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Papers prepared for the Colloquium
“Working for Europe:
Perspectives on the EU 50 Years
after the Treaties of Rome”

Chambre belge des représentants
Belgische Kamer van Volksvertegenwoordigers
9 March 2007

Bruges Political
Research Papers

Michele Chang, Eric De Souza,
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Editor's note:

The Chamber of Representatives of the Belgian Parliament asked the permanent professors of the College of Europe to write brief papers for a conference organized in honour of the 50th anniversary of the Treaty of Rome. The objective of these papers was to highlight the main challenges facing the European Union in four different issue areas (Lisbon Strategy, enlargement, Neighbourhood Policy and institutional reform) and to generate a debate among Belgian academics, politicians and members of civil society. The papers produced used to promote this discussion are reprinted here. A transcript of the proceedings (including interventions by participants) can be found on the Belgian Chamber of Representative's website,

http://www.lachambre.be/kvvcr/pdf_sections/comm/committee/col029-PR.pdf

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Table of Contents

| | |
|---|----|
| The Lisbon Strategy by Michele Chang | 3 |
| Enlargement of the EU by Eric De Souza | 10 |
| EU External Action: European Neighbourhood Policy by Sieglinde Gstöhl | 19 |
| La réforme des institutions de l'Union européenne : Perspectives cinquante ans après la signature des traités de Rome de Dominik Hanf | 32 |

The Lisbon Strategy
Paper prepared for a panel discussion
Michele Chang
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In March 2000 the European Council launched the Lisbon strategy, the purpose of which was to create “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.” This paper will trace the development of the Lisbon strategy from its inception until the present day, highlighting the essential points of debate in terms of the strategy’s contribution to the EU’s competitiveness, social objectives, and democratic legitimacy.

The distinguishing feature of the Lisbon strategy was the Open Method of Coordination (OMC), an intergovernmental form of cooperation that employed soft law. Hodson & Maher¹ described the OMC as a “heterarchical, decentred and dynamic process [that] supports and radicalizes the principle of subsidiarity, offers an alternative to treaty rules on enhanced co-operation, and addresses some of the legitimacy issues” (p719). Though these soft law mechanisms had existed and been implemented in the previously outlined initiatives on employment, the OMC would be extended to new issue areas such as social policy, R&D, and macroeconomic policy, as well as maintaining its use in employment policy. The distinguishing feature of the OMC was that nation states would retain the ability to make policy decisions, and legislation at the Community level

¹ Dermot Hodson and Imelda Maher, “The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination”, *Journal of Common Market Studies*, 39, 2001, pp. 719-746

was “explicitly excluded.”² In 2001 sustainable development was added to the Lisbon agenda’s objectives at the Gothenburg summit.

Member States jointly identified and defined common objectives, and the Commission monitored progress towards achieving these goals. Member States implemented these objectives through the development of National Action Programmes (NAPs). The NAPs would not only encourage policymaking coordination at the EU level, they would engage various economic and social actors at the EU and domestic levels. Benchmarking, naming and shaming, and peer pressure were the mechanisms used to promote compliance.

The Lisbon strategy was welcomed for its innovative approach to integration. In particular, this new form of governance could lead to enhanced cooperation and improve legitimacy problems of the EU by involving more social actors in the policy process, thus creating a dialogue as well as aggregating diverse preferences at multiple levels.³ Moreover, integration via the OMC was seen as less threatening to Member States that were averse to further integration, as the states retained their ability to direct and implement the economic and social policies associated with it.⁴ For example, Member

² Fritz Scharpf, “The European Social Model: Coping with the Challenges of Diversity” *MPIfG Working Paper* 2002

³ See James S. Mosher, “Open Method of Coordination: Functional and Political Origins”, *ECSA Review*, 31, 2000; Maurizio Ferrera, Anton Hemerijk and Martin Rhodes, *The Future of Social Europe: Recasting Work and Welfare in the New Economy*, Oxford: Oxford University Press, 2001; Dermot Hodson and Imelda Maher, “The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination”, *Journal of Common Market Studies*, 39, 2001, pp.719-746; Joshua Cohen and Charles Sabel, “Sovereignty and Solidarity: EU and US” in Jonathan Zeitlin and David Trubek (editors), *Governing work and Welfare in a New Economy: European and American Experiments*. Oxford: Oxford University Press, 2003; Burkard Eberlein and Dieter Kerwer, “New Governance in the European Union: A Theoretical Perspective”, *Journal of Common Market Studies*, 42, 2004, pp.121-142; Kerstin Jacobsson, “Soft Regulation and the Subtle Transformation of States: The Case of EU Employment Policy”, *Journal of European Social Policy*, 14, 2004, pp.355-370.

⁴ Oliver Gerstenberg and Charles F. Sable, “Directively-Deliberative Polyarchy: An Institutional Ideal for Europe?” www2.law.columbia.edu/sable/papers/gerst-sabel1029.doc, 2000; Christoph O. Meyer, “The Hard Side of Soft Policy Co-ordination in EMU: The Impact of Peer Pressure on Publicized Opinion in the Cases of Germany and Ireland”, *Journal of European Public Policy*, 11,

States are loath to harmonize their different welfare models, but the OMC allowed for a dialogue that encouraged convergence without necessitating harmonization.⁵

However, the Lisbon strategy and the OMC also faced detractors in regards to effectiveness, legitimacy, and policy outcomes. In terms of the effectiveness of the OMC, it is unclear whether or not soft law promotes further cooperation. Its voluntary nature makes it difficult to ascertain if reforms were undertaken as a result of policy learning or if they would have been adopted anyway. It is also unclear if policy learning via the OMC is even realistic; while the business world has successfully employed peer review and benchmarking techniques to improve performance, applying such strategies at the level of international policy is difficult.⁶ Governments do not possess the same type of resources as multinational corporations, and the Lisbon Strategy's budget does not provide sufficient funds to rectify this situation, thus limiting the prospects for innovative policy to emerge.⁷ Though it was originally touted as making the policy process more democratic via the social dialogue, the OMC can be criticized for exacerbating the legitimacy problem due to the lack of transparency in the process, the limited role that civil society plays in practice,⁸ and the muted role for the more democratic institutions of the EU (like the European Parliament) and of national governments (national parliaments).⁹ Indeed, accountability is quite difficult in a system that easily conflates decision-making with implementing

2004, pp.814 - 83

⁵ Caroline de la Porte, "Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?" *European Law Journal*, 8, 2002, pp.38-58

⁶ Martin Lodge, "The Importance of Being Modern: International Benchmarking and National Regulatory Innovation", *Journal of European Public Policy*, 12, 2005, pp.649-667

⁷ James Arrowsmith, Keith Sisson, and Paul Marginson, "What Can 'Benchmarking' Offer the Open Method of Co-ordination?" *Journal of European Public Policy*, 11, 2004, pp.311-328

⁸ Mary Daly, "EU Social Policy after Lisbon", *Journal of Common Market Studies*, 44, 2006, pp.461-481

⁹ Susana Borrás and Kerstin Jacobsson, "The Open Method of Co-Ordination and New Governance Patterns in the EU", *Journal of European Public Policy*, 11, 2004, pp.185-208; Erika Szyszczak, "Experimental Governance: The Open Method of Coordination", *European Law Journal*, 12, 2006, pp.486-502

policy.¹⁰ Rather than a more participatory system, the OMC encourages the development of technocratic elite.¹¹ The Court plays only a marginal role, as do the European Parliament and the national parliaments. Finally, the Lisbon Agenda could have negative effects on integration itself if the EU sets ambitious policies that it is unable to achieve.¹²

