

## EUROPE'S FUTURE AFTER THE EUROPEAN COUNCIL MEETING OF JUNE 2007: A PANEL DISCUSSION

Europe's future after the European Council of June 2007 was discussed by a panel of distinguished economists at a recent CESifo conference. After the constitutional process was hindered by the referenda in France and the Netherlands, the Council has reached an agreement over a treaty that might serve as a substitute to a constitution for Europe. While this treaty has been signed at the recent Lisbon summit, its implications for policy making in Europe is open for debate. Whether the Constitutional Treaty is a major breakthrough which will bring back momentum to European policy or whether further political steps will be necessary was discussed by five competent participants. Massimo Bordignon chaired the panel and gave an introductory overview of the major elements of the agreement. This introduction was followed by brief statements by the panellists on their individual assessments of the agreement.

### MASSIMO BORDIGNON\*

The idea behind this panel discussion is to learn more about the pros and cons of the agreement reached in June 2007. In June 2007, the European Council agreed to convene an intergovernmental conference, which would start in July and finish its work by the end of the year. In this way, the resulting treaty can be ratified by the national parliaments of the member states well in advance of the next election of the European Parliament, which will take place in the summer of 2009.

The intergovernmental conference is aimed at changing the existing treaties along the lines of a mandate given to it by the European Council reflecting the political compromise found in June 2007. So what are the main features of this compromise? First, there has been a clear attempt to play down the importance of the amendments which are introduced. Whether these constitute indeed structural changes with respect to the original proposal for a constitutional reform or just a matter of rhetoric is

open to discussion. Everybody was well aware that the French President could not return from the Council with the proposal for another constitutional change. He simply could not risk holding another referendum in his country. This is the reason why we are no longer talking about a new constitution for Europe but just about reforming the existing treaties. Many things have been changed from the original Constitutional Treaty with the aim of reducing all the symbolic hindrances, which could, in turn, indicate that we are gradually moving towards a unified Europe. For example, the treaties will no longer mention a European anthem, a representative flag or a political motto. Instead of the EU minister of foreign affairs, the already existing High Representative of the European Union will take over such a position. Also, there will no longer be "framework laws" of the EU, but the usual directives, regulations, and decisions will continue to prevail. In sum, we are no longer trying to introduce a new constitution, but a type of "mini treaty".

A large part of the provisions, which were agreed upon in the 2004 intergovernmental conference and thereafter included in the Constitutional Treaty, will actually remain in the new treaty. Basically, the intergovernmental conference starting in July 2007 will have two reformed treaties as its outcome: first, the Treaty on European Union (TEU), and second, the Treaty on the Functioning of the European Union (TFEU), which will replace the existing Treaty Establishing the European Community (TEC). Therefore, there will be a sort of two-level treaty. If one considers this agreement in terms of the two treaties' names, it sounds like we are indeed going to have a constitutional structure: the former something like a fundamental treaty on the EU, and the latter less fundamental concerning the functioning of the Union. Of course, it is easier to change the latter than the former, exactly like it often happens in the national states with constitutional changes versus legislative changes. Somewhat paradoxically, it then looks like we will have more of a constitutional structure now than we had with the original Constitutional Treaty.

The second point is that the package of all the institutional changes, which were foreseen in the original Constitutional Treaty, will be implemented. For example, there will be a President of the European Union who will stay in office for two years. There will be a new kind of High Representative, who will also be the Vice President of the Commission and also be

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responsible for external relations. Finally, there will be a reduction of the number of Commissioners. So it really looks as if the “mini treaty” has recovered most of the things that were already included in the Constitutional Treaty.

But there are also some important novelties. For example, the national parliaments will gain importance. One of the problems with the previous constitutional proposal was that a lot of power was given to the European Parliament at the expense of the national parliaments. Now, the national parliaments will have eight weeks – not six weeks as before – to examine the Commission’s legislative draft proposals. And if a majority of national parliaments decides that a draft violates the principle of subsidiarity, the Commission will be forced to reconsider it. Consequently, it looks like there will be more democratic control, with national parliaments being able to countervail more strongly against the drift toward centralisation at the European level.

