation of EU policies. Secondly, better coordination between the national desks involved in the different parts of the EU and national policy cycle – a better networking within individual states of the national experts involved in EU agenda-setting, formulating the national position, negotiating in the Council, the national transposition and national implementation, enforcement and evaluation. Thirdly, involvement of national parliaments at an early stage to strengthen the smooth transfer of EU legislation into national law. In addition, the regional and local authorities often feel inadequately involved in the national input in the EU policy process – a remobilization of the subnational level is required.

The more coherent and better informed positions which would result from these extensive changes on the national level, would allow member states to inform EU policy-makers more accurately and adequately on the possible effects of future policies and policy options. This more quantitative and reliable data will improve the quality and accuracy of the Commission's impact assessments. The enhanced input in the IA system would likely see a greater use of the impact assessments as well as more evidence-based policy-making in Council and EP decision-making, especially when major amendments to Commission proposals are made that were not foreseen in the original

"Both member states and the Union must step up in multi-level governance."

assessment. The EP has already committed itself to take more account of IAs. To operationalise this commitment, the EP could start by systematically acknowledging European and national implications for instance as part of the EP report on the relevant law-making dossier.

These ambitions might sound like a call for more bureaucratic decision-making, but this is not the case: it is just an added dimension that will better ensure that policies are able to deliver. Enhanced internal coordination from the member states, input in the data collection process of the IAs and a better use of the impact assessments during the decision-making process will ensure better fitting EU laws – the ultimate national interest.

It is however not only the EU member states that have to step up. Too often the perception in Brussels is that it is the member states and their assertion of national interests that stand in the way of a better EU – one that is smoothly functioning internally and has a more influential stance on the global stage. While these observations are often voiced by those with a vision of the common good for Europe, they disregard the fact that not the EU but the national level are the dominant players in the EU and will be for the foreseeable future. After all, this is where most of the EU budget is collected and spent, and where the vast majority of the EU's policies are executed as well. Dismissing national interests as obstacles in the way of a better functioning Union ignores the crucial importance of both national support and a fit between EU and national policies for the success of the Union and its delivery of results. For an EU in crisis, a focus on its key results – the deliverables for EU citizens, businesses and public authorities – is the best way forward.

48

Mirte van den Berge is Executive Director of TEPSA, the Trans European Policy Studies Association, based in Brussels. Any opinions expressed in this paper are those of the author and do not necessarily represent the position of TEPSA.

Sami Andoura

The Sustainable Union

Towards a European Energy Community for the 21st Century

Challenges of a modern European energy policy

When six European states decided in 1951 to integrate two key sectors of their economies and create a Coal and Steel Community (ECSC), their purpose was to replace conflict with cooperation and antagonism with prosperity. Energy was one of these two key sectors, and sixty years later, energy is still at the top of the political and economic agenda. However, despite increased regulatory activity, the EU and its member states are struggling to develop a truly common energy policy.

The difficulty of this task is compounded by the various challenges European societies are facing. These include climate change, which demands radical changes to the way we produce and consume energy; energy supply, due to the fact that people consume more resources than nature can provide and that the oil and gas on which the Union depends lie mostly outside Europe; and economic and financial challenges, illustrated by the recent downturn, which obstruct investment in key areas.

However, these challenges also offer opportunities. The development of alternative, sustainable energy sources and of green technologies is the key. They will underpin a new industrial revolution based on sustainable development and new technologies which will in turn help the Union's

50

members emerge from the economic crisis while paving the transition to a carbon-free or low-carbon economy by 2050. Will the EU choose to play a pro-active role in the next industrial revolution, or will it be content to follow the lead set by others?

A piecemeal EU approach

Member states have already identified fields of action in this area: the European Union needs to develop a common energy policy that promotes sustainable development and the transition to a low-carbon society, guarantees access for its citizens to energy at reasonable and stable prices, maintains its industrial competitiveness, and ensures security of energy supply for all Europeans.

However, the EU is finding it difficult to put in place a common energy policy along those lines. Despite a spectacular increase in regulatory activity aimed at creating a unified internal energy market (of which the cornerstone is the third energy package adopted in 2009), barely half of the work needed to create a single energy market has been done. Deregulation has been achieved but there is a long way to go before the various national markets become parts of a homogeneous block.

For example, the creation of a unified internal energy market requires a shared interconnection infrastructure for gas and electricity – something which also serves to improve Europe's energy security. However, the Union can neither finance

"Will the EU choose to play a pro-active role in the next industrial revolution, or will it be content to follow the lead set by others?"

actions of wide scope nor exercise choice over energy. The annual EU budget for energy is 20 million Euro – a negligible figure when compared to the amount member states spend in this area, let alone to the cost of a few kilometres of gas pipeline.

