



FOUNDATION FOR EUROPEAN
PROGRESSIVE STUDIES
FONDATION EUROPÉENNE
D'ÉTUDES PROGRESSISTES

Queries

N°03 (9) / 2012-2013

DEMOCRACY: TAKING THE NEXT TURN

Magazine by FEPS - Foundation for European Progressive Studies
www.feps-europe.eu/queries

Queries

N°03 (9) / 2012-2013

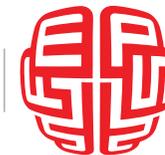
About **Queries**

Isaac Newton's famous book "*Opticks*" concludes with a set of "Queries".

These "Queries" are not questions in the ordinary sense,
but rather rhetorical questions intended to stimulate thinking.

This was Newton's mode of explaining "**by query**".

FOUNDATION FOR EUROPEAN
PROGRESSIVE STUDIES
FONDATION EUROPÉENNE
D'ÉTUDES PROGRESSISTES



Inside

FOREWORD

7 **Democracy Taking the Next Turn**
Ernst STETTER

10 **What kind of Democracy and
for which Europe?
3 Myths and 3 Proposals**
Ania SKRZYPEK

RESTORING SENSE IN PRIMACY OF POLITICS

22 **The Endangered Primacy of Politics**
Fabien ESCALONA

30 **Restoring the Primacy of Politics**
Robin WILSON

41 **The Long Build-up Towards a
New Politics**
Alfio MASTROPAOLO

DEMOCRATISING EUROPE BY LEGITIMISING ITS' ACTORS

52 **"The Emperor is Naked"
Challenges and Answers for
a Fairer Society**
Maria BADIA I CUTCHET

58 **Democracy beyond the State?
The European Experiment.**
Richard CORBETT

63 **Democracy in the EU:
the Building-Blocks for a fully
Democratic Future**
Vivien A. SCHMIDT

POLITICISING EUROPE BY EMPOWERING ITS CITIZENS

76 **Federating Competition States
vs. Building Europe from Below.**
Markus MARTERBAUER &
Lukas OBERNDORFER

90 **Ambivalent Europeans**
Catherine DE VRIES

94 **The Real Significance of 2014**
Julian PRIESTLEY

LEARNING FROM DIFFERENT EXPERIENCES BY UNDERSTANDING INDIA

104 **Democracy vs. Inclusive
Development: a Short-Story of
Two India(s)**
Kamakshi NANDA

111 **Indian Politics 2012:
Crisis and Response**
Manoj JOSHI



"Queries" is the scientific magazine of the Foundation for European Progressive Studies.

The Foundation for European Progressive Studies is a European progressive political foundation, close to the Party of European Socialists (PES). As a platform for ideas, FEPS works in a close collaboration with social democratic organizations, and in particular national foundations and think tanks, to tackle the challenges that Europe faces today.

Publisher: FEPS – Foundation for European Progressive Studies
First published in Belgium 2012/2013
Publishing supervisor: **Dr. Ernst Stetter** (Secretary General – FEPS)
Managing Editor of Queries: **Dr. Ania Skrzypek** (FEPS Senior Research Fellow)
Editorial support: **Ischi Graus** (FEPS Events Organizer)

With the financial support of the European Parliament.

Designed by: RedWorks Belgium

Copyright © FEPS – Foundation for European Progressive Studies
ISSN 2032-9113

This magazine is published subject to the condition that it shall not by way of trade or otherwise be lent, resold, hired out, or otherwise circulated without the publishers' prior consent in writing in any form of binding or cover other than that in which it is published and without a similar condition being imposed on the subsequent purchaser.

FEPS

Rue Montoyer 40, 1000 Brussels, Belgium
Phone + 32 2 234 69 00, Fax + 32 2 280 03 83
info@feeps-europe.eu
www.feeps-europe.eu

Federating Competition States vs. Building Europe from Below.

EU Treaty Revision as an Opportunity for the Democratization of the Economy and Politics



By Markus MARTERBAUER & Lukas OBERNDORFER

1. Introduction

We are in the midst of the deepest crisis of the world economy since the 1930, and this crisis has left its mark on European democracy. Undoubtedly, the decision-making process within the European institutional framework has been characterized by a “democratic deficit” for a long time. But due to the economic and political effects of the crisis, an “authoritarian turn” is taking place in Europe. Leading trade unionist and intellectuals are alerting us to the fact that certain aspects of formal democracy are being undermined in order to preserve neoliberalism. The slogan is “carry on” – despite the fact that the consensus behind the neoliberal mode of integration is crumbling. In this situation, the (potential) actors in favour of a Social Europe – among them trade unions, social movements and the parties of the left – remain in a defensive position and embrace the national state. Such national orientations result in rearguard action with little prospects of success, not least because the imperatives of the neoliberal mode of integration¹ – in particular, the focus of the internal market and the monetary union on *competition* – cut across borders. **Only a transnational social project establishing multi-scalar political structures that promote a new distribution of wealth can succeed in triggering a turn towards top-down redistribution in European economic policy.** This suggests that the democratization of the European institutional framework involves addressing a paradox. It is both, the precondition and the result of a new direction in economic policy. As a result, the actors in favour of a social Europe are facing the challenge of finding ways to put into practice such a project.

¹ P. Ziltener, *Strukturwandel der europäischen Integration, Westfälisches Dampfboot, Münster 1999, p. 132.*

In this article, we want to add a new piece to this puzzle. The EU quartet of presidents has started a debate on revising the EU treaties. In light of this, we will address a very topical question: *can there be a “new foundation” of Europe, and would it be a way of countering their “elite” project?* To begin with, we will sketch the trajectory of the crisis and the autocratic-neoliberal mode of managing it politically (section 2). After that, we will (a) describe the plans of the quartet of presidents and the existing procedures of treaty revision and (b) confront these plans with the demand for a pro-European social project based on an assembly for a “new foundation” of Europe (section 3).

