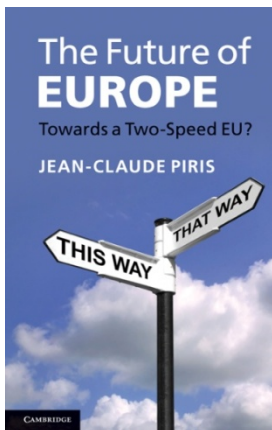


The Future of Europe. Towards a Two-Speed EU?¹

Jean-Claude PIRIS

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Introduction

Jean-Claude Piris has been called an “EU architect” by the *Financial Times* (3 November 2011). The title of his latest book is “The Future of Europe”; indeed, one could hardly think of a more topical question than that of whether we are heading “towards a two-speed EU?” and, if so, what its institutional design could look like. At a time when some have already said “L’Europe à 27, c’est fini” (*Le Monde*, 10 December 2011), Piris seeks to provide guidance as negotiations on the new Intergovernmental Treaty, entitled the “Fiscal Compact”, are only just underway.

The author, a former Director General of the Legal Service of the Council of the European Union, examines the present State of the Union and shows that Europe is not well prepared to address current and future challenges; he subsequently develops **four options to re-construct the European Union (EU)**. The first two of these options propose a classic, but substantial, treaty revision; or – if this proves impossible – the use of the entire toolbox that the Lisbon Treaty provides in order to proceed with the closer cooperation of some member states. The alternative approaches involve building a two-speed Europe – either “politically” with a declaration, or else “legally” with an international agreement, as options three and four.

Each of these options is, in turn, examined rigorously, and what could be called the “depth of change” is weighed carefully against the scope of membership and the chances of practical realisation – a lesson that was recently learned as a direct result of the difficulties in ratifying the Lisbon Treaty by all 27 member states. Based on his analysis, Jean-Claude Piris makes the case that a two-speed Europe is feasible and necessary.

This review aims to analyse the principal ideas and arguments that the author has made in his latest book.²

1. General assessment: Why a strong EU is still necessary, but why it does not work well

Whilst the EU was established to “help its member states [...] face their problems more effectively”, and, moreover, could yet help its member states to achieve better governance and economic prosperity, Piris shows how demographic and economic trends make it difficult for the European nation states to defend their interests in the world. But nowadays the EU “does not function well [any longer] and [...] is unable to solve its current fundamental problems”. Institutions are weak and inadequate, policies are not successful

¹ Jean-Claude Piris, *The Future of Europe. Towards a Two-Speed EU?*, Cambridge University Press, January 2012, 176 pages.

² The views expressed in the book are not necessarily those of Notre Europe.

enough. **The Lisbon Treaty, in essence, was not sufficient.** Three assessments selected from a long list concern the major institutions:

- The largest problem lies within the Commission: **one Commissioner per member state** prevents the institution from working as a “college”, as it forces its President to provide more leadership and reduces the Commissioners’ independence vis-a-vis their country of origin. Interestingly, the Lisbon Treaty foresees that the number of Commissioners should be two-thirds the number of member states from 2014 onwards. In order to keep the political promise given to Ireland (one Commissioner per member state), a “legal decision”, whose nature is disputed, still needs to be adopted.
- In the **Council**, the **threshold of qualified majority voting is high** – and under unanimity the right of veto has two effects: the member state that exercises it does not have to adopt legislation and “it also forbids other member states from going ahead and adopting the act in question”.
- It has been common practice of the **European Parliament** to group different files, one of which falls under co-decision, but this practice goes beyond the powers conferred to it in the treaty and must be seen as critical. The provisions of the Framework Agreement that favour the European Parliament in interinstitutional relations and “when it tries to have a say [...] in the conduct of international negotiations” can seriously disturb the balance between the institutions, too. In addition to this, the European Parliament **has been a “relative failure”** because it lacks political legitimacy.³

Jean-Claude Piris also examines core policies (internal market, monetary union, defence, and justice and home affairs).

He finally concludes that we need to leave the status quo behind and advance. Some people might have thought, in a Fukuyama-inspired fashion, that “Lisbon” had been the End of History. But **the year 2011 has brought treaty matters back onto the European agenda.** Jean-Claude Piris who has been a protagonist at Maastricht, Amsterdam, Nice and Lisbon examines four options that allow tackling Europe’s problems.