In addition, while the 20-20-20 objectives of 2007 are noble and ambitious in their bid to lower primary energy use and greenhouse gas emissions and to increase reliance on renewable energy sources, it is regrettable that member states too often favour national solutions to meet these shared objectives. Isolated national solutions – such as for instance in the area of renewable energy – not only have clear limits but create the risk of discordant responses to the same challenges. In this field there can be no truly satisfactory solutions, nor added value, without far-reaching cooperation between states.

Meanwhile the external energy environment has become increasingly political, and the European Union remains impotent. Whereas the Lisbon Treaty gives the Union limited powers in internal energy policy, the EU has no such powers in external energy policy. Therefore it struggles to develop a common strategy vis-à-vis producers such as Russia and to make choices about where to import its energy from.

And even though the Lisbon Treaty does explicitly recognise energy as an area of EU activity, stipulating that the EU's energy objectives must be met in a spirit of solidarity between member states, this solidarity has not yet been defined in concrete terms at the European level. Yet, it is clear that solidarity must become the motor for developing a European energy policy, replacing conflicts over national sovereignty.

"The most ambitious option, and also the most promising, is that of a European Energy Community, with its own rules and functioning appropriate to the energy field."

Moreover, the concept of solidarity could so easily be adapted to the specific demands of European energy issues. To start with, for example, the concept of solidarity could be broken down into some general principles and objectives such as: speaking with one voice (prior coordination) in bilateral relations with suppliers as well as on issues of external transit; a commitment to a level of investment in networks and to their pooled management; the pooling of potential national research and development programs around certain critical projects; and enhanced interaction between regional blocs in Europe.

It is simply important to avoid reducing the principle of energy solidarity to financial transfers from "richer" to "poorer". Instead, it must be seen as an opportunity to determine the responsibilities of all and involve the 27 states in the development of European energy policy, thereby avoiding the risk of "free riders" in the implementation of the common energy market.

Long-term solution – a European Energy Community

If the EU's leaders wish to take on the new challenges concerning energy, the environment, technology, geopolitics, and security collectively, they must ensure that the EU's energy policy provides the decision-making tools to support these difficult policy choices while remaining flexible enough to accommodate change. In order to create a coherent European zone of energy regulation, the EU needs to develop a coherent approach that achieves a greater degree of competition, cooperation and solidarity in energy policy. The most ambitious option, and also the most promising, is that of a

51

European Energy Community, with its own rules and functioning appropriate to the energy field and including relevant economic, political and strategic aspects. Such a common project is consistent with a deeper degree of integration and pooled sovereignty in this sensitive political field.

Such a European Energy Community would deal with a wide range of issues, including:

– A well-functioning internal energy market, that is liquid and competitive both at the wholesale and retail level;

– An integrated and smart infrastructure that not only supports the internal market, but also helps the EU to achieve its sustainability and security of supply objectives;

– Price stabilisation measures if and when market forces fail to deliver socially acceptable results or threaten to undermine crucial investment decisions;

– A diversified European energy portfolio through stimulated innovation (R&D) and the use of renewable energy sources;

– The power to raise levies and to allocate its own financial resources;

– Adequate crisis management and strategic reserves, that can be dispatched and used for the benefit of all citizens;

– External powers allowing the EU to project itself and secure its goals on the international scene, and where needed to pre-empt supply deals.

Such a solution will require a more coherent zone of energy regulation, based on the internal market and directed by both the institutions and a decision-making platform, including a

"Infrastructure plays a vital role in the development of an effective European Energy. It is important to give depth and structure to cooperation, by establishing energy networks on a regional scale."

real European energy regulator, with the capacity to find effective solutions. The project should also be capable of exporting, in a credible and convincing way, EU regulation to the Union's external partner countries.

Such a common energy policy cannot be put in place all at once. Thinking that the Treaties can be revised to accommodate a new Energy Community under these lines in the short-term is not realistic. Nonetheless, the EU cannot afford to wait. While it may take some time before the European Energy Community project is accepted by all member states, the existing system still has room for improvement. On some concrete issues, there is and will remain a pressing need to develop interim solutions.

Short to mid-term priorities: networks, diversification, financial resources and the external dimension

These dispositions, appearing technical and limited, would nonetheless create decisive and progressive change, opening the way to more cooperation and solidarity in the energy field.

First of all, the internal market process must be founded upon renovated, integrated energy networks of EU dimensions. Infrastructure plays a vital role in the development of an effective European Energy Community as it links markets together, provides a platform for trade and encourages cooperation between states.