In March 2004, the Commission conducted a mid-term progress report of the Lisbon strategy. The Lisbon strategy did not deliver bear fruit: sluggish growth (about half the rate on which the strategy itself had been based) and high unemployment (almost 9 percent) prompted a major reform. The Commission proposed the “rigorous prioritisation” of the project, focusing on economic growth and employment. The Council invited the Commission to set up a High Level Group to contribute an independent-analysis to the mid-term review, the results of which were published in November 2004 and is known as the Kok Report. This report criticized the lack of progress made during the preceding years, noting the “disappointing delivery” that resulted from “an overloaded agenda, poor co-ordination and conflicting priorities.” Ultimately, however, the Member States failed to rise to the task. Like the Commission report, the Kok Report emphasized the lack of ownership, stating “Lisbon is about everything and thus about nothing. Everybody is responsible and thus no one.” The following priorities were suggested: increasing the adaptability of workers and enterprises; bringing more people into the labour market; investing more in human capital, both quantitatively and qualitatively; and devising better governance procedures in regards to the implementation of reforms. Finally, “the High Level Group advises the EU and Member States to focus on growth and employment in order to underpin social cohesion and sustainable development.” The strategy needed “to

¹⁰ Claudio M. Radaelli, “The Open Method of Co-ordination--A New Governance Architecture for the European Union”, *Swedish Institute for European Policy Studies*, 1, 2003

¹¹ Burkard Eberlein and Dieter Kerwer, “New Governance in the European Union: A Theoretical Perspective”, *Journal of Common Market Studies*, 42, 2004, pp.121-142

¹² Michael Zängle, “The European Union Benchmarking Experience. From Euphoria to Fatigue? . *European Integration online Papers (EIoP)* 8, 2004, pp.1-22

promote coherence and consistency” across Member States and to be reinforced at the level of the EU.¹³

In February 2005 the Commission proposed a new Lisbon strategy that emphasized jobs and growth (COM (2005) 24 of 2.2.2005). In March the European Council officially launched the Growth and Employment Strategy (also known as Lisbon II), whose ambitions were scaled back substantially, calling for a focus on growth, innovation and employment. The social and environmental elements of the original agenda would still be encouraged, but it signalled an even greater shift in the EU’s priorities towards market-oriented policies.

Institutionally, this would be done through a partnership between the EU institutions (specifically the Commission) and the Member States. A Community Lisbon Programme set common goals for the Member States, and National Reform Programmes (which replaced National Action Programmes) implemented them at the national level. This marks a departure from the original Lisbon strategy in several respects. First, it shifts the focus away from the intergovernmentalism of its predecessor. Though the OMC remains as a mechanism for coordination, Lisbon II envisions more interaction between Member States and Community institutions, in particular granting the Commission a larger role. Second, Lisbon II significantly streamlines the previous system at the EU and the national level. At the EU level, Lisbon II’s Integrated Guidelines unite the broad economic policy guidelines (BEPGs), employment guidelines, and microeconomic guidelines into a single set of recommendations. At the national level, the NRPs consolidated the previous NAPs that had been fragmented. They thus form a single programme for each Member State, encouraging greater policy coherence across agencies and levels of governance. A

¹³ Wim Kok, *Jobs, Jobs, Jobs: Creating More Employment in Europe* Brussels, Employment Taskforce, 2003

third institutional shift is the abandonment of “naming and shaming” as a mechanism to induce change. The political difficulty of publicly criticizing Member States led to the Commission producing reports that encourage rather than censure, prompting some detractors to claim that it reduces its political relevance and makes it difficult for Member States to constructively learn from the process without adequate feedback.¹⁴

Additional weaknesses of the revised strategy include a lack of political visibility and the need to increase incentives (or sanctions) for complying with Community objectives.¹⁵ While in some Member States the Lisbon strategy has enjoyed a certain amount of political prominence, in other states it is absent from the policy debate, thus impeding its efforts to be a mechanism for change at the domestic level. In addition, the Community has been given neither the financial resources to actively support the CLPs nor the means to sanction states who fail to implement them.

Since the CLP was established in July 2005, a variety of proposals have been generated but few innovations have been made. Member States have referred to the CLPs in their NRPs to varying degrees as well, making it difficult to assess what its impact will be. The involvement of societal actors has also differed across states, with systems accustomed to accommodating such interests typically doing so in this regard as well, while others seldom consult societal actors.

Thus some key questions for discussion include:

1. How does the Lisbon agenda contribute to policy innovation and reform, if at all?
2. Is there a value-added to handling this at the Community level?

¹⁴ Iain Begg, “Lisbon Relaunch: What Has Changed? Is It Working Better?” Brussels: Special CEPS Report, 2006

¹⁵ *ibid.*

3. If the answer is affirmative, how can the EU encourage the accountability of Member States without resorting to the “naming and shaming” that it has thus far been reluctant to use? How can we enhance ownership?
4. Should civil society be more engaged in this process, and how could this be promoted across Member States with different political traditions?
5. The emphasis on jobs and growth has pushed social and environmental concerns down the list of the EU’s priorities. Was this necessary?

Enlargement of the EU

Paper prepared for a panel discussion

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During the first fifty years of its existence, the European Economic Community (EEC) evolved into the European Community (EC) and the European Union (EU) – from now on we shall refer to it as the EU, even if this is at times anachronistic – as well as enlarged in size from 6 to 27 Member States. In spite of continuous fears, it did not sacrifice “deepening” its institutions and policies to “widening” its geographical scope. In this short note, I shall concentrate mainly on the economic aspects of enlargement. To begin with, I shall examine the change in the political and economic characteristics of the Member States applying for EU membership (the enlargement process). I shall then look at how this affected the negotiations preceding membership and the entry requirements (the enlargement strategy). Next I shall analyse the benefits and costs resulting from the two most recent enlargements (2004 and 2007), both for the incumbent Member States (EU15) and for those who joined. Finally, I shall consider the prospects for future enlargements in the light of what is described as “enlargement fatigue” and what alternatives are on offer.

1. The Enlargement Process

The European Economic Community started in 1958 with six Member States that were relatively homogeneous both from a political-institutional and from an economic point of view. Diversity did exist, but this occurred within the Member States. The one possible exception was Italy with its large mezzogiorno which was accorded special treatment: the European Investment Bank was created with the south of Italy in mind. There then followed six enlargements:

| | |
|-------------|--|
| 1 Jan. 1973 | first enlargement (UK, Denmark, Ireland) |
| 1 Jan. 1981 | second enlargement (Greece) |
| 1 Jan 1986 | third enlargement (Spain , Portugal) |
| 1 Jan. 1995 | fourth enlargement (Sweden, Finland, Austria) |
| 1 May 2004 | fifth enlargement (Malta, Cyprus and the CEECs: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia) |
| 1 Jan 2007 | sixth enlargement (Bulgaria, Romania). |

Each of these enlargements affected the EU in a different way. The first and fourth enlargements involved countries that were not too dissimilar in their political, economic and social structures to the EU they joined. Although diversity in cultures and habits was not denied, the fundamental feeling of belonging to one people remained. This is not to say that these enlargements had no effect. To list a few, the Regional Development Fund was created at the instigation of the United Kingdom, the 1995 enlargement led to a greater transparency in the functioning of the EU institutions, and the Eastern enlargement has forced, and is still requires, long needed reforms in the Common Agricultural Policy.