2. The management of the crisis and its effects on social issues and democracy

The European Union has been facing a crisis triggered by the banking sector and financial markets for five years now, and no end is in sight. Initially, the crisis emerged as a real estate and banking crisis in the US, but it quickly spread to Europe. In Spain, Ireland and the UK real estate bubbles burst; the European banks lost lots of money both overseas and within the internal market and were bailed out by the states. The financial crisis quickly started to affect the real economy, which experienced the deepest recession after World War II. In 2012, average GDP in the EU is still 1% lower than it was before the crisis, in Greece even 17%.

The costs of bail-outs and losses in tax revenue caused by the recession triggered a sovereign debt crisis in the EU, which is reflected in a massive rise of sovereign debt (from 59% of GDP in 2007 to 86% in 2012) and in the difficulties faced by a number of countries in refinancing this debt. At the same time, the number of unemployed people rose by more than 50%, from 16m at the end of 2007 to 25.5m in the middle of 2012. The EU is in the midst of a crisis of the financial system, a crisis of the real economy, and a sovereign debt crisis. And it is about to tumble into another crisis: a deep social crisis, which is caused, among other things, by cuts to the welfare state carried out at a time when benefits are needed most.

There is a multiplicity of economic causes for the crises: decades of financial deregulation; the intensification of macro-economic imbalances between different Eurozone countries (reflected in current account surpluses and deficits); and the increase in wealth and income inequality.²

A pragmatic policy mix aimed at preserving finance-driven accumulation

At various points in the last few years, the financial system was in meltdown. The heads of state, government and central banks made interventions at the level of economic policy, which stabilized the situation to a degree. Initially, they were very pragmatic when it came to defending the existing, finance-driven regime of accumulation³ – if necessary, they discarded neoliberal dogmas quickly. In particular in the US, but (later) also in the EU, decision-makers proved that they had learned from the depression in the 1930:

- they supplied banks with liquidity;
- in the US and the UK, central banks bought large amounts of sovereign bonds in order to make sure that capital markets continued to function and to keep the cost of sovereign debt at a manageable level;

² For a comprehensive account of the causes, see: M. Marterbauer, *Zahlen bitten! Die Kosten der Krise tragen wir alle*, Deuticke, Wien 2011.

³ T. Sablowski & S. Alnasser, *Auf dem Weg zu einem finanzgetriebenen Akkumulationsregime?*, [In:] *Ein neuer Kapitalismus?*, M. Candelas & F. Deppe (eds.), VSA, Hamburg 2001, p. 131.

- in September 2012, the European Central Bank started a new programme with the purpose of buying sovereign bonds (“Outright Monetary Transactions Programme”); and
- the European banks were provided with fresh capital.

So far, European tax payers have spent about €700bn on the banking sector (half of it in Germany) – but in many cases they have done so without becoming the owners of the banks or obtaining the right to manage them. Consequently, the banks are the main direct beneficiaries of government bail-outs. Currently, the provisional bail-out mechanism EFSF funds the national debt in Greece, Portugal and Ireland by charging comparably low interest rates. In sum, the states reacted in a Keynesian/anti-cyclical manner to the recession of 2009, and contained the drop in output and employment through economic revival plans.

An opportunity for the deepening of the neoliberal mode of integration

After the immediate threat of a financial meltdown had been averted, the predominant mode of “crisis management” started to follow neoliberal patterns. It now consists in implementing a set of policies that, to put it bluntly, function as “building blocks for an authoritarian politics of austerity”.⁵

Decision-makers in the field of monetary policy have reacted to the crisis in a protracted and half-hearted fashion. They have ignored the colossal rise in long-term interest rates in the countries in crisis. The interest rate for 10-year benchmark securities rose to more than 7% in Spain and more than 6% in Italy. There has been a slight decline in interest rates for long-term sovereign bonds after the announcement of the “Outright Monetary Transaction Programme”. Yet at the current level of interest, no lasting consolidation of national budgets is possible, no matter how much expenses are cut back – at least as long as the nominal GDP and the tax revenues continue to shrink.

The biggest failure, however, has been fiscal policy. The expansionary fiscal policy was terminated too early – and in contrast to the bail-outs in the banking sector from 2010 onwards, drastic austerity measures were imposed on the countries in crisis. These have shrunk the disposable incomes and thus the demand for consumer goods and output, which has led to shrinking tax revenues, additional difficulties for the budgets and further increases in unemployment.

At the moment, the countries in crisis are forced to cut back more than is necessary – even if the strict conditions of the Stability and the Fiscal Pact are considered.⁶ Expenditure cuts in the midst of an economic crisis lead to worsening economic outlooks; they result in a failure to meet budgetary targets and create pressure to cut back even more. In other words, the more countries save, the worse they are off in macroeconomic terms. Right now, this is clearly visible in Spain.

The experiences with restrictive fiscal policies in the current recession – not just in relation to the economic consequences but also in terms of budget deficits – are mostly negative. This confirms once more that it is impossible to fully determine the balance of a budget at the political level. It is possible to control tax rates and (to a degree) government expenditure, but overall revenue depends primarily on economic development. This suggests that successful fiscal policy depends on creating a macro-economic framework for stable

4 http://www.ecb.int/press/pr/date/2012/html/pr120906_1.en.html

5 N. Huke & J. Schlemmermeyer, Warum so staatstragend? Die Krisen der repräsentativen Demokratie in der Euro-Krise als Chance für radikalen Reformismus und gesellschaftliche Emanzipation, [in:] PROKLA, Westfälisches Dampfboot, Münster 2012, p. 455.

