

STATE OF PLAY IN THE EU

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ABSTRACT

This article deals with some issues that are arisen in the EU in the past years and how they shall be tackled with the vision of the EU. The author refers to the internal market as a cornerstone of the EU, the economic idea that overgrew to political goals. This idea brought a lasting peace to the EU, enable the economic prosperity among the Member States and also indirectly influence to respect human rights. This is nowadays questionable. The financial stability was put over the social rights. At least lawyers shall not agree with the fact that consequences of the measures to solve economic and financial crises shall primarily lie at the poorest part of the society. The author also touches the issue of ageing the EU, environmental policies that shall repair the damage done by the baby-boom generation, unemployment, especially of the youth. Go green, go social shall be two cornerstones of the EU prospective.

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1. INTRODUCTION

Being engaged with the EU, especially with the EU law for several decades, I dare to compare a development of the EU in the past with its current situation and add my personal future anticipations. I would like to start with the vision, which is closely linked to the situation currently, as the EU stands. Differently from what we heard from politicians, which usually tell people what they *want* to hear, I would like to address issues that people *need* to hear. That is a huge difference. I will touch upon some of the issues, some struggles and all are linked to the future of the EU and its vision (that EU should have and that should be told to people).

To me, EU has solved many problems of the *baby boom* generation (generation born after the Second World War, generation to which I also belong); however from the eyes of today's generations (not so much x, but y and z generation¹), EU is seen as a problem. To them EU reflects primarily the unemployment of the youth, a huge discrepancy between poor majority and minority of rich. To this, also the financial and economic crisis (these are two different crises, nowadays going hand in hand) shall be added, especially the financial one and the huge reduction of natural resources that remains available for the future generations. From this respect, we are entering in to the age of consequences and I think that the future of today's new-borns is not appropriately address by the EU.

2. PEACE AND THE INTERNAL MARKET

To be rightly understand, EU did a tremendous job for today's Europe, its citizens and inhabitants, including third country nationals. The economic idea which prevailed in 1950's, i.e. to *trade and not to make war*, brought a lasting peace to Europe. From this point of view, to me, people like Jean Monnet, Robert Shuman, Conrad Adenauer etc. are heroes, only *without the guns*. They start with the process, they initiated the idea that changes our continent in many good ways.

¹ Generation X is a generation, predecessor of Y generation and follower of the baby boom generation, born after 1966 and before 1980. This is a generation, which is faced with bigger unsafety as baby-boomer. Oil crises and crisis of the labour market forget them. Y generation is born between 1975 and 2000, and Z generation is their follower. Especially for them the professional ambition is hard to imagine due to the high unemployment with no clear sign that things will change for the better. See J. Löhr, Freizeit als Statussymbol, in: Beruf und Chance, FAZ, 8-9. Juni 2013, p. C1.

Their idea of internal market was an economic idea and not the political project; only the consequences were political. This initial idea was further developed and upgraded with the EU Citizenship and single currency. EU Citizenship brought also a huge inclusion and allegiance; people in Europe fell nowadays much more Europeans than decades ago.² The internal market connects Member States, from initial 6 to 28 today; from this perspective, it is, once more, clear that economic incentives are so important for states that, at least most of the time, political discrepancies and other state based issues are set aside.

On the other hand, we were so overwhelmed with the development of the internal market and political project of EU that we failed to prepare today's generation for the global competition. We also failed to prepare ourselves to the ageing (EU will become increasingly old in only 20 years-time³), we also failed to prepare ourselves to the ageing and even today, we simply do not understand these problems, issues that are in head of us. The fact that these problems will be our reality in the future (they are not so much now) makes us difficult to understand them. We simply cannot imagine how the society in the EU will work, be organized... what will the EU be in thirty years' time.

To this, we should also add increasing immigration, which is a proof of the evolving society and there is no common policy in Europe that would indeed battle with all these problems. EU shall have a vision of the consequences of these developments of two or three decades ahead. I think that *y* and *x* generation will be grown up in the different world, but they are not ready to it.

Never the last all this generations are happy generations because of the lasting peace that is part of the modern history in Europe. According to statistics, free movement of persons, abolition of the borders and freedom of movements are the most important values for Europeans nowadays.⁴ We should be aware that this is the consequence of the internal market. Nowadays generations should be reminded, all over again, that this idea was born during the cold war and it

² Indeed, according to the DG Comm, in spring 2013, only 7% would say, that they are first Europeans, and then later on express nationality. For vice-verse situation would opt 38% of the EU citizens (In: Info, One year to go to the 2014 European Elections, EP/EB 79.5, Team Europe Seminar - Brussels - 18/19 February 2014, slide No 30).

