

Debating the Future of the European Union: From Laeken to IGC 2004

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Introduction

The European Union (EU) is one of the most remarkable innovations in modern world politics. The EU is involved in a range of policy areas – including the free movement of goods, services, capital and people; agriculture; environment; international trade; foreign and security policy; and justice and home affairs – to name just a few. EU rules have an impact on most aspects of European political life: from the common currency (the euro) used by twelve of its fifteen member states, to the harmonisation of the odometers of two to three wheeled motor vehicles. Around 50 percent of all legislation which is approved in national parliaments is directly linked to European law. In the European Commission, the European Parliament, the Council of Ministers and the European Court of Justice (ECJ), the EU has strong supra-national institutions with legislative, executive and judicial powers.

The past three decades have witnessed major changes in the membership of the European Community (EC). Four enlargements from 1973 to 1995 have increased the membership of the Community from six to fifteen. Thirteen more candidates are knocking on the EU door. By 2010 the EU might have up to 30 Member States. Far-reaching policy changes in four Intergovernmental Conferences (IGCs) from 1985 to 2000 have transformed the Community into the European Union, moving from a free trade area and customs union to a fully inte-

grated single market on the way to achieving full Economic and Monetary Union (EMU) and a potentially robust foreign policy.

Accompanying these institutional and policy reforms has been an ongoing debate about the challenge of further integration and enlargement in an increasingly heterogeneous EU. In the acrimonious Nice negotiations in December 2000 the heads of state and government agreed that the next treaty change will take place in 2004. The roadmap for change was set out in the European Council of Laeken in December 2001. This article addresses three questions relating to the debate on the future of the European Union:

- (1) *Why are we debating the future of the EU?*
- (2) *Which questions should be tackled?*
- (3) *What can we expect from IGC 2004?*

Why Are We Debating the Future of the EU?

A constant process of change

The European Union is in a constant process of change. For nearly two decades the Union has been either preparing, negotiating or ratifying a new treaty. In many ways the pace of change has been overwhelming. In fifteen years the EU has modified its basic treaties four times. The next treaty change is already in the pipeline. No Western nation state has made four major changes to its constitution, including hundreds of amendments, within the span

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of fifteen years. By way of comparison the US Constitution has been subject to less than thirty amendments over 200 years.

The process of IGCs has become institutionalised. The Single European Act established the foundations for the internal market. The Maastricht Treaty brought with it Economic and Monetary Union (EMU), a Common Foreign and Security Policy (CFSP) and co-operation in Justice and Home Affairs (JHA). The Treaty of Amsterdam incorporated a range of new policies into the treaty and transferred areas of justice and home affairs to the Community arena. However, it proved unable to reach agreement on its original objective - the institutional changes required for enlargement. The latest revision, the Nice Treaty, attempted to address this deficiency. Success was limited.

The Nice and Amsterdam treaties are symptoms of a broader problem. Whilst the EU has taken on more member states and policy tasks, institutional development has not followed. The key institutions and the decision-making structure of the EU were originally created for six member states. The system has been modified in subsequent IGCs, through for example an increase in the use of qualified majority voting and the co-decision procedure with the European Parliament. But it is questionable whether the changes are enough to take on board ten or more new member states.

Debating the future

In the past year and a half debating the future of the Union has become a popular sport among the political leaders of the EU. Kicked off by German Foreign Minister Joschka Fischer in May 2000, virtually all heads of state and government, of both member and candidate states, have outlined their vision for the future of the EU.¹⁾ In many ways it is a bit of a “fig leaf” debate. Whenever the member states do not want to talk about improvements which could be done without treaty change, the debate turns to futuristic visions. Ironically Fischer’s call for a federation came in the midst of the Nice negotiations in which Germany did not belong to the camp of states calling for radical reform.

The debate on the future of the Union is a legacy of the Nice Treaty. Keeping to the IGC tradition of “I’ll quit smoking tomorrow” the heads of state and government decided to convene a new IGC in 2004 to deal with the constitutional issues which were not on the Nice agenda. According to the Nice Treaty IGC 2004 should deal with, among others:

- (1) *Legally binding fundamental rights*
- (2) *Simplification of the treaties*
- (3) *The role of national parliaments*
- (4) *The delimitation of competences.*

These issues might not sound very “sexy”, but they touch the very core of European integration. As will be highlighted in section two, these questions raise a multitude of sub-questions about the very nature of the European project. Should the EU, for example, have a constitution? If yes, what kind of constitution?