The second and third enlargements saw the entry of countries which had a much lower standard of living and had emerged from authoritarian regimes a decade or less earlier. Whilst Spain and Portugal experienced rapid economic development and adaptation of their socio-economic structures, Greece became the “sick man of Europe”. Indeed, the Commission had felt that Greece was not yet a suitable candidate for membership but was overridden by the Council. It was only in the second half of the 1990s that the situation changed for the better. Greece is catching up quickly.

With the fall of the communist regimes in Central Eastern Europe, these countries began a transition to market economies with democratic institutions. In order to encourage the transition to a more Western European type of political and economic system, membership in the EU was offered them at the Copenhagen European Council of June 1993 but under relatively strict conditions. Bulgaria and Romania, the last two countries to

accede to the EU, have a GDP per capita in purchasing power standards (PPS) equal to one third of the EU25 average.

The successive enlargements of the E(E)C/EU did not put a stop to the deepening of its policies, in spite of fears of its developing in the direction of a free trade area. The EU has not only deepened – if not yet completely achieved – its internal market but has also established a monetary union among almost half of its members with almost all of the others preparing for monetary union. And even though the economic policies of the Union are still dominant, its competences have been greatly extended in a number of other directions. All this, of course, requires that much more attention be paid to the conditions for accession to the EU.

2. The Enlargement Strategy.

The diverse nature of the countries aspiring to membership of the EU, the fear of being overwhelmed by the problems of the aspiring Member States, and the increased deepening of the EU led to an evolution in the requirements for accession. This change is already reflected in the Treaty (compare Article 237 of the original Treaty of Rome with Article 49 of the (consolidated version of the) Treaty on the EU).

The new attitude towards candidates for membership of the EU was clearly expressed at the Copenhagen European Council of June 1993 in the four Copenhagen criteria, to which the Madrid European Council of December 1995 added a fifth. These criteria are (i) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, (ii) existence of a functioning market economy, (iii) capacity to cope with competitive pressure and market forces within the Union, (iv) ability to take on the obligations of membership including adherence to the

aims of political, economic and monetary union, and (v) administrative capacity guaranteeing the effective implementation of the *acquis*. These decisions were applied through the Europe Agreements and the other Association Agreements. The Union's capacity to absorb new members, while maintaining the momentum of European integration, was also considered to be important in the general interest of both the Union and the candidate countries. This relatively tough attitude was meant to ensure that the candidate countries were more or less prepared to function properly when they became members of the EU. In certain areas, transitional arrangements were allowed after the candidate countries actually became Member States. Thus, for the incumbent Member States, free movement of workers could be restricted for up to seven years after accession.

Nevertheless, one can question whether imposing the entire *acquis* indiscriminately, albeit with transition periods for certain issues, was the appropriate manner to proceed. Would a more rational approach not have been to define a core *acquis* without which the EU could not function properly and to require that these be implemented prior to or at accession. For instance, the costs of implementing all the environmental directives are large and affect the competitiveness of the recently acceded Member States. One can also ask whether the implementation of EU health and safety rules in the workplace in all their detail do not impose unbearable costs on small and medium-sized enterprises in these countries (see also below under “costs of membership”). For countries with low income per capita the costs of such measures are tremendous.

Similarly, the pre-conditions for joining the monetary union – the convergence criteria laid down at Maastricht – will probably create unnecessary pressures on the economic development and catching-up of the recently acceded Member States. It is well known that capital inflows are an integral part of the catch-up or economic convergence process; but also that these capital inflows can cause great instability because of their

volatility. Furthermore, the same countries experience an appreciation of the real exchange rate, either in the form of an appreciating nominal exchange rate or inflation, in the course of economic convergence and catch-up (the Balassa-Samuelson effect). This will complicate the achievement of both low inflation and exchange rate stability. On the other hand, the excessive deficits criteria will help to bring about the required discipline in public spending and taxation.

3. Benefits and Costs of Enlargement.

It cannot be stressed enough that the benefits of enlargement far outweigh the costs for the recently acceded Member States, and to a certain extent for the incumbent Member States. However, the debate on enlargement has been dominated by the cost side.

3.1 Benefits for the Recently Acceded Member States.

The benefits for the recently acceded Member States are too numerous to list completely here. I shall limit myself to the CEECs and only stress the most important benefits. Membership of the EU served as a compass keeping the CEECs on the path of democratic and economic reform. Without such reforms, political, economic and social turmoil would have resulted.

Next in line come the gains from increased trade, the elimination of barriers to trade and incorporation into the Single Market of the EU.

Equal in importance to the increase in trade was the increase in inward foreign direct investment which the countries direly needed for their economic development. Foreign ownership was often perceived negatively in the receiving countries, but without such ownership foreign investment would not have been forthcoming in sufficient

amounts. Nor would it have occurred without the market oriented economic reforms and political stability imposed by the Copenhagen criteria.

One should also not forget the benefits from the macroeconomic policies introduced in order to qualify for membership in the monetary union: fiscal discipline, low inflation, exchange rate stability with the principal trading partners.

Of much less importance are the structural funds which has attracted the most attention in several recently acceded Member States. This is not to deny their importance, but rather to relativise them.

3.2 Benefits for the Other Member States.

What benefits do the incumbent Member States draw from enlargement? The primary benefit is political, economic and social stability in surrounding countries. Peace, security and stability were the original motives for the creation of the European Economic Community. They remain important. Not only do the Member States benefit from them but also countries such as Norway and Switzerland.

The economic weight of the recently acceded Member States is small. The immediate gains from enlargement for the EU15 will, therefore, be small. However, over a longer time horizon the gains should not be under-estimated: as the recently acceded Member States converge in economic terms towards the incumbent Member States, the gains, both static and dynamic, from belonging to the same internal market will rise.

The recent enlargement will also exert pressure for economic reform in the incumbent Member States, mainly in the fields of the common agricultural policy and structural reform of goods and labour markets. These reforms are necessary for higher economic growth and lower unemployment rates in the incumbent Member States.

One should not neglect the benefits resulting from actual (for Slovenia) and future (for the other countries) membership in the monetary union. Especially, for small countries, sharing a common currency and a common central bank with ones main trading partners has a number of advantages.

3.3 Costs for the Recently Acceded Member States.

Although enlargement is mainly about benefits, especially for the recently acceded Member States, there is no denying that there are also costs involved. These costs are twofold in nature resulting, on the one hand, from the costs of transition to a market economy with democratic institutions; and, on the other hand, the costs resulting from the political and economic management of this transition. What is of concern to us here are the costs imposed unnecessarily by the conditions of membership in EU. They have already been mentioned previously.

These costs result, first of all, from the imposition of the *acquis communautaire* without a proper consideration of sequencing its introduction on the basis of indispensability for the correct functioning of the EU and the consequences of its introduction for the recently acceded Member States. To the extent that measures have purely or almost entirely domestic effect and the cost of their implementation is high, they should have been introduced slowly. These measures concern, for instance, the introduction of (Western European) labour market or social policy rigidities (because of the fear of what has been called social dumping), and various health, safety and environmental directives.

The road to monetary union for the recently acceded Member States (with the exception of Slovenia which has joined the monetary union since 1 January 2007) can be fraught with dangers if the appropriate policies are not followed. The main potential

problems lie in the volatility of capital flows, credit boom risks and macroeconomic booms **(overheating) caused by low interest rates.**

3.4 Costs for the Other Member States.

The main costs that have been put forward for the incumbent Member States are associated with labour either in the form of competition through low wages or because of migration from the less prosperous CEECs to the much more prosperous incumbent Member States. The costs associated with migratory labour forces in the form of wage competition are probably exaggerated. The host country principle limits the extent to such competition can occur: laws and regulations of the host country apply to all labour in the country even if migrant. Increasing the transition period for the application of free movement of workers for too long, however, may lead to illegal migration and in practice undermine the principle.

