

# WHAT FUTURE FOR EUROPE AND THE CJEU?

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António Vitorino made a speech on 4 December dealing with the future of Europe and of its legal protection system on the occasion of the 60<sup>th</sup> anniversary of the Court of Justice of the EU. He focussed on three main issues: the political challenges facing the EU and the euro zone, differentiation and the role of the CJEU in a new political context.

Addressing the theme of Europe's future ahead of a European Council meeting for whose crucial decisions there is such anticipation is a bold, even a dangerous, exercise.

Firstly, because people's expectations are so high: banking union, economic union, budgetary union and... political union – even if the expression itself is missing from the conclusions of last June's European Council meeting – in the guise of the formula: “democratic responsibility and legitimacy”.

The conclusions of the next European Council are going to inaugurate a very sensitive and crucial era in European political life:

- on the one hand, the Council is expected to define the crucial guidelines of those projects which can be pursued without changing the treaties, particularly in the spheres best suited to meet the immediate challenges of the euro zone crisis (in other words, the single supervision of Europe's banks, rules governing the coordination of economic policies in the member states, and the possibility of creating a specific budget for the euro zone);
- but on the other hand, it is also going to have to formulate the broad guidelines for the development of the European integration project over the next decade.

This latter aspect may include the need to adopt amendments to the treaties on European Union (TEU) and on the functioning of the European Union (TFEU), which I personally envisage for 2015.

## 1. The political challenges facing the EU and the euro zone

### 1.1. The crucial deadline in 2014

This dual political dynamic – the immediate management of the euro zone crisis and the formulation of a new long-term integration schedule – is going to be put to the test crucially at the democratic rendez-vous in June 2014 – namely the elections to the European Parliament – in a number of ways:

- first of all, in the renewal of two institutional players that are central to European public life, namely the European parliamentarians and the members of the European Commission;
- at the same time, in the context of a strengthening of the Commission's democratic legitimacy, by permitting a more direct nomination of its president (on condition that the European political parties can identify their candidates to the post in advance, as Jacques Delors suggested well over ten years ago...);
- and lastly, so that the European political parties can at long last submit real European platforms and agendas to their electorates, unambiguously presenting the crucial changes to the treaties that they consider essential for the next step in the integration process.

Thus this democratic rendez-vous will provide an excellent opportunity for clarifying and exploring in greater depth the three elements underpinning political union as it exists today: the member states have decided to pool certain competences and, to that end, they have set up common institutions which act under the supervision of the citizens.

## 1.2. The EU confronted with its dilemmas

Having said that, it is impossible to avoid addressing the dilemmas with which we are confronted:

- on the one hand, the doubts harboured by grass-roots opinion in the member states regarding the meaning of the integration project and its ability to produce tangible results – doubts which clearly emerge from the constant drop in support for the EU recorded in successive Eurobarometer polls; in this context, the euro zone crisis has exacerbated people's perception of such issues as weak growth, rising unemployment (especially among young people) and competition from the emerging economies;
- on the other hand, meeting the challenge of completing the basic architecture of the Economic and Monetary Union on the basis of a joint strengthening of the solidarity and supervision exercised by the EU, which can only translate into a new pooling of essential national competences, especially in connection with member states' budgets;
- and lastly, this process is going to have to be pursued in the knowledge that not all member states will either wish or be able to take part in this deepening of Europe's economic, monetary and social integration.

In addition to this dilemma, it is also necessary to address a disturbing dynamic that cannot be ignored: as the European Central Bank has warned quite clearly, namely the fact that the euro zone crisis is gradually leading to the disintegration of the single financial market, which is a crucial lifeline both for European integration as a whole and for its driving force, the single market, whose twentieth anniversary falls this year! Yet it seems obvious to me that the deepening of the EMU is going to lead to further pressure and to foster greater tension regarding the proper functioning of that single market...

## 2. Juxtaposing the euro zone and the EU, and resorting to differentiation

### 2.1. Organising "unity in diversity"

Thus the crucial question arising is how to match a 17-strong deeper harmonisation of the Economic and Monetary Union's structural policies with the single market's broader 27-strong base.

In this regard, we cannot pretend not to notice that the United Kingdom – one of the single market's most stalwart advocates – is pursuing an agenda for the revision of its status in the broader EU on the basis both of its "opt-out" over the euro and of its new "opt-out" in the sphere of justice and internal affairs, with a crucial deadline next year in terms of the Lisbon Treaty: this is bound to raise numerous issues, as shown by the current debate on banking union and on the shareout of tasks between the ECB and the European Banking Agency...

Actually, the issue raised in this case is not totally new: it is a matter of devising the best way to organise "unity in diversity" – the European Union motto adopted by the Convention on the Future of Europe in 2003 in response to a proposal submitted by its chairman, Valéry Giscard d'Estaing.

