

EU's "Little" Constitution: between Schweik and Kafka¹⁵,

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Motto: *EU "action shall be aimed at: protecting... the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen" (Constitution for Europe, 2003, Article III-182, 2g; later -III-282, Ig).*

CONTENT: we do not need new EU constitutions, we need to return to the basics - the Treaty of Rome; unified energy procurement policy can do for the EU today the same the steel and coal policy did to it fifty-plus years ago.

They - the People of America - established their Constitution to "form a more perfect union". And the last century has proven that it is a success story. On the contrary, Old Europe's efforts to keep some unity together (that had been caused by the common shock of WWII) have constantly failed. Traditionally applauded achievement - thanks to the EU there have been no wars in Europe for 60 years - is factually incorrect. Firstly, the period between two European wars (from the Hungarian one in 1956 till concentration camps in the former Yugoslavia and Russia we can count maximum 37 years only) have been shorter than usual and, secondly, none of the serious conflicts (Korean and Vietnam War, Berlin and Caribbean Crises, even the first substantial terrorist attack: against Israeli sportsmen during the Olympic games in Munich) did not have anything to do with the European Union.¹⁶ Thus it would be safe to say, that the world peace and trade normalcy have been preserved at best - without the EU or - to put it more frankly: in spite of ongoing European tendencies to go on with its "policy-politics" as usual.

Classical European policies (as they are defined in Euro-legal documents) mean establishing economic control and cultural superiority over smaller European countries or the European territories under auspices of some higher "European Idea" (as President Klaus labeled it years ago - an "Ersatz-idea").

In other words: in spite of all the fireworks of conferences, agenda, constitutional draftings, loose-button meetings, Putin-befriendings etc. my fundamental point's first half goes like that. **Since perhaps**

¹⁵ ' This article in its shorter version was published in EU Watch, issue 9, Dec 2007/Jan 2008 under the title of "The EU Constitution, Russia and a Common EU Energy Policy". Having studied Kafka for decades I admit that most probably Franz Kafka and "Schweik's" author Jaroslav Han>ek never met or had any relations. These names here are combined only metaphorically due to their great compatriot, the greatest economist of our days - Professor Vaclav Klaus to whom I present this essay.

¹⁶ "The legend has been fostered that "European civil wars" have not happened in the second half of the 20th century because the Common Market has brought France and Germany together. In my view, peace in Europe is due to American intervention and generosity." (Schwartz 2001, p. 41.)

Maastricht the European Union has not changed much and it is not so bad. But the risks included in the new constitutional process are still there.¹⁷

On the other hand today's magnum scale political situation is a *deja vu* of the best (or worst) days of the Cold War and Europe is positioned under the circumstances that clearly resemble those of the early 1950s. All the Western Europe (I mean Old and New Europe plus countries aspiring to join the alliance or having adopted the rules of EU behaviour like Albania, Norway, Turkey, Iceland, Moldova, Switzerland and some others) stands today opposed to Russia that very constantly, vocally and honestly has declared its imperial and revanchist ambitions.

To use it just as an example *par excellence*: why does Russia need to use its military might to grasp control over Europe if the former Chancellor Schroder is on discount sale or if new French President Nicolas Sarkozy is so inexperienced that his taking into the service for Russian interests (through alliance of Total with Shtokman Fields) comes almost for free and within a matter of weeks without even proper negotiations? "It's economy, stupid!" that is how Clinton started his presidency and - succeeded. (Although it became visible only thanks to the presidency of George W. Bush).

Once Russia has defined its strategic position (the strategic goals that had been finalized under Czar Alexander III in the 1880s) and found the adequate means to pursue them (by using the scarcity and scarcity of everything related to energy resources) it is the only reasonable, understandable and beneficial policy for Russia to avoid the birth of any kind of unified Europe as a customer for Russian energy resources. Particularly in the times when Russian gas reserves are running low and the means of oil transportation (pipes, compressing stations and especially - the tanker and rail-cars fleet) degrade in progression. Russia is smart enough to avoid any energy deals with Europe, clever enough to grasp European fundamental humanitarian value: national(istic) greed and intelligence-wise informed enough to pick up individual countries by offering them special energy-deals individually country-by-country.

