

# THE EUROPEAN UNION AND THE AMBIVALENCE TOWARDS THE PROCESS OF EUROPEAN INTEGRATION

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*The European Union (EU) was established by the Maastricht Treaty in 1993 but its origins date back, in an unbroken line of institutional continuity, first to the establishment of the European Coal and Steel Community in 1952 and second to the European Atomic Energy Community (EURATOM) as well as the European Economic Community (EEC), both established in 1958. There is no doubt that in the overall process of European integration, understood as referring to the organisation of the common life of all citizens and all peoples inhabiting the European continent, the European Union, in both method and purpose, sharply distinguishes itself from all the previous, imperialist, belligerent, bloody, and, most of all, failed attempts of uniting Europe.*

*Notwithstanding the European Union's overall success in a vast area of fields, support for its existence and work is still met with a strong sense of ambivalence. Such ambivalence is characterised by a great uncertainty over its finalité, i.e. both its purpose and end, which is expressed in a strong indecisiveness as to which path to follow. In this regard, it is suggested here, that this ambivalence is caused by the dynamic dialectic underlying its creation and functioning which – when coupled with a growing complexity of the legislative and administrative procedures that characterise our present epoch – is still causing serious troubles to the minds of people. Such troubles find their expression in an often disharmonious, divided, and even polarised discussion of EU affairs which is most of the times dominated by polemics based on misconceptions and a lack of reliable information rather than a constructive common public debate.*

*This article intends to provide a concise overview of selected stages of the process of European integration beginning with the second half of the 20<sup>th</sup> century and extending to the development of the main legal foundations as well as*

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*institutions of what today forms the “European Union”. By focusing on some of the most imminent challenges that presently threaten the prosperous future of the European Union, this article marks also an attempt to dig deeper into the underlying considerations and perhaps bring some of its original spirit to the fore. It tries to ponder on the cause of the problems and reflects on the question whether this ambivalence is the source of a slow down of the smooth development of European integration or instead forms the basis for its sustainable and democratic development?*

## I. INTRODUCTION

It is in the same year which saw India celebrating her 60<sup>th</sup> anniversary of independence, which eventually led to the adoption and entry into force of the Constitution of India on January 26, 1950, that the European Union celebrated the 50<sup>th</sup> anniversary of the Rome Treaty, which was signed on March 25, 1957. However, at the occasion of commemorating such solemn and decisive moment in the history of Europe and trying to bring the process of European integration back on track following the setback to the process of the ratification of the Treaty Establishing a Constitution for Europe as a consequence of the two negative referenda in France and the Netherlands in 2005, the Heads of States or of Government of the Member States of the European Union, meeting in their function as the European Council, largely disappointed and failed to equal the vision that the founding fathers of the process of European integration had proved to not only to be able to visualise but also to realise in the successive years.

In the so-called “Berlin Declaration”, signed on March 25, 2007, the European Council made no mention of the Constitution for Europe but instead merely stated that “we are united in our aim of placing the European Union on a *renewed common basis* before the European Parliament elections in 2009”.<sup>1</sup> What precisely such “renewed common basis” would entail was clarified hardly four months later during the European Council meeting in Brussels on June 21-22, 2007. In the so-called “Presidency Conclusions”, in which the European Council is supposed to lay down the guidelines which provide the Union with the necessary impetus for its development (Art. 4 TEU),<sup>2</sup> one finds the fateful information that

<sup>1</sup> Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome available at [http://www.eu2007.de/de/News/download\\_docs/Maerz/0324-RAA/English.pdf](http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf) (last visited Jun. 10, 2007) [*Italics added*].

<sup>2</sup> Please note that when ever reference is made to the *Treaty on European Union* (TEU) or to the *Treaty Establishing the European Community* (TEC), it refers to the version currently in force which is based on the amendments introduced by the Nice Treaty in 2001 (*Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*, March 10, 2001, [2001] O.J. C 80/1). Any reference to a previous Treaty version is explicitly specified in the text. For useful information on the European Union, visit the official homepage at <http://www.europa.eu> and for access to its primary and secondary legal sources see <http://eur-lex.europa.eu/>.

“the constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called “Constitution”, is abandoned”.<sup>3</sup> Hence for the time being all constitutional aspirations for injecting greater systemic unity in the current fragmented structure of the various treaties on which the European Union is presently built, and attempts to bring the Union not only closer to its citizens but also its own “tryst with destiny” are hereby postponed and, at least temporarily, traded for a more pragmatic and short-termed approach of bargaining diverse national interests under the disguise of a “supranational umbrella”.

In the history of the process of European integration there have been numerous setbacks. These have included, *inter alia* plans for the establishment of a *European Defence Community* (EDC) and for a *European Political Community* (EPC) in 1954, the failure of the Werner Plan aiming at adopting a European Monetary Union (EMU) in 1970, or the initiative led by Altiero Spinelli to create a political union as expressed in the *Draft Treaty Establishing the European Union* in 1984.<sup>4</sup> All these initiatives have eventually been fruitful, although following the lapse of different time spans and sometimes in different content and form. The importance was generally to maintain the spirit of a *de facto* solidarity necessary for maintaining the pace of European integration.

Thus for the present situation regarding the constitutional future of the Union, the central question to be asked is whether the present setback is a form of resignation of governments before the enormous complexity of problems of governance in the 21<sup>st</sup> century or a general lack of orientation of citizens due to an apparent value crisis also stirred up by a sense of uprootedness in the era of globalisation fostered by the virtual real-time coverage of the media. It is certainly a combination of several of these and possibly more factors but the main interest concerns the question whether the widespread ambivalence towards European integration is rooted in the largely dialectic processes on which the European Union has been and is being built. This dialectic may be at the origin of the nausea that European citizens feel when trying to add a European layer to their multiple identities including *inter alia* a national, regional, municipal or personal identity.

A second important element of nausea is likely to be found in the undefined destiny of the European Union, *i.e.* its open-ended nature, which has been described as follows:

*“The signatories of both European treaties thus incorporated within them a tension which is characteristic of European integration, between a short-term and rather uninspiring formal*

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<sup>3</sup> Presidency Conclusions of the Brussels European Council (21/22 June 2007), EU Doc. 11177/07, CONCL 2 available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/doc/pressData/en/ec/94932.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/doc/pressData/en/ec/94932.pdf) (last visited Sep. 2, 2007).