6 M. Marterbauer & G. Feigl, Die EU-Fiskalpolitik braucht gesamtwirtschaftlichen Fokus und höhere Einnahmen, [in:] WISO direkt, August 2012, <http://library.fes.de/pdf-files/wiso/09284.pdf>

economic growth.⁷ In this context there are two potentially successful approaches for European budget consolidation: (1) decreasing the share of savings in disposable income (for example through the redistribution of incomes and wealth from higher income groups who tend to save money to lower income groups who tend to consume); and (2) reviving the investments of corporations (for example through stabilizing expected sales and improving the returns on investments in the real economy). A decline in the savings rates through redistribution will lead to an increase in private consumption. Together with a revival of investment, this will result in an increase in GDP and employment. This in turn leads to higher tax revenues and a consolidation of public budgets.

“Building blocks for an authoritarian politics of austerity”

The authoritarian politics of austerity in Europe consists of three main buildings blocks (or is made permanent with the help of these): (1) Economic governance; (2) the Fiscal Pact; and (3) bail-outs linked to the imposition of budget cuts.

At the level of economy governance, a new “legislative package” has been enacted in autumn of 2011. To put it bluntly, the motto is “austerity forever”: The cuts agenda implemented in the “problem states” is now supposed to be extended to the other member states. In addition, there is a new procedure for competitive restructuring, which stipulates that the European Commission is solely responsible for setting macroeconomic targets. The Commission already has the power to make recommendations in economic policy. This suggests that the European executive now has almost exclusive control over European economic policy. De facto, the Commission is acting on its own when it imposes the new fines and the existing sanctions for ‘deviant’ economic policies on the member states.⁸

The fiscal pact takes things one step further. It is a treaty based on international law; the contracting parties are supposed to have ratified it by the end of 2012. The pact entails the imposition of a regime of austerity on the countries involved, preferably through the inclusion of “debt brakes” in their constitutions. If the resulting targets are not hit, an “automatic mechanism of correction” intervenes. The existence of this mechanism and of deficit procedures that force countries to implement structural reforms approved by the European executive mean that the budgetary rights of the national parliaments have been curtailed.⁹

The countries that struggle to refinance themselves in the financial markets and apply for funds from the bail-out mechanism are subject to a strict regime of obligations. So far these programmes (which form part of the EFSF¹⁰) are negotiated and implemented by the troika (consisting of the Commission, the ECB and the IMF), which means that the European Parliament is not involved. The new system, the European Stability Mechanism (ESM), will change this state of affairs only insofar as the Commission is more or less solely responsible for these tasks. The existing programmes are characterized by the de-regulation of labour markets, cuts to welfare expenditure and the termination of public investment. The neoliberal assumptions guiding them became visible when the Troika linked the release of additional funds for Greece to the re-introduction of a six-day working week.¹¹

7 M. Marterbauer, Budgetpolitik in Zeiten vermindelter Erwartungen, [in:] Wirtschaft und Gesellschaft, Lexis Nexis Wien 3/2010, p. 299.

8 E. Klutzer and C. Schlager, Europäische Wirtschaftsregierung – Eine stille neoliberale Revolution, [in:] Kurswechsel, Sonderzahl Wien 1/2011, p. 61.

9 L. Oberdorfer, Der Fiskalpakt - Umgehung der „europäischen Verfassung“ und Durchbrechung demokratischer Verfahren, [in:] Juridikum, Verlag Österreich Wien 2012, p. 168.

10 Europäische Finanzstabilisierungsfazilität

11 I. Traynor, Eurozone demands six-day week for Greece, The Guardian 4.9.2012.



The hegemonic crisis of the neoliberal mode of integration

In contrast to the cuts imposed when the Economic and Monetary Union was established, there is no active or passive consensus behind the current cuts in the European population. It is not a coincidence that the focus of social conflict can be found in the countries faced with the most severe austerity drives. This suggests that the European crisis of hegemony and the authoritarian turn entailed by it are characterized by diachronous developments: in countries where traditions of militancy coincide with the effects of the uneven development of the European economy, there are severe tensions. In countries that are among the 'world champions in export' (in particular Germany and Austria), things remain relatively calm, even if a rise in social conflict can be observed. These countries have managed to address the problem of demand caused by wage restraint and the flexibilization of the labour market through externalization.

The attempt to focus the internal market and the monetary union on competitiveness were neoliberal projects implemented within the framework of the EU. They used to be based on a consensus and were presented as mechanisms capable of resolving urgent social, economic and political problems in the name of the common good. Today, approval of these projects has diminished considerably. The unfolding crisis is the deepest one since the 1930s. As a result, the imaginaries of neoliberalism fade into the background and the attractiveness of neoliberal projects is dwindling.¹²

The European system of Economic Governance represents a set of "visibly unlawful decisions made without a legal basis"

Against this backdrop, the contours of a hegemonic crisis of the neoliberal mode of integration emerge. This leads to an emergency mode of legislation, which in turn serves as the foundation for a politics of austerity. The European system of *Economic Governance* represents a set of "visibly unlawful decisions made without a legal basis"¹³. The *Fiscal Pact* makes far-reaching interventions in the economic and monetary union and in the budgetary rights of national parliaments. More than ever, it forces the parliaments to adopt a neoliberal agenda in economic

policy. Nevertheless, it was not enacted through amending the European Constitution, but through a construction aimed at circumventing European law, i.e., a treaty based on international law. A more wide-ranging process of amending European law would have been needed in order to make sure that the *ESM* does not infringe on it. The new "bail-out mechanism" turns the Commission into the main actor behind the obligations imposed on member states – despite the fact that there was no attempt to create a legal basis for this in the European Treaties. According to Christian Joergs, director of the Centre of European law and Politics in Bremen, the new arrangement represents a "(il-)legal hybrid, which underscores the terrifying contemporary relevance of Carl Schmitt.¹⁴

An authoritarian turn?

