

Hänsch, Klaus

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Klaus Hänsch\*

## The Future of European Integration: Visions, Challenges, Perspectives

*In the last five years the European Union has developed at a speed unknown since its beginnings in the Fifties. As a result, the EU is participating in the last three reserves of the European nation state's sovereignty: the currency, the judiciary and the military. The achievements already made, not only enlargement, make the reform of the structures of the Union a necessity. Its institutions must be tailored to these achievements, not just arithmetically adjusted to the increasing number of Member States.*

In Germany, as well as in other – though not all other – Member States of the European Union a broad discussion is under way about the future of Europe. To be sure, nobody welcomes the public debate about the visions, challenges and perspectives of European integration more than all those whose daily – and more often than not ungrateful – job is European politics.

The discussion is fuelled

- first of all by the imminent eastward enlargement of the Union,
- furthermore, by the dwindling sovereignty of European nation states in the wake of globalisation,
- and last, but not least, by the achievements of European integration over recent years.

### Achievements of the Past

To gain perspective, the visions of the future need to be viewed against the achievements of the past. In the last five years the EU has developed at a speed unknown since its beginnings in the Fifties:

- In May 1998 we decided to introduce a common currency in eleven Member States. This will enhance the need for greater coordination of budgetary, fiscal and economic policies between the partners in Euroland and its outside representation.
- In September 1999 the European Council in Tampere gave the go-ahead for a comprehensive

legislative programme for a “European area of freedom, security and justice”. Quantitatively, in terms of scope and ambition, it is comparable to the Single Market programme of 1989. Qualitatively, it touches much more on the sensitive issues of citizens' rights in our Member States than the Single Market programme ever did.

□ In December 2000 the European Council, the European Parliament and the EU Commission will solemnly proclaim the “EU Charter of Fundamental Rights”. Though not yet legally binding, this European “Magna Charta” will inspire the European Court's jurisdiction and give orientation to the institutions of the Union and to national legislators. It demonstrates that European integration is not purely about free markets and competition throughout Europe, but also about citizens' rights and freedoms. For the first time social rights have been formulated comprehensively on a European level. To the two pillars of the common heritage of European values – freedom and equality – is added the third: solidarity.

□ In December 1999 the European Council in Helsinki decided to set up a European Rapid Reaction Force. The Western European Union is to be incorporated, step by step, into the EU. The European Union is developing a military dimension. Since October 1999, the EU's Common Foreign and Security Policy has gained a face and a voice, in the shape of Javier Solana. In the medium term, though, the CFSP will only gain ground and substance with a decision centre that enables the Union to know what to say – and to do what it says.

The euro, the Charter, the area of freedom, security and justice and common defence: the EU is

\* MEP, former President of the European Parliament, Brussels, Belgium, and Strasbourg, France. The article is based on a speech given at the Symposium “Challenges for the European Future”, Hamburg, 28 October 2000.

participating in the last three reserves of the European nation state's sovereignty: the currency, the judiciary and the military.

There remain, of course, a lot of footnotes, opt-outs, and special arrangements – whether political, judicial, or regarding timing – and many decisions and provisions have yet to be implemented. But everything has been agreed by all fifteen Member States. On its way to becoming a one-of-its-kind federation, the Union has already covered more ground than the public, the media, or indeed many politicians realise.

These achievements, not only enlargement, make the reform of the structures of the Union a necessity. The Union's institutions must be tailored to these achievements, not only arithmetically adjusted to the increasing number of Member States. This is the first challenge.

Whether such a reform could eventually lead to a "Constitution", a sort of "Constitutional Treaty" or just another amended Union Treaty is not essential. The result of the reform will in any case serve as a Union constitution.

"Although adopted as international Agreements, the EU-Treaties are nonetheless the constitutional document of a community of law" the European Court of Luxembourg stated in 1991. The question, though, is not whether the Union needs a constitution. It has one. The question is, whether it has the constitution it needs. And to this, the answer is a clear "No".