What about the costs associated with competition resulting from low wages in the recently acceded Member States? It should first be remembered that what counts is unit labour costs, namely, labour costs taking into account levels of productivity. Nevertheless, given the high levels of education in the recently acceded Member States, productivity levels will quickly catch up. But then so will wage levels.

4. Prospects and Perceptions of Further Enlargements.

Croatia and Turkey are already candidate countries with which accession negotiations have started. Macedonia has been admitted as a candidate country but accession negotiations are still to begin. The other Western Balkan countries (Albania, Bosnia and Herzegovina, Montenegro, and Serbia including Kosovo) are potential candidates to whom commitments, although still vague and not definitive, have been made.

It is most likely that the EU frontiers will stop there even though several other countries have made it clear that they will apply for membership.

The European Union is said to be suffering from “enlargement fatigue”. There is a general perception that a pause is necessary before new Member States are accepted as candidates, and that actual candidates should be subjected to a tougher examination. This perception goes hand in hand with the feeling that the whole EU process is elite-driven.

The Treaty clearly limits to enlargement to European states. Should Europe be defined in geographical terms (and even this criterion is not clear-cut), or should it be defined in cultural terms? And what does one understand by cultural? Is religion to be included in the cultural reference, especially in modern European society?

In lieu of membership in the Union, other forms of association have been proposed. But these have been discussed in another session.

By way of conclusion, let me put the following thought to you: just imagine what the situation could have been in Europe today if the gate to the EU had not been opened to the CEECs. Was there really any other option?

EU External Action: European Neighbourhood Policy

Paper prepared for a panel discussion
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Over the past fifty years the European Union (EU) has developed a series of external policy instruments to promote its interests and values: from trade and development cooperation to the Common Foreign and Security Policy (CFSP) and the more recent crisis management tools of the European Security and Defence Policy (ESDP). The European Neighbourhood Policy (ENP), launched in 2003, touches on all these dimensions. Its cross-pillar nature and its application to sixteen immediate neighbours (i.e., all except Russia, the EFTA states and the candidate countries) have made the ENP **a key priority** within EU external relations.¹⁶ Plagued by 'enlargement fatigue', the EU's new flagship policy is likely to dominate European foreign policy for many years to come. The current German Presidency as well as of the subsequent Portuguese and Slovene Presidencies have declared the strengthening of the ENP a main concern.

This discussion paper sets out why, how and with what chances of success the Union is developing this new external action and identifies a number of future challenges.

1. Goals

The EU already has bilateral agreements in place with most of its neighbouring countries (see Annex, Table 1) such as, since the late 1990s, the Partnership and Cooperation Agreements (PCAs) in the East and the association agreements (AAs) in the

¹⁶ See also the "special relationship with neighbouring countries (...) founded on the values of the Union" introduced by the Constitutional Treaty (article I-57).

framework of the Euro-Mediterranean Partnership (EMP) in the South. Hence, why set up yet another European policy?

With its enlargements of 2004 and 2007, the Union extended its external borders to some very troubled and poor regions in the world. The objective of the ENP is "to avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union".¹⁷ At the same time, the European Security Strategy of 2003 stressed the need "to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean".¹⁸ Hence, with the ENP the EU aims at 'exporting' its values (the rule of law, good governance, the respect for human rights, the principles of market economy and sustainable development) into its near abroad.¹⁹ However, this new relationship "would not, in the medium-term, include a perspective of membership or a role in the Union's institutions".²⁰

In the words of the Commissioner for External Relations, "the question is how to use our soft power to leverage the kinds of reforms" that would make it possible "to expand the zone of prosperity, stability and security beyond our borders".²¹

2. Instruments

Building on existing bilateral treaties, the Commission initially presents a country report to the Council, on the basis of which the Council decides whether to negotiate an

¹⁷ European Commission, Communication from the Commission to the Council and the European Parliament, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM(2003) 104, 11 March 2003, p. 4.

¹⁸ European Council, *European Security Strategy, "A Secure Europe in a Better World"*, Brussels, 12 December 2003, p. 8.

¹⁹ European Commission, Communication from the Commission, *European Neighbourhood Policy – Strategy Paper*, COM(2004) 373, 12 May 2004, p. 3.

²⁰ European Commission, *Wider Europe, op.cit.*, p. 5

²¹ Benita Ferrero-Waldner, "The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument", *European Foreign Affairs Review*, 11(2), 2006, p. 139.

action plan. **Action plans** are political documents specifying the jointly agreed objectives for the next 3 to 5 years, featuring the same chapters for each country but tailor-made contents. The action plans are adopted by the Commission, endorsed by the Council and approved by the relevant Cooperation or Association Council set up under the PCAs and AAs, respectively (see Annex, Table 2). The European Parliament is not consulted at any stage but merely informed. The implementation of the action plans is monitored through the relevant bodies and subcommittees set up under the respective agreements. In addition, the Commission prepares progress reports, with input from the country concerned, the High Representative for the CFSP as well as international organisations.

Drawing on its 'soft power', the EU intends to apply two important principles: **conditionality** ensures that it may withhold certain 'carrots' and apply certain 'sticks' if a country does not fulfil certain conditions. All Euro-Med agreements and PCAs, for instance, as well as the EU's aid regulations feature a suspension clause. Second, according to the principle of **differentiation**, partner countries are assessed individually and the extent of cooperation offered to them depends on the degree to which they effectively share European norms: "In return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the *acquis*, the EU's neighbourhood should benefit from the prospect of closer economic integration with the EU", in particular the prospect of 'a stake in the EU's Internal Market'.²²

In addition, the Union uses two types of instruments to change the behaviour of neighbouring countries (see Table 3): on the one hand, **incentives** for domestic reforms that affect their cost-benefit calculations and lead to adaptation (e.g. improved market access, more aid), and on the other hand, **deliberative instruments** that aim at promoting

²² European Commission, *Wider Europe, op.cit.*, p. 10.

the acceptance and internalisation of European values through processes of learning, socialisation and persuasion (e.g. 'joint ownership' of the process with a shared setting of reform priorities and monitoring of their implementation, dialogue on different levels). Hence, ENP countries adopt EU norms either because they want to obtain the rewards that come with such a 'policy import' (or avoid the costs of non-compliance) or because they begin to view these norms as appropriate and legitimate.

Table 1: ENP instruments of 'policy export'

| | incentives | deliberation |
|--------------------------------|---|---|
| positive (‘carrots’) | preferential trade, technical assistance, financial aid, 'stake in the internal market', inter-connected infrastructure, EU participation in regional conflict resolution, etc. [EU membership] | 'joint ownership', political dialogue, legal approximation, twinning, TAIEX (Technical Assistance and Information Exchange), people-to-people exchanges, etc. |
| negative (‘sticks’) | suspension of aid or trade preferences etc., economic or political sanctions, delay of negotiations | suspension of dialogue or expert assistance etc., 'naming and shaming', peer pressure |

It is evident from this table that – despite denying any membership perspective – the ENP was moulded in the Commission's DG Enlargement before being transferred to DG External Relations. The policy uses many instruments from the enlargement toolbox, and the ENP action plans indeed resemble the Accession Partnerships.