Furthermore, the Charter of Fundamental Rights will be given legal value according to the annex. But it is also specified that the Charter of Fundamental Rights will work only within the limits of the competences of the EU, which basically means allowing the individual countries to opt out if they wish to do so.

Finally, the double majority system (55 percent of Council votes representing 65 percent of the EU’s population) will also be adopted in the new treaties. The only difference is that the introduction of the new majority rules has been postponed until 2014, and that a country can also ask for a further transition period up to 2017. This poses an interesting question which I would like to pose to the participants: If the EU manages to work with the old rules of the Treaty of Nice for the next ten years, will there really be a switch to the new rules? Would it still be necessary?

The last point that I want to mention is Sarkozy’s amendment, which we should worry about as economists. Mr. Sarkozy convinced his colleagues to accept a change in Article 2 of the original Constitutional Treaty. This article originally said that the European Union shall offer its citizens an internal market where competition is “free and undistorted”. Now the article just reads: “the European Union shall establish a single market”. It is not clear whether these changes are just symbolic or substantial. Certainly they are not going to affect the treaty arti-

cle on competition policy so that the Commission appears to still maintain all powers regarding competition policy. But as we all know, in politics symbols are often very critical. Therefore, we should wonder if this amendment changes the EU’s direction in terms of competition policy.

In my view, these are the most important aspects of this new treaty. Now I would like to invite all the speakers to tell us their opinion and assessment of the June 2007 Council agreement, starting with Daniel in alphabetical order.

### DANIEL GROS\*

The most important aspect to keep in mind when judging the new “Reform” (or the Lisbon Treaty) is that this text continues the old game of a dynamic disequilibrium. Assuming it gets ratified, the new treaty creates at least two new potential power centres in the form of the High Representative and the permanent Presidency of the European Council. An important point of detail here is that the permanent “President” of the European Council will not preside the Council of Ministers. The European Council consists of the Heads of State and Government that meet once or twice every six months, and the Council of Ministers is the one that meets in nine different formations on a ministerial level on a different schedule. Here the Presidency will continue to rotate. Therefore, in the end we will have three centres of power (High representative, permanent Presidency of the European Council and rotating (national) Presidency of the Council of Ministers), and they will all compete against each other.

Two Presidencies of the European Council and the Council of Ministers are likely to have different policy goals. The decision making rules are formally the same for the European Council and the Council of Ministers, but in reality voting almost never takes place in the European Council, whereas voting is much more frequent in the Council. Moreover, whereas the former has a permanent agenda-setter (with a tenure of 2.5 years), the specialised Councils of Ministers do not – except the Euro Group which has an elected President. This set-up will give us a new dynamic disequilibrium, and we cannot know beforehand how this will play out. For example, if Tony Blair became the first President of the

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European Council, he would probably have a strong agenda, possibly both on internal reforms and on foreign policy issues. This could result immediately in a competition with the Head of the Commission (Mr. Barroso?) to show who is more important, who eclipses whom, etc. Then we might have another famous person, for example, Mr. Fischer (the former German foreign minister) as the High Representative and he would also come with a strong agenda, possibly in competition with the President of the European Council. The competences of these institutions are not well defined in the new treaty. Should there be a conflict it is thus not clear who would win. Of course, it is also possible that they all agree and work harmoniously together, but this is definitely not a foregone conclusion. Basically, we launch a new game. This is the essence of what has been achieved with the new treaty. It is thus actually an advantage that the new treaty does not pretend to constitute the final constitutional settlement.

As an aside one might note that the ratification process can only increase the “democratic deficit” of the EU. The new treaty is being sold in France, for example, as a miniature treaty, although it is basically ninety or ninety-five percent of the Constitutional Treaty. And this term is really indicative for the characterisation purpose. The democratic deficit will be increasing because the negative referenda in the Netherlands and in France will be ignored. Both French and Dutch get almost exactly the same treaty, but this time via parliament. And the only important change for France is one-half sentence in the preamble (now without the reference to competition).