2. First option: “Substantially revising the EU treaties”: Goodbye, Lisbon!

If member states are still in need of the EU, and if the EU is badly equipped, “the logical answer to this dilemma in theory looks obvious”: institutions, procedures and decision-making could (and should) be modified. What are the shortcomings of, and left-overs, in the Lisbon Treaty? What would have to be done to address these? **Piris gives the following response: “the entire institutional system should be re-considered”.** This concerns the composition, role, independence and powers of institutions, as well as their efficiency, their flexibility and their legitimacy in taking decisions.

One of his proposals is to **revamp the European Parliament for matters of enhanced cooperation.** MEPs from non-participating countries should not participate in those deliberations and vote any longer. The upcoming partial reshuffle of committee chairs will show whether the European Parliament is starting to move in that direction, when observers doubt that British Liberal Democrat MEP Sharon Bowles will be re-elected at the top of the Economic and Monetary Affairs committee.⁴ Until now, the European Parliament has resisted any variable geometry.⁵

Other proposals aim at reducing the size of the Commission, strengthening the role of national parliaments with a permanent secretariat and, generally, **moving away from the idea that “one decision fits all”:** 27 member states are more heterogeneous than the original six of the Treaty of Rome!

³ With his assessment that the European Parliament lacks “political legitimacy” Piris contributes to the debate on the “democratic deficit” of the European Union.

⁴ *Financial Times*, 12 December 2011.

⁵ In the House of Commons (the United Kingdom is also a multi-level system since “devolution” in the late 1990s) MPs from Scotland and Wales vote on matters that concern only England and are tackled by the Scottish and Welsh assemblies in those parts of the United Kingdom. The case of the European Parliament is similar.

But Jean-Claude Piris is well aware that such **classic treaty revision looks “politically implausible”**, since member states do not want to revisit the 8-year-long negotiation and ratification experience that led from the Laeken Declaration to the Lisbon Treaty. Consequently other options need to be examined.

3. Second option: To live with the Lisbon Treaty “while developing further closer cooperation”

Actually, the EU is already working in a multi-speed way. Piris identifies “in-built” cases of closer cooperation, enhanced cooperation, and opt-outs: all three cases provide for **closer cooperation within the EU institutional framework**. He recalls how Alexander Stubb, now Finnish Minister for European Affairs and Foreign Trade, defined multi-speed Europe in 1996: “the pursuit of common objectives is driven by a core group of member states which are both able and willing to pursue some policy areas further, [with] the underlying assumption that the others will follow later.”

After a brief discussion of “*avant-garde*”, “centre of gravity”, “pioneer group” and other concepts, Piris turns to the question of **what is possible under the current treaty**:

- In order to allow some countries to advance, the EU could use its “**built-in**” cooperation: The Schengen area is one example; the Euro area and Permanent Structured Cooperation in defence are other groupings that make differentiation possible.
- The treaty also allows to “**opt-out**”: “Denmark and the United Kingdom are certainly not travelling at the same speed as the others”.
- Despite being in the legislative toolbox since the entry-into-force of the Amsterdam Treaty in 1999 (and improved with the Nice Treaty in 2001), **enhanced cooperation** has only seen the light of the day in regard to a Directive on the law applicable to divorce in 2010 and the creation of an EU patent in 2011. This hesitation was for political reasons: enhanced cooperation has the potential to be exploited much more than it has been to date.

The heads of state and government of **22 member states signed up to the Euro Plus Pact** in March 2011. Due to the fact that not all members of the Euro group “are ready to accept legally binding obligations in this very sensible field”, the pact will “benefit from neither the control of the EU’s institutions over national implementing measures, including the role of the Court of Justice of the EU; nor from the possibility of sanctions as provided by the treaty against member states not implementing EU law correctly.”

Political will is necessary for this second option. The crisis might trigger it, but if not, the EU could and should consider the idea of a two-speed Europe again – in order to avoid the possibility “that its progress would be halted or possibly even begin to decline.”

4. Third option: “Politically progressing towards a two-speed Europe” – visibility for the volunteers

This “soft” option of a two-speed Europe – achieved **without modification of the treaties and without using an international legal instrument** – would be “announced publicly by a political declaration of the heads of state or government of the willing EU member states”. Some decisions would be taken within the institutional framework (e.g. via enhanced cooperation), whereas other decisions would be taken outside the institutional framework, whilst fully respecting both the treaties and EU law.