However, realism is in order: the European Union will not transform 27 isolated national markets into a single European market overnight. This is why it is important to give depth and structure to cooperation, by establishing energy networks on a regional scale. Agreements of this

type are already envisaged between member states, such as the offshore wind project in the Northern Sea or the interconnection of the Baltic energy markets.

It is also important to ensure that these processes take place in a collective framework and that they serve an overarching vision, namely that they contribute to the realisation of a single energy market. In that regard, gaps between different regions must be bridged, so as to avoid excessive regional disparities and to anticipate a future common dynamic. To this end relevant solidarity mechanisms – especially in the form of best practices – should be put in place, perhaps with administrative and financial support from the Union.

The diversification of Europe's energy sources must be supported by the better encouragement of research and development in green technologies and by the use of renewable energy sources. Several projects for cooperation between member states deserve support from the European level (political, financial and administrative). They involve offshore wind, solar, carbon sequestration, and smart networks and metering. Common actions with European financing would allow the rationalisation of investment and maintenance costs.

New alternative-energy technologies require investment on a grand scale, as does the creation of a proper network. This means giving the Union ambitious economic instruments to finance projects which are in the shared European interest. The European Union should therefore have at its disposal independent financial resources, including the power to raise taxes on certain goods and types of production. This issue should be

"The EU should have at its disposal independent financial resources, including the power to raise taxes on certain goods and types of production."

considered when preparing the next Financial Perspective 2014-2021 and negotiating a reform of the budget.

Finally, securing access to gas and oil resources mostly situated outside the Union is of fundamental strategic importance. The European Union must be able to present a united front and speak with a single voice to its external partners, be they producer countries or transit countries. A united front is the only way the EU can ensure its interests prevail vis-à-vis these states and other commercial entities. This implies, if need be, a pooling of energy supply capacity, collective representation within international organisations and the ability to make international commitments and, in the eventuality of a major energy crisis, that genuinely European strategic reserves are available and distributed across Europe in a spirit of solidarity.

All these initiatives have a single and unique objective: promoting energy integration and solidarity between the peoples of Europe and beyond. Freedom from energy dependence would remove a source of tension and conflict. And peace is one of Europe's raisons d'être. The development of a European Energy Community along these lines would thus put the EU back on the track which the founding fathers traced in 1951 when they concluded the ECSC Treaty, albeit in a manner that is technologically and democratically adapted to today's standards and to tomorrow's expectations.

European leaders should bear in mind that they have a special responsibility towards future generations when developing a common energy policy. Whereas 2030 may seem far off, major

53

decisions on energy taken today would represent a commitment for many decades to follow. Vague rhetoric and declarations without follow-up will not be enough if Europe wants to prepare the transition towards the sustainable development of our societies. If the Union really is incapable of working out a collective response to these shared problems, then clearly one needs to ask what the European project still stands for.

Sami Andoura is a researcher at Notre Europe in Paris.

Toby Archer

The Restrained Union

Has EU Counter-Terrorism Policy Become More About Having an EU Policy Than About Countering Terrorism?

Why does the EU have a counter-terrorism (CT) policy? To counter terrorism would be the obvious reply, but a critical look at the state of the Union's CT measures raises questions about whether such a policy is necessary, let alone possible in a meaningful form. The answer to the question clearly lies elsewhere and, worryingly, it seems that there are certain pressures pushing the EU to develop policies even if these have limited or even negative value. The case of CT suggests that it is inherent in the nature of the EU for political goals such as having a common European position and furthering integration, or coherence with other EU policies, to obscure the issue that the policy actually professes to address.

"Why does the EU have a counter-terrorism policy? A critical look at the state of the Union's counter-terrorism measures raises questions about whether such a policy is necessary."

Is EU counter-terrorism policy really a product of activism?

Of course this is not the first time the criticism has been made that the EU seeks out areas for cooperation merely for the sake of increasing the scope of European integration. What makes its CT activities particularly interesting is that, at first sight, they appear to stand above such criticism. Counter-terrorism is not a policy area that the EU ever coveted – despite there being a long history of cooperation across Europe against terrorists groups. It was only as terrorism and counter-terrorism became central issues of both domestic and international politics after the 9/11 attacks on the United States, that it became hard to avoid. But even then, the EU was often slow, or reluctant, to act.

Not only is the EU now active in counter-terrorism policy and counter-radicalization; the threat of terrorism is often used as a justification for other policy initiatives, particularly those that come under the umbrella of the Area of Freedom, Security and Justice. But to what extent has European CT policy become more about proving the Union can produce policies than about actually countering terror? Evaluations of the effectiveness of EU policy offer little comfort. A number of criticisms can be – indeed, frequently are – made about the effectiveness of the EU's counter-terrorism activity.