<sup>4</sup> Draft Treaty Establishing the European Union, February 14, 1984, [1984] O.J. C 77/33.

*image of Europe (Europe as institution; Europe as common market) and an ambitious long-term and permanently moving image, which points into a direction (that of an ever closer union) but without defining in advance the end station to be reached.<sup>5</sup>*

This quote also reflects the paradigm shift in perception that occurred throughout the 20th century in the wake of the invention of the cinematograph and other information and communication technologies, which was well-described by Paul Nora as follows:

*“Indeed, we have seen the tremendous dilation of our very mode of historical perception, which, with the help of the media, has substituted for a memory entwined in the intimacy of a collective heritage the ephemeral film of current events.”<sup>6</sup>*

Despite this change in perception, which more closely corresponds to the uncertainty caused by the flow of life, in legal or constitutional terms we still appear to cling to the desire for total certainty and predictability even if we are aware that it is only a fiction of it. Perhaps this is one of the major problems with the process of integration underlying the European Union as compared to the already established statehood at the national level.

This article briefly tries to capture some of the central features characterising the process of European integration, and to explain some of the problems in particular the European Union faces with regard to its acceptance and support. It starts with an overview of the main developments from the early days of European integration following World War II until the establishment of the European Union in 1993. Subsequently it gives a concise overview of the European Union, its central stages, institutions and fields of action, following its creation in 1993. The chronological presentation is based on the strongly felt belief that knowledge about the history of European integration is indispensable for the proper understanding of the functioning of the European Union. This is true not only for the mere search of documents or cases of the European Court of Justice following the renumbering of the Treaties' articles in the wake of the Amsterdam Treaty but most importantly for deeper insights into the dynamics of economic integration in general. The article concludes with a critical view of some of the present development in view of future challenges and yields to offer a few thoughts on the possible causes for the widespread ambivalence towards European integration.

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<sup>5</sup> B. de Witte, *Building Europe's Image and Identity, in EUROPE FROM A CULTURAL PERSPECTIVE: HISTORIOGRAPHY AND PERCEPTIONS* (1987).

<sup>6</sup> P. Nora, *Between Memory and History: Les liuex de Mémoire* 26 REPRESENTATIONS 7 (1991).

## II. AMBIVALENCE IN THE VARIOUS STAGES OF EUROPEAN INTEGRATION

### ***A. FROM THE BEGINNING TO THE CREATION OF THE EUROPEAN UNION***

*“Two souls alas! are dwelling in my breast;  
And each is fain to leave its brother.  
The one, fast clinging, to the world adheres  
With clutching organs, in love’s sturdy lust;  
The other strongly lifts itself from dust  
To yonder high, ancestral spheres.”*

Johann Wolfgang Goethe, *Faust – The Tragedy Part One* (1808)

The most fundamental explanation for the feeling of ambivalence towards the process of European integration might well lie in the universal human’s dual composition marking his thoughts, feelings and deeds, which is so well reflected in the verses from Goethe’s *Faust* quoted above. As a human project it is hardly surprising that such binary thinking also characterised the initial steps of European integration following the cataclysms created by World Wars I and II. In fact, the horrors created and suffered by two World Wars and the blind nationalism leading to their outbreak have certainly for some considerable time ensured that the virtuous elements in Europe were directed towards the supranational level of European integration whereas the dark and lingering vicious remnants were still hidden under the rubbles and scars the two wars had left on the surface of the continent, on as well as under the skin of the people inhabiting it. The temporal distance and fading memory of younger generations of the atrocities committed during the two wars as well as a the former lengthy border controls between European states including occasional vexatious visa requirements may also contribute to the growing ambivalence towards the existence of the European Union displaying also a large disparity among the different Member States of the European Union, ranging in a recent from a height of 77% in the Netherlands to a low of 36% in Austria.<sup>7</sup> It seems that we have almost forgotten that “a bird in the hand is worth two in the bush”.

But already in the initial years the union in preventing another war diverged as did the views about the means to ensure a peaceful and prosperous future for the European continent. Such divergence found its first formal expression in the almost parallel creation of the Council of Europe in 1949 and the European

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<sup>7</sup> On the support of Membership in the various EU Member States see EUROBAROMETER, PUBLIC OPINION IN THE EUROPEAN UNION, 67 (Brussels: European Commission, 2007), available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf) (last visited Sept. 18, 2007).

Coal and Steel Community (ECSC) in 1952.<sup>8</sup> While the Council of Europe was entrusted more with the political aspects of cooperation among its Members, the ECSC not only established a common control over what were then some of the most important raw materials but also paved the way for the establishment of an institutional framework (a High Authority, a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee) for closer economic integration from which the present European Union should eventually emerge. Only five years after the ECSC was established, its founding Members gathered and signed the Treaties establishing the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC) in 1957.<sup>9</sup> Among the three Communities, the institutional setting of which was merged in 1965,<sup>10</sup> the EEC, which introduced the four fundamental freedoms (free movement of goods, services, workers (persons) and capital) emerged as the central force for not only the establishment of the common market and future aspiration towards an internal market but also for the entire process towards the creation of the European Union in 1993.

This initial institutional split or division of labour between the Council of Europe on the one hand, and the three European Communities on the other, was by and large caused by a disagreement of European states over the ultimate *finalité* of European integration, namely whether to pursue the objective of integrating into a federal model of a state (like the United States of Europe) or to merely cooperate and at its best establish a relatively loose bond in the limited areas of economics and trade (like a Free Trade Agreement (FTA)). A similar disagreement prevailed in the choice of the means for the pursuit of integration in Europe, where a constitutionalist-federalist method contrasted with a functionalist-dynamic approach. The former favours the mere legal statement of accomplished facts which then have to impatiently await their realisation throughout the course of time whereas the latter is based upon the gradual realisation of concrete but small steps eventually spilling over to other areas. This early disagreement also extended to the two organisation's respective fields of activity and working methods: On the one hand, the Council of Europe was entrusted mainly with political and cultural

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<sup>8</sup> The Council of Europe, located in Strasbourg, currently gathers 47 states and the founding Members were: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom); Statute of the Council of Europe, London May 5, 1949, E.T.S. – Nos. 1/6/7/8/11: The founding members of the ECSC (and EURATOM as well as the EEC) were: Germany, Belgium, France, Italy, Luxembourg and the Netherlands; Treaty Establishing the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 142. The ECSC Treaty entered into force on July 25, 1952 and was concluded for a period of 50 years and hence expired on July 25, 2002).

