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978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)

Introduction

The European Union (EU) is currently and simultaneously facing three huge challenges, which are making the present period the most serious crisis the EU has ever known.

First, there is an immediate and urgent problem, which already affects the stability of the EU and might even affect its survival if it is not solved rapidly: the acute crisis of the euro area. The imbalances in the EU's economic and monetary union (EMU), as it is conceived in the EU treaties, are serious. They will be difficult to correct as long as those Member States who have the euro as their currency remain the masters of their own budgetary and economic policies, as is allowed by the treaties. The process of giving huge loans to countries in need (Greece, Ireland and Portugal) might soon reach both its economic and political limits. Many economists think that no solution will be found without 'significantly increasing the degree of political union' according to Paul de Grauwe,¹ or what a Nobel prize-winner for economics (2001), Paul Krugman, calls 'a revised Europeanism'² and another Nobel prize-winner for economics (2008), Michael Spence, calls an inevitable 'greater centralization and political unification'.³ Such a great leap forward would not only raise economic problems, but also political, institutional and legal ones.⁴

¹ Paul de Grauwe, 'The Governance of a Fragile Eurozone', Centre for European Policy Studies (CEPS), Brussels, 4 May 2011.

² 'Can Europe be saved?', *New York Times Magazine*, 16 January 2011.

³ 'Five steps to fix the world', *Newsweek*, 31 January 2011.

⁴ See also Martin Wolf, *Financial Times*, 1 June 2011: 'The eurozone, as designed, has failed . . . it has only two options: to go forwards towards a closer union or backwards towards at least partial dissolution. This is what is at stake.'

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Excerpt

[More information](#)

Second, this crisis is happening at a time when the trust in and enthusiasm of European public opinion for the EU is diminishing. This trust will hardly be regained with an EU programme that, based on the need to solve the euro area crisis, could be characterized as exclusively aimed at producing a reduction in social welfare, an increase in budgetary savings and stricter economic discipline. This will not only risk diminishing the trust of the public in the EU, but also open the way to populism, as elections in a number of EU countries have already shown. Therefore, one should think about a wider and more ambitious programme, able to give hope for the future.

Third, it is by no means obvious that the institutions of the EU, which are not working well, would be able to deliver such a programme with their present decision-making system. As a result of this dysfunctionality, the EU does not deliver enough internally and has become less relevant in the external world. This is all the more so as the EU now has twenty-seven Member States, each with different levels of economic development and extremely different needs. Yet its current decision-making process is based largely on the system of 'one-decision-fits-all', inherited from the time when the aim was to establish a uniform common market among the six rather homogeneous founding countries. The reforms made by the Treaty of Lisbon are not on the kind of scale that is necessary to solve these problems.

A priori, the three challenges referred to above cannot be met without substantively amending the current EU treaties, but this is opposed by many (if not all) Member States.⁵ What if this leads to

⁵ This opposition is led by the United Kingdom. When the 'EU Bill', put before Parliament by the UK Government on 11 November 2010, comes into force, it provides for the UK to hold a national referendum on nearly every proposed change of the EU treaties. This would include provisions of the treaties enabling the European Council or the Council to adopt changes to the treaties to switch decisions from unanimity to qualified majority vote in the Council (QMV). This is despite the fact that some of these so-called 'passerelles' provide for a six-month period during which any national parliament can oppose the proposal, and that some of these 'passerelles' already existed before the Lisbon Treaty. This is why, in the written personal evidence I gave to the House of Commons on 24 November 2010 (see House of Commons' website), I stressed that this 'could trigger a tendency among other Member States to circumvent this situation, either by engaging in enhanced cooperation among themselves without the participation of the UK, or by concluding intergovernmental agreements outside the framework of the EU'.

Cambridge University Press

978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)*Introduction*

3

stagnation and a growing irrelevance of the EU? Would it be possible for the EU to continue on its present path, while developing further closer cooperation? The growing diversity of formulas adopted over the years by the EU in order to adapt itself to the heterogeneity of its members has helped, but without deeper reform, continuing on the current path will be difficult.