3. Chances of Success

Even if it may be too early to assess the impact of the still young European Neighbourhood Policy, a certain **East-South divide** appears likely in the medium term, as set out below. With regard to incentives, the Union is likely to achieve more in the South than in the East as the longstanding market economies in the Mediterranean have to a large extent already realised free trade and are eager to move further, whereas the Eastern

transition economies have remained on the level of WTO treatment and still need to build up their institutional and administrative capacities. By contrast, deliberation centred on European norms is likely to work better with the Eastern than with the Southern neighbours in that the authoritarian Arab regimes appear less receptive to (especially political) EU norms than the ex-Communist Eastern countries which have been relatively open to new ideas since their previous political and economic systems were discredited.²³

As regards **incentives**, the South's medium-term perspective for economic progress is more promising than that of the East. Twelve years since the launch of the Barcelona Process bilateral free trade for industrial goods has largely been achieved (the target date being a Euro-Med free trade area by 2010). However, the EMP has not had a significant economic impact since it neglected areas of key importance for fostering growth in the Mediterranean region such as agriculture, services and investments.²⁴ The ENP, which does not replace but complements the multilateral EMP, has provided new impetus to this process.²⁵ In 2006 negotiations on liberalising trade in agricultural and fisheries products as well as in services have been launched with some Mediterranean countries. In addition, the offer of 'a stake in the internal market' goes much further than trade, tackling many behind-the-border issues: the free movement of capital and persons as well as horizontal policies such as competition, intellectual property rights or government procurement rules.

²³ Socialisation research indeed suggests that persuasion is more likely if the target is in a novel and uncertain environment, has few ingrained beliefs inconsistent with the socialising institution and wants to belong to the latter. See Jeffrey Checkel, "International Institutions and Socialization in Europe: Introduction and Framework", *International Organization*, 59(4), 2005, p. 813. In the long run, the East may well catch up economically if the EU really applies its principles of conditionality and differentiation.

²⁴ Cf. Bernard Hoekman, "From Euro-Med Partnership to European Neighborhood: Deeper Integration à la Carte and Economic Development", *Working Paper*, 103, Cairo, Egyptian Center for Economic Studies, 2005; Daniel Müller-Jentsch, *Deeper Integration and Trade in Services in the Euro-Mediterranean Region: Southern Dimensions of the European Neighbourhood Policy*, Washington, D.C., World Bank, 2005.

²⁵ The EU has also encouraged sub-regional integration, in particular the Agadir Agreement, which entered into force in 2006. Intra-regional trade in the Southern Mediterranean is still among the lowest in the world for any region of this size.

It is thus a long-term objective and a gradual, tailor-made process. Labour migration is fraught with politically sensitive problems, but would add flexibility to the labour market and relieve demographic pressures on both sides. In 2006 negotiations on the right of establishment have been launched, and the Commission recently envisaged further visa facilitation, readmission agreements and people-to-people exchanges.²⁶

By contrast, the PCAs with the transition countries to the East grant no preferential treatment for trade. The parties basically apply most-favoured nation status to one another with respect to tariffs. Although most of the Eastern countries' exports currently qualify for the EU's autonomous Generalised System of Preferences, they still face some tariffs on manufactured goods. Whereas the agreements with Russia, Ukraine and Moldova feature a perspective of free trade (without a timetable), the PCAs with the South Caucasian countries – like those with the Central Asian states – embrace no such free trade perspective. However, in December 2006 the Commission announced its intention to negotiate a new generation of "deep and comprehensive free trade agreements" with all ENP partners, covering substantially all trade in goods and services "including those products of particular importance for our partners".²⁷ For the Eastern neighbours deep free trade agreements are long-term objectives, and some of them first need to join the WTO.

Concerning financial aid, the European Neighbourhood and Partnership Instrument (ENPI) has in 2007 replaced the programmes for the Mediterranean (MEDA) and the East (TACIS). It is endowed with €11.2 billion for 2007-2013 (compared to €8.5 billion MEDA and TACIS funds for 2000-2006).

²⁶ European Commission, *Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy*, COM(2006) 726 final, Brussels, 4 December 2006, pp. 4-8.

²⁷ *Ibid.*, pp. 3-4. It also remedies the hitherto neglect of sub-regional integration by proposing a 'Black Sea Synergy' initiative which aims at the EU's close association with the Black Sea Economic Cooperation.

Some (Eastern) neighbours have been looking for a European contribution to the resolution of their regional conflicts. However, the EU has up to now preferred conflict prevention and post-conflict management to any direct involvement in frozen or open conflicts and has thus provided only weak political incentives in this regard.

Turning to **deliberation**, the East's medium-term perspectives for political reform appear more favourable than for the South. The political and economic benchmarks in the action plans are not simply imposed by the EU but developed in close cooperation with the partner countries in order to ensure ownership and commitment. There is no obligation to accept the *acquis*, although in order to participate in Community programmes and obtain 'a stake in the internal market', alignment with EU standards is necessary. The TAIEX programme provides centrally managed short-term technical assistance in the field of approximation, application and enforcement of legislation by sending expert advisers to a country or organising study visits and trainings. Progress is monitored through peer reviews. Twinning takes a longer-term approach. Experts from EU member states are seconded to partner countries in order to help countries adapt their domestic institutions and national administrations. The Commission also holds economic policy dialogues with most neighbouring countries.

The ENP also foresees cooperation on several aspects of foreign and security policy, in particular an enhanced political dialogue with "the possible involvement of partner countries in aspects of CFSP and ESDP, conflict prevention, crisis management, the exchange of information, joint training and exercises and possible participation in EU-led crisis management operations".²⁸ In the framework of the ESDP, the Union has since 2004 carried out the Rule of Law mission EUJUST THEMIS to support Georgia's reform of its criminal justice system, two border assistance missions at the Moldova-Ukraine border and

²⁸ European Commission, *Strategy Paper, op.cit.*, p. 13.

the Egyptian-Palestinian border as well as an EU Police Mission in the Palestinian Territories (EUPOL COPPS).

Monitoring processes and dialogues permit to directly address offenders and may create peer pressure if one partner is 'falling behind its neighbours'. This is even more important as the ENP action plans are no legal documents.

The ENP instruments directed at political reforms face particular challenges. First of all, governments must be willing to modernise. The ENP cannot substitute for national commitments to democratise. A government's socialisation is more likely to be successful when domestic opposition is weak, when the political costs of adaptation are low and when EU norms resonate well with domestic norms in the ENP countries.²⁹ The Mediterranean region has essentially remained on the same level of democratic consolidation in spite of the decade-long Barcelona Process, whereas many Eastern neighbours have embarked on democratic reforms.³⁰ Therefore, there is a risk that the Mediterranean Arab countries may only formally adhere to European values, while their real interest is to proceed with economic cooperation. The Union has in fact contributed to this attitude as in the framework of the EMP it has never sanctioned non-compliance by its Mediterranean

²⁹ Cf. Judith Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions", *International Organization*, 58(3), 2004, p. 430; Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe", *Journal of European Public Policy*, 11(4), 2004, p. 670; Andrew P. Cortell and James W. Davis, "Understanding the Domestic Impact of International Norms: A Research Agenda", *International Studies Review*, 2(1), 2000, p. 73.

³⁰ See Freedom House ratings, *CEPS European Neighbourhood Watch*, 23, 2007, p. 9, www.ceps.be/files/NW/NWatch23.pdf (download 10.2.2007).

partners. A lack of credibility may further encourage these countries to focus only on economic reforms.³¹

Unlike their Mediterranean counterparts, the Eastern ENP countries enjoy the potential prospect of EU membership. On the one hand, this expectation is likely to reinforce the countries' political will for reforms. On the other hand, experience shows that EU policy itself increases in consistency with an accession perspective. The EU may well turn out to be stricter with its Eastern than with its Southern neighbours.