<sup>9</sup> Treaty Establishing the European Atomic Energy Community, March 25, 1957, 294 U.N.T.S. 5 (entry into force: January 1, 1958) [EURATOM] and Treaty Establishing the European Economic Community, March 25, 1957, (1957) 294 U.N.T.S. 5 (entry into force: January 1, 1958) [Rome Treaty].

<sup>10</sup> Treaty Establishing a Single Council and a Single Commission of the European Communities, April 8, 1965, [1967] O.J. 152/1 (July 13, 1967)

tasks and the procedures its central institutions followed were close to those applied by ordinary forms of international cooperation. On the other hand, the institutions serving the three European Communities dealt more with aspects of economic cooperation and followed a more supranational method of integration (*i.e.* the so-called “Community method”). The main characteristic of this method is not only the greater involvement of the principal supranational institutions, such as the European Commission, European Parliament and the European Court of Justice but is also based on the experience that the objective of political integration of Europe cannot be realised at once or according to a single plan but instead only through “practical achievements” or through a “*de facto* solidarity” as mentioned by Robert Schuman in his famous Declaration of May 9, 1950 which since 1985 is annually celebrated as “Europe Day”. Such functional approach also implies that progress in the area of economic integration will automatically “spill over” to areas other than economic fields and hence lead to more political integration.<sup>11</sup> This functional approach is strongly reflected in the drafting style of the Treaties, which – instead of opting for a clear-cut competence catalogue like many national constitutions do – lists a number of objectives to be achieved by the European Union/European Communities (*cf.* Art. 2 TEU and Art. 2-4 TEC).

Since its inception continuous progress was made in the pursuit of the objectives enshrined in the Treaties, especially in economic aspects under the aegis of the European Economic Community, manifest notably in the creation of a common agricultural policy (CAP), a customs union (CU) in connection with the formulation of a common customs tariff (CCT) and a common commercial policy (CCP) for external trade relations with third countries as well as in the context of the implementation of the fundamental freedoms and application of European competition rules. Initially, these changes were mainly achieved through the process of negative integration, which generally refers to the removal of national legislation hampering the free flow of goods, services, persons and capital.<sup>12</sup> It also denotes a phenomenon which is common to all efforts of trade liberalisation or even characteristic for the changing nature of the state in the era of economic globalisation.<sup>13</sup>

These so-called “integrations dynamics” of negative integration created a regulatory void which had the effect of requiring better coordination and even stronger cooperation beyond the area of economic integration in realms of a political

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<sup>11</sup> See also Indent 8 of the Preamble of the Treaty on European Union, which reads: “DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that *advances in economic integration are accompanied by parallel progress in other fields* [...] [*Italics added*].”

<sup>12</sup> F.W. Scharpf, *Balancing Positive and Negative Integration: The Regulatory Options for Europe*, EUI Policy Paper 97/4 (1997).

<sup>13</sup> K. Jayasuriya, *Globalization and the changing architecture of the state: the regulatory state and the politics of negative co-ordination*, 8 J. EUR. PUB. POL'Y 101 (2001).

nature, such as issues related to social standards, the protection of the environment, external relations, human rights, cooperation in the area of civil and criminal law matters to mention but a few. The void created by measures of negative integration had thus to be complemented with measures of positive integration. Positive integration here refers especially to the adoption of legislative measures at the supranational level by the central European institutions involved in the law-making process, the Council of Ministers, the European Parliament and the European Commission. Such measures are generally created by the ordinary legislative procedure (*i.e.* the co-decision procedure of Art. 251 TEC) or by one of the special legislative procedures (*i.e.* assent, cooperation or consultation procedure). With regard to their purpose, Article 189 of the Rome Treaty created the four following main legal legislative instruments or so-called “secondary Community acts”: Regulations; Directives; Decisions, and Recommendations (now Article 249 TEC).<sup>14</sup> In fact, this enumeration is not exhaustive and several more forms or action exist or have been created by mere practice, such as resolutions, declarations, communications, white and green papers as well as action programmes, to mention but a few more examples.

In parallel to the ongoing dialectic between negative and positive integration, a gradual widening of the area of European integration took place first of all in terms of the competences conferred and exercised by the European Communities. This was a consequence of the progress being made in the field of economic integration and was especially aided not only by substantive requirements in the respective areas but also by a progressive interpretation of the Treaty norms by the European Court of Justice (ECJ). In a series of pioneering judgments, the ECJ had established *inter alia* that the European Community legal order has “by contrast with ordinary international treaties created its own legal system” to the benefit of which Member States have limited their sovereignty or transferred (some of) their powers.<sup>15</sup> Furthermore, it called the Treaty the “basic constitutional charter”<sup>16</sup>; formulated the doctrines of direct applicability, direct effect and *effet utile* from which the principle of supremacy of European law derives

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<sup>14</sup> Regulations have general application, are binding in their entirety and are directly applicable in all Member States, whereas Directives are binding, as to the result to be achieved, upon the Member States to whom they are addressed but Member States are left the choice of form and methods of how to achieve their objectives. Decisions are binding in their entirety upon those to whom they are addressed while Recommendations have no binding force and only provide guidance for those to whom they are addressed as to the interpretation and content of Community law.

<sup>15</sup> Case 6/64, *Costa v E.N.E.L.* [1964] E.C.R. 585 at pt. 3.