I fear that any solution to this new shareout of the exercise of sovereignty in such a way as to make it at once effective, legitimate and beneficial for the EU's member states and its citizens can only lead to greater complexity in terms of the implementation of common policies and of the framework within which the European institutions function. That is going to demand an additional effort of clarification and explanation to the citizens, because we are talking about issues linked to the EU's functioning and to the results they expect of it. In any event, it seems more reasonable to me to argue that the strategy of improving "functional federalism" already operating within the EU (as opposed to the notion of a "federal revolution") is the most dependable way of achieving this...

### 2.2. The euro zone, core of a differentiated political integration

The drive to combine efficiency and legitimacy must also encourage recourse to "differentiation" within the EU (a concept also formulated by Jacques Delors fully ten years ago), as has been done in the past, for instance in connection with the Schengen Agreement and even with the euro, without it being explicitly stated...

To make myself clear, in my view it is part of the very nature of the Economic and Monetary Union to be organised and developed through the enhanced cooperation procedure, in other words, in the context of the current treaties, so as to ensure its effective dovetailing with the functioning of the 27-strong Europe. In

this context, it will be possible to envisage an improvement in decision-making procedures, including resorting to qualified majority voting as a general rule!

Having said that, not all of the EU member states are going to partake from day one in the advances occasioned by the deepening of the EMU, but all those wishing to be involved will have the opportunity to do so without any single one of the 27 member countries being able to hamper the others' desire for integration.

The current crisis has clearly, and on occasion even painfully, highlighted the euro zone member states' and citizens' economic, financial and political interdependence, prompting them to act to safeguard and to bolster it. The crisis has reminded us that membership of the euro zone rests on specific rights and duties in terms of discipline and of solidarity. And lastly, it has pointed up the flaws caused by the imbalance between monetary union and economic union, and it must us lead us to addressing both the consequences and the causes of that imbalance with firm conviction.

This crisis has shown the euro zone to be the natural core for increased integration, which must be based on a continuation of the acts of solidarity and supervision already in hand: the establishment of a European bank supervision system under the aegis of the ECB, and an extension of the bailout funds to banks; a partial mutualisation of the issue of the euro zone member countries' debt (via "Eurobills" or "Eurobonds") and the attendant strengthening of the Commission's powers of supervision and sanction; the improvement of European coordination in the sphere of member states' social and economic policies, in order to curb the excesses and abuses that threaten the correct functioning of the monetary union, by offering member states financial incentives within a contractual framework; and the creation of a "cyclical adjustment fund" playing the role of an insurance policy among the euro zone member countries...

On the institutional level, "euro zone summits" are already held both to adopt the broad guidelines for the euro zone to follow, and to reach decisions in times of crisis. The Commission must play its role to the full in defining these broad guidelines and in exercising all of the powers conferred on it by the treaties. The European Parliament must continue to play a central role in the adoption of European legislative and budgetary decisions. And finally, in the spirit of Article 13 in the Treaty on Stability, Coordination and Governance

(the "fiscal compact") cooperation among national parliamentarians from euro zone member states and European parliamentarians must make it possible to foster a more open political dialogue and to strengthen the democratic supervision of the euro zone's executive bodies. National parliaments, in particular, must be involved in major euro zone budget decisions when such decisions have an impact on national budgets or when they concern a new budget dedicated to the zone.

### 3. The role of the Court of Justice in a new political context

So, what role is the Court of Justice going to play in this broad framework that I have just described?

I shall endeavour to answer that question by referring to two crucial elements:

- on the one hand, the Court will probably have a larger role to play in its capacity as the European constitutional court;
- on the other, with the European project putting down deeper roots in European citizens' everyday lives, the Court is going to have to play a crucial role in the new stages along the road leading towards integration.

#### 3.1. The European Constitutional Court's intervention is more necessary than ever before

Where the first element is concerned, it seems clear to me that the increased complexity that is going to result from the deepening of the European integration process and from the existence of a centre of gravity built around the single currency and its attendant policies, is going to raise compatibility issues between the planned advances and the entirety of the Community acquis, especially with regard to those policies' impact on the single market.

The task of ensuring this compatibility will lie primarily, of course, with the legislator. But we all know how real life (and the "creative ambiguity" of political agreements...) leaves judicial agents with plenty of room for manoeuvre. It is therefore going to be up to the Court to guarantee that that compatibility is legally watertight, because it is bound to be beset by numerous appeals demanding rulings at the highest jurisdictional level.

In fact, we are already facing this challenge in connection with the Treaty on Stability, Coordination and Governance, because it is an intergovernmental treaty adopted by 25 of the EU's 27 member states, including the 17 that belong to the euro zone, and it assigns competences to the European institutions – the Commission, the European Parliament and the Court of Justice – for the development of an EU common policy – its economic and monetary policy!