One additional point which I want to underline is that this two-level treaty structure could turn out to have very important consequences. First of all, the fact that there will not be anything called “constitution” means that it is easier to make additional changes if the dynamic disequilibrium described above does not work well. If the Constitutional Treaty had been approved by referendum in France and in the Netherlands, we would perhaps have the constitution and it would be very difficult to change anything.

The new treaty consists of two parts: the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The first one I would call the “fundamental law” of the EU, whereas the second one is closer to “normal” laws at the national level. Unfortunately their con-

tents are not quite the neat differences and packages we would like to see in a true constitution. Therefore, it is not a perfect separation. But it is a beginning of a process which might make it easier to make changes in future: it should be easier to change a normal law (the TFEU) than the fundamental law (TEU).

This is partially already the case. The TFEU includes a Passerelle clause. This means that on a number of issues the Council can switch to qualified majority voting just by unanimous Council decision (without any need to change the Treaty). This makes it possible to change the TFEU without going through the parliaments, without convening an intergovernmental conference. And I bet that when we talk about treaty changes next time one important aspect will be to say: “We make a difference between the TEU and the TFEU in the sense that for changes in the fundamental law in the TEU we continue to have a requirement that we need unanimous approval”. The functioning of the European Union, in contrast, might be changed with some super-majorities so that no single member country can impede changes in that part of the construction. Of course, you will then have to have opt-out clauses for areas which are important to sovereignty, like perhaps for the UK.

One aspect of the way in which agreement on the new treaty has been achieved has not been sufficiently underlined: A fundamental policy decision of strategic nature seems to have been taken by the UK. In a nutshell the UK did not dare to say to the others, “We have these red lines and you cannot go ahead without us”. Instead, what the UK said was, “We have these red lines, but we do not want to hold you up. You, the others, can go ahead and we just opt out”. And that is, I think, extremely important because it means that from now on it will be very difficult for any single member state to say, “The EU cannot go ahead because we do not want it to”. The answer will be, “You do not want to go ahead with us? Then let us (the vast majority) use the common institutions, and you just get an opt-out”.

In many cases, the country that does not want to go ahead will be the UK. I do not think that a true multi-speed Europe will emerge in the sense of many different groups in different areas. Instead, the only major cleavage I see in Europe is between the UK and the continent. You see it with Schengen, which comprises basically the entire con-

continent by 2008 already. You see it with the euro area which is expanding as well. We do not need to think about multiple speeds and core Europe all the time. The basic question is: Can and does the UK want to keep up with the pace of integration set on the continent?

Otherwise I think that the game is not yet decided. New rules will come into effect, and at present nobody really knows what the results of these rules will be, whether the EU will be more efficient, will take better decisions and more decisions, or whether because of the fighting between these new institutions decisions will become more difficult and more painful. And at any rate, by 2012 we will have to reinvent Europe again.

### GÉRARD ROLAND\*

I actually agree with nearly everything the former speaker said. I am just going to restate it with some different accents. First of all, the most important thing is that soon it is going to be behind us. In Europe there has been an immense progress in integration in the last twenty years. It has been really positive both regarding the deepening and widening of integration, the creation of EMU and its enlargement, etc. To be sure, it was good and necessary to have such success behind us, since there are many other crucial issues ahead on the European agenda where indeed the Commission and the institutions will have to show what they can do and what they can deliver for the EU-citizens.

We economists tend to think that a constitution means credibility. But in fact there appears to be a lot of ambiguity that is the result of compromises. Consequently, it depends on what you make of it. Take the President of the Council as an example. He could either be the new head of Europe, or he could be just an honorary person, just like the presidents of Italy and Germany, for instance.

What I find interesting in the constitution is precisely these flexibility clauses through which a change of the decision-making rules can be agreed by unanimity. We tend to think of the constitution in terms of commitment, credibility etc., but in the case of the EU we have to see it as an evolutionary process. Many people may now think, "it is behind

us, let us now think of new policies" and so on. But the important thing is to make it work the way it is. And there are many things that can be used both with what is in there and also with the practices as they emerge.