<sup>16</sup> Case C-314/91. *Beate Weber v European Parliament* [1993] E.C.R. I-1093 at point 8, Opinion 1/91, Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area, [1991] E.C.R. I-6079 (point 1), Case 294/83, *Parti écologiste “Les Verts” v European Parliament*, [1986] E.C.R. 1339 at 1365 (point 23), and Opinion 1/76 of 28 April 1977, [1977] ECR 741 at 758 (points 5 and 12).

and which, by conferring rights on individuals which they can invoke before the national and Community courts strengthens the efficiency of Community law.<sup>17</sup> The ECJ also defined measures of equivalent effect with the formulation of the *Dassonville* formula<sup>18</sup> and the concept of mutual recognition<sup>19</sup> hereby accelerating and facilitating the removal of obstacles to the free movement of goods based on national borders which continued to fragment the internal market. Finally, the jurisprudence of the ECJ also widely expanded the scope of Community powers, for example with regard to the principle of parallelism of internal and external (Community) powers.<sup>20</sup>

Second, this widening of European integration could also be recorded in terms of the number of Member States. In the years from its inception in 1952 and 1957 respectively until the present time, 21 new Members joined the European Union in so far six so-called “enlargement rounds”.<sup>21</sup> With two more countries, namely Turkey and Croatia, negotiations for accession to the EU have commenced in fall 2005. Moreover, with a great number of third countries, the European Economic Community (EEC) and later the EU have entered into special, so-called “associations agreements”, which are agreements that create a special framework for cooperation between the European Community and third countries.<sup>22</sup>

In connection with a great variety of factors these principal forces were carrying the process of European integration forward during the years of the inception of the three European Communities until the establishment of the European Union.

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<sup>17</sup> Case 6-64, *Flaminio Costa v E.N.E.L.* [1964] E.C.R. 585 and Case 26-62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland* [1963] E.C.R. 3.

<sup>18</sup> Case 8-74, *Procureur du Roi v Benoît and Gustave Dassonville* [1974] E.C.R. 837.

<sup>19</sup> Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] E.C.R. 649 [*Cassis de Dijon*].

<sup>20</sup> Case 22/70, *Commission v. Council*, [1971] ECR 263 [*ERTA*].

<sup>21</sup> The six founding Members of the ECSC, EURATOM and the EEC (mentioned in FN 8) were joined in the successive years by Denmark, Ireland, the United Kingdom (1972), Greece (1979), Portugal and Spain (1985), Austria, Finland, Sweden (1995), the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and the Slovak Republic (2004) as well as Bulgaria and Romania (2007). Moreover, negotiations for future accessions have commenced with Turkey and Croatia (2005).

<sup>22</sup> See Article 310 TEC (Art. 238 Rome Treaty), which states: “The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure”; see e.g. the Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, June 23, 2000, [2000] O.J. L 317/3 [hereinafter *Cotonou Agreement*].

## *B. THE TURNING POINT AND THE CREATION OF THE EUROPEAN UNION BY THE TREATY OF MAASTRICHT*

The often antagonistic forces at work in the “workshop” of European integration during the formative years of the European Communities, nonetheless, proved to be fruitful and constructive in a sense that they managed to bring out their complementary rather than contradictory character. Similarly and probably due to the horrors caused by the atrocities committed during World War II, principally and with minor exceptions only, virtue presided over vice in the overall development of a nascent Community legal order and European political system. “Europe as an idea” competed with “Europe as a reality” and, in this competitive process, efforts of numerous individuals blended with aspirations of whole societies when methods of a functional approach were combined with those of a more intergovernmental nature in parallel with measures of negative integration and of positive integration which coincided with a widening and a deepening effect on European integration which was also expressed in the frequent amendments to the primary sources of European law, the founding Treaties. Thus, the forces underlying these “integration dynamics” set free a chain reaction very much based on the logic residing in the nature of these things the Communities were supposed to govern as well as the objectives they were asked to pursue. For instance, the creation of a customs union required a common custom tariff as well as a common commercial policy. Similarly the functioning of the common market based on the four fundamental freedoms necessitated rules on competition as much as the successful adoption of measures targeting the internal market calls for closer cooperation in external relations, to mention but a few complementary issues.

The overall increase in what could be termed “the entropy of European integration” already started to call for a major amendment to the founding treaties in the early 1980s, especially when the internal market initiative was launched with the 1985 White Paper aiming at the completion of the internal market before January 1, 1993.<sup>23</sup> Mirroring further apparent contradictions in terms and actions, the said White Paper concluded that:

*“Europe stands at the crossroads. We either go ahead – with resolution and determination – or we drop back into mediocrity. We can now either resolve to complete the integration of the economies of Europe; or, through a lack of political will to face the immense problems involved, we can simply allow Europe to develop into no more than a free trade area.”<sup>24</sup>*

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<sup>23</sup> See Commission of the European Communities White Paper, *Completing the Internal Market* COM(85) 310 final (1985).

<sup>24</sup> Commission of the European Communities, *Completing the Internal Market*, White Paper from the Commission to the European Council, COM(85) 310 final (1985) at 55.

There was great ambivalence towards the issue of fostering integration or possibly regressing into a mere free trade area which was expressed by the coexistence of an awareness about the necessity for further progress in European integration beyond mere economic forms of cooperation and of a beginning nausea with the unfettered progress of European integration and, especially the Member States' fear of further losing their powers to the European institutions. This ambivalence is equally reflected in the attempts of European Parliament, which was first directly elected in 1979, to create a European Union based on the Draft Treaty Establishing the European Union.<sup>25</sup> This ambitious initiative for the creation of a political union called "European Union" was (for some time) transformed into a slightly more modest first important amendment to the Rome Treaty based on an intergovernmental conference (IGC) which led to the adoption of the Single European Act (SEA), which entered into force on July 1, 1987.

The temporary setback in terms of enhanced scope and depth of European integration, however, would not last long and was finally neutralised by the signing of the Treaty of Maastricht on February 26, 1992.<sup>26</sup> The Maastricht Treaty entered into force on November 1, 1993, and hence formally instituted the European Union marking a "new step in the process of creating an ever-closer union among the peoples of Europe". The European Union created a single institutional framework (Art. 3 TEU) based on the European Communities and assisted by the European Council, the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. As the only genuine European Union organ, the European Council, made of the Heads of States or Government of the EU Member States, was asked to provide the Union with the necessary impetus for its development and the definition of the general political guidelines thereof (Art. 4 TEU). At the same time, an Economic and Social Committee and a Committee of the Regions were created in order to advise the principal organs of the European Union. Similarly, a European System of Central Banks, a European Central Bank and a European Investment Bank have been created under the provisions of the Treaty. In institutional terms, the Maastricht Treaty continued a growing tendency of decentralised forms of governance through the setting-up of various agencies across the territory of the European Union.<sup>27</sup>

Most notably, the Maastricht Treaty introduced the so-called "three pillar structure" of the European Union with the first pillar consisting of the governance of the (mainly economic) affairs by the institutions of the European Communities. The second pillar is the Common Foreign and Security Policy (CFSP) which aims at giving the European Union a greater and better coordinated voice in the international arena, with the main objectives being listed as follows in Article 11 TEU:

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<sup>25</sup> Draft Treaty Establishing the European Union, February 14, 1984 [1984] O.J. C 77/33; see also J.P. Jacqué, *The Draft Treaty Establishing the European Union*, 22 *COMMON MKT. L. REV.* 19 (1985).