The purpose of this book is to examine all possible options for the future: first, a revision of the treaties; second, a continuation on the current path and, finally, to consider, particularly from a legal point of view, the possibility of a group of Member States, the composition of which would probably be based on that of the euro area, acting temporarily in closer cooperation in order to be able to progress, without changing the EU treaties. These states would develop common policies and actions before the other Member States, thus playing the role of an 'avant-garde'. The others would join them when willing and able to do so. The aim of the process would be to improve the working of the entire EU.

This concept has already been discussed in the past. However, the consequences of the euro area crisis and the need for the seventeen members of the euro area to advance towards more economic convergence make it necessary to revisit this issue, especially at a time when the Union is not working well and when its purpose has become unclear to many Europeans.

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The Lisbon Treaty entered into force in December 2009 after eight years of gestation and a very difficult ratification process. After this painful period, one would have hoped that, thanks to its new treaty, the European Union would work more efficiently, and would be more visible and more active on the international scene.

However, since the treaty's entry into force, negative assessments have flooded in: 'The Death of the European Dream';⁶ 'Europe is sleepwalking to decline';⁷ 'Europe is a dead political project';⁸ 'Is Europe heading for a meltdown?';⁹ 'Would Europe be condemned to

⁶ Gideon Rachman, *Financial Times*, 18 May 2010.

⁷ Timothy Garton Ash, *The Guardian*, 19 May 2010.

⁹ Edmund Conway, *Daily Telegraph*, 27 May 2010.

⁸ Etienne Balibar, 26 May 2010.

Cambridge University Press

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Jean-Claude Piris

Excerpt

[More information](#)

disappear?';¹⁰ 'Can anything perk up Europe?';¹¹ 'Europe heads for irrelevance';¹² 'A loss in Europe's global influence';¹³ 'Europe does not get how irrelevant it is becoming to the rest of the world';¹⁴ 'The EU is agonizing';¹⁵ 'The European Union as a Small Power';¹⁶ 'Can Europe be saved?';¹⁷ 'Five reasons why Europe is cracking'.¹⁸

Some recent events are equally disturbing, among them the European Union's fiasco at the end of the Climate Conference in Copenhagen in December 2009.¹⁹ It was also a shock when, during the first six months of 2010, President Obama cancelled the planned summit between the United States and the EU. One may also mention 'the EU's debacle at the UN'.²⁰ This refers to the fact that on 14 September 2010 the EU lost its first battle to obtain an improved observer status at the General Assembly of the United Nations (UNGA). This was overcome, however, in a second battle eight months later.²¹ One may add to that many announcements by various 'Cassandras' predicting that, due to the economic and financial crisis, the euro will collapse soon and that this will be followed by the disappearance of the EU itself!

¹⁰ Alain Frachon, 'L'Europe serait-elle condamnée à disparaître?', *Le Monde*, 9 July 2010.

¹¹ Front page, *The Economist*, 10–16 July 2010.

¹² Philip Stephens, *Financial Times*, 10 September 2010.

¹³ Wolfgang Munchau, *Financial Times*, 20 September 2010.

¹⁴ Kishore Mahbubani, a former Singaporean diplomat, Dean of the Lee Kuan Yew School of Public Policy, University of Singapore, wrote in an article in *Time* magazine in March 2010: 'Europe just doesn't get it. It does not get how irrelevant it is becoming to the rest of the world' (quoted in *The Economist*, 9–15 October 2010, p. 63).

¹⁵ Charles Kupchan, Professor of International Relations at Georgetown University, Washington, DC, former Director of European Affairs at the National Security Council (1993–4): 'L'UE est à l'agonie – pas une mort spectaculaire ni soudaine, non, mais une agonie si lente et si progressive qu'un jour prochain, les Américains, en portant nos regards de l'autre côté de l'Atlantique, découvriront peut-être que ce projet d'intégration européenne, qui allait de soi depuis un demi siècle, a cessé d'être', *Le Monde*, 14 October 2010.