Another important aspect to be addressed is the choice of the President of the Commission. In this context, the problem of ambiguity emerges again. The President of the Commission has to be elected by the European Parliament, and proposed by the Council. A priori, one can argue that the Council makes the decision as before and the Parliament is just asked to approve. The European Parliament wanted Chris Patton to be the President of the Commission, he was their candidate. Yet their wish was pushed aside and Mr. Barroso got the job. The European Parliament managed to get Mr. Buttiglione out. But if the EU wants to move ahead regarding this matter, we should probably follow the German practice. In Germany the big parties nominate their candidates and announce them before the elections. And there is also a campaign for him or her. Analogously, the European Parliament should say, "our candidate for the President of Commission is Mr. X". The Socialists should announce, "Our candidate is going to be Ms. Y". Of course the Council can always override them. But if there is a nomination of a candidate and a campaign for the President, the Council's intervention would meet with some difficulties. In addition, it is a political practice that has to evolve.

### ANDRÉ SAPIR\*

In my opinion, the real problem persisting in the European integration process is that the "large" countries have become gradually less important. They are the victims that are making the biggest sacrifices. In order to make them willing to go on with integration they should get more power. The basic question is therefore: Is the June 2007 compromise going to solve this problem? And how come we are getting all the problems from Poland, for example, which is a large country?

I will use the second half of my time to answer these questions but would like start from where Daniel and Gérard left things. I also fully agree with the assessment that Daniel made. I just want

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to add one factual element. The intergovernmental conference is not going to finish in December, it is going to finish on October 15th. So it is going to be a very short intergovernmental conference. After that, there will be discussions in the capitals and in the European Council. The reason for this shortness is that indeed the mandate that has been given is extremely detailed, and there is very little room for manoeuvre.

What is also clear – something on which I agree with Daniel as well – is that in a sense there is a decrease in transparency. I do not like to use the term “democratic deficit”. Everybody could go on a website to see the Constitutional Treaty. But we are not going to be able to see the new reform treaty. Just as they have done for the Treaty of Amsterdam and others, they are simply going to show us the “first differential”. And one of the difficulties with reading the mandate is that you need to have the Treaty of Nice and the Constitutional Treaty, because in the new treaty reference is made to both. Sometimes it states how the Treaty of Nice is being amended, and sometimes it states how the Constitutional Treaty is going to be changed. So the legibility has clearly decreased. The degree of transparency is reduced.

I also agree on the dynamic disequilibrium. One of the important issues is the triangle between the Commission, the Council and the European Parliament. In the past, there was a clear dominance on the part of the Commission and the Council. Hence, according to the old model, the Commission was the gatekeeper and had the responsibility for putting forward legislation, whereas the Council was the ultimate decider. The Parliament had a relatively minor role. Now the role of the Parliament will be significantly enhanced with co-decision powers. Co-decision had already come up, and now its scope is being increased. As we saw in the services directives, for instance, the role of the Commission was minor. It put forward the legislative proposal and then what came out of it? In the ultimate result the Commission's proposal did not play any role. It was an agreement essentially between the Parliament and the Council. With co-decision, the initial proposal does not play a role. What matters is what you get at the end, and at the end there is conciliation between the Council and the Parliament. So the role of the Commission is getting less significant, and the Commission has to rethink its role with the new elements of the Presidency and the High Representative who is part of both the Council and the Com-

mission. And indeed, if you speak to people in the Commission, they are saying, “We need to reinvent ourselves”. This is the beginning of reinventing Europe. And there are different models for that. Gérard put forward one, with the elected Commission. But this more politicised role does not coincide at all with its role as the guardian of the treaty. So the Commission will have to choose in the future which role it wants to emphasize.

Now, what are the big projects coming up? And I will link this question to the big countries as well. It seems to me that there are two issues. One is about the Euro Area, and the other is about the external affairs. About the Euro Area: we recognize that the Ecofin can be broken down into the Ecofin with 27 countries, and the Euro-Ecofin. It is getting recognised that finance ministers of the Euro Area can decide on a number of issues among themselves. This has been institutionalised. At the same time the Euro Group will remain, consisting of the same finance ministers but meeting in a smaller group, without some of their advisors but with the President of the ECB. Therefore, the Ecofin is the place where finance ministers coordinate their economic policies, and the Euro Group is the place where they have an informal dialogue with the ECB. Consequently, the incentive for a country to become a member of the Euro Area might not be the exchange rate, but the simple fact that the country's finance minister can participate in the Euro Group meetings.