Article 136 TFEU gives the Euro group the possibility to accelerate their speed, as one could put it. These provisions have not been used yet. “In order to ensure the proper functioning of economic and monetary union [...] the Council shall [...] adopt measures specific to those member states whose currency is the euro” (Article 136(1) TFEU), non-Euro countries shall not take part in the vote. Indeed, “the scope of application of Article 136 is *extremely* wide, because many measures may be characterised as ‘strengthening the coordination and surveillance’ of the budgetary discipline [...] or as ‘setting out economic policy guidelines’”. **These measures would not even fall under enhanced cooperation, as they are part of the Euro group’s “in-built” cooperation.** The Euro group of Finance ministers, however, must stay informal; only the ECOFIN Council can ultimately take decisions (with members from non-Euro countries not voting). Under the third option, member states could also continue the intergovernmental path of the Euro Plus Pact and subsequently avoid supranational interference.

Beyond the area of economic governance, numerous other possibilities exist (in the fields of defence, cooperation in civil and criminal law, environmental protection not linked to the Single Market). The third option is feasible, but difficulties should not be ignored: Participation would be required in all areas covered by the declaration. If opt-outs were granted to one or more member state(s), the project “would risk appearing as patchwork”. And, obviously, the better functioning of the institutions – a key part of the proposed modifications in the first option – could not be realised. Bearing in mind these restrictions, member states could as well decide to take a “bolder” way – that of legally building a two-speed Europe.

5. Fourth option: “Legally building a two-speed Europe” with an extra treaty, outside the institutions

The fourth option, described by Piris as the “bold” option of a two-speed Europe, takes the form of an international agreement. Contrary to the two-speed option with a declaration, this treaty would be legally binding. The main reasons to consider an extra treaty (and to circumvent the EU institutions as well as member states that are not willing to move forward) are the shortcomings of the Economic and Monetary Union. Other areas like defence, cooperation in civil and criminal law, environmental protection not linked to the Single Market could also be covered.

New institutions co-existing with the current EU institutions **would be created** in this “international legal instrument”. Jean-Claude Piris proposes:

- To “look outside”, if the European Parliament resists variable geometry, and “think about **another type of parliamentary organ**” composed of national MPs;
- To establish the equivalents of EU Council and European Council;
- To create an “**Administrative Authority**”, distinct from the Commission, that consists of a maximum of five members and that might have to share the “monopoly of initiative”.

In addition to such an extra institutional triangle, an Administrative Tribunal that could operate in the same way as the EFTA Court and respect ECJ case law should be set up, the entity could have “own resources” and decision-making could be modified by a generalisation of qualified majority voting and the introduction of two categories of decisions: one that does not bind member states that voted against; one that binds those states if a 80%-qualified majority voting has voted in favour.

Piris also responds to potential critics and defends the fourth option: **This avant-garde is less complicated than a patchwork-inspired alternative – and the project could not be achieved without new bodies.**

Conclusion

Each of the four options examined by Jean-Claude Piris provides useful propositions that can, and surely will, guide the negotiations in the so-called “Forum” that has started to work on the Intergovernmental Treaty as of late December 2011 and the overall development of the European Union in the future. At the end of the day, **the Intergovernmental Treaty** (to be signed in March 2012) **could serve as an overall framework where separate measures from each of the options are included** – after all, the treaty revision required in order to accommodate the European Stability Mechanism still needs to be ratified by all 27 member states. Another issue that remains to be seen is the ratification of the intergovernmental treaty – whether by parliamentary ratification alone, or else via a referendum.

The concluding remarks that Jean-Claude Piris makes at the end of his book, show an amazing similarity to Angela Merkel’s statement after the December 2011 European Council: with the best-suited option excluded, **the second best option must be chosen**, “an international legal instrument” (Piris) or “this legal instrument, this treaty” (Merkel). The whole point is, as Jacques Delors has put it, to re-invent “the momentum of building Europe.”⁶

⁶ Jacques Delors, “Europe needs an avant-garde, but...”, *CER Bulletin 14*, October-November 2000.