It is not a debate just for the sake of debating

The debate on the future of the EU is not an end in itself, nor is it simply the hobby of “institutional junkies” involved in IGCs. The debate leading to IGC 2004 is important for at least three reasons:

- (1) *Enlargement*
- (2) *Public opinion*
- (3) *Globalisation.*

Virtually no one has been able to grasp the quantitative and qualitative difference of the next round of enlargement. In the coming years the membership of the European Union will increase from fifteen to twenty-eight or perhaps more. The previous four enlargements have taken place in small steps, ranging from one to three new members at a time. The total of nine new members in fifty years should be seen against the potential prospect of ten new members in one “big bang”. On a practical level one only has to imagine a Council meeting of twenty-five states, where each delegation takes five minutes to thank the Presidency for organizing the meeting and providing a document which can be considered a good basis for further work. The first round of banalities will not be finished before lunch.

¹⁾ For references to contributions on the future of the EU see www.europa.eu.int/futurum.

Another important reason for debating the future is public scepticism in the European project. The member states of the Union decide collectively on issues which were traditionally in the national or regional domain. This combined with an increasingly complex decision-making structure has led to general disillusionment. Over the past year public opinion has taken a more violent form, the European Council of Göteborg being only one example. Paradoxically the EU is asked to increase its efforts in for example security and stability, whilst at the same time there is reluctance to transfer more competence to the supranational level.

The third reason for debating the future is globalisation. The paradox here is that some see the European Union as the solution to globalisation and others see it as the cause of it. Whichever approach is adopted the fundamental question is about the EU's role in the world. Will the EU ever be able to show leadership akin to that of the United States? Or will the EU continue as an economic giant and a political dwarf? Will the Union be able to have a common foreign and security policy? Or will EU foreign policy always be the sum of the different foreign policies of its member states?

Which Questions Should be Tackled?

The Convention

In the European Council of Laeken (Brussels) on 14 December the heads of state and government agreed on a declaration on the future of the EU. The Laeken Declaration sets out the challenges of the EU, the mandate and working methods of the so-called Convention. The next Intergovernmental Conference will be prepared by a Convention, a body composed of representatives from the national governments, the national parliaments, the European Parliament and the Commission. In addition there will be public forum (structured network) of civil society following and contributing to the debate.

The Convention is a radically different way of preparing treaty change. Previously the preparations have been made by a "Group of Wise Men" or a "Reflection Group", the former usually representative of the nostalgic visions of former (old) statesmen, and the latter only a mask for the beginning of the actual IGC negotiations. This "top-down" approach has been

changed to the "bottom-up" approach of a Convention in which all the meetings are held in public, a refreshing change to the traditional negotiations behind closed doors.

At this stage in the debate it seems more important to pose the right questions, than to provide the answers. It is up to the Convention to start tackling the various issues on the table. At least five key, albeit very broad, questions can be identified. The answers will depend on both practical and ideological approaches:

- (1) *What are the objectives of the EU?*
- (2) *What are the competences of the EU?*
- (3) *How can the EU be made more democratic and efficient?*
- (4) *How can the instruments of the EU be simplified?*
- (5) *How can the EU be strengthened both internally and externally?*

Objectives

The basic objectives of the EU – peace, prosperity, security and stability – have not changed over the years. They will remain the *raison d'être* of European integration, but should the EU have other objectives? Should it define a *finalité* (an end state) or should the EU continue on its path of step-by-step integration towards "an ever closer Union", without a clear aim? Objectives are also linked to the basic nature of the Union. Should the EU be intergovernmental, federal or based on the community method (see below)?

Competences

The question of the delimitation of competences has been raised mainly by the German *Länder*, in an attempt to safeguard some of their basic competences against the German central government and the EU. Traditionally it has been argued that there are three categories of competences between the EU and its member states:

- (1) *Exclusive competence of the EU (for example trade and competition)*
- (2) *Mixed competence between the EU and the member states (for example environment)*
- (3) *Member state competence (for example harmonisation of education and culture).*

Reality is much more complex. Education is mainly in the national domain, yet the most successful EU programmes – Socrates and Erasmus – are important education policy on the EU level. At this stage it seems clear that there will not be a so-called catalogue of competences as a result of the next IGC. There might be a clearer understanding of who does what, but to expect that the competences can be set in stone is to misunderstand the flexible dynamics of the European project. In any case a division of competences between the EU and its member states is rather artificial because it is the member states that decide which competences the EU should have anyway. The dynamic of the system is, however, guaranteed by the often progressive interpretation of EU competence by the European Court of Justice.