Firstly, it is said that the Union simply has no natural role in dealing with terrorism and, therefore, should actually expect to be ineffectual. The concept of subsidiarity means that the EU has to allow member states to do the policy implementation and is left only providing coordination, general principles and best practices. Even those EU measures and agencies which have developed beyond the declaratory stage struggle for meaning. EUROPOL, for example, enjoys limited cooperation from national police and intelligence agencies. Efforts to boost the political will behind

55

these measures have also foundered. The creation in 2004 of the role of Counter-Terrorism Coordinator – as opposed to a director with executive power – has achieved relatively little. Commentators suggest that only a minority of governments actually take the coordinator's role seriously.

A second major criticism is that the EU has nothing new to offer. Far from adding to the coherence of EU-wide efforts, European CT policy merely offers a duplication or replication of pre-existing structures. There are several, often unofficial networks between European counter-terrorism police and security officials that significantly pre-date even the Maastricht Treaty. These do much of the work that EU measures aim for. The measures adopted by the Union are often more inclusive than these networks and involve a greater number of member states, and from this perspective have an added value. All the same, these EU actions seldom build on the existing groups, and even more rarely achieve or indeed improve the effectiveness of these networks.

A third important criticism of European CT policymaking suggests that the very policy principles and substantial goals underpinning policy are flawed. In the last three years a number of scholars have argued for the necessity of 'Critical Terrorism Studies', a field of academic study that looks at the discourse of 'terrorism', as much as at the individual terrorists or groups. First results of these studies reveal assumptions about terrorism post-9/11 that are fundamentally misplaced. Terrorism has become almost synonymous with 'al Qaeda', which centrally associates terrorism with Muslims. As a result, European Muslims are becoming a central subject of

56

"The EU may be chasing problems that are of its own imagining, and then citing their failure to emerge as a sign of success."

security policymaking, with counter-radicalization as a concept dealing almost solely with young Muslims. This labelling as a potential threat actually increases the chance of radicalization.

A self-generating policy

Of course, the finding that the principles and goals underpinning EU policy are wrong would not normally be a sign of unnecessary activism on the part of the Union. There are ample examples of policy areas where the EU follows odd principles and goals, but nevertheless has a legitimate role to play. Counter-terrorism policy, however, is different. Being largely a 'preventative' area of policy – a policy which seeks to stop something from happening – it is difficult to measure its success. In such a policy area, the pursuit of faulty principles can actually create a policy that is self-generating. The EU may be chasing problems that are of its own imagining, and then citing their failure to emerge as a sign of success.

The political conditions for this phenomenon were ripe at the offset of EU CT. Interviewing Commission and Council Secretariat officials about various aspects of CT policy they were responsible for in early 2003, less than a year and half after the 9/11 attacks, they quickly – and worryingly – attested to having no special knowledge of the issue. The sudden rise of terrorism in political importance after 9/11 meant that many officials were given responsibility for issues under the CT umbrella when they had no knowledge of the problem and therefore were unable to distinguish between reliable and dubious or politically slanted information.

It is also notable that researchers assessing EU CT policy have tended to be more interested and

knowledgeable about EU policymaking than they are about terrorism. This means that there is only limited critical analysis of EU CT policy – indeed this tends to be critical only in the sense that it questions how successful EU policy is in the EU's own terms. It measures the EU's success against its capacity to produce a CT policy that the member states and the community institutions can agree on, not against its capacity to stop terrorism.

One example of how perceptions of terrorism are generated can be found in the way researchers, politicians and policy-makers politicise the number of arrests made under anti-terrorism legislation. In 2005, a number of analysts noted that there had been over 1000 terrorism-related arrests in the EU since 2001, 700 of which were in the UK alone. But arrests are not convictions – in the UK, the conviction rate for terrorism and terrorism-related offences since 9/11 has been only 13%, and 56% of all those arrested are released without facing any charge. This is not to say that there is no threat – there clearly is, some of those convicted had carried out, or were planning to carry out serious acts of violence – but rather citing arrests for terrorism can easily create a false impression of the scale of the threat.

Using the (wrong) tools that we have

In such a political context, it is unsurprising how many states – not just European ones – have developed a talent for identifying terrorist threats which justify the political action they were anyway planning. And, worryingly, the EU's frequent assessments of what it can do to combat terrorism really do seem to pre-date its assessments of the nature of the threat itself. The EU has created

"Short of the doubtful assumption that angry poor people commit acts of terrorism, development aid actually has little to do with Europe's internal security problems."

certain institutions that need to be used in order to be justified. In the CT policy area, EUROPOL and EUROJUST are the obvious examples.