¹⁶ Title of a book by Asle Toje, *The European Union as a Small Power* (Basingstoke: Palgrave Macmillan, 2010).

¹⁷ Paul Krugman, *New York Times Magazine*, 16 January 2011.

¹⁸ José Ignacio Torreblanca, *El País*, 15 May 2011.

¹⁹ The 15th Conference of Parties to the Framework Convention on Climate Change.

²⁰ Michael Emerson and Jan Wouters, 'The EU's Diplomatic Debacle at the UN. What else and what next?', Centre for European Studies, CEPS Commentary, Brussels, 1 October 2010.

²¹ The EU finally obtained on 3 May 2011 the better status it was seeking from the United Nations General Assembly by a massive vote (180 in favour, 10 votes against and only 2 abstentions). This vote was quite important, as it did actually establish a new kind of observer in the UNGA.

Cambridge University Press

978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)*Introduction*

5

Is it true that the EU is in such a desperate state? Despite the fact that reports of its agony are obviously exaggerated, some factors nevertheless incline one not to be excessively optimistic. To begin with, the Lisbon Treaty was supposed to give to the EU the means to speak with a more united and powerful voice in the world, and to act with more cohesion and more determination. This was expected due to some of the reforms brought by the treaty, such as a full-time President of the European Council, a High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service. At least on this point, and for the time being, one must recognize that it is a failure. Is this failure temporary, due to an inevitable period of adaptation, or is it going to be durable? Another issue is the adequacy of the EU's responses to the economic and financial crisis and the question of whether it would be able, together with its Member States, to stabilize the euro in an enduring way, as it was able to resist the first euro crisis which was surmounted in the spring of 2010. One may also draw attention to the fact that the 'Lisbon Strategy', which was supposed to make the EU one of the most advanced economies of the world within ten years (2000–2010), was not self-evidently successful.²² Finally, the crisis has increased the natural tendency of Member State governments not to put efforts into strengthening the solidarity between them and to avoid the adoption of bold and courageous decisions which could make the EU stronger.

Against this background one may ask iconoclastic questions: will the EU still be necessary in the future? Will the EU still be useful for its Member States and their peoples? Should they fight to prevent it from slowly becoming irrelevant? An analysis of the situation of the Member States leads to a positive answer to these questions. Actually, at the beginning of the second decade of the twenty-first century the prospects for the future of most of the twenty-seven EU Member States, taken individually, do not look promising. Due to their small size, the alarming development of their demographic situation, their huge budget deficits and public debts, the scarcity of

²² The Lisbon Strategy, adopted by the European Council in 2000, aimed at making the EU 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by 2010. It was commented on as being a relative failure: see Charles Wyplosz, *Vox*, 12 January 2010 or Charlemagne, *The Economist*, 10 January 2010.

Cambridge University Press

978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)

their energy resources, the often mediocre state of their economies, their insufficient investment in structural reforms necessary to prepare for the future, most of the EU's countries will find themselves in a difficult situation in the decades to come. They will need to cooperate or to act jointly through the EU to benefit from the better governance it brings in order to be able to continue to prosper and to defend their needs, interests and values in the world.

What if the EU was not able to help due to the limits set by the treaties to its powers and to its decision-making procedures?

In that case, and if it was impossible to revise the treaties substantively,²³ would the EU be condemned to slowly becoming irrelevant? Or would a temporary 'two-speed' help to open another way forward?

'Two-speed Europe' does not mean 'two-class Europe'

The hostility towards a 'two-speed Europe' is sometimes due to a lack of precision in the vocabulary and, therefore, to the confusion between a 'two-speed' and a 'two-class' (or 'two-tier') Europe. The two concepts must be distinguished.