The multiplicity of legal sources of various different kinds, their overlapping in the context of a single policy reflecting a single EU goal, and the variable geometry in the way in which member states participate: none of this can be perceived or mastered through simple, all-embracing legal regulations or traditional criteria governing legal hierarchies. Each solution will always have to be assessed on the basis of the ultimate aims envisaged and of the overall consistency of a multi-layer system.

Thus the interpretative harmony of the different legal instruments pegged to the same shared goal, as laid down in the Treaty on European Union, is going to depend very much on the Court in the general European interest. Once again, this crucial value in the European project – cohesion and solidarity among European member states and their citizens – is going to rest on the shoulders of the judicial system, acting on the basis of the measures enshrined in the treaties and in the legislation adopted.

That is the price that we have to pay for an EU based on the rule of law, the core of a specific and independent legal system whose features are original and unique in the wider world!

### **3.2. The area of freedom, security and justice: a “citizen’s issue”**

In conclusion, allow me to adopt a more personal approach in connection with the second element I mentioned, namely a citizens’ Europe.

I have believed for a long time now that the spheres connected with the area of freedom, security and justice are going to gain increasing importance through the Court of Justice’s action, and that its role in this connection is going to be crucial in helping to reconcile the man in the street with the European project as a whole.

In that connection, I would like to mention an immensely rewarding conversation that I held with President Skouris at the Convention on the Future of Europe, on the future role of the “Charter of Fundamental Rights of the European Union”, the EU’s subscription to the “European Convention on Human Rights”, and the development of the Community acquis in those spheres linked to the area of freedom, security and justice.

I continue to think of it as a construction site for the enhancement of European citizenship and a constituent element in European political union.

Yet the crisis we are currently going through has undeniably caused us to turn in on ourselves, and we are faced on all fronts with doubts questioning the member states’ pledge of solidarity and the citizens’ attachment to the very idea of European unity. One has but to look at the circumspect, sometimes chilly, and occasionally even downright critical reaction to the awarding of the Nobel Peace prize to the EU, to realise that the European project is in search of a narrative capable of imparting legitimacy to it. It is no longer possible to think that the legitimacy of the European project can do without a “citizen’s dimension” which can be clearly identified by the peoples of Europe as a whole.

The deadlock over the multi-annual financial framework at the last European Council meeting, the danger of scrapping the Erasmus programme due to lack of funds (on its twenty-fifth anniversary and after some five million young Europeans have benefited from it...), the growth of a sometimes cultural, not to say moral, rift between the north and south of the continent, the centrifugal trends at the European and even at the national level, and the lack of confidence in Europe’s added value in the context of the globalisation process: all of these are potentially divisive factors which have an impact on freedom of movement, on the abolition of internal border controls in the context of the Schengen agreement, and on the legal status of European citizens’ rights and duties.

The increasing political and legislative tension, and of course the increasing number of legal issues regarding freedom of movement, immigration and asylum, and civil and criminal cooperation, highlight the importance of all of these issues for Europe’s citizens as a whole and for the very survival of this wonderful common project. I believe that the manner in which these issues are given appropriate political and legislative

responses, accompanied by legal guarantees, is the crucial factor that will enable us to strengthen people's sense of belonging to this common project and to our common destiny as Europeans. These feelings are likely to be an essential premise in the construction of an environment of mutual confidence, without which economic integration will not be able to hold out for long.

Once the transition period envisaged in the Lisbon Treaty has expired, that treaty will enable us, both from the standpoint of democratic legitimacy and from the standpoint of legal guarantees, to complete the construction of the essential pillars of the area of freedom, security and justice, as long as the European institutions as a whole are assigned the areas of jurisdiction which they need to perform their functions in a framework of respect for the basic values of our rule-of-law states.

It is thus over the crucial issues of the protection and safeguarding of the citizens' fundamental rights and duties that an increasingly fruitful and intense dialogue between the Court of Justice and the national

judicial bodies, including the member states' constitutional courts, is going to develop from now on. Rather than the tension which some people fear, I for my part am convinced that this dialogue will result in a strengthening of citizenship and in new hope for the sentiment of belonging to a common destiny and to a community of values and interests on the part of all of the peoples of Europe.

## Conclusions

In the best tradition of the 60 years of jurisprudence that we are celebrating here today, I feel reassured in the knowledge that, just as it has been in the past, so the Court of Justice is still equal today to meeting these new challenges while remaining loyal to the founding fathers' fundamental values! And I am particularly happy to note that the Court is the European institution in which citizens have the greatest confidence. It only remains for the Court to carry on in the same way for the next 60 years!

Thank you all for your kind attention.

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