Against this backdrop, the pattern of the emergency mode of legislation can be identified easily: there is no longer a consensus behind the demand to 'carry on'; as a result, the required amendments to the European Treaties and the degree of consensus needed (qualified majorities in parliament or referenda, depending on the respective constitution) are circumnavigated. This emergency mode cannot be grasped with the concept

of "new constitutionalism" used by Stephen Gill to describe the solidification of neoliberal dogmas in the Treaties, which conformed to European law and was based on (passive) consensus.¹⁵ In the light of the rise of this mode of legislation, which is controlled by the executive, is selective in character and has no constitutional foundation, we have to adjust our terminology. Against the backdrop of a crumbling consensus, a system of neoliberal economic policy has emerged that can be described as '*authoritarian constitutionalism*'.¹⁶

Even if we go beyond questions of law, social scientists have fairly uniform views on the emergency regime of the EU. Drawing upon Colin Crouch¹⁷, Jürgen Habermas concludes that a post-democratic executive federalism has emerged.¹⁸ Hans-Jürgen Bieling, a political scientist who is also an expert on Europe, sees the radicalization of neoliberal politics as a form of "emergency constitutionalism directed against democracy"¹⁹. Similarly, Hans-Jürgen Urban, a member of the executive board of German metal workers' union (IG Metall), contends that the EU is on the way to authoritarianism.²⁰

Hegemonic projects and the European mode of integration

If we try to grasp these developments from an actor-centred perspective²¹, it becomes clear that the neoliberal project is still dominant – even if it is in the process of losing its leading position. It still dominates the discussions in the Commission, the Council and the ECB. With onset of the crisis, however, it has come under intense pressure: the existence of liberalized financial markets was one of the causes of the slump and the hike in national debt and unemployment. The authoritarian turn described is supposed to save the neoliberal project and to thwart an alternative strategy of crisis resolution. Neoliberal and conservative forces at the European and the national level attempt to use the sovereign debt crisis as a pretext for cutting back the reviled welfare state.

It would be a mistake, however, to assume that there is no alternative to the neoliberal project. Right now, there is a battle for political dominance between three different conceptions of politics: (1) the neoliberal project; (2) a traditionalist project promoting a national welfare state based on bourgeois-democratic structures, and (3) a pro-European social project in formation. The project of a national, democratic welfare state is in a defensive position vis-à-vis the dominant neoliberal project. Recently, there has been an upswing in support for it, because countries with an extensive welfare state have weathered the crisis comparably well. It is based on social insurance systems funded through contributions and on social

12 L. Oberndorfer, *Hegemoniekrise in Europa - Auf dem Weg zu einem autoritären Wettbewerbetatismus*, [in:] *Die EU in der Krise. Zwischen autoritärem Etatismus und europäischem Frühling*, Forschungsgruppe Staatsprojekt Europa (ed.), Westfälisches Dampfboot, Münster 2012, p. 50.

13 U. Häde, *Kommissionsentwürfe für offensichtliche Ultravires-Akte*, [in:] *EuZW*, Beck München 2010, p. 921.

14 C. Joergs, *Europas Wirtschaftsverfassung in der Krise*, [in:] *Der Staat*, Duncker & Humblot Berlin 2012, p. 377.

15 S. Gill, *European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe*, [in:] *New Political Economy*, Routledge London 1998, p. 5.

16 L. Oberndorfer, *Vom neuen zum autoritären Konstitutionalismus - Soziale Bewegungen, Recht und Demokratie in der europäischen Krise*, [in:] *Kurswechsel*, Sonderzahl, Wien 2012, p. 62.

17 C. Crouch, *Post-Democracy*, Polity, Cambridge 2008.

18 J. Habermas, *Zur Verfassung Europas - Ein Essay*, Suhrkamp Berlin 2011, p. 48.

19 H.-J. Bieling, *EU-Verfassungspolitik und Wirtschaftsregierung. Krisenkonstitutionalismus gegen Volkssouveränität und Demokratie*, [in:] *Widerspruch*, Widerspruch Zürich 2011, p. 61.

20 H.-J. Urban, *Stabilitätsgewinn durch Demokratieverzicht? Europas Weg in den Autoritarismus*, [in:] *Blätter für deutsche und internationale Politik*, Blätter Verlagsgesellschaft mbH Berlin 2011, p. 77.

21 For a comprehensive overview, see: S. Buckel, F. Georgi, J. Kannankulam, & J. Wissel, "… wenn das Alte stirbt und das Neue nicht zur Welt kommen kann." - Kräfteverhältnisse in der europäischen Krise, [in:] *Die EU in der Krise. Zwischen autoritärem Etatismus und europäischem Frühling*, (ed.) Forschungsgruppe Staatsprojekt Europa, Westfälisches Dampfboot Münster 2012, p. 12.

services funded through taxes. On the one hand, the national basis is the strength of this project because it facilitated the creation structures of solidarity among people in employment. On the other hand, it is also the reason why the project is currently in a defensive position: the national patterns of politics have drastically lost influence due to the freedom of movement for capital at the European level and the obligations imposed on national (welfare-)states by European political institutions. In our view, it is only possible for the national, social and democratic project to go on the offensive again if it is restructured in a transnational way enabling it to influence political processes at the European level.