### Enlarging without Dissolving the Union

The enlargement of the Union to 20, 27 or even more Member States is an unprecedented act of European solidarity. Enlarging without dissolving the Union: that is the second challenge. For the Member States of the Union as well as for the applicant countries, enlargement is economically important, politically necessary and morally imperative.

The enormous gap between the economic power of the applicant states and the EU Member States must, if not be closed, at least be narrowed. And this has to be achieved without major economic and social upheavals on either side. This will become a test of solidarity – not for the politicians alone, but also for the public and the peoples in East and West Europe.

The new Member States will not just be additions to the Union as it stands. Their historical experiences and traditions, the compulsions and implications of their geographical situations and patterns of be-

haviour are different from all other Member States. That will change the Union's aims and tasks and dimensions profoundly – much more profoundly than any previous enlargement has done. There will be not only a larger Union, but a quite different one.

That means clearly: The structure of the enlarged Union will be found in the enlarged Union – and by the enlarged Union. The institutional reform of Nice will not close the discussion about the structure of the enlarged Union. The reform process must and will continue.

### Nice – a Challenge not a Vision

Nevertheless, first there will be Nice: the attempt at a reform of the Union's institutions enabling it to digest enlargement. The agenda for Nice is certainly not about the nitty-gritty of techniques and procedures. It is about the sharing and balancing of power between big and small, rich and poor, eastern and western, southern and northern Member States.

But even if the Intergovernmental Conference in Nice works best – achieving,

majority voting as the rule in the Council, unanimity being reserved for decisions of constitutional relevance only,

co-decision for the European Parliament whenever the Council can decide by majority voting

and a compromise between a new weighting of votes and a new definition of majority in favour of the big countries and a new composition and structure of the European Commission with one Member of each nationality in favour of the small –

the Union's institutions will not be sufficiently fit for enlargement.

Even if Nice succeeds in abolishing the right of veto against the "enhanced cooperation" between a smaller group of Member States within the framework of the treaty, the enlarged Union will not get what it needs: the greater political coherence necessary to steer the single currency on the one hand, and on the other hand greater flexibility and diversity and, not less important, more democratic accountability.

Nice is a challenge, not a vision. Even the maximum that can be achieved in Nice is less than the minimum of what needs to be done. What the EU needs – regarding its present state of development and its future enlargement – is:

a streamlining, simplification and constitutionalisation of the Treaties,

- the clarification of the competences of the European Union and the Member States,
- the further improvement of the efficiency, transparency and democratic legitimacy of the Union institutions.

### The Next Reform

The third challenge are the ways and means for European integration ahead.

The EU is committed to being ready for enlargement by the end of 2002. If not, it will have to face incalculable consequences for its credibility and for the stability of Eastern Europe. Whatever the result of Nice turns out to be, it will therefore in any case become the institutional basis for enlargement.

Even the minimal reforms envisaged for Nice will lead to difficult ratification debates in some of the Member States – in the smaller ones in any case, but also in some of the larger ones. Ratification will last until the end of 2002. It would be hazardous to complicate it with drafts of further Treaty reforms or even dreams of a European constitution or federation. The German government seems to envisage 2004 for the next attempt for further reforms. That is realistic as well as ambitious.

This leads to the conclusion that the next reform, not to mention any draft for a constitution, will not be discussed among the representatives of fifteen, but of twenty or more Member States – and it will need the agreement of twenty or more. The European Union must endeavour to draft the structures that will enable the enlarged Union as a whole to act efficiently and make its institutions accountable and transparent.

### Basic Concepts for Further Development

For the further development of the Union I see three basic concepts:

1. Strengthening the intergovernmental elements in the decision-making procedures, namely by use of the “enhanced cooperation”, thus allowing more flexibility and diversity in an enlarged union. That is what a majority of governments, especially those of France and Germany, are in favour of.

2. A federal union, be it a group of Member States, based on a treaty or a constitution within the treaty – that is, what some, among them Schäuble/ Lamers and eventually also Joschka Fischer, seem to dream of.