One extremely valuable historical lesson seems to have been lost in Europe: all countries and all rulers, from Swedes, Poles, French, Germans, Turks, Mongols and others who have entered into sweat-heart deals (or not so very sweat, but still deals) with Russia have ended very badly: by losing their states as Poles, Mongols or Estonians or in the hands of a hangman in Nurnberg or GULAG concentration camp. St Helena was just a piece of Paradise, let us be honest... Napoleon might have ended much worse than he actually did. If that lesson of history is taken seriously at least for the argument's sake, then all these "special treatments" by Gazprom, Rosneft and other Putin enterprises with individual companies and countries based upon case-by-case granted "favours" are the "cold kisses of death" to Putin's partners even if we do only guess today how it will play out at the very end of the day.

I am not a Rush Limbaugh style person telling "see, I told you so" but just a believer that there is some reason in the universe ("except some places in New Jersey" - Woody Allen would add here!) and there are some lessons to be learned from the past. And thus comes the second part of the argument here: **European Union is needed and will survive if and only if it is going to be based upon the unified, joint, honest and transparent energy policy in the interests of the Union as a whole. Like once the EU had been started as a steel and coal union it can make the second start as a home for modern unified European energy policy.** In the latter I include first and foremost - unified energy-purchasing policies from Russia, but also harmonized efforts to eliminate wasteful energy-usage, uncontrolled emission; creating new energy technologies, means to protect the environment, development of nuclear technology, honest implementation of Kyoto Protocol etc. - but all these latter things are secondary; we can save and optimize the use of energy we have!

That is why there is no problem of, for instance, restricting the consumption of oil: one day the last drop of oil will be drilled out and the problem will go away by itself...

¹⁷ Back in 2003 Professor Klaus noted: "The marginal contribution of further economic or non-economic unification will be close to zero, if not negative. Because of that, the birth of the euro as well as the day of the next EU enlargement in 2004 do not represent any breakthroughs." (Klaus 2005, p. 133.)

Dictatorship of accidental problems

In reality the focus of euro-politics has been turned away from its main objective, even from the *condition sine qua non* of its existence: I mean harmonization and certain altruism in the basics of its economic existence, most crucially: its energy policy. It goes far beyond EU's lack of capability to standardize even the electrical plug-ins, although their very existence has always made me doubt how serious EU truly is about the integration and co-operation between its member-states. I think that there is no time left and even no serious academic interest in the "soft" European subjects, although some of them might be of certain political interest. (Like: whether Islam for Europe is "in" or "out" - consider some Balkan states that are definitely Europe and Turkey that actually is "almost" Europe.) The highly questionable topic of European cultural heritage (outside of Franco-German tradition) is definitely worth studies. But under one very certain condition: that whatever we mean by the name "Europe" is still there. And definitely it will not (be there) as we know it once it is going to lose its own standing and positions after the surrender to any kind of strong pressure caused by the lack of more or less decent energy resources.

Europe had an easy ride after WWII: the danger to its very existence emanating from the Soviet camp had been barred away by NATO, i.e. by the USA. The crisis of Yugoslavia in the mid-1990s just proved the evident fact. NATO without USA is basically militarily close to a non-entity and even little Estonia's resolution and abilities to fight a successful war against the cyber-aggression from Russia worked rather in spite of than due to the NATO's military capabilities. I do not want to underestimate NATO's moral roles and responsibilities in Europe, but when it comes to the energy security issues it has to be noted, that USA's interests and even capabilities to solve them in and for the EU are quite limited. Thus the NATO pressure as well. And vice versa: "Old Europe" had turned a blind eye and a deaf ear towards the cases when USA needed assistance to solve its own problems regarding safe oil flow from the Middle East. (Let us not forget the fact that EU "big players" refused to listen to the US arguments on Iraq long before they happened to be proved false. And Colin Powell's presentation as such had been very convincing in the UN.) In other words: in the master game of energy everybody is for himself: EU, USA, Russia, China and it goes on and on and on.

EU is a player here only if it really stays or becomes unified in principal issues.