There is a need for social and democratic actors to re-orient themselves to the transnational level in order to overcome the neoliberal mode of integration in the EU. We want to illustrate this with reference to an issue that will probably become one of the most important fields of political conflict in the coming decade. In June 2012, the presidents of the European Council, the Commission, the Eurozone and the European Central Bank (ECB) presented a paper that has re-ignited the debate about the revision of European Treaties. In the light of the far-reaching plans presented and of the structure of the existing treaty revision procedure, it will soon become clear that only a pro-European social project is capable of challenging the increasingly authoritarian, neoliberal mode of integration in the EU. **One of the key questions is whether there is a procedure which would allow for a “new foundation” of Europe based on the Europeanization of social rights and a U-turn in economic policy.** A “new foundation” of Europe would ensure that the existing systems of social security will not be crushed through the formation of a federation of competition states.

3. A federation of competition states or a democratic and social Europe: on procedures for founding a “New Europe”

According to José Manuel Barroso, the president of the Commission, the recommendations presented²² aim at establishing a “federation of national states”²³. If they are implemented, this will amount to a far-reaching intervention in the budgetary rights of the member states and thus in “the heart of Europe’s parliamentary democracies”²⁴. The EU quartet of presidents appears to share the commonly held view that such measures cannot be implemented with the help of previous emergency mode of legislation. According to Barroso, the restructuring of European institutions should be advanced under the existing contracts, but it can “only be completed with the help of a new European Treaty”²⁵.

Both the French Conseil Constitutionnel²⁶ and the German Bundesverfassungsgericht²⁷ have recently turned a blind eye to the state of democracy in Europe: they have decided to wave through the bail-outs, the European Stability Mechanism and the Fiscal Pact – but only because they were worried that any other decision would deepen the crisis²⁸. This suggests that interventions in the budgetary rights of the parliaments going *even further* would be thwarted by the constitutional courts of the member states, which still retain a degree of relative independence.

22 Towards a Genuine Economic and Monetary Union, EUCO 120/12.
23 Busse, *Barroso wirbt für Föderation der Nationalstaaten*, FAZ 12.9.2012.
24 Towards a Genuine Economic and Monetary Union, EUCO 120/12, p. 6.
25 Busse, FAZ 12.9.2012.
26 Conseil constitutionnel, *Décision No. 2012-653 DC vom 9. 8. 2012*.
27 BVerfG, 2 BvR 1390/12, 2 BvR 1421/12, 2 BvR 1438/12, 2 BvR 1439/12, 2 BvR 1440/12, 2 BvE 6/12 vom 12.9.2012.
28 C. Joerges, *Europas Wirtschaftsverfassung in der Krise*, [in:] *Der Staat*, Duncker & Humblot Berlin 2012, p. 374.

A great leap forward towards a fiscal union?

But it is precisely this “qualitative move towards a fiscal union”²⁹ that the quartet of leaders has in mind. According to it, the setting of deficit and public debt ceilings and the emission of sovereign bonds should no longer be the prerogative of national states, but a *collective* task involving the entire Eurozone. It remains to be seen who will be responsible for coordinating it. A still to-be-founded European “treasury office”, as was suggested in the paper of the presidents? The Council of Governors of the ESM, which is the preference of the ECB director, Jörg Asmussen³⁰? Or one of the existing institutions?

After the creation of this “robust framework for fiscal discipline and competitiveness”, it will be possible, according to the recommendations, to introduce joint liability for the national debts of the member states. Moreover, the paper suggests the establishment of an “economic union” allowing for a “more enforceable” European economic policy, which would no longer be put at risk by “unsustainable policies” pursued by member states. The latest recommendations of the new State Secretary for European Affairs show how far this “joint economic policy” could go. In the context of this debate, he demanded that the member states transfer to the EU the right to set the pension age.³¹

The presidents suggest that the third pillar of the new European architecture should be a “banking union”. The ECB would get the right to supervise all the banks in the Eurozone and to intervene proactively, and there would be an integrated framework for securing deposits and restructuring banks. The paper only contains brief remarks on how a deepened union can achieve democratic legitimacy. According to it, joint decisions have to be accountable, and a “close involvement” of the European and the national parliaments is needed.³²

Theses on the next steps

On the whole, the plans of the European leaders are still vague; more concrete proposals can be expected in December when detailed recommendations for the European Council will be published. Nevertheless, it is already possible to make some preliminary observations regarding the next steps:

1. It is to be expected that the apparatuses and procedures created under the emergency mode of legislation (economic governance, the Fiscal Pact, bail-outs linked to the imposition of austerity), which have deepened the existing, neoliberal mode of integration, will be refined and included in the European Treaties after the fact.
2. Under the heading “fiscal, economic and banking union”, there are already plans to deepen the integration of the Eurozone.
3. The existing recommendations are characterized by the fact that they neither address the causes of the economic crisis (the dominance of the financial markets, the unequal distribution of incomes and wealth, and regional imbalances) nor promote the democratization of the European Union and its economic policy, which is necessary for finding ‘social’ strategies of resolving the crisis.