The EU has also sought to increase its role in other policy areas, citing pressing CT concerns. For instance, the role of development aid is stressed in the EU's counter-terrorism documents. Short of the doubtful and rather patronizing assumption that angry poor people commit acts of terrorism, development aid actually has little to do with Europe's internal security problems. Ideas such as the 'dialogue of civilisations' are also exceedingly vague and, whilst not necessarily bad notions in themselves, are again far removed from the specific task of countering terrorism within the EU.

Similarly the EU has taken many steps against the financing of terrorism, targeting money laundering and other financial crimes. Whilst the criminal use of the financial system should generally be combated, it is not clear to what extent this specifically helps in combating terrorism. After all, one of the startling facts to emerge from the investigations of terrorist attacks in Europe is their small cost. The 7/7 bombings in London cost only a few hundred pounds to stage and, including the travel to Pakistan for training, it is believed that the perpetrators only needed a total of approximately £ 8000 (9,500E). The majority of this was financed by the group leader, in part by a bank loan and in part by his wages as a classroom assistant.

On the other hand, new policy initiatives that do seem necessary if we are to avoid the marginalization and potential radicalization of individuals in European societies may not even be the responsibility of member state governments, let

57

alone the EU, but rather best dealt with by local authorities and policing agencies. These are areas where the EU has no or few tools and can only have marginal influence at best. EU efforts to spread 'best practice' will be of limited value due to the differing political and social circumstance in the various member states.

Institution-building before policy outcomes

So, is EU CT activity more about European institution building than it is stopping terrorism? Both the policy documents themselves, and the supporting and analyzing academic and think-tank discourse, focus – as so often with the EU – on internal coherence and institutional matters, more than on the issue at hand itself. Political pressure to do something about terrorism becomes caught up in the complexity of producing a policy agreeable to 27 member states and to the Community institutions and coming up with joint European policies seems often to involve giving pre-existing Union legal instruments or institutions a new, and newsworthy role.

The EU is based on impeccable liberal democratic principles – a purposeful rejection of the continent's brutal past. The use of violence to make political or other ideological points or to influence or intimidate governments or peoples – terrorism – is diametrically opposed to the best of European values and therefore must be opposed. Yet, a critical look at the EU's fumbling attempts to counter terrorism shows the inherent problems for policy production within an entity that is less than a super-state and more than just another international organisation.

"The Union could achieve a greater sense of focus by funding and disseminating research on complex phenomena around terrorism which are still not well understood."

Firstly, citizens exert much the same political pressure on the EU as they do on their own governments. Since it is more than an international organisation, citizens rightly expect that the EU can 'do something'. But fearing the creation of a super-state, citizens refuse to put the same tools at the EU's disposal as a national government enjoys. *Secondly*, with its contested nature and at times conflicting stakeholders, no EU policy-making can be divorced from the politics of what the EU is, does and will be in the future. Questions such as whether the EU should develop a presence in a certain policy field are viewed from a constitutional perspective rather than one of effectiveness, subsidiarity and proportionality. *Thirdly*, the sheer complexity of forging a policy agreeable to the different institutions of the EU and the 27 member states means that agreeing on anything can become a goal in itself, and reaching an agreement a victory. Questioning how successful that policy is runs a distant second.

The EU must learn a little more restraint and self-discipline. In a highly politicised policy area such as counter-terrorism, the EU would show greater political maturity than many governments if it resisted the pressure to act unnecessarily and concentrated on those areas where it can make a meaningful contribution. The Union could achieve this greater sense of focus by funding and disseminating research on complex phenomena around terrorism which are still not understood – questions such as how and why the political dynamics of the Middle East are connected to the everyday experience of European Muslims. And where it funds and disseminates such research, the Union could usefully incorporate it in

its own policy measures too. After all, the Commission has already funded limited but good research in these areas, but the nuanced conclusions of academics and social researchers attract less political attention than police, intelligence or military officials can gain for their policy recommendations. Not only could such research boost the success of CT policy at the national level, it could also contribute to the imperative of increasing understanding in Europe between majority and minority groups. In this case, less would certainly be more.

Toby Archer is an EU security analyst based in Helsinki.

★

Contact

Almut Möller

Head of Program

Alfred von Oppenheim Center for European Policy Studies

German Council on Foreign Relations (DGAP)

Rauchstraße 17/18

D-10787 Berlin

Phone: +49 (0)30 25 42 310

E-Mail: moeller@dgap.org

www.dgap.org