<sup>26</sup> Treaty on European Union, July 29, 1992 [1992] O.J. C 191/1 [hereinafter *Maastricht Treaty*].

<sup>27</sup> For a list of the main European Union agencies visit [http://europa.eu/agencies/index\\_en.htm](http://europa.eu/agencies/index_en.htm).

- *to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,*
- *to strengthen the security of the Union in all ways,*
- *to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,*
- *to promote international cooperation,*
- *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.*

The third pillar originally covered the field of Cooperation in the Fields of Justice and Home Affairs (JHA) which according to the Maastricht Treaty included a long list of so-called “matters of common interest” of special relevance for the area of the free movement of persons, such as asylum policy, immigration policy, customs cooperation, the combat against drug addiction and fraud as well as more general forms of judicial cooperation in civil and in criminal matters.<sup>28</sup> This area of cooperation is a typical cross-dimensional field between the free movement of persons as one of the four (economic) fundamental freedoms and further derivative questions of law and policy. This functional logic is for instance manifest in the adoption of the Schengen Agreement of June 14, 1985 and the Schengen Implementing Convention of June 19, 1990 which aimed at enhancing cross-border cooperation in the context of a gradual disappearance of cross-border controls between Member States based on progress in the area of the free movement of persons. Cooperation entailed especially an exchange of information on terrorism, drugs, organised crime and illegal immigration networks. Following the entry into force of the Maastricht Treaty, the field of JHA has seen a wide expansion in activities, such as notably the gradual creation of a so-called “area of freedom, security and justice” as highlighted by the European Council in Tampere on held by the Finish EU Presidency on October 15-16, 1999.

In the two areas of the second and the third pillar, the Council does not act as a Community institution but according to specific intergovernmental rules. Hence, legal instruments also differ from those created under the first pillar. Under the CFSP, the work is shared between the European Council, which adopts the principles and general guidelines<sup>29</sup> as well as common strategies<sup>30</sup>, and the Council of Ministers which adopts joint actions and common positions.<sup>31</sup> In the area of Judicial and Police Cooperation in Criminal Matters (JPCC), the principal instruments used are: common positions, framework decisions, decisions, and conventions.<sup>32</sup>

<sup>28</sup> Cf. Articles K and K.1 of the (unconsolidated version of the) Treaty on European Union; *id.*

<sup>29</sup> Article 13 (1) TEU.

<sup>30</sup> Article 13 (2) TEU.

<sup>31</sup> Articles 14 (1) and 15 TEU.

<sup>32</sup> Article 34 (2) lit. a)-d) TEU.

The Maastricht Treaty also provides another significant example for the dual, sometimes apparently contradictory mode of functioning of the European integration process. On the one hand, it extended the Community competences to new fields, such as trans-European networks, industrial policy, consumer protection, education and vocational training, youth, and culture.<sup>33</sup> At the same time, the inclusion of these new areas had the result of drastically constraining the future expansion of Community actions in these fields. This was achieved, for instance, by “excluding any harmonisation of the laws and regulations of the Member States” in some of these fields.<sup>34</sup> A further delimitation of Community powers was meant to be safeguarded by the introduction of the subsidiarity principle by virtue of Article 5 TEC. Generally, the question of Community competences or Community powers, *i.e.* the areas in which the Community institutions can become active, is characterised by the principle of conferred powers, which stipulates that “the Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein”. From this system derive the three following types of power sharing: 1. “concurrent (or shared) powers”, *i.e.* the most common case where both the Community institutions and the Member States can take action; (2) exclusive Community powers, *i.e.* where only the Community can take action; and (3) supporting Community powers, *i.e.* fields where the Community is solely entitled to support and complement Member States’ actions. Further specifying the principle of conferred powers and being supplemented by the principle of proportionality, the principle of subsidiarity creates an obligation on behalf of the Community to examine whether a proposed action (which is outside the exclusive competence of the Community) can “by reason of the scale or effects of the proposed action”, be better achieved by the Community. In the current debate, the principle of subsidiarity is interpreted as creating a preference for action to be taken at the local or national level and, consequently, is generally used to delimit the further expansion of Community competences. In times of often excessive legislative action, it is submitted here, it would be more appropriate to interpret the principle of subsidiarity as a general standard of review for the adoption of legislative acts because even fields of action which have become the exclusive competence of the Community can again be returned to the Member States’ level, as was partially the case with the field of competition rules.<sup>35</sup> In other words, the subsidiarity principle should be read in consonance with the solidarity principle enshrined in Article 10 TEC and be interpreted as creating not merely a unilinear but also a circular dynamism of cooperation between the Community and the Member States.

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<sup>33</sup> R. Lane, *New Community competences under the Maastricht Treaty*, 30 COMMON MKT. L. REV. 939 (1993).

<sup>34</sup> Cf. Articles 149 (4) (and 150 (4) (‘Education, Vocational Training and Youth’), 151 (5) (‘Culture’) TEC.

<sup>35</sup> In the field of antitrust rules, Council Regulation No 1/2003 replaced Regulation No 17 substituting the formerly centralised control system with a decentralised application of competition rules; see *Council Regulation (EC) No 1/2003*, 16 December 2002 [2003] O.J. L 1/1 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Under a similar apparently contradictory expression of European thinking, the Maastricht Treaty also introduced a European citizenship. The provisions on European citizenship were precisely meant to contribute to a greater sense of European identity in response to fears about the democratic deficit of the EU. Again, in contrast to many countries, such as for example citizenship in the Indian Union, which emphasises a single citizenship (Art. 5 Constitution of India), the European Union has opted for a “dual citizenship”, which according to Article 17 TEC “shall complement and not replace national citizenship”. European Union citizenship confers in particular the following special rights: the freedom to move and take up residence anywhere in the Union, the right to vote and stand in local government and European Parliament elections in the country of residence, diplomatic and consular protection from the authorities of any Member State where the country of which a person is a national is not represented in a non-Union country, and the right of petition and appeal to the European Ombudsman.<sup>36</sup>