A “New Foundation” of Europe

It will be the task of a pro-European social project to intervene in the debate about Europe and the

29 Towards a Genuine Economic and Monetary Union, EUCO 120/12, p. 5.
30 Euro-Staaten sollen Souveränität abgeben, FTD v. 17.7.2012.
31 Lopatka: „EU sollte Bandbreite festlegen“, *Kurier* v. 11.09.2012.
32 Towards a Genuine Economic and Monetary Union, EUCO 120/12, p. 7.

coming process of treaty revision. Its aim should be to make sure that there is a democratic and social U-turn in the areas of crisis management and overall integration.³³ **There are indications that a new coalition of actors from the social movements, the trade unions, and academia is emerging – one example is the recent appeal for a “New Foundation” of Europe.** It was signed by important figures from the German trade union movement such as Michael Sommer (leader of the German Trade Union Federation DGB), Frank Bsirske (leader of the German public sector union ver.di), and Hans-Jürgen Urban (IG Metall), and by leading academics such as Elmar Altvater, Jürgen Habermas, and Gustav Horn. The appeal questions the crisis management of the EU and its demands are diametrically opposed to the recommendations in the area of treaty revision.³⁴

Moreover, the appeal is directed against the bottom-up redistribution of wealth and the de-regulation of financial markets. According to it, both processes have contributed to causing the crisis. In addition, the appeal states that the measures taken by the European institutional framework

- are counterproductive in economic terms because they suppress demand and public investment;
- are socially irresponsible because they deepen the rifts between member states and within them;
- and have a destructive effect on democracy because they suspend democratic procedures and attack existing achievements of social democracy such as collective bargaining and social security.

The appeal demands that the EU regulate financial markets, increase taxes on wealth and profits, and pursue a monetary policy strategy focussed on employment. All of this amounts to rejecting the neoliberal mode of integration. Finally, it also calls for the re-regulation of labour markets in order to rein in casual work and low wages and for the establishment of a ‘transfer union’ designed to rebalance the European economy. According to the appeal, these goals can only be achieved if they form part of an offensive for democracy: **if the EU continues to be an “elite” project, it will not have a positive future; it is necessary to address the European public and take up the fight for a social and democratic Europe.** The signatories make a case for the formation of a European social movement directed against the disastrous crisis management of the European Union. According to them, this movement should instigate a serious political U-turn – a process culminating in a “new foundation” of Europe.

The existing treaty revision procedure

The appeal reflects the views of many European trade unionists and other actors supporting a social Europe. Against this backdrop and in the light of the plans of the European leaders, we now want to examine which strategic selectivities³⁵ are built into the existing treaty revision procedure, whose interests are advanced or blocked by it, and whether it allows for enforcing at least some of the demands made in the appeal.

The regular revision procedure was amended in the Treaty of Lisbon and can be found in article 48 TEU. It starts when the government of a member state, the European Parliament or the commission submits a proposal for treaty revision and the European Council decides by simple majority to examine it. Subsequently, the President of the European Council sets up a convention consisting of representatives of the national parliaments, the heads of state and government of the member states, the European Parliament and the Commission. The convention examines the proposals and, based on a consensus decision, makes a

³³ S. Buckel & F. Georgi and J. Kannankulam and J. Wissel, „... wenn das Alte stirbt und das Neue nicht zur Welt kommen kann.“ - Kräfteverhältnisse in der europäischen Krise, [in:] Die EU in der Krise. Zwischen autoritärem Etatismus und europäischem Frühling, Forschungsgruppe Staatsprojekt Europa (ed.), Westfälisches Dampfboot Münster 2012, p. 12.

³⁴ <http://www.europa-neu-begruenden.de/gb/index.html> (01/10/2011)

³⁵ B. Jessop, *State Theory, Polity*, Cambridge 2003.

recommendation for a conference assembling representatives of the national governments. This conference determines which amendments should be made on the grounds of a *unanimous decision*. It is not bound by the preparatory work carried out by the convention.³⁶ The amendments become effective after being ratified by all member states in accordance with their respective constitutions.

The national state as a ‘Bottleneck’

From a social and democratic perspective, there are three key weaknesses of the existing revision procedure. The first one concerns the pivotal role of the *national executives*. Since the convention is only allowed to produce non-binding recommendations, the representatives of the national states get to decide what it is going to happen. This prevents the formation of diverging interests at the European level; they struggle to get through the national ‘bottleneck’: French workers find themselves in ‘the same boat’ as French big farmers and corporations instead of pursuing their interests together with their German or Austrian colleagues. The revision procedure ‘horizontalizes’ the social conflicts in Europe: the heads of state and government clash over diverging ‘national’ interests (the horizontal axis of conflict); at the same time, the contradiction between capital and labour (the vertical axis) is covered up. The procedural logic of this institutional arrangement and its strategic selectivities come into view once we address the question of joint liability, for example in the form of Eurobonds. If we go by the paper of the presidents, this issue will be one of the objects of the next revision procedure. In all likelihood, the existing treaty revision procedure will lead to a “national” framing of the issues at stake before the conference of governments has even started. The point of contention will be whether “the Germans/Austrians/...” will be liable and will thus have to pay for the “Greeks/Spanish/...” This suggests that the logic of this arrangement pushes a key issue into the background – the question how the banking sector and the owners of big assets, which have caused the crisis, can be made to pay for being “saved”.

The second weakness of the existing procedure is the undemocratic veto power that can be turned against the vast majority of people in Europe by every single national executive. There is no treaty revision without the consent of *all* member states. This means that the lowest common denominator always prevails over the highest common factor.

The third weakness is that the procedure requires proposals to be revisions of *existing treaties*. This not only results in the juridification of the debate – only experts in European law are capable of framing amendments in such a way that they are consistent with the existing treaties –, but it also means that specialist knowledge on the existing, predominantly neoliberal mode of integration is required. It is very hard to acquire the expertise needed – not just for actors from the social movements, but even for European politicians. Consequently, it is fairly easy to undermine political demands and discourses by resorting to specialist knowledge on European law and the process of integration.