Then, there will be issues of the economic governance which are brought up by Mr. Sarkozy, like the Stability Pact, the euro-dollar exchange rate, etc. Also, the issue which will certainly come up is the matter of external representation in the IMF, the G7, etc. People are even discussing the notion of a High Representative for Money and Financial Affairs, which could be the President of the Euro Group. I think the issue of the governance of the Euro Group will become increasingly important. It is unlikely that we are switching to an economic government, but there will be some elements of visibility on the political side next to the central bank. For foreign affairs, I think there are negative and positive aspects. Let us consider Mr. Solana and his function now: he has no money, no instruments but only his voice. By linking him to the Commission, the EU can grant him the ability to link foreign policy with the typical instruments that a Commissioner has at his disposal, like foreign trade and foreign aid. And this will be the power of the new High Representative:

he will not be somebody who just speaks, but somebody who has the ability to influence the other traditional instruments of foreign economic policy inside the Commission. So he will be the person in charge of foreign policy but will be able to draw on the foreign economic policy tools, too.

Moreover, he will be a Vice President of the Commission and, at the same time, chair the Council meetings as well as coordinate foreign services that are to be built. So that person will have quite a big responsibility. Therefore, there will clearly be the issue of the future President of the Commission, because he is playing quite a big role in foreign affairs at the moment. For this reason, the High Representative and the President of the Commission will be competing against each other.

### MIKA WIDGRÉN\*

I mostly agree with the other speakers, and I do not have anything to add. So let me concentrate on the aspect of voting. I am glad that this political decision has been made, but we cannot be sure whether it will be accepted in all the member states. Regarding the voting procedures, the constitution has achieved an improvement in terms of transparency. The majority voting system can also be easily updated, if necessary. Although, as Gérard suggested, we might not desperately need any change to improve the role of the European Parliament, it actually seems that the internal rules of the Council largely affect the Parliament's capability to have influence on decisions. The new rules have important implications with this respect. Since these new rules effectively reduce the majority threshold in the Council, the Parliament becomes a more equal partner of the Council. Therefore, the new rules enhance the role of the European Parliament and are a step towards an implementation of a "true" co-decision system.

The voting rules themselves in this disguised constitution seem to be somehow cumbersome. Why not 50 percent? Think about the majority rule of 55 percent of the member states – what does it mean? Another concern is that the majority rule of 55 percent for the member states is accompanied by the 65 percent rule for population. Such a dual voting rule system delivers a clear advantage to the bigger member states like Germany. The 65 percent rule is

more restrictive than the 55 percent one. And if the population criterion is more restrictive, then it dominates the membership criterion. I am still quite fond of the original idea of the Commission in the 1990s to have a simple "fifty-fifty" rule.

In Europe we have a huge variance in population. In the United States, the fifty-fifty-rule applies between the Senate and the House. That mimics the square-root rule which is still, I would say, valid for evaluating political fairness in the EU. So the deal would be "anyone from any member state has equal power". To repeat, the square-root formula gives every voter the same power, regardless of his or her member state.

When electing the national government, Germany has more voters than Finland does, for instance. So in the case of making a EU-wide political agreement among the national governments, Germans need to be compensated in terms of power to guarantee that each German has exactly the same power in Brussels as a Fin. And the so-called Penrose idea is that compensation should be made in proportion to the square-root of a country's population size. If we would decide everything in the EU by using a referendum, compensation would be strictly proportional to the population – "one man, one vote". But we have two types of majority voting and that is the reason why the square-root rule appears to work better. Actually, together with Daniel, I proposed to use 65 percent of the square-root of populations plus 55 percent of the members. Since it is rather difficult to change from 55 to 50 percent, that would actually be a very good compromise.

One brief additional comment on the EU budget. I expect some serious problems to emerge when the member states start to negotiate for the next budget framework, since the new members feel somehow mistreated in my view. They will claim that their budget share should be larger, which will, in turn, make the agreement with the old members rather difficult.

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