The ghost of the Constitutional Treaty

The dead-born Constitutional Treaty suffered from multiple sets of diseases. As a lawyer and legislator I am ready to agree that sometimes the textual form does not matter for a good law, but the fact nevertheless is: a sloppy text usually reflects something wrong in its content. And that Treaty was a very poor text indeed. With inconsistencies in numerations, strange fragmentations, different styles, evident compilatory transfers etc. To make a long story short: that Treaty was simply unteachable to the students! Likewise it was unintelligible to the professors. The technically best by far presentation of the Treaty and the only "reader-friendly" edition of the proposed "EU Constitution" was presented to me by its author Jens-Peter Bonde (MEP) with his personal autograph: "To Igor Grazin, best greetings: and the book I cannot recommend". As in its drafting the speed of the process outpaced its intellectual content the outcome had to be of poor quality. Any barbaric code of Medieval Europe surpasses this document by logic, clarity and applicability. It draws us to the conclusion: **the text of the Constitutional Treaty did not matter, what mattered had been its acceptance by EU member states at that period of time.**

Looking back at the slow and boring times in Europe (9/11's aftershocks taught Europe some 4-5 years later) one has to ask: what truly happened in Europe that forced former French President (who came to praise Napoleon and Hitler for their efforts in "Continent building").¹⁸ So what actually motivated "Euroenthusiasts" to ram this strange *quasi-legal-semi-opus* through the nations and parliaments? Why did Germany support it? Why so many others (with the vocal exception of UK) remained silent? It seems that there could be just only one answer - the accession to Europe of new member states from the former Soviet

¹⁸ That speech in the Royal Geographical Society included one very Machiavellian twist as well: to sell his idea of eliminating the democratic revolving presidency and the majority vote Giscard warned his English audience that 4 republics of the former Yugoslavia will outvote UK one day... What a way to build trust in the new EU!

Bloc. It goes without saying that for those countries ("The New Europe" - a new concept in European politics coined by an American Paul Wolfowitz) the accession to the EU was almost a "must do" thing due to the facing of the accelerated revanchist thinking in Russia. The life has proved that kind of pragmatic consideration to be a right one: during the days of the "Bronze Soldier Crisis" in Estonia (April, 2007) EU's reaction to that was politely mild and *siestally* slow but nevertheless - quite clear. Those days took away many second thoughts about the pragmatic wisdom of EU membership for Estonia.

But there **had been second thoughts** as well. The main difference being a bit paradoxical one: from the point of view of the "New Europeans" the "Old Europe" was a stagnant quasi-political institution with weakening socialist economy, decreasing competitiveness, irresponsible fiscal and monetary policies, bureaucratic and un-democratic political system etc.¹⁹ Briefly: dynamic and democratic East European countries had to join the ones with exhausted economic, organizational and psychological resources. From the point of view of the "New Europe" the EU was a regress, a step backwards.

In the year of 2004 there was even one more specific monetary risk: joining the *euro-zone*. Because unitary currency had been based upon the economies of the countries lacking budgetary responsibilities and facing the fiscal crises (like Germany and Italy) might have meant that relatively poor Eastern Europe had to start to pay the debts of deficit-ran and inflationary economies of richer Western Europe.²⁰ The way out of it might be found in the method the least desirable for libertarian economic policies - like in Estonia - the unification of the tax system. Although these fears turned out to be groundless they had been in mind of many politicians on both sides of the "velvet curtain". ? The new members of the EU were definitely not much of a political burden to the EU (Polish magnitude and agriculture were of concern of course) but posed a risk as an **example of success of a truly free market**.

The socialist elements of the EU that had turned to be outdated and in-efficient (Marxism-Leninism died a bit earlier than Marxism-Keynesianism): quota systems, subsidation of whole sectors of economy, economic planning, switching off market mechanisms and democratic political procedures etc were something that the "New Europe" had been opposed to. But as these elements of modern EU had become essential to preserve its very existence there could seem to be the only one reasonable solution: to decrease the economic-political role of the European newcomers in the real process of European integration and this could be achieved just by some crucial political maneuvers - introducing majority vote (to guarantee the domination of "Old Europe"), preservation of the system of planned economy that had been planned *in absentio* of the New Europe i.e. without taking into the consideration of the national, economic and purely democratic interests of the newly democratic countries;²¹ unification of the foreign policies (i.e. to cut the New Europe off its ties to US and Asia and weaken their traditional links with UK) and creating the unified institution of presidency. (Here I truly wonder - why that had been needed. For the sake of Giscard's own vanity? I can't find other explanations.)