'Two-speed' Europe means the development of closer cooperation among some Member States, pursuing objectives that are common to all EU Member States, as they are actually and precisely the objectives aimed at by the EU treaties. The idea is that the members of a smaller group would be both able and willing to go ahead

²³ At the time of writing three *ad hoc* revisions of the treaties have been 'promised', but they have not yet been formally decided and the procedure for their ratification has not been launched in the Member States. These revisions were promised during the ratification of the Lisbon Treaty: (a) in order to codify in a Protocol some 'guarantees' politically given to Ireland (see European Council Presidency Conclusions, 18/19 June 2009, doc.11225/1/09 REV 1); (b) in order to revert to the rule of one Commissioner per Member State, also promised at the same time to Ireland (same reference, as well as European Council Presidency Conclusions, 11/12 December 2008, doc.17271/1/08 REV 1); (c) in order to adopt a Protocol promised to the Czech Republic aimed at adding the name of the Czech Republic to those of Poland and the United Kingdom in the Protocol on the EU Charter of Fundamental Rights (European Council Presidency Conclusions, 29/30 October 2009). A fourth *ad hoc* revision has already been decided by the European Council on 25 March 2011 and the process of its ratification has been launched. It concerns, within the framework of the EMU, a modification of Article 136 TFEU, which is due to enter into force, after its ratification by the twenty-seven Member States, on 1 January 2013 (see the text of this amendment, p. 97).

Cambridge University Press

978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)*Introduction*

7

immediately, while this would not be possible for all. The other Member States, each of them travelling at its own speed, would follow later. The differentiation between Member States would be temporary. In the past, transition periods and temporary derogations, frequently provided by accession treaties for new EU Member States, have been examples of such a concept. These periods have sometimes been quite long, but the derogations have been limited in time, at least in principle.²⁴ There are other examples, such as Article 27 of the Treaty on the Functioning of the EU (TFEU),²⁵ or the treaty articles on the consequences of the division of Germany.²⁶

‘Two-class’ (or ‘two-tier’) Europe equally means closer cooperation within a group that would not include all EU Member States. However, that cooperation would aim at a permanent and irreversible separation between this group and the other EU Member States, which, because they would be perceived as structurally unable or politically and durably unwilling, would not be expected to follow later. In that case, the differentiation would therefore be conceived as a permanent one. That kind of concept will not be considered in this book.

²⁴ A number of exceptions to this principle do exist, such as for ‘snuff’ (Sweden), secondary houses (Denmark), the Åland Islands (Finland), abortion (Ireland), defence (Denmark), the euro (Denmark and the United Kingdom), the Schengen acquis (Ireland and the United Kingdom), etc. Some of them will be explained later in more detail.

²⁵ According to that Article, which was previously Article 7c of the EECT, then 15 ECT: ‘When drawing up its proposals . . . the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate provisions. If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.’

²⁶ Articles 98 and 107(2c) TFEU allow Germany to take measures compensating for the economic disadvantages caused by the division of Germany to the economy of certain areas affected by that division. These provisions, which have existed since the establishment of the European Economic Community in 1957, may be repealed five years after the entry into force of the Lisbon Treaty.

Cambridge University Press

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Jean-Claude Piris

Excerpt

[More information](#)

CHAPTER I

The continuing need for a strong European Union in the foreseeable future

MOST EU COUNTRIES FACE SIMILAR PROBLEMS, WHICH MAY NEGATIVELY INFLUENCE THEIR FUTURE

On the one hand, European countries have important advantages, which should allow them to continue to prosper

They have highly educated populations

On average, EU citizens enjoy a very good education system, which is obviously vital for economic development. Thus, a high proportion of children at the age of 4 in the EU (around 85 per cent) have the benefit of pre-primary educational institutions. Compulsory education lasts for nine or ten years in most EU countries, starting from the age of 5 or 6. Ratios used by statisticians show that the EU-27 average situation is better than in other developed countries (for example, Japan and the United States), be it pupil–teacher ratios or youth education attainment levels. More than three-quarters of all 18-year-olds within the EU-27 remained within the education system in 2007.

However, the situation is far from being perfect. The proportion of the population aged 25–64 in the EU-27 who had a tertiary education in 2008 was under 25 per cent. Some studies have established that ‘an additional year of average school attainment raises productivity by 6.2 per cent and by a further 3.1 per cent in the long run through the contribution of faster technical progress’.¹ With rapidly

¹ Joint Report by the Economic Policy Committee and the Directorate-General for Economic and Financial Affairs of the European Commission, 8 October 2010, European Economy Occasional Papers No. 70.