Veto power and the neoliberal mode of integration

The social and democratic weaknesses of the treaty revision procedure can be illustrated with reference to the fact that there is not a *single demand* from the appeal for a “new foundation” of Europe that could be enforced on its grounds. There will always be at least *one* national government that will veto a retreat from the neoliberal mode of integration. For example, it would not be possible to re-regulate financial markets and re-

³⁶ H.-J. Cramer, *Art. 48 EUV, [in:] EUV, AEUV-Kommentar* (ed.) C. Callies and M. Ruffert, Beck München 2011, Mm. 6.

structure the banking sector because this would go against the interests of the British government and the City of London. Similarly, a qualified or simple majority for new laws in the area of corporate taxes would be vetoed by Ireland or the “flat tax” countries in Eastern Europe, which attract transnational corporations through low taxes or loopholes. And the introduction of joint liability, which would alleviate the pressure on peripheral members states to impose an internal devaluation on themselves (consisting in wage cuts and the curtailment of social rights), would fail thanks to the German state apparatuses, whose representatives fetishize this effect of the economic and monetary union by treating it as a safeguard of competitiveness. It is not a coincidence that the existing treaties are blocking the enforcement of these demands and the enactment of the respective laws: changes either require unanimous decisions (in the areas of corporate, profit and wealth taxation) or outright bans that can only be amended by resorting to the treaty revision procedure (the ‘no bail out’ clause, article 125 TFEU).

An assembly for a “New Foundation” of Europe

The success of a pro-European social alliance depends on its ability to question the revision procedure. It is only logical that the appeal for a “new foundation” of Europe concludes with the assertion that its demands can only be enforced with the help of a democratic offensive. According to it, there has to be an offensive “in European public life” that forces key actors “to negotiate the guiding ideas for a social and democratic Europe”. This demand has procedural preconditions: it requires the creation of a forum that weakens the national formation of interests. For reasons of substantive democracy, the formation of a structure resembling a European federal state, to which the national parliaments transfer their rights, must not be the result of a “revolution from above”³⁷.

In other words, the arguments and deliberation over the content and the extension of the next step towards integration should take place in an assembly with the purpose of instigating a “new foundation” of Europe. This assembly has to enjoy *direct* legitimacy vis-à-vis all the people in Europe: as an assembly based on general and equal elections giving every human being in Europe one vote, it would represent the opposite of the “elite” project proposed by the presidents. The general elections for this assembly would be held after a preparatory period, which would give the national parties, institutions, and movements the chance to ‘Europeanize’. Political currents not yet organized at the European level would have the chance to establish themselves.

The consequence would be that interests would have to be formed at the European level and would have to promote a vision of a European future. Political demands and ideas could be formulated without subscribing to the existing revision procedure and mode of integration with their limiting effects. The tug-of-war over Europe would not end *after the elections*, but would take on a new form. It would enable the members of the assembly to pass a *complete new* constitution with a *qualified majority*.

The legal-constitutional framework of the assembly

There are two ways in which the decisions of the assembly could be integrated into the existing legal-constitutional structures. Undoubtedly, both of them would require the modification of these structures. The first option, which could be called “the route guided by European law”, would use the existing revision procedure in order to create a new one. The next process of treaty revision would solely focus on the creation

37 For a detailed account, see B. Opratko, *Hegemonie, Westfälisches Dampfboot* Münster 2012.

of a procedure for founding a “New Europe”. This procedure would contain provisions for general elections, the establishment of the assembly and the ratification of its decisions (for example through a *European* referendum, in which the new constitution would have to be approved by a qualified majority). According to article 48 TEU, these regulations would have to be accepted by the member states and be ratified on the grounds of their constitutions. After that, elections could be held, and a “new foundation” of Europe could begin.

A different route guided by international law would consist in neglecting the existing procedure. This would be legal precisely because of the fact that the European Union is not yet a federal state.³⁸ The result of the convention would have to be ratified by all member states as a treaty based purely on international law (according to their respective constitutions). This treaty would replace the existing ones.

Undoubtedly, both paths would get through the “national” bottleneck in different ways. But they would both direct the political debate towards the following questions: Why should all the people in Europe as the population of a European federal state in formation not determine their fate with the help of free, equal and general elections? And why should the *bourgeois* self-constitution should not repeat itself at the European level 200 years after it started at the national level?

Founding the “New Europe” as a concrete utopia

Obviously, it is possible to criticize our thoughts on a procedure for founding a “New Europe” for being utopian and for having been produced from scratch. **Anyone in favour of a pro-European social project, however, will have to concede that it is impossible to enforce even limited demands on the basis of the existing procedure. Under the given conditions, the supporters of the neoliberal mode of integration³⁹ will find it fairly easy to thwart a U-turn towards a social and democratic Europe – in theory, they can do so with help of a single stronghold at the national level.**

It could be one result of the debate on a fiscal, banking and economic union that the demands for a procedure for the foundation of a “New Europe” could turn out to be more realistic than they seem at first. A large number of the “steps towards integration” discussed would not just involve a revision of the European Treaties but also amendments to national constitutions, which, in some cases, require referenda. In some member states, there is no longer a consensus behind the deepening and fortification of the neoliberal mode of integration – in particular in those countries that have implemented the politics of austerity imposed by the Troika. In light of this, a reform of the Treaties that does not entail a U-turn away from the existing political course and is presented in the form of an “elite” project will result in a debacle.

In the light of the danger of defeat (and the need to avoid it), it is possible that the European institutional framework will increasingly resort to the emergency mode of legislation. Furthermore, the horizontal axis of conflict inherent in the existing procedure of treaty revision is highly useful for nationalist forces. We hope that the workers in Europe are spared an emergency mode of legislation and large-scale nationalist mobilizations. Following Ernst Bloch, we would much prefer it if these experiences are not needed for turning the potential procedures for founding a “New Europe” into a *concrete utopia*.⁴⁰

38 H.-J. Cremer, Art. 48 EUV, [in:] *EUV, AEUV-Kommentar* C. Callies & M. Ruffert (ed.), Beck München 2011 Mn, 19ff.

39 J. Wisse, *Krise, Staat und die Radikalisierung des Neoliberalismus* [in:] *Kurswechsel, Sonderzahl* Wien 2012, p. 11.