This is not a conspiracy theory! Let us not forget, that we are talking about the times when the German Chancellor tied his corruptive (not to say - criminal) knots with Putin and when Chirac was taking most

¹⁹ On economic degradation of the "Old" EU and the dynamism of the post-communist world in Europe see: Szamuely & Jamieson 1998, pp. 38^8. The gaps shown in that paper indicated the initial differences between the two parts of modern EU. Today all these differences have turned into the political ones after the accessions of 2004.

²⁰ The absurdity of a unified monetary policy without a unified fiscal policy has been demonstrated by Professor Klaus, look his: "On the Road to Democracy" (2005, pp. 132-138). "The single currency (without fiscal unification) creates an environment for fiscal irresponsibility," writes Klaus. It is time to say: there are no doubts that Vaclav Klaus has been a great President of his country and a great European, but we should never forget that he stands among the most outstanding liberetarian economists of our times - after Friedmann - and the only one who has theoretically analyzed the economic aspects of EU transformation and predicted the macro-economic problems we face today. Professor Klaus is too much of a gentleman and a diplomat not to say so but I can do that: the question is simple - whether the idea of euro is based upon a crooked or a stupid mind. That is so simple.

²¹ Paradoxically enough, these methods of socialist planning were taken very seriously in the case of the "New Europe" but in a very relaxed mood by the old members of the EU. Hygenic prodecures in the public eating places cuisines had been implemented with the whole rigidity while in the center of grand European capitals in one of the most prestigious hotels' kitchen I saw this year something that by far exceeded the ways of operation of Fawltly Towers.

decisive steps against the liberalization of energy-market (thus trying to out-bid Schroder's offers to Russia).

As the events turned their own course the Constitutional Treaty died, although - now it seems it still refuses to put a " R.I.P." stone above its head. We shall notice that the death of the Treaty was not an accidental one as it has been interpreted by some: caused by some secondary thoughts by the Dutch (that is a small country anyway!) or emotional unhappiness (!) by the French with their government. It was perfectly clear, that the Treaty would have failed miserably in UK, almost for sure in Czech Republic and... after all: in several countries (like Estonia) it could have been returned back to the referenda with predictably negative outcome.²²

So everything that had happened was perfectly understandable and natural.

True dangers

The real danger of all that "constitutional process" lay in the fact that it misled the peoples' of Europe attention away from the real and serious problems they were going to face. All that otherwise innocent entertainment (for politicians only!) covered up two most principal events: **(a) Putin's regime had become more aggressive and had discovered a true lever to move European policy around - European dependence upon Russian energy resources; (b) EU leading countries had started their individual, egotistic and nationalistic policies with Russia regardless of joint European interests.**

After the failure of the whole constitutional idea it could have been put to rest indeed, unless there were two decisive factors:

1. The renewed (?) version of the Treaty is still pushed ahead and will come to the voting in several EU countries (although the popular vote will be avoided even in the countries where it had been mandated or politically promised).

2. In 2008 the EU faces the need for true, sincere, honest cooperation and some sort of unification indeed. And the Treaty needs to be examined critically not because it does too much but because it accomplishes so little if anything at all.

This second point cannot be stressed strongly enough. Because till today the real economic integration has not been meant by serious political people seriously! It has gone almost unnoticed that of the four economic "freedoms" of EU (free movement of goods, services, people and capital) only three favor integration. On the contrary: the free movement of capital is a means to avoid any cohesion, freedom, solidarity or even any of the basic principles of liberal democracy.²³ Unregulated capital tends to move towards the sectors of economy or to the countries where its returns are the highest, i.e. to the most prosperous countries or to the sectors that enjoy special favored treatment from the government.²⁴ The latter is the most important factor: as we see, state subsidized energy-sector and agriculture in France like state-monopoly relations in gas distribution in Germany etc. actually reproduce the system of socialist economy and control over societies. In EU the "freedom of capital movement" has come only at the expense of free market and the freedom of decision-making by the people. Thus it cannot come as a surprise that among the first steps of President Sarkozy (formerly: right-wing liberetarian) in his office has been the establishment of ties between French energy-giant Total and Russian oil-monopoly regarding the Shtokman oil-field exploration.