Following the creation of the European Union, the following stages in the process of European integration were marked by an increasing complexity which was partly accompanied by further amendments to the Treaties, as it is reflected in the signing of the Treaty of Amsterdam on October 2, 1997 and the Treaty of Nice on February 26, 2001.<sup>37</sup> Among other changes, the Amsterdam Treaty created a Community employment policy, transferred some areas of JHA to the first pillar, extended the co-decision procedure and qualified majority voting, and enabled certain Member States to cooperate more closely (enhanced cooperation), hereby expanding further the possibility for a multi-speed Europe. The Nice Treaty was designed to deal with some of the “leftovers” from Amsterdam, especially with regard to the reform of the institutions and the weighing of votes in the Council as well as to further increase the efficiency and legitimacy of the European Union. Another important point on the agenda was the preparation for the next enlargement round, which would increase the number of Member States from 15 to 25 on May 1, 2004.

During this time important other developments were notably the introduction and adoption of the Euro as the official currency of the European Union by 12 Member States.<sup>38</sup> Two more important developments which took place which deserve to be mentioned and which stand both in direct relation to the

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<sup>36</sup> Cf. Articles 17-22 TEC.

<sup>37</sup> Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts, November 10, 1997, [1997] O.J. C 340/1 [Amsterdam Treaty] and Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, March 10, 2001 [2001] O.J. C 80/1 [hereinafter Nice Treaty].

<sup>38</sup> The countries having introduced the Euro on January 1, 2002 are: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, The Netherlands. Slovenia has adopted the Euro as the 13<sup>th</sup> country on January 1, 2007. Please note that the Euro is also used by the Vatican, San Marino and the (*Principauté de*) Monaco.

future development of the Union are first, the official proclamation of the Charter of Fundamental Rights of the European Union and, second, the announcement of a political commitment on the “deeper and wider debate on the future of the Union” in Declaration No. 23 on the “future of the union” annexed to the Nice Treaty.<sup>39</sup> Both events not only respond to the needs deriving from an expanding scope and increasing depth of the EU’s field of action but also an important preparatory step towards a beginning constitutional debate in the European Union. The constitutional aspect of the debate on the future of the Union itself was launched informally by the then German foreign minister, Joschka Fischer in his Humboldt Speech held on May 12 in Berlin, where he delivered his thoughts on the required reforms of the European Union. Elaborating on the vision presented by Robert Schuman in 1950 for a “European Federation”, he stated as follows:

*“These three reforms – the solution of the democracy problem and the need for fundamental reordering of competencies both horizontally, i.e. among the European institutions, and vertically, i.e. between Europe, the nation-state and the regions - will only be able to succeed if Europe is established anew with a constitution. In other words: through the realization of the project of a European constitution centred around basic, human and civil rights, an equal division of powers between the European institutions and a precise delineation between European and nation-state level.”<sup>40</sup>*

Officially the constitutional debate was inaugurated with the Laeken Declaration on the Future of the European Union where the decision to convene a Convention on the Future of Europe was made.<sup>41</sup> The Convention was established under the Presidency of Valéry Giscard D’Estaing, Giuliano Amato and Jean-Luc Dehaene and counted in total 105 representatives from the various European institutions, the national governments and national parliaments as well as from the candidate countries. In substantive terms it was asked to ponder on four principal sets of questions. These questions were first the simplification of the existing treaties without changing their content, second the distinction between the Union and the Communities characteristic for the EU’s three pillar structure, third the possible reorganisation of the Treaties with a view of distinguishing a basic treaty text from other treaty provisions and fourth the question of the legal status of the EU Charter of Fundamental Rights as well as a possible accession of the European

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<sup>39</sup> Charter of Fundamental Rights of the European Union, December 18, 2000 [2000] O.J. C 364/1, available at: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (last visited Sept. 18, 2007); Declaration No. 23 on the future of the union annexed to the Nice Treaty, *supra* note 37.

<sup>40</sup> WHAT KIND OF CONSTITUTION FOR WHAT KIND OF POLITY?: RESPONSES TO JOSCHKA FISCHER (Ch. Joerges & Y. Mény & J.H.H. Weiler eds., 2000).

<sup>41</sup> Laeken Declaration on the Future of the European Union, December 15, 2001, EC Bulletin 12-2001 at pt. 1.27.

Community to the European Convention on Human Rights (ECHR). Ultimately, these four sets of questions were summarised as follows:

*“The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union.”*

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In the end, the European Convention elaborated a text of a *Draft Treaty Establishing a Constitution for Europe* which was adopted by consensus by the European Convention on 13 June and 10 July 2003, which was submitted to the then President of the European Council in Rome on 18 July 2003.<sup>43</sup> This draft text formed the basis for the *Treaty Establishing a Constitution for Europe* (EU Constitution), which was signed on October 29, 2004 in Rome and subsequently opened for ratification by the then 25 Member States of the European Union in line with the treaty amendment requirements of Article 48 TEU.<sup>44</sup>

After ten EU Member States had already successfully ratified the Constitution in accordance with their national constitutional requirements which included also one popular referendum held in Spain on February 20, 2005 in which the Constitution was approved by the population by a vast majority of 76,73% a sudden setback occurred. It was on May 29 of the same year that first the French electorate voted against the Constitution in a popular referendum with a relatively clear majority of 54,9% only to be followed on June 1 by a similar outcome in a popular referendum in the Netherlands in which 61,6% voted against the Constitution.

Ultimately, as mentioned in the introduction, the project for a Constitution for Europe was officially dropped in June 2007 following a short (and in substantive terms rather unproductive) reflection period, which was announced in the wake of two negative referenda in France and in the Netherlands in 2005.<sup>45</sup> This means that although ultimately two thirds of the current 27 EU Member States had successfully

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<sup>42</sup> Laeken Declaration, *supra* note 41.

<sup>43</sup> All relevant materials as well as the text of the Draft Treaty can be found at the official website of the European Convention, available online at: <http://european-convention.eu.int/bienvenue.aps?lang=EN>; for an excellent overview of the work of the Convention, see J. ZILLER, *THE EUROPEAN CONSTITUTION* (2005).

<sup>44</sup> Treaty Establishing a Constitution for Europe, December 16, 2004 [2004] O.J. C 310/1.