³ According to the statistics, more than 28% of the population will be older than 65 years old by 2031 in the following Member States: parts of Italy, parts of Spain, parts of Portugal, parts of Germany, parts of Austria, parts of Estonia. See statistics of Eurostat: http://epp.eurostat.ec.europa.eu/portal/page/portal/gisco_Geographical_information_maps/maps_posters/PER_POPSOC/pop_projection

⁴ According to the DG Comm, in *One year to go to the 2014 European Elections*, EP/EB 79.5, Team Europe Seminar - Brussels - 18/19 February 2014, slide No 36).

was realized in very short time (one cannot imagine that a treaty, such as the EEC Treaty, could be prepared, signed and enter into force in a short time like this was the case at that time). Without this idea, without the strong will of the above mentioned individuals, it could be that today's picture of the Europe would be totally different.

3. HUMAN RIGHTS PROTECTION

We are, nowadays, faced with so many evidences that systems which do not respect human rights and social aspects collapse soon or later. This is also one of the reasons for the collapse of socialism. It was therefore necessary for Council of Europe to start, again already in 1950's, with process of adopting European Convention of Human Rights, which is, still today, a primarily and very solid base for human rights protection in the Member States of the Council of Europe. The convention sets forth a minimum level of a protection; nevertheless, since it is widely interpreted and broadly developed by the European Court of Human Rights, it is not only about the text of the Convention and its protocols, but also the jurisprudence needs to be taken into account.

The EU itself also adopted a Charter of Fundamental Rights, which is of equal validity and applicability as the Treaty of the EU and the Treaty on Functioning of the EU. This is also why EU was doing fine in terms of social welfare.

This approach is, on my opinion, very welcomed; however, I also think that EU failed to apply correctly human and fundamental rights during the economic and financial crises, especially in the Member States visited by "troika". The financial stability was put above all other considerations; but the financial stability cannot be achieved without the social stability.⁵ The economic welfare, the economic prosperity, has little to do with the very essence of the humans – social aspects among us, solidarity, equality... there should be a balance between economic fundamentals in the one hand and the social, human rights on the other. We are in a situation nowadays in which the consequences of the economic and financial crisis are paid by the poorest individuals, and that at the same time the rich minority is not substantially tackled. Measures directed by troika, most likely not intentionally, have most negatively hit the lowest part of the societies. This is not to be so. This is, among others, the responsibility of EU. Indeed, Member States alone initially caused the crisis, but there is also a responsibility of EU. EU lacked the legal rules (supervision) that would prevent this economic and financial collapse. One should not blame USA for things being not regulated in the EU.

⁵ V. Pop, Bail out troika in bridge of human rights laws, EU observer, 29. 01.2014.

4. BANKING UNION, SUPERVISION OF THE NATIONAL PUBLIC EXPENDITURES

To me, lawyer, not economist, it is of outmost strange and odd that there is a single currency, but there is no supervision on national public expenditure and totally national independent systems of social rights. The value of the currency is very much depending from the public debt, and hence the public expenditures. If we have different systems of social rights, as currently stands in Europe, this might have a huge influence to the single currency. For example, there is difference if there is a Member State where people can retire at age of 50 and another Member State, where one can retire at age of 65. 15 years of public expenditure for pensions can have a devastating effect and if Member States are sharing the same currency, than this is not only a problem of a Member State with lower pension threshold.

To scrutinize public expenditure of the Member States is of course very difficult and this competence is not given in fully to the EU institutions. It will be necessary to change the treaties. With respect to the supervision of the banks (and corollary an establishment of the banking union), almost the same can be repeated. These are, on my opinion, two areas where the appropriate legal rules shall be adopted. This cannot be done overnight; it is also not appropriate to do it over night. One day, European Court of Justice, or even National Constitutional Courts, can adjudicated breaches of EU/national legal framework. Hence, this might also lead to claims for damages, etc. And there is another aspect; too huge pressure might turn people to vote (in referendums happen) against anticipated changes of the treaties. To my opinion, changes of the treaties are namely necessary.

From this point of view, 2014 elections are indeed important. The political elite that will take place in the new parliament will decide the personal structure of the EU Commission. It will need to continue legal battles in above mention fields. With respect to financial field and banking union the EU is doing two jobs at the same time; on the one hand EU works as firefighter to stop negative consequences that happened and it is also active as an architect on the other hand, since this kind of rules needs to be adopted at the EU level.