²² I'd like to quote Danish "Politiken"-magazine's editor-in-chief's idea that is remarkable for its courageous clarity: "The use of referendums subverts representative democracy at both national and European levels." (Europe's World, Spring, 2006, p. 71.) Sapientia sat...

²³ In an earlier study under the auspices of the research center "Free Europe - UKVE" - I hoped to demonstrate that the existing restrictions on the freedom of movement of labor - and Schengen system are an administrative barrier within the EU itself! - prove that the free and single market had never been achieved in Western Europe. Look at: Grazin 2001, p. 64.

²⁴ Hayek in his "Road to Serfdom" (1994) - chapter IV - and Friedman in "Capitalism and Freedom" (1982) - chapter VIII - have proven clearly and conclusively: monopolistic position on the ...market can be established only with the assistance or at least tacit approval of the state; actually - what is socialism anyway? - a system of monopolies.

Badly smelling gas deal including Gazprom, Schroder, Ruhrgas, Putin, KGB etc. regarding the gas-pipeline (Nord Stream) through the Finnish Gulf and to be protected by newly created Russian submarine fleet (including at least 14 ships, some with nuclear capabilities - reactors secretly tested in February, 2007) comes from the same linkage of monopolistically uncontested capital with political power. I do not want to claim this to be some kind of a European vice - to point into another direction: it was US President Nixon who while engineering his ping-pong policies with China noted that for "true American business" it would be always preferable to deal with well-organized (i.e. communist) than chaotic (i.e. small and less government controlled) economy. I know agro-businessmen in Ohio who still admit that Soviets were not so bad after all - when it comes to business... The stability of Soviet grain purchases on Chicago Merchantile Exchange is remembered till today.

I do not want to extend here regarding the monopoly-socialist relations but simply state the fact: while until now it had been possible to ignore the dangers to the free market emanating from the fundamentally socialist orientations of the EU, it is not possible anymore.

The series of the gas-supply crises caused by Russia's conflicts with Ukraine, Byelorussia and Poland revealed a fact, known earlier but tacitly tolerated - the overwhelming portion of European economy has ceased to be based upon the principles of free market of economic democracy and had been replaced by state-socialist monopolistic conglomerates. So there should be no surprise that the gap between normally developing economy (like that of the US) and the stagnant European one that had to be overcome by 2010 has been widening and the "Lisbon Strategy" itself has become a rather embarrassing expression not to be mentioned in a politically correct "European discourse". **Socialist economy controlled by administrative planning performed by state-monopolistic corporations is determined to be an underperformer and the opposite is true as well: degrading European economy serves as a proof that its economy is not liberal.**

The ongoing bureaucratic developments of EU (more declarations, regulations, restrictions, subsidies, obstacles) have shadowed the fundamental principle of the very existence of the EU itself: the one, unified, single free market of Europe. In other words. There may be some kind of coordinated whatever policies of EU, but without the free market they will never work. Instead of the fundamentals the EU tends to deal with issues although interesting but of derived and secondary importance. Belgian Prime Minister Guy Verhofstadt while propagating the renewal of the current EU gives us an agenda of items he considers to be of primary importance for the (future) EU: improvement of social welfare system for the generally aging population of Europe, reshaping of European "social model", to "step up... efforts in areas like research and development and trans-European information networks", "single European area of justice" (sic!?) etc. (Verhofstadt 2006, p. 80).²⁵ Not a single hint at the true and solid basis of the EU itself: the free and democratic economy left on its own and the governments just only correcting its normal course for the sake of common social good and protection of market mechanisms. (But, unfortunately "politicians think that the economy has to be governed if it does not ? function properly.") (Schwartz 2001, p. 43.)

