

On European Order

By Markus C. Kerber¹

The state of the European Union as the chief reason for political instability.

Why the reform of the European Institutions is a prerequisite for re-establishing European order

1. The imperative of European reform is more than a wishful claim of certain countries and divers eurosceptic groups and individuals. It is the stringent conclusion from a realistic analysis of the European Project and its development since the Maastricht Treaty.

Put in a nut shell I would say:

The French dominated steering of the then European Community and its deliberate transformation into a Federal Union with enlarged competences and constructivist political ambitions has led to an overload of missions and a widening gap of democratic legitimacy, continuously undermining Europe's authority in the world in general and towards the U.S. in particular.

The Euro-project illustrates the biggest failure and the institutional dilemma: Although obviously the project has shown shortcomings, the Commission – being a prisoner of its own misjudgements - has declared even Greek's membership irreversible. Not to mention its rigid reluctance to take into account the growing divergence of the Eurozone economies due to the Euro, and its refusal to discuss a plan B for the monetary reorganisation of Europe.

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Other projects – though more useful – like the Galileo Navigation Satellite System - prove the Commission's sustained endeavour to carry out self-defined ambitions which European industry has qualified as too risky.

The fact that the Union continues such a mega-project irrespective of the setbacks, delays and overrunning costs reveals another feature of EU instability:

the major lack of accountability. Nowhere in the world (except in Zimbabwe) political agents – both in the EP and the Commission – are allowed to exert power with so little feedback from their principals – either governments or citizens – as in Brussels. *Herr Schulz* hurrying to meet the newly elected Greek government has acted on his own behalf, fulfilling a mission he has arbitrarily determined himself. He was clearly out of bounds. Nevertheless no member of the political class criticized his redundant journey to Athens which at a delicate moment was at least far from being helpful for the institutions officially in charge of handling Greece's debt burden.

2. The institutional mismatch described above has led in many other fields of EU policy to a dramatic deviation from the Union's course plotted in the Treaties. Let us look at merely three domains:

- Competition policy: Since 2001 the Commission had audaciously initiated the rewriting of the primary law rules for antitrust. Although Art. 100 TFEU clearly and unequivocally forbids cartels whilst giving a right of individual exemption to the Commission, the latter has converted that rule into a legal assumption simply to be invoked by the corporations instead of being expressly stated by the Commission. The invention of the „more economic approach“ as a decision making method by Directorate General Competition merely serves the function of giving more discretion to DG Competition in antitrust matters irrespective of the academic debate which goes on. The efficiency criterion – nowhere to be found in the Treaties – has meanwhile become the political guideline for both cartel

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prohibition and merger control. Germany as the spiritual founder of Competition policy is no longer a significant factor in Brussels.

- Internal Market policy has become the trite commonplace for all sorts of initiatives. Invoking the achievement of a functioning internal market pursuant Art. 114 TFEU seems to have become a door opener for those Commissions' initiatives which would clearly need an independent authorisation. The constitution of a Single Resolution Mechanism for banks defining a wide range of fees and contributions to be raised by the member countries in order to be used in a Resolution fund was the last masterpiece of the Commission's legal imagination and fantasy.
- Climate policy - according to the EU-speak a cornerstone of European soft power - has been started before the Lisbon Treaty although there was clearly no authorisation for a CO2 emission trading system. In the meantime this policy has – despite large and wide exceptions due to the carbon leakage doctrine – led to competitive disadvantages for the European industry. Both the U.S. and China belittle us and continue to be grateful to the Commission's climate evangelists. These countries impose their own speed in the field of climate policy at a moment where the cheerleaders of that fashion – namely the climate panel - are coming heavily under scientific attack.

In all these fields the Commission and Parliament have usurped power by systematically misinterpreting European primary law thus making themselves the masters of the integration process. Law however limits power instead of allowing a limitless self-authorisation as in the past. This should be true for European Law as well.

As no other institution than the Council can stop the Commission and Parliament in their collusive actions, the role of the European Court of Justice has to be reassessed. How can it enforce the rule of law in the future and become a counterveiling

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power to the other official guardian of the Treaty, the European Commission?