<sup>45</sup> Declaration by the Heads of State or Government of the Member States of the European Union on the Ratification of the Treaty Establishing a Constitution for Europe, June 18, 2005, SN 117/05.

ratified the original Treaty for a Constitution for Europe, the constitutional dimension of the project was abandoned and replaced by a mere prospective reform of the current treaties.<sup>46</sup>

The reasons for the setback in the adoption of a single text in the form of a Constitutional Treaty remain unclear and also display the well-known contradiction in terms that is quite characteristic of the EU. In the first place, it must be noted that there seemed to have prevailed a misperception concerning the opinion of the public in the run-up to the ratification of the Constitution in the two respective countries which was clearly seen as highly favourable for the ratification of the said Constitution.<sup>47</sup> This misconception is also seen reflected in the two respective governments' decision to call for a referendum which was facultative and neither required by French nor by Dutch constitutional law. Why ultimately the mood could swing in the other direction is difficult to explain and was perhaps caused by a mixture of factors, such as the significance and occasional irrationality of national politics, the lack of reliable information about the Constitution either due to a generally low quality of reporting about European affairs or the nearly total absence of media and news stations of a European scale not in terms of ownership but in terms of "spirit".

Another significant element which could have played a crucial role is that the Convention model, in order to give it the widest possible democratic legitimacy and support was constituted by relatively large number of members. With such a large number, it was already destined to produce only a shallow compromise instead of a well-drafted and concise text, such as a smaller number of legal experts would have and have indeed produced.<sup>48</sup> It is submitted here that a less shallow and more concise and coherent text could have mobilised more people and engendered a more substantial debate. As far as democratic legitimacy is concerned one could also ask whether it was really necessary to invite such a large number of representatives, if ultimately each Member State would still have to ratify the text in line with its constitutional requirements. In other words, if popular referenda were to be envisaged, it would have been perhaps more appropriate and especially more democratic to remove the existing legal obstacles that hamper the possibility of conducting a European-wide referendum. Without a European-wide referendum there exists the possibility that even if 26 out of the 27 current Member States approve the Constitution, only one Member State, and if it only counts only about 0,4 million inhabitants of the approx. 486 million citizens of the EU, can

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<sup>46</sup> On the scope of the envisaged reform, see Annex 1 ("Draft IGC Mandate") of the Presidency Conclusions of the Brussels European Council (21/22 June 2007), *supra* note 3.

<sup>47</sup> Eurobarometer, *The Future Constitutional Treaty: First Results* (Brussels: European Commission, 2005), available at [http://ec.europa.eu/public\\_opinion/archives/ebs214\\_en\\_first.pdf](http://ec.europa.eu/public_opinion/archives/ebs214_en_first.pdf) (last visited Sept. 18, 2007) at 8.

<sup>48</sup> See e.g. the study conducted by the Robert Schuman Centre of the European University Institute (Florence, Italy) *A Unified and Simplified Model of the European Communities Treaties and the Treaty on European Union in Just One Treaty*, European Parliament Directorate-General for Research, Legal Affairs Series, Working Paper W-9, October 1996.

still successfully block the entry into force of the said Constitution. Consequently, one is invited to speculate on how representative of a European electorate or how democratic such procedure is?

The mentioned factors are certainly not exhaustive and cannot be further elaborated upon here but should suffice to forward the hypothesis that the current decision to erase the concept “constitutional”, or to delete the provisions on the hymn and flag only mark a defensive and unoriginal retreat from which there is no escape except for falling even lower in the esteem of the European citizen. It is a shame but this strongly ridicules not only the current leaders of the European Member States as well as of the European institutions but is capable of threatening even the idea of European integration and the work done so far altogether.

### III. CONCLUSIVE REMARKS ON THE FUTURE OF EUROPE: AMBIVALENCE OR EQUANIMITY?

*In the dime stores and bus stations,  
People talk of situations,  
Read books, repeat quotations,  
Draw conclusions on the wall.  
Some speak of the future,  
My love she speaks softly,  
She knows there's no success like failure  
And that failure's no success at all.*

Bob Dylan, *Love Minus Zero/No Limit*

Reflected aptly in the White Paper of 1985 on the completion of the internal market, Europe stands “at crossroads” again. It is difficult to predict the near future of the European Union, whether it eventually fails or succeeds. The founding Treaties were, except for the Treaty of the ECSC, concluded for an infinite time period and it was only the Treaty Establishing a Constitution for Europe which planned to introduce the possibility for a voluntary withdrawal from the European Union.<sup>49</sup> From this perspective the failure of the ratification of the Constitution is clearly a positive development, because it would have not only violated the letter but also the spirit of the law underlying the process of European integration. Moreover, in the context of the EU, having created its own legal order, a possible withdrawal of one Member State from the EU would have also had implications for all the citizens of that particular state which are for instance residing in other Member States or have made use of the rights guaranteed in the Treaties.

Nonetheless, there are important questions as to whether the abandon of the constitutional project will have a negative impact on the future path of the European Union. Such evaluation requires observations from both an internal as

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<sup>49</sup> Article I-60 Constitutional Treaty, *supra* note 44.

well as an external perspective. So far, however, the conflicting views and interests that characterised its past development were still capable of fuelling its existence and rapid development despite the strong ambivalence prevailing with regard to European affairs. However, with the rapid increase in the number of Member States as well as the continuing process of widening of competences and activities beyond the traditional scope of economic integration under the first pillar, especially to the areas of cooperation in police and judicial cooperation in criminal matters under the third pillar as well as a common foreign and security policy under the second pillar, the question legitimately arises whether the cohesive forces are sufficient to keep the process alive. This is of great relevance given that certain serious errors have been committed in the recent past and certain important decisions have to be taken in the imminent future. For instance, the handling of the issue of Turkey's accession to the European Union continues to be highly unprofessional and has become even more complicated with the accession of Cyprus to the European Union in 2004 which arguably has not been in line with the so-called "Copenhagen criteria" that have to be met by States applying for Membership to the European Union.<sup>50</sup>

Other important questions concerning the financing of the European Union which should be given even greater autonomy in order to free it from the destructive dynamics of bargaining over Member States national contributions to the EU's budget, as they shattered the foundations of European solidarity in 2005 in the run-up to the negotiations for the future budget for 2007 through 2013.<sup>51</sup>