3. Preserving and strengthening the delicate balance of the institutional triangle, made up of Council,

Parliament and Commission, as well as trimming down the Union’s tasks to the essentials. That is reasonable and feasible.

The reality of European politics, though, will of course lead to a mixture, a combination of those elements.

The first concept, intergovernmentalisation by “enhanced cooperation”, is what is under way now. Its results will be very limited with regard to both the chances and the risks of flexibility and diversity.

Enhanced cooperation could apply to the strengthening of the economic union envisaged under the Maastricht Treaty, under the precondition, however, that all euro states take part in it – no one more and no one less. It could apply also to the Common Foreign and Security Policy as far as the desirable cohesion and strength in the Union’s international profile is not attained. And it could apply to policing certain external borders for some of the new Member States.

But in all matters related to the internal market and in all areas with common legislation it is different. Since the group of Member States that is able and willing to join “enhanced cooperation” in environmental and consumer protection will probably be different from the group cooperating on transport policy, and that again different from the group cooperating on social affairs and so on and so forth, the EU would dissolve into a patchwork union.

As an exception, “enhanced cooperation” can create an integrative momentum, from which the whole EU can benefit. As a structural principle, it would create a patchwork Union, dent the legitimacy of the Union’s institutions, destroy the unity of common legislation, strengthen the national bureaucracies and confuse the citizens. “Enhanced cooperation” may be useful to intensify political cooperation in some areas, but it will definitely not enhance the institutional structure of the Union.

The second concept has as its aim a European federation (of nation states) with a real and written constitution. Hopefully this will be agreed by all Member States within the EU Treaty; more realistic, however, is that it will happen outside, thus dividing Europe into “ins” and “outs”.

As it seems unrealistic, even inconceivable, that the enlarged Union as a whole should ever be able to draft and accept a federal constitution, any “institutional avant-garde” will have to create this federation (of nation states) with a separate breakaway treaty. This – without being explicit about it, maybe even without

being aware of it – would be banking on the creative potential of a major crisis.

Such a crisis can indeed be triggered by a zero result at the European Council in Nice and a slowing down of the enlargement process. To hope that it will be a benign one, a catharsis giving birth to the desired results, is wishful thinking. To raise crisis to the level of policy is a recipe for disaster.

It is in the German interest to keep the Union together, with all its Member States – the present ones as well as the future ones.

That is why we should focus on the third concept: strengthening and streamlining the existing institutional triangle – Council, Commission and Parliament – and in parallel pruning the Union's tasks to the essentials.

The European Council will take on the role of a "collective president of the Union", type French president, not British Queen. "It shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof" (Art. 4, Treaty of the EU). It decides on the highest posts in the Union, proposes to the European Parliament the candidate for the election of the president of the Commission and has – under certain conditions – the power to dissolve the European Parliament.

The European Commission will turn into the Union's "government", even under a different name, a different structure, different legitimacy than in the case of national governments. It must be the head of the administration in Brussels – not only its hat. For that it has to be revitalised, not degenerated to a sort of secretariat for the Council.

The European Parliament, directly representing the peoples of the Member States, will remain a codeciding, not an all and alone deciding Parliament. It has to restructure profoundly its own working procedures.

The Council of Ministers, the body that needs reforms most profoundly and urgently, will become the Council of Member States. It will be part of the Union's legislative and be endowed with certain executive tasks and decide together with the EU Commission on the rules for the implementation of union laws in the Member States. Thus, national governments, on whom lies the responsibility to apply and enforce EU legislation, remain involved in setting up the executive regulations.

The task of making all the EU's institutions stronger, more efficient and more accountable is a challenging one. Trimming the competencies of the Union and rendering them more intelligible is an even greater one. In this regard it is not sufficient to merely apply the principle of subsidiarity, something we have to do anyway and more so than ever. And the trimming of competencies, necessary as it is, relates, by the way, not only to the Commission, as is often suggested. It must affect the Union as a whole and each of its institutions – including the Parliament.