Another field of European policy where the EU endangers stability, concerns foreign policy and the role of the High Representative. In the dawn of a historic crisis of East-West relations in Ukraine the new High Representative as well as the European Foreign services had better keep out of the way. On behalf of whom should that service and its young chief speak ? The European foreign service is a danger by definition because it is incapable of substituting or accomplishing the work of national governments. The temptation for people representing countries with a tiny stake in the EU to play a disproportionate role is great. One Juncker is already too many.

3. To set in motion a political process which could aim at overcoming these deficits we should have a full discussion on both institutional reform and a catalogue of political measures to be taken promptly at the appropriate time.

Here are the main principles of stabilizing the EU and its environment by reform:

- Instead of formal lipservice let us make subsidiarity and the principle of conferral (Art. 5 TEU) the refounding factors of confining the Commission and its allies to the limits of their mandate. As the subsidiarity objection by National parliaments has hitherto not been effectively used, the EU needs an institutional body whose sole purpose would be to object to the Commission's initiatives if they are judged not in line with either subsidiarity or the principle of conferral. This new organ should have no more than 50 Members and would be elected by strictly democratic principles (one man one vote). Nevertheless smaller nations should be guaranteed membership.
- A reform treaty should shed competencies which are redundant for the integration process in view of the internal market. Sport,

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Tourism, Humanitarian action, cultural and health policy, industry, social cohesion and civil protection should no longer be on the list of union competences. The Committee of Regions as well as the Economic and Social Committee and the European Social Fund should be immediately abolished.

- A delicate question is about the future of the EP. As a matter of fact the EP is not a fully functioning parliament because it has no power to tax. Hopefully it will never have. Its co-determination right in legislation, together with the EU council has not increased the debate nor given weight to the above-mentioned principles of EU self-restraint. The EP is a driving force behind the Brussels institutional incest, a conglomerate of powers which reinforce each other and suffocate debate instead of bringing the big matters to the level of open discussion. From that point of view nothing would be more logical than to abolish the most unrepresentative of all European institutions. However being realistic in analysis and pragmatic in action I would consent to cutting the number of EP-MPs by half and thus enabling the National Parliaments to send their members to make up the second half.
- Military coordination is not a EU matter. French proposals to conceive a European defence policy have largely discredited those who initiate and claim „more military Europe“. However I may accept that risk because the debate on military options since the Ukrainian crisis has revealed the discrepancy of those being locally concerned – the Europeans – and those who incessantly give recommendations without ever feeling the pinch of their implementation. It is in defence of assertiveness and with a view to revitalizing Nato that I request an institutional framework enabling the operational cooperation of France, the UK, Spain, Italy Poland and of course Germany. Reinforced cooperation according to the TFEU would be the right framework not only to become operationally effective but to serve two purposes:

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- Deploying those military forces which are insignificant by themselves but could serve in an operational battle group giving the country and its soldiers concerned the certainty that they are useful. The Luxembourg army is not the only case deserving qualified attention.
- Coordinating an European strategic assessment from a local point of view. That European input to the Nato strategic debate is dramatically important in view of undifferentiated recommendations from US politicians who – to be polite - apparently lack insight.

My proposals are provocative but not revolutionary. They are conservative minded because they seek stability through reform. Moreover they are inspired by increased German responsibility for the EU. Germany is the indispensable nation, the only one with enough influence to stop destabilizing EU projects and to signal to mavericks like Senator McCain the limits of US influence on European matters.

Unfortunately my modest suggestions are not supported by the German government. But contrary to so called European experts they are the fruit of almost 35 years of a practitioner's insight in Brussels affairs. I do hope that you will support me on my lonely path which I shall continue to follow with all my endeavour.

Apart from that, the political will to give Europe a new direction is more important than the day to day handling of European matters by the German government. Political imagination will immediately get its chance when problems and crisis overrule the business as usual attitude of politicians like Frau Merkel.

To put it more emphatically by the words of Victor Hugo:

“Nothing is as powerful as an idea whose time has come.”

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My project for institutional reform is ready. There is even a detailed plan for a Reform Treaty transforming the EU into what it naturally is: A Community of Nations. But Germany needs a push from you.