4. Challenges Ahead

Even though the *finalité* of the ENP is not clearly defined and the policy's full potential has so far not been used, it offers a 'value added' compared to the status quo. For the first time, the Union promotes a special focus on its neighbourhood. The ENP covers a wider range of issues across pillars, offers increased and exclusive assistance, uses 'proven methodology', sets concrete priorities, closely monitors their implementation and presents a greater potential for tailor-made relations in the future. It can be considered part of the Union's still rather new 'soft diplomacy' approach which combines economic resources with political ambitions. While the ENP has so far been rather a Commission-driven policy, its strengthening will require a closer involvement of EU member states, especially with regard to CFSP matters.

³¹ The Union has shown a marked preference for the use of persuasion through dialogue instead of resorting to coercive instruments. If at all, it resorted with greater ease to negative measures towards marginal countries (e.g. sub-Saharan Africa) and candidates for membership (e.g. Central Europe and Balkans). See Rose Balfour, "Principles of Democracy and Human Rights: A Review of the European Union's Strategies towards its Neighbours", in Sonia Lucarelli and Ian Manners (eds.), *Values and Principles in European Union Foreign Policy*, London, Routledge, 2006, pp. 114-129.

However, a successful norm export may be challenged by the ENP countries' lack of ambition or capacity to tackle the domestic reforms required and by how serious the Union takes its own principles of conditionality and differentiation, that is to say, to what extent it will deliver real economic and political incentives and endorse its values. Deeper integration (removal of non-tariff barriers to trade, trade in agriculture and services, migration, investment, etc.) is of great interest for both Eastern and Southern ENP partners, but strong vested interests in the EU may prevent progress. The existence of a membership perspective is thereby likely to matter for the chances of success as both sides – the partner country and the EU – may make a greater effort.

The emerging East-South divide may increasingly call into question the overarching ENP umbrella for two very different regions, in particular since the Eastern neighbours cherish a hidden 'membership carrot'. Moreover, in terms of legitimacy, conditionality seems more justified in the accession process than in a neighbourhood policy. The EU's approach is based on the assumption that the European model of democracy, market economy or regional integration can and should in fact be exported abroad. For the East Europeanisation means moving beyond Communist legacies and 'returning to Europe', whereas for the South a policy transfer from the EU may be viewed more critically a kind of 'neo-imperialism'. Besides, in the Southern Mediterranean the EU faces the dilemma of maintaining regional stability and the potentially destabilising consequences of encouraging pluralistic democracy, as the Hamas-led government of the Palestinian Authority has shown.

For an effective implementation of the action plans, choices have to be made about those elements of the *acquis* that are fundamental to 'a stake in the internal market' and their proper sequencing. The vast internal market legislation was not devised for less developed economies. The Union in effect faces the general problem of how to prioritise

among competing ENP goals such as security, good governance and economic aspirations. For example, individual action plans have entered into force earlier than others despite weaker political records. Then again, a package deal may facilitate the acceptance of certain reforms by ENP partners, although a 'jointly owned' process at the same time makes it more difficult for the EU to include elements considered unattractive by them.

Finally, the ENP is a two-way relationship and will have (perhaps unintended) effects on the Union as well – closer ties with its neighbours may well transform the EU's future identity. And the more successful the ENP, the higher the pressure for further enlargement to the East.

Annex

Table 1: The **ENP** in the EU's 'pyramid of preferences' with neighbouring countries

| | |
|--|---|
| (1) internal market association | European Economic Area (Norway, Iceland, Liechtenstein) |
| (2) customs union agreement | |
| - with accession perspective | Turkey |
| - without accession perspective | Andorra, San Marino |
| (3) free trade agreement | |
| - with perspective of customs union | former Mediterranean association agreements (Cyprus, Malta, Greece, Turkey) |
| - without perspective of customs union | |
| - symmetric reciprocity | Switzerland |
| - asymmetric reciprocity | former Europe Agreements (Central and Eastern Europe), Euro-Mediterranean Association Agreements (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Tunisia) |
| (4) partnership and cooperation agreement (MFN treatment) | |
| - with free trade perspective | Russia, Ukraine, Moldova |
| - without free trade perspective | Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Uzbekistan |
| (5) non-reciprocal trade preferences | |
| - with perspective of reciprocal free trade | Stabilisation and Association Agreements (Croatia, Macedonia) |
| - autonomous EU preferences | Stabilisation and Association Process (W Balkans) |

No agreements in force yet but eligible for ENP: Belarus, Libya and Syria

Table 2: Status quo of ENP implementation

| ENP partner countries | Agreement entry in force | Country report | Action plan agreed | Adoption by EU | Adoption by ENP country |
|------------------------------|---------------------------------|-----------------------|---------------------------|-----------------------|--------------------------------|
| Algeria | AA 2005 | -- | -- | -- | -- |
| Armenia | PCA 1999 | March 2005 | autumn 2006 | 13.11.2006 | 14.11.2006 |
| Azerbaijan | PCA 1999 | March 2005 | autumn 2006 | 13.11.2006 | 14.11.2006 |
| Belarus | -- | -- | -- | -- | -- |
| Egypt | AA 2004 | March 2005 | autumn 2006 | 06.03.2007 | 06.03.2007 |
| Georgia | PCA 1999 | March 2005 | autumn 2006 | 13.11.2006 | 14.11.2006 |
| Israel | AA 2000 | May 2004 | end 2004 | 21.02.2005 | 11.04.2005 |
| Jordan | AA 2002 | May 2004 | end 2004 | 21.02.2005 | 02.06.2005 |
| Lebanon | AA 2006 | March 2005 | autumn 2006 | 17.10.2006 | 19.01.2007 |
| Libya | -- | -- | -- | -- | -- |
| Moldova | PCA 1998 | May 2004 | end 2004 | 21.02.2005 | 22.02.2005 |
| Morocco | AA 2000 | May 2004 | end 2004 | 21.02.2005 | 27.07.2005 |
| Palestinian Authority | Interim AA 1997 | May 2004 | end 2004 | 21.02.2005 | 04.05.2005 |
| Syria | -- | -- | -- | -- | -- |
| Tunisia | AA 1998 | May 2004 | end 2004 | 21.02.2005 | 04.07.2005 |
| Ukraine | PCA 1998 | May 2004 | end 2004 | 21.02.2005 | 21.02.2005 |

La réforme des institutions de l'Union européenne :
Perspectives cinquante ans après la signature des traités de Rome

Document destiné à l'animation d'un débat

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1. 1957 - 2007

La Chambre des représentants organise le présent débat sur les perspectives de l'Union européenne et ce, cinquante ans après la signature des deux traités de Rome créant, d'une part, la Communauté européenne sur l'énergie atomique et, d'autre part, la Communauté économique européenne. On se souvient que ces traités étaient le fruit d'une « relance » - empreinte de pragmatisme, mais de manière générale considérée comme assez modeste - après l'échec de l'ambitieux projet politique qu'était celui d'une Communauté européenne de défense.