When the Union takes on board more Member States, it will have to shed certain tasks in order to stay fit. The Union does not need competencies in areas such as tourism, hunting laws, disaster prevention, keeping of wild animals in zoos, local bathing waters, the length of ladders on scaffoldings and so forth. Of course, one can produce arguments as to why the Union should act in all those areas.

Danièle Alexandre/Apirat Petchsiri (eds.)

## Trade Regulations between the EU and ASEAN

Selected issues of common concern – Investment Law, Competition Law and Environmental Law – studied both by Thai and European researchers with the aim of comparing the different situations and legal approaches and suggest new paths for exchange of points of view and experiences.

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However, a well-constructed argument does not necessarily point to a convincing need. In history, a lot of victories have been won by intelligent retreats.

Much more important is to keep a healthy perspective: European integration has reached a point where further progress relies less on strengthening the Union's competencies, but increasingly on limiting them. Undoubtedly, the Union needs competition rules, strictly and effectively enforced, to make the Internal Market work, and this has to remain one of the core competencies of the Commission, even after further decentralisation. But European politics cannot allow itself to be totally subjected to the market and competition. This is particularly true for parts of the broad area of public services or economic services of general interest, for example savings banks and social services.

The Union has to focus its responsibilities and its actions on the classical fields for successful large-scale political organisation in history: the market, the currency, the equality of rights and the safety of its citizens within its borders and the defence of common interests without. That is the core mandate. And for the sake of the core mandate, it is absolutely necessary for the Member States to continue to be linked by common institutions, in order to create solidarity amongst them and to enforce and control the application of common laws.

### No Need for New Institutions

Neither the Federal Republic of Germany nor the United States of America will serve as the blueprint for future European integration. In Europe, nationality cannot be replaced as the main focus of identity. In other words: the Member States of the European Union will always be more than just "states" or "Bundesländer" of a "Federal Republic of Europe".

The European Union will remain a union of Member States. The Union will continue to combine federal and confederal structures and therefore will be intergovernmental as well as supranational. The nation states' system of checks and balances cannot be merely mapped onto the European Union.

At present and for the foreseeable future the EU lacks the structural as well as the social, cultural and political preconditions to allow for elements of direct democracy. Do European citizens really want to directly elect a president of the Commission or of the Union, whom most of them can only understand with the help of an interpreter? Only a constitutional treaty

or a constitution could be accepted in a referendum. At the level of the Union, representative democracy must prevail.

No new institutions need to be created – neither a "secretariat" for "enhanced cooperation" (Chirac) nor a second chamber of the European Parliament, made up of national deputies (Fischer and Blair) – all that would fudge the issue of the Union's institutions' responsibility and legitimacy, sowing confusion where transparency is necessary. What we need in Europe are not more institutions but more efficient ones so that all people can understand who decides when and on what in Brussels and Strasbourg.

### Cooperation with Europe's Periphery

The future structure of European integration is one challenge, but there is another challenge ahead.

The EU is negotiating with twelve applicant countries. Within ten years, the number of Member States will increase to twenty-seven. Turkey, too, was granted candidate status by the Heads of State in December 1999. The next few years will show, what the proposed "European perspective" for the four Balkan states means. From the Ukraine and other countries in the south of the former Soviet Union we are receiving signals that they, too, are interested in becoming part of the EU in the long run. Finally, Norway may well make another attempt to become a member and Switzerland could revise its current "No" to the EU.

Member States and applicant countries want a Union which is more than a market place – a Union that guarantees them all freedom and peace, coherence and solidarity, a Union on a par with other world powers. This limits its ability to enlarge, not its responsibility to the outside world.

In terms of geography, economy, polity and culture the European Union will always be less than the whole of Europe – or it will no longer be either European or a Union. Instead of offering membership to ever more states, the Union should offer attractive concepts of cooperation with Europe's periphery, adapted to different geographical, economic and political requirements. And this cooperation should be a long-term engagement, not a waiting room for EU membership.

It is one of the most European of Europe's characters, who tells us, "In Europe, there are more things between Kirkenes and the Krim, Horatio, than are dreamt of in your simple federalist philosophy."