Democracy and efficiency

The issues of democracy and efficiency open up a whole host of questions relating to the basic nature of the EU. Can democracy be reflected on the supranational, national and regional level, or is just a prerogative of the nation state? The EU is not a state and thus it is very difficult to determine how to make it more democratic. The temptation to use traditional state models, such as federations, is great. These do not, however, accurately reflect the sui generis nature of the EU system (see below).

Efficiency is linked to democracy. The EU is often perceived as inefficient and unable to deliver. Much of the blame is put on the seemingly cumbersome decision-making structure of the EU. Though over 80 percent of all decisions relating to the internal market are decided by a qualified majority, many important areas – such as taxation, justice and home affairs, common foreign and security policy – still require unanimity. Is this sustainable in an enlarged Union or will it render decision-making virtually impossible?

Simplification

Over the past decades the EU has witnessed an explosion of decision-making instruments. European legislation was originally based on simple instruments of law, including regulations, directives, decisions and recommendations. A

directive, for instance, was supposed to be binding as to the result to be achieved, but it was up to each member state to leave the national authorities the choice of form and method of implementation. Today, directives are so tightly defined that the room of manoeuvre for national authorities is virtually non-existent. Open coordination and bench-marking, among others, have been added to the already complicated arsenal of legislative instruments. The question for the Convention is: how can the existing instruments be simplified?

Another issue of simplification is linked to the basic treaties of the EU. The Union has four treaties, over 700 articles, over 50 protocols and over 100 declarations. As articles have been added to the treaties over the years, the relationship between importance and length has become inverse. Justice and home affairs, an area where the EU has limited competence, covers thirteen articles and seven pages. Competition, one of the most important areas of the EU, is defined in two articles (excluding state aid) in slightly more than one page. The EU treaties will never replace Harry Potter on the best seller list, but a case can be made for simplifying the existing texts and making them more readable.

Internal and external strength

The internal and external strength of the EU is derived from legal opportunity and political will. The European treaties give the member states the possibility to cooperate, but the will to do so is not always there. JHA and the CFSP are good examples of areas where rhetoric and reality do not always meet. In the post September 11 world the EU had the opportunity to strengthen cooperation in both justice and home affairs and common and security policy. For instance, measures against terrorism were taken, but they were mainly implementation of decisions taken at the Tampere European Council in October 1999. In the foreign policy field the EU has acted within its sphere of competence, which is limited. The lead has been taken by individual member states, such as the United Kingdom. The question left hanging is whether the European Union will one day be able to act as one in a similar international crisis.

What can we expect from IGC 2004?

Looking into the crystal ball is always dangerous, especially for a political scientist. Nevertheless, with the experience of two IGCs (Amsterdam and Nice) I will try to make a few predictions about the final outcome and form of the next treaty change. There is cause for being optimistic and realistic. Optimistic that the Convention will produce a final document, be it in form of options, which will go far beyond anything which has previously been a basis for an IGC. Realistic that no matter what the Convention suggests, it is the IGC, i.e. a unanimous decision based on the specific interests of member states, which will produce the final treaty change. Member states are by nature conservative, and thus those expecting radical treaty changes will most probably be disappointed.

Three strands of development

In integration literature a multitude of models describe and analyse the nature of the European Union. Some argue that it is fruitless to try to fit the EU into a box. That may be the case, but it is often useful to try to categorise and make sense of the complex process of European integration, albeit with some simplified models. In trying to outline the outcome of IGC 2004 there are three possible strands of development. These models are by no means mutually exclusive. On the contrary, the reality of the European Union will always be a mix of the three approaches:

- (1) *Intergovernmental*
- (2) *Federal*
- (3) *Community*.

Intergovernmental

An intergovernmental outcome of the next IGC would mean a repatriation of competences, a weakening of the institutional triangle between the Commission, the Council and the European Parliament, and a return to unanimous decision-making – in other words, an arrangement where decisions are mainly taken outside the current institutional framework. The system would not be transparent and not necessarily democratic and efficient. It could also

potentially lead to a blockage of decision-making and a directorate of large states.

In looking at the five questions outlined in section two an intergovernmentalist would give the following answers. The objective is a Union of states, not a Union of peoples. The competences of the EU should be cut down to a bare minimum. Democracy is a prerogative of the member states only and the efficiency of the decision-making structure can be guaranteed by unanimity. Simplification is achieved by repatriating competences to the member states. And the internal and external strength of the EU is the sum of the interests of its member states.