Ce débat prend également place cinq ans après le début des travaux de la Convention sur l'avenir de l'Europe, travaux ayant largement contribué à l'élaboration du (troisième) traité de Rome instituant une « Constitution pour l'Europe ». Réfuté par les électeurs français et néerlandais, et bénéficiant de peu de considération de la part de certains gouvernements l'ayant signé en 2004, ce nouveau traité de Rome est - il faut bien l'admettre - peu susceptible d'entrer en vigueur. Pourtant, certains lui avaient souhaité une durée de vie de cinquante ans, à l'instar des traités fondateurs.

Il n'est donc pas surprenant que l'idée d'une « relance » soit de nouveau à l'ordre du jour. Certains espèrent que la coïncidence de « rendez-vous historiques » avec la formation d'un nouveau gouvernement aux Pays-Bas mais surtout avec le prochain renouvellement politique en France produira un climat politique favorable à une telle entreprise. Par conséquent, nombreuses idées relatives à la réforme de l'Union européenne circulent. Les variations, considérables, entre les différentes propositions s'expliquent par

des perceptions divergentes quant à l'identification des problèmes à résoudre, aux remèdes à choisir et à leur chance d'aboutir.

En effet, les formules actuellement discutées couvrent un champ très vaste. Celui-ci s'étend, sur le plan matériel, de quelques ajustements « minimalistes » des traités actuellement en vigueur à l'élaboration d'une version de traité constitutionnel améliorée (« plus ») ; certains visent même l'adoption d'un projet politique commun innovateur et de grande d'envergure. Sur le plan procédural, les propositions vont d'une confection intergouvernementale sanctionnée par des ratifications parlementaires à une large consultation de la société civile, y compris la convocation d'une nouvelle Convention, suivie d'une consultation populaire organisée à l'échelle européenne.

2. Une réforme des institutions : est-elle indispensable ?

Vu les efforts politiques déployés pour parvenir à un accord sur le contenu du traité constitutionnel, d'une part, et les obstacles considérables rencontrés lors de sa ratification, d'autre part, on doit se demander dans quelle mesure cette réforme institutionnelle est indispensable.

En effet, le projet de réforme visait, en premier lieu, à adapter les institutions à l'élargissement important du nombre d'Etat membres. Ceci avait en principe été réalisé en 2000 par le traité de Nice mais nombreux étaient ceux qui considéraient ces adaptations comme insuffisantes. Presque trois ans après le grand élargissement, on observe toutefois que ce dernier ne semble pas avoir mis en danger le fonctionnement du système institutionnel de l'Union. Malgré certains problèmes, les institutions de l'Union sont capables de travailler – et de coopérer suivant les procédures de prise de décision prévus par le traité. Par ailleurs, il est peu probable que l'arrivée de la Roumanie et de la Bulgarie

changera de manière significative cette situation. Ce constat reste indépendant de la question de savoir si les changements prévus par le traité constitutionnel (ou à prévoir dans un autre traité) permettraient aux institutions de travailler de manière plus efficace que sous le régime actuel.

La réforme des institutions devrait, en deuxième lieu, rendre le travail des institutions plus démocratique et plus transparent. Toutefois, même en supposant qu'un tel besoin existe et que ces objectifs soient effectivement réalisés par les réformes proposées, ces dernières ne sont pas indispensables pour le fonctionnement des institutions.

3. Une réforme des institutions : est-elle nécessaire ?

Même si le seul fonctionnement des institutions n'impose pas une réforme immédiate, on doit toutefois se demander dans quelle mesure une telle réforme ne serait pas nécessaire.

Les changements proposés les plus « visibles » concernent la composition et le fonctionnement des institutions. Or, leurs effets bénéfiques en terme d'efficacité et de légitimité ne sont pas certains. Un président «permanent» au Conseil européen – s'ajoutant à la présidence tournante du Conseil, à la présidence de la Commission et au nouveau ministre des affaires étrangères – ne doit pas nécessairement apporter à l'Union un « leadership » accru mais, au contraire, pourrait avoir l'effet opposé. Aucune des deux formules imaginables quant à la réforme de la Commission – réduction du nombre de ses membres ou renforcement de l'autorité de son président – ne permettra d'accroître son efficacité tant que les Etats membres ne se rendent pas à l'évidence que leur propre intérêt exige un renforcement de cette institution spécifique occupant une place particulière dans l'architecture d'ensemble. Finalement, la performance du Conseil ne semble pas dépendre

du choix de la formule précise utilisée pour le calcul d'une majorité qualifiée. Ces adaptations, bien que peut-être utiles, ne nous nous semblent donc pas forcément nécessaires.

Il en va sans doute de même pour les arrangements institutionnels visant au renforcement de l'action externe de l'Union. Ces arrangements sont bâtis sur un certain réalisme puisqu'ils maintiennent dans une large mesure les prérogatives nationales en la matière. On peut se demander si la création d'un ministre des affaires étrangères – réunissant à la fois les fonctions de Haut représentant des affaires étrangères en charge de la présidence du Conseil « affaires extérieures », et les fonctions de vice-président de la Commission – contribuera à des concurrences interinstitutionnelles accrues ou, comme l'espèrent ces auteurs, au développement progressif d'une politique extérieure cohérente de l'Union. Ceci dépendra probablement d'une autre question, également envisagée par le traité constitutionnel : la création progressive, et si nécessaire avec le concours d'un nombre limité d'Etats membres, de forces de frappe communes et d'un système d'armement intégré. Or, il semble qu'une telle approche « graduelle » pourrait également se réaliser sur base des dispositions en vigueur : l'agence d'armement a déjà été établie et les préparatifs pour des forces de frappe « à géométrie variable » sont également déjà en cours.

D'autres innovations inscrites dans le traité constitutionnel pourraient également être considérées comme souhaitables sans pourtant être forcément nécessaires. Il s'agit ici notamment de la réorganisation des traités existants en un traité unique, divisé en quatre parties, en vue d'en souligner la portée constitutionnelle. Il en va de même pour l'ensemble des dispositions visant à codifier les aspects constitutionnels des traités déjà en vigueur, tels qu'interprétés par le juge communautaire. Ceci vaut aussi pour l'insertion de la Charte des droits fondamentaux - nettement moins innovatrice que certains ont voulu le croire -,

pour la classification purement descriptive des compétences ou encore pour la nouvelle dénomination des actes de l'Union. Même la clause de sécession, allant bien au-delà de ce qui a été communément reconnu aux Etats membre en la matière, ne consacre en effet qu'une réalité politique : l'on voit mal comment obliger un Etat de demeurer contre son gré dans l'Union.

Certaines réformes, non sans importance, ont déjà été réalisées sur base du traité de Nice. Il s'agit notamment du droit accordé au Parlement de revoir des actes législatifs délégués à la Commission et des règles relatives à la transparence des travaux du Conseil lorsqu'il agit en tant que législateur. Aussi l'obligation imposée à la Commission d'examiner des initiatives populaires signées par un million de citoyens pourrait parfaitement figurer dans un accord interinstitutionnel.

Le mécanisme d'alerte permettant à un certain nombre de parlements nationaux d'obliger la Commission à réexaminer une proposition législative a trait à un problème important. La cause de celui-ci se situe pourtant à un niveau national, comme l'indique l'expérience de certains Etats membres où les parlements réalisent depuis de nombreuses années un contrôle efficace du processus législatif communautaire. Il s'ensuit qu'un tel « screening » peut parfaitement se faire sans l'établissement d'un mécanisme communautaire spécifique, surtout si les efforts nationaux sont ensuite coordonnés au niveau européen (Cosac). Un tel contrôle est d'ailleurs indispensable et doit se développer davantage dans les domaines pour lesquels le Parlement européen dispose de pouvoirs limités, notamment la PESC.