So what about the new constitution

The most dangerous people for today's Europe are - visionaries, who want to modify the euro-socialist model that has led to the economic and political stagnation. We can say exactly (let me omit figures here — they need long explanations because of the need to correct the ones influenced by non-economic and specific economic factors: destruction after the WWII, American aid, exclusivity of the "Swedish model" etc.) how the EU went wrong. It happened just the very moment when the normal market principles had been spoiled by the introduction of all sorts of "European policies" - commercial, educational etc. crowned by EU's crown jewel: CAP. And it is not just that these policies led to bad and economically bad actions, but that they are completely ambiguous and may mean almost anything the current politicians want them to mean. Even such quite a clear (it seems) term as "single market" may mean in reality almost anything: it "is designed to enable left and right to interpret it in wholly different ways. To the free-market minded, the

²⁵ To put it frankly - that idea of going forward is the scary one indeed and reminds us of the worst days of "social engineering" concepts. At the same time it would be more correct to look backwards and ask a question: at what moment and where exactly did we take the wrong turn?

single market seems to be euro-speak for free trade, and we all applaud that. But to the left, it means what it is - a Trojan Horse for transferring powers from the independent, democratic nations to unaccountable technocrats in Brussels." (Helmer 2007, p. 81.)

The situation is worse than in the case of carrying out bad policies - people's flexibility is so high that they tend to survive even very bad politics (look at the experience of the USSR: we did overcome it somehow!). But what destroys the economy is - unpredictability. Economic history (like that of the Weimar Republic) has shown us: we can somehow handle the galloping inflation, but it is impossible to keep business going under zig-zaging inflation... In other words: the new constitution like the failed old one is dangerous by its own ambiguity. And there are indicators that the new version of the Treaty (the so called mini-treaty) does not serve the purpose of clarification of the disputed issues but the one of hiding them away. Valery Giscard d'Estaing made it clear: "Making cosmetic changes would make the text easier to swallow". The think tanks have figured out that of 250 changes proposed to the failed Treaty only 10 have been taken into account (Hague 2007). William Hague states the principal fact: the short version "is essentially the old EU Constitution, rejected by French and Dutch voters just two years ago, but bought back under another name." Nolens-volens the same has been admitted by Giuliano Amato, Gordon Brown and actually by all euro-caring political audience. EU Commissioner M.Wallstrom while suggesting a more prolonged "period of reflection" to grasp the essence of the EU crisis nevertheless does not question the idea of the modern EU itself dedicated to "solidarity between generations", "new narrative", "EU's role in driving growth" etc. - *ad infinitum* (Wallstrom 2005).²⁶ Thus just modifying the needless and misleading text of the failed Constitutional Treaty. To put it figuratively: **the piece to be played by orchestra of the "Titanic" was an issue (of taste) but its choice had nothing to do with the fate of the ship.** To quote Vaclav Klaus (then not a president yet!): "The ideology of unification, the ideology of Europeanism - which is, however, only a very superficial substitute ideology, an Ersatz-ideology." (Klaus 2001, p. 7.)

Thus one text creating unpredictability has been replaced by another one of the same quality. Under all other circumstances this would have remained just another relatively innocent exercise in boring political text writing. But as mentioned earlier: the strategic situation for Europe has changed. If not cold per se then at least the **COOL WAR HAS BEEN LAUNCHED.** And it requires proportionate and adequate actions. The free market created the EU and it might recreate it once again. EU started as a coal and steel union and those ideas were carved into the law within the Treaty of Rome. It seems that it was the intersection where Europe took the right turn and we went wrong somewhere close to Maastricht. So: wouldn't it be right to go back to the Treaty of Rome we all know, understand and that had served us so miraculously well? **Re-implementation of the Treaty of Rome and not the production of some new questionable texts is the way out of the crisis for the EU.** What steel and coal industries' integration did for Europe in 1951 (can and must be done today by unified energy-procurement policies. It is a two-sided task of recreation of the "Fortress of Europe": unified and coordinated energy policy towards the third countries (not Russia only, but towards the US, Middle East as well) and restoration of economic liberalism within the EU itself. In other words. The customs union for the outside world and free (i.e. non-monopolistic) market inside the EU itself.

AFTERWORD. Today it is January 25, 2008 and I am going to vote against the old but shortened version of the Constitutional Treaty. Not because it is bad or dangerous, but because it is - irrelevant. And because it is high time to start to build up (or restore) the true European Union as it had been designed by its great founders. Times for plain vanity, boredom and intellectual laziness are over.

²⁶ The interview suggests that the very idea of "reflection" itself was never meant to be about the essentials of further European integration.

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