Cambridge University Press

978-1-107-02137-2 - The Future of Europe: Towards a Two-Speed EU?

Jean-Claude Piris

Excerpt

[More information](#)

The need for a strong EU in the foreseeable future 9

ageing populations, raising the productivity of the labour force in European countries will increasingly become imperative in order to maintain standards of living. Therefore, the target aimed at by the EU with the 'European 2020 Strategy' is to increase the share of the population aged 30–34 who have completed tertiary education from 31 per cent to at least 40 per cent. In 2007, less than half the Member States, mostly among the EU-15, had already reached this target.² In comparison with the United States, the situation is not favourable: in 2007, the United States devoted 2.9 per cent of its GDP to education, compared with a mere 1.4 per cent for the EU as a whole; moreover, spending per student in the United States, including public and private contributions, is roughly double that of the EU.

These populations generally enjoy good living conditions and welfare

Favourable living conditions are vital for economic growth; they depend on a wide range of factors, which may be income-related or not. The factors that are not income-related include healthcare services, education and training opportunities and transport facilities – aspects that affect everyday lives and working conditions. The income-related indicators cover income, poverty and social exclusion. All factors and indicators show that the EU citizens enjoy a privileged situation in the world.

Social protection systems are highly developed in the EU: they protect people against the risks and needs associated with unemployment, parental responsibilities, sickness, healthcare, invalidity, the loss of a spouse or parents, old age, housing and social exclusion, etc. Social protection expenditure in the EU-27 averaged 26.9 per cent of GDP in 2006. It was more than 25 per cent in eleven of the EU-15, but less than 20 per cent in the Member States that had joined the EU since 2004, with the exception of Slovenia and Hungary, as well as being below this threshold in Ireland. Most expenditure on social benefits in the EU-27 is directed towards pensions, sickness and healthcare. Together these items accounted for close to 70 per cent

² European Policy Centre Issue Paper No. 61, October 2010: 'Skills and Education for Growth and Well-being in Europe 2020: Are We on the Right Path?.'

Cambridge University Press

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Jean-Claude Piris

Excerpt

[More information](#)

of the total EU-27 benefits in 2006. On top of the action of each Member State, the EU plays a coordinating role to ensure that people who move across borders continue to receive adequate protection.

EU citizens are well protected against illness and disease. The EU and its Member States have developed policies which include consumer protection (notably food safety), workplace safety, environmental and social policies, etc. This explains why the health status of the EU-27 citizens is very high and life expectancy at birth is one of the highest in the world. Other indicators also show that EU citizens enjoy more 'healthy life years' (also called 'disability-free life expectancy') than most people in the rest of the world. A number of indicators, such as expenditure on healthcare per inhabitant, the quality of healthcare services, the number of doctors per inhabitant, the number of hospital beds, the rate of serious accidents at work, etc., show that the EU Member States enjoy a privileged situation in the world.

Public infrastructure and services are excellent: in particular, the railway network for high-speed trains is one of the best in the world. The network of roads and motorways is also very dense and modern. In 2008, a majority (60 per cent) of households in the EU-27 had access to the Internet, and this figure was rapidly increasing (54 per cent in 2007). However, there are wide differences between the Member States, access being very high in the Netherlands, Finland and Sweden and quite low in some other countries, such as Bulgaria with 25 per cent.

EU Member States generally benefit from a good governance

As compared with the rest of the world, including, of course, comparable developed countries, governance, defined as the rules, processes and behaviour that affect the way in which public authority is exercised at the level of each EU Member State, particularly as regards openness, participation, accountability, effectiveness and coherence, looks to be at a top level and durable.

Voter turnout in national parliamentary elections is reasonably high. However, at the level of the Union, the turnout in elections for the European Parliament has tended to decline steadily and was only 43.3 per cent in the June 2009 elections.