An intergovernmental Union is highly unlikely to be the outcome of the next IGC. The experiences of the Nice negotiations and the need for efficiency in an enlarged Union will persuade the member states to stay clear of any purely intergovernmental models. However, this is not to say that the development of a common European defence, for instance, would be anything but intergovernmental. On the contrary, the defence field is an example of an area where intergovernmentalism has the potential to work, at least in the short term.

Federal

A federal Europe would mean a clearer division of competences, a decentralisation of power, a European constitution with a set of fundamental rights and an institutional structure with a bicameral parliament and an elected government. Arguably, a federal structure could be clearer and more transparent. At least in principle, federal regimes take decisions closer to their citizens on the basis of the principle of subsidiarity.

A federalist would answer the five fundamental questions in the following way. The objective is to have an institutional structure which takes into account the dual legitimacy of the EU as a Union of states and a Union of peoples. The competences between the EU and its states need clearer definition. Democracy can be reflected on the supranational, national and regional levels and efficiency can be increased through more majority voting. The system can be simplified by having a clear constitution. And strengthening the internal and external

capacity of the EU is based on finding common solutions to common problems and speaking with one voice on the world scene.

Attractive though it may be, a completely federal Union is mere utopia in the foreseeable future. The member states are not willing to take a quantum leap to a federal state with its own treaty-making and its own budgetary powers. There is no political space or demos which would call for a bottom-up movement pushing for a European federation. Nevertheless, as the history of the European Union shows, there can be federalism without a federation. Examples of federative elements in the EU include the common currency and the European Central Bank.

Community

The final method is a mix between the two models outlined above. It is generally called the community method and is to a certain extent based on the current structure of the EU. The community method would mean a continuation of the current largely functional path of integration and a strengthening of the current institutional triangle between.

Advocates of the community method would answer the five questions as follows. The primary objective is a Union of states and the secondary objective is a Union of peoples. The competences of the Union are defined in the basic treaties which are agreed in IGCs. There is no clear definition of competence because it would make the system too rigid and unable to cope with external and internal change. Democracy is mainly in the national domain, but is reinforced through supranational community institutions. Effectiveness is secured through majority voting and an independent Commission. The current treaties and instruments can be simplified without fundamental changes to the treaties. And the internal and external strength of the Union can be based on the current system whereby the domestic and foreign policies of the individual member states reinforce and strengthen the common EU policies.

The basic philosophy of the community method is that integration in one area leads to pressure to integrate in another. The Union has thus developed step-by-step from a free trade area to a customs union and further from an

internal market to an economic and monetary union. The basic idea is that form follows function, not vice versa as the federalists would claim. It is a path which has been followed from the beginning of the community project in the 1950s. The community method will once again be predominant in the IGC for the simple reason that it is something that the member states can accept.

Conclusion

Some observers claim that European integration has come to a halt. This claim is false. Though institutional change has been lagging behind, policy change has been all the more robust: the single market, CFSP, JHA, the Euro and developments in defence policy are good examples of the changes the EU is undergoing. For some the change might seem slow. The reason is simple: the issues are at the core of national sovereignty.

The agenda for 2004 is by no means light. The European Union is traditionally able to negotiate only one thing at a time. However, in 2004 there might be three large questions on the table at once: the end of the ratification of the accession treaties, IGC 2004 and the beginning of negotiations on the financial framework for 2006 onwards. These three issues are closely interrelated and will form an important package.

The process should not, however, be taken for granted. Things do not always go as planned, as was the case with the Irish referendum on the Nice Treaty. What happens if there are major problems with the euro? What if there is a problem with the ratification of the accession agreements? What if the British vote against joining the single currency? What if IGC 2004 fails to do the necessary changes for enlargement? The Convention combined with the difference of the nature of the next IGC negotiations – with some twenty-five or more states sitting around the table – might well bring with it a qualitative change in the final outcome. The EU seems to make its most bold decisions with its back against the wall.

The reality of European integration is naturally more complex than the intergovernmental, federal and community models outlined above. The EU has always been a combination of the

three. The EU is much more than an international organisation, but less than a state. It is *sui generis*, an original way of organising relations between states; a system of multi-level-governance where the supranational, national and regional co-exist.

The result of the next IGC will most probably reflect this complexity. The next IGC might decide to give the Union a legal personality, merge the current pillar structure and establish a European constitution, but it does not mean the creation of a European federal state. At the

same time the next IGC could also decide to repatriate some of the EU's competences back to the national level, but it does not mean that the EU will have taken steps back to an inter-governmental system. The next IGC might also strengthen the existing institutional triangle without anyone being able to make the claim that the community method is prevalent. The bottom line is that the EU has always developed incrementally, and there is no reason why this general trend would change in the coming years.