Equally, the EU must still find ways to enhance its legitimacy while tackling the problem of the democratic deficit. Here "ostrich-kind" solutions, such as a purely academic 'no-demos thesis', were rebutted not only by the existence of states like Switzerland and India but also disproved by the European-wide protests in the run-up to the War in Iraq. Furthermore they are of no help and should instead be met by greater visionary spirit and concrete forms of action.<sup>52</sup> It is

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<sup>50</sup> The so-called "Copenhagen criteria" for accession were established at the European Council in Copenhagen in 1993 and require the stability of the institutions guaranteeing democracy, rule of law, human rights and protection of minorities, the existence of a functioning market economy and the ability to cope with competitive pressure and market forces within the Union, the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and adoption of the common rules, standards and policies that make up the body of EU law the '*acquis communautaire*'. At the European Council in Brussels held in March 2006, the Union's capacity to absorb new members while maintaining the momentum of European integration was added as an additional criterion.

In the case of Cyprus the questions remains unanswered how a state could become a Member State of the EU which was and continues to be unable to guarantee democracy, the rule of law and human rights, as laid down in Article 6 TEU, given it does not exercise effective control over the entire territory.

<sup>51</sup> E. Sciolino, *Summit Fight Shakes Europe*, N.Y. TIMES, June 19, 2005.

<sup>52</sup> On the 'no-demos thesis', see J.H.H. Weiler, *Does Europe Need a Constitution? Demos, Telos, and the German Maastricht Decision*, (1995) 1 EUR. L.J. 219.

believed here that a European demos exists and has actually always existed but continues to be divided because the information it receives is fragmented as are the means for the democratic expression of its common political will. This problem is mirrored for example in the present debate about the future legal nature of the EU Charter of Fundamental Rights where – despite the general accepted principle of the universality and indivisibility of human rights – certain Member States are trying to limit or even opt out of its general scope of application.<sup>53</sup>

With regard to greater visionary skills in coping with the widespread ambivalence, European institutions as well as representatives of national governments in general and those in the Council of Ministers in particular should have less arrogance on the one hand and greater ambition and self-confidence on the other. The latter means for instance that one must also be capable of leaving certain issues, such as the question of the status of religion in the European Union to the individual responsibility of the people and, no values of any religion in Europe can be singled out and should be inscribed in a founding legal text. This also applies to a great variety of legislative proposals which are an affront to individual responsibility and to human freedom and dignity. Consequently, instead of producing too many proposals for action, the European institutions should focus on the core areas of European integration, such as the full implementation of the four freedoms first. Still the relatively small number of Europeans who take advantage of the mobility within the internal market are burdened with excessive bureaucracy and largely disadvantaged or even discriminated against not only with regard to nationals of other Member States but also with regard to their own fellow citizens ('reverse discrimination') who do not make use of the fundamental freedoms. As an immediate field of action, a critical thought should be given also to reforming the selection methods and criteria for the recruitment process of the staff of the European institutions in order to reduce the technocratic and autopoietic elements inherent in these institutions and, based on the abandon of multiple choice evaluation as the dominant model, encourage greater creativity in order to engender new fresh ideas and combat the spreading 'institutional sclerosis' and degeneration of political culture. The degeneration of political culture is also an issue at the Member States' level where politicians are tempted to trade the higher common good of European solidarity for personal gains disguised in the form of national interests. Here too, the media should improve the quality of their reporting and comply with their basic mandate which is to serve the public interest and not to manipulate public opinion.

In the attempt to successfully tackle these and many more questions no fruitful answer can be found by singling out one issue and not have a good grasp

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<sup>53</sup> See the proposed amendments to Article 6 on fundamental rights and the Protocol annexed to the Treaties creating an exemption for the United Kingdom (and possibly for two more delegations) from the binding legal force of the Charter of Fundamental Rights; see Annex 1 ("Draft IGC Mandate") of the Presidency Conclusions of the Brussels European Council (21/22 June 2007), *supra* note 3 at 25 (footnote 19 and 20).

of the situation as a whole. This is because the density of European integration as well as the scope of societal regulation in general has nowadays reached a complexity which calls for an integrated approach instead of a piecemeal sector-by-sector or problem-by-problem approach. For instance, the question of whether Turkey should join or not join the EU cannot be answered by a mere "yes" or "no". Both answers may provide optimum results depending on the flanking measures and overall contextual circumstances. If one day Europeans will have learned to see the both economic and political damage their often sectarian as well as racist attitudes are causing and discover the true value of an open and liberal society where individual freedom, cultural and linguistic diversity including religious freedom are respected and a constructive and peaceful culture of dialogue prevails, then the accession of Turkey must certainly be welcomed and supported. If, however, narrow national interests and the intellectual fragmentation across national markets prevail, then perhaps it is better to at least postpone the decision to a later moment in European history. The same kind of thinking applies to the question of the Constitution for Europe. The adoption of a Constitution for Europe, if carried by virtuous aspirations towards an "ever closer union" would have certainly meant a great progress not only in terms of legal clarity and systemic unity but also in terms of a better balance between divergent interests. If, however, a European Constitution is used or abused to slow down the dynamic of European integration based on a shallow compromise or, worse still, based on different vicious desires, then the status quo must be clearly favoured.

Hence, in the next years and awaiting the outcome of the next Intergovernmental Conference, which is now in charge with the reform of the Treaties, it will become apparent in which direction Europe moves (if it moves at all) in a rapidly changing global environment. Then also it will be seen whether our general ambivalence towards the European Union and towards the open-ended process of European integration, the *finalité* of which is not defined in advance, is no more the expression of our general inability to grasp life in its fullness, the motion and unity intrinsic to nature as it so sadly neglected by present day science. It is thus time to transform the lessons from the past into an improved understanding of nature in order to learn how to successfully convert this ambivalence, caused by our general fear of the unknown and inability to see the Gestalt as a whole as opposed to single constituent parts only, into a sentiment of constructive equanimity where a sense of complementarity between the different apparently antagonistic interests prevails over the instinct of their mutual exclusion. Then conceivably questions of whether the European Union is a state or not or where exactly its final destination lies will become secondary to more imminent questions of how to enhance the quality of life and to efficiently organise the coexistence of all European citizens on the European continent in every single moment.