5. AGEING OF THE EU

21% of youth is over qualified, 5,7% millions of youth is unemployed, 2 millions of unfilled vacancies, 8 millions of illegal emigrants in the EU on the one hand, and in 2031 around half of the EU territory will have 30% of inactive population. These figures show inappropriate picture. We have the youth in

the EU that is very well equipped with the knowledge, perhaps the best so far, but largely unemployed. At the same time, countries like Spain, Italy, Austria, Germany, Finland, will be, in less than two decades, faced with a population where every third person will be economically inactive because of his age. The EU is aware of that; however, the vision how to tackle these issues is missing.⁶ It is true that the EU is trying to force as much as possible the free movement of workers, however only 3% of EU workers are employed outside their home country. The fluctuation, from this point of view, is low. Even though this figure is increasing, there is still a lot of young people who are not moving across the borders to search for a job. This is not a general European culture. Europe, for centuries being partitioned to individual states (often being in wars and disputes) with rigid borders (especially on the east) was not an ideal continent where people would move without obstacles. The habit on moving across Europe is unskilled. However, the involving European society is heading towards this fluctuation. For the sake of ageing of the EU, this is also necessary.

6. THE ENVIRONMENT

As mentioned above, not only in Europe but also all over the world, we are entering in to the age of consequences regarding the natural resources. It was in the 1950's when the development of the industry and the economy prosperity started with huge intensity; also to the use of natural resources. At that time, also the EU did not pay any attention to the environment and its protection.⁷ A baby boom generation succeeded to destroy balance in the environment in the nature so necessary for the life of the human kind. Nowadays, we, humans are spending two to three time more of natural resources that can be recovered by the Earth itself.⁸

EU is, seems to me, aware of that. There is an idea of the EU Commission, that natural resources shall be taxed (and not the work; on the other side taxing should shift away from the labor. This is accordance to the rule what you don't want - tax, and what you want - don't tax. This is of course much generalized statement, however the basic idea is that natural resources should not

⁶ Corinne Balleix, A review of post-Lampedusa: What type of EU migratory cooperation with third countries?, Policy Paper; Fondation Robert Schuman, No. 301, 4 Feb. 2014.

⁷ To this respect, see also N. de Sadeleer, Reconciling the Irreconcilable Trade: Trade v Environment in the EU, The European Financial Review, Feb. 21, 2014 and N. de Sadeleer, EU Environmental law and the Internal Market, Oxford, 2014, str. 7-12.

⁸ D. Plut, Trajnostna, ekosocialna, nizkoogljična, materialno zmerna in pravična država; Delo, Sobotna priloga, 28. julij 2012.

be used as much as in the past. So far, we are not faced with any results. Even though, EU is sincerely fighting against the destruction and environmental strains. Sometimes it seems that EU is pretty much alone in the world with its aspirations (emission allowances and the trading system – indeed with struggles – was in place in the whole EU even though it was not alive in the Kyoto protocol).⁹ There is also a directive that obliges member states to use renewables, etc. “Go green” is one of the mainstream of the EU. The precautionary principle is also well developed in the EU.¹⁰ Indeed, it is not always followed, but nevertheless, the consciousness is present. In this respect, the EU is doing a job of important global partner, aiming to restore a due order.¹¹

7. CONCLUSIONS

The initial idea of the internal market of EU shall still be very much respected. It is a process and the internal market is still not fully achieved. Important is that the process should not slow down (namely, there are some signs with the respect of the free movement of workers in some Member States, the UK signs to step out from EU etc.). The Member States should not lost the economic incentives that brought them together and tight them together still.

The vision of EU should be how tackled issues to which we remain to be unprepared and we failed them to understand them (mostly from the reason that they will cause consequences in the future). These are questions of ageing of Europe, immigration, especially illegally immigration, unemployment, especially among the youth, future pensions of the baby boom generations which will burden the public expenditure; not only among the Member States, but also among the EU itself. There is also a part that touches EU itself, EU and financial institutions like ECB, IMF shall take the responsibility not only to respect social rights and position of an individual, but to raise them to a high-

⁹ EU has reduced its emissions by 9,6% in 20 years time, the European continent (including Russia) by 18,6% (and over the coming decades its contribution to greenhouse gas emission will be below 15% of world emissions), and the EU share in world emissions was only around 12% in 2010 whilst Japan’s emissions have increased by 7%, North America by 13,6%, Africa by 70%, Latin America by 86%, the Middle East by 173%, Asia by 154%, including India 179% and China, 219%. The Far East alone now represents more than 40% of emissions and by 2050 this share is due to rise even more and will be more decisive for the planet than all of the previous centuries put together. Grégoire Postel-Vinay, *Competitiveness and climate, what should Europe’s priorities be?* Policy Paper; Fondation Robert Schuman, No. 303, 25 Feb. 2014.

¹⁰ See in this respect N. de Sadeleer, *The Precautionary Principle in EU Law*, 2010.

¹¹ As B. M. Župančič noted: »It is clear that global challenges, such as the environment, cannot be solved without a global state, which will restore the due order.«; *Prva od suhih krav*, Cankarjeva založba, Ljubljana, 2009, p. 73.

er level. I think that there might be little left from the economic prosperity reached if this will not be a part of the future vision of the EU. “Go social” (as well as “go green”) shall part of the future EU vision.

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