40 E. Bloch, *Das Prinzip Hoffnung* Werkausgabe Band 5, Suhrkamp Frankfurt am Main 1990

Markus MARTERBAUER is head of the department of economics and statistics at the Austrian Chamber of Labour. His main fields of research are fiscal policy in Austria and the EU, distribution of income and wealth, postkeynesian economic theory. <http://wien.arbeiterkammer.at/wissenschaft/wirtschaftswissenschaft.htm>

Lukas OBERNDORFER is scientific staff member of the Austrian Chamber of Labour and the legal journal *juridikum*. He is also active in the Study Group on Critical European Studies (AkG). His main field of research is critical theory and the empirical study of European integration and European law <http://homepage.univie.ac.at/lukas.oberndorfer>

References

- Bieling, H.-J. (2011)** *EU-Verfassungspolitik und Wirtschaftsregierung. Krisenkonstitutionalismus gegen Volkssouveränität und Demokratie*, [in:] *Widerspruch*, Widerspruch Zürich.
- Buckel, S., Georgi, F., Kannankulam, J. & Wissel, J. (2012)** "...wenn das Alte stirbt und das Neue nicht zur Welt kommen kann." - Kräfteverhältnisse in der europäischen Krise, [in:] *Die EU in der Krise. Zwischen autoritärem Etatismus und europäischem Frühling*, Forschungsgruppe Staatsprojekt Europa (ed.), Westfälisches Dampfboot Münster.
- Cremer, H.-J. (2011)** *Art. 48 EUV*, [in:] *EUV, AEUV-Kommentar* C. Callies & M. Ruffert (ed.), Beck, München.
- Crouch, C. (2008)** *Post-Democracy*, Polity, Cambridge.
- EUCO (2012)** *Towards a Genuine Economic and Monetary Union*, 120/12.
- Gill, S. (1998)** *European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe*, [in:] *New Political Economy*, Routledge, London.
- Habermas, J. (2011)** *Zur Verfassung Europas – Ein Essay*, Suhrkamp Berlin.
- Häde, U. (2010)** *Kommissionsentwürfe für offensichtliche Ultravires-Akte*, [in:] *EuZW*, Beck München.
- Huke, N. & Schlemmer, J. (2012)** *Warum so staats tragend? Die Krisen der repräsentativen Demokratie in der Euro-Krise als Chance für radikalen Reformismus und gesellschaftliche Emanzipation*, [in:] *PROKLA*, Westfälisches Dampfboot, Münster.
- Joerges, C. (2012)** *Europas Wirtschaftsverfassung in der Krise*, [in:] *Der Staat*, Duncker & Humblot Berlin.
- Klatzer, E. & Schlager, C. (2011)** *Europäische Wirtschaftsregierung – Eine stille neoliberale Revolution*, [in:] *Kurswechsel*, Sonderzahl Wien 1/2011.
- Marterbauer, M. (2010)** *Budgetpolitik in Zeiten verminderter Erwartungen*, [in:] *Wirtschaft und Gesellschaft*, Lexis Nexis Wien 3/2010.
- Marterbauer, M. (2011)** *Zahlen bitte! Die Kosten der Krise tragen wir alle*, Deuticke, Wien.
- Marterbauer, M. & Feigl, G. (2012)** *Die EU-Fiskalpolitik braucht gesamtwirtschaftlichen Fokus und höhere Einnahmen*, [in:] *WISO direkt*, August, <http://library.fes.de/pdf-files/wiso/09284.pdf>

- Oberndorfer, L. (2012)** *Der Fiskalpakt - Umgehung der "europäischen Verfassung" und Durchbrechung demokratischer Verfahren*, [in:] *Juridikum*, Verlag Österreich Wien.
- Oberndorfer, L. (2012)** *Hegemoniekrise in Europa - Auf dem Weg zu einem autoritären Wettbewerbetatismus*, [in:] *Die EU in der Krise. Zwischen autoritärem Etatismus und europäischem Frühling*, Forschungsgruppe Staatsprojekt Europa (ed.), Westfälisches Dampfboot, Münster.
- Oberndorfer, L. (2012)** *Vom neuen zum autoritären Konstitutionalismus - Soziale Bewegungen, Recht und Demokratie in der europäischen Krise*, [in:] *Kurswechsel*, Sonderzahl, Wien.
- Sablowski, T. & Alnasser, S. (2001)** *Auf dem Weg zu einem finanzgetriebenen Akkumulationsregime?*, [in:] *Ein neuer Kapitalismus?*, (ed.) M. Candeias and F. Deppe, VSA, Hamburg.
- Traynor, I. (2012)** *Eurozone demands six-day week for Greece*, [in:] *The Guardian* 4.9.2012.
- Urban, H.-J. (2011)** *Stabilitätsgewinn durch Demokratieverzicht? Europas Weg in den Autoritarismus*, [in:] *Blätter für deutsche und internationale Politik*, Blätter Verlagsgesellschaft mbH Berlin.
- Wissel, J. (2012)** *Krise, Staat und die Radikalisierung des Neoliberalismus* [in:] *Kurswechsel*, Sonderzahl Wien.
- Ziltener, P. (1999)** *Strukturwandel der europäischen Integration*, Westfälisches Dampfboot Münster.