Si l'implication des parlements nationaux semble être essentielle et ce, sans pourtant requérir une révision des traités, d'autres réformes nécessaires ne peuvent être réalisées sans une modification du droit primaire. Il s'agit en premier lieu de l'élimination des droits de veto au sein du Conseil au profit d'un vote à la majorité (sur-)qualifiée, de

l'extension de la procédure de codécision au profit du Parlement européen et du contrôle judiciaire par le juge communautaire. Le traité constitutionnel propose des avancées réelles dans les politiques sensibles visant la création de « l'espace de liberté de sécurité et de justice » moyennant une coopération policière et judiciaire dans le domaine pénal (ne pouvant pas entièrement être réalisées par l'utilisation de la clause de passerelle inscrite à l'article 42 du traité UE). Il ne procède toutefois pas à une communautarisation complète de tous les domaines de l'intégration, ni à une élimination du droit de veto au sein du Conseil – car un tel changement ne fait pas l'unanimité parmi les Etats membres.

Finalement - et le sort probable du traité constitutionnel n'adressant pas ce problème de manière décisive le démontre bien -, il semble inacceptable qu'aucune modification des traités ne puisse se réaliser sans l'approbation unanime de tous les Etats membres. Deux solutions sont envisageables : soit l'introduction d'une procédure permettant une révision à la majorité, combinée à une clause de sortie pour les Etats n'ayant pas accepté la réforme, soit l'insertion de clauses permettant des coopérations renforcées soumises à des conditions nettement moins strictes que sous le régime actuel. Néanmoins, aucune de ces deux possibilités ne sera probablement réalisable.

4. Une réforme des institutions : est-elle réalisable ?

Il semble, d'une part, que les réformes institutionnelles sur lesquelles les Etats membres peuvent s'accorder en surmontant toutefois de grands difficultés ne sont pas pour la plupart ni indispensables ni forcément nécessaires. D'autre part, les réformes nécessaires ne feront très probablement pas l'unanimité et ne sont donc pas réalisables à terme.

5. Une nouvelle relance ?

Les comparaisons historiques ne sont que rarement exactes et il serait certainement erroné de vouloir comparer la situation ayant menée à la signature du traité CEE à celle se présentant aujourd'hui. Une des maintes différences qui s'opposent à un tel procédé est liée à la nature même des traités de Rome de 1957 et de 2004. Dans les années cinquante, il s'agissait de faire face à l'échec d'un projet d'intégration précis, une politique de défense commune, en lançant un nouveau projet visant à unifier les économies nationales des Etats fondateurs. Aujourd'hui, l'échec ne concerne pas un projet d'intégration concret nécessitant la création ou l'amélioration de structures institutionnelles : le traité constitutionnel vise avant tout à une rationalisation des institutions et des mécanismes de prise de décision déjà existants. La plupart des projets de « relance » avancés dans le débat actuel ne vont pas au-delà de cette limite. Or, l'histoire de l'intégration européenne nous enseigne que des avancées sur le plan institutionnel ont toujours été indiquées par des projets tangibles – le marché commun en 1957, sa réaffirmation par l'acte unique en 1986, l'Union monétaire en 1992 et peut-être même encore le projet d'un espace de liberté, sécurité et justice en 1997.

Il est donc difficile de qualifier de « relance » une tentative de réforme institutionnelle sans rapport visible et direct avec un objectif concret, nouveau ou réaffirmé. Ceci peut paraître injuste dans la mesure où la réalisation de tout objectif commun d'intégration dépend largement d'un système institutionnel capable de produire, de manière efficace, des décisions considérées comme étant légitimes. Mais en réalité, les questions institutionnelles sont des problèmes relatifs à la réalisation de certains buts ; détachées de ces derniers, elles génèrent trop souvent soit l'indifférence soit la méfiance. Le sort des tentatives de réforme à caractère institutionnel, certes ambitieux et remarquables mais toutefois jamais réalisées, semble confirmer ce constat.

Il s'ensuit que l'on doit probablement revenir aux leçons des années cinquante. L'échec de la Communauté européenne de défense a donné lieu aux traités de Rome de 1957, le projet de Constitution de 1984 a eu un impact important sur l'élaboration de l'Acte unique. On peut espérer que l'expérience du traité constitutionnel de 2004 ouvrira la voie à une relance similaire. Ceci demande toutefois que l'on se détache des débats purement institutionnels.

En poursuivant les idées publiées par l'actuel premier ministre belge et, plus récemment, par l'ancien député européen Ph. Herzog, les dirigeants politiques désireux de « relancer » le processus de l'intégration devront réfléchir à la réalisation des projets d'intégration matériels « porteurs » - sans hésiter à les poursuivre, au moins dans un premier temps, avec le concours d'un nombre restreint d'Etats et, si nécessaire, en marge des traités.

6. Thèses à discuter :

1. Le traité constitutionnel signé, en 2004, à Rome ne sera pas ratifié par tous les Etats membres et n'entrera, par conséquent, pas en vigueur.
2. La réforme que certains souhaitent relancer se limite à la réforme des institutions. Une telle réforme est certainement importante et utile mais n'implique pas – ou qu'indirectement – une « relance » du processus d'intégration comparable aux traités fondateurs, l'Acte unique, les traités de Maastricht et d'Amsterdam.
3. Une vraie « relance » impliquerait l'établissement de nouveaux objectifs d'intégration – accompagné des mécanismes institutionnels correspondants. En substance, il s'agirait de créer un programme visant, sur le plan économique, certains des objectifs établis dans le cadre du « processus de Lisbonne » et sur le plan

politique, la défense commune déjà visée en 1952. Aussi le projet de marché intérieur de l'énergie devrait être examiné en profondeur en raison de ses enjeux économiques, écologiques et sécuritaires. A l'instar des expériences du passé, un tel programme devra être accompagné d'une date butoir et prévoir des possibilités de différenciation.

4. Une réforme institutionnelle, visant à rendre les mécanismes de prise de décision plus efficaces, démocratiques et transparents, ne semble pas être indispensable à l'heure actuelle pour le fonctionnement de l'Union.

5. Parmi les réformes institutionnelles inscrites dans le traité constitutionnel, maintes sont utiles et même souhaitables – mais peu sont réellement nécessaires : il s'agit surtout des cas dans lesquels (i.) le droit de veto au sein du Conseil est éliminé au profit d'un vote à la majorité (même surqualifiée), (ii.) les droits de codécision du Parlement européen et (iii.) la juridiction de la Cour de justice sont étendus.

6. Il s'ensuit qu'une réforme institutionnelle conséquente pour une Union élargie visant à la fois à l'efficacité et à la légitimité de son action devrait systématiquement étendre la mode de prise de décision communautaire sur l'ensemble des activités des institutions communes tout en généralisant la prise de décision à la majorité (sur-)qualifiée au sein du Conseil.

7. Une telle réforme devrait inclure une procédure de révision des traités permettant à dépasser des blocages découlant de l'opposition d'une minorité d'Etats membres.

8. Tant que des projets de réforme institutionnelle dignes de se nom ne sont pas politiquement réalisables, il convient de progresser suivant la méthode

fonctionnelle classique. Ceci peut – et doit même – inclure des coopérations entre Etats volontaires à l'extérieur des traités.

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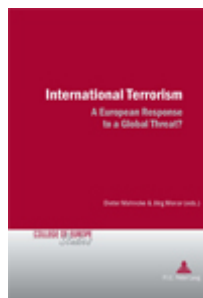
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