

A. The lack of democracy and the future of the union

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Some of you will remember John Cleese in Fawlty Towers. The running gag was: "Don't mention the war!" When I came to Britain yesterday, I thought may be it would be better, not to mention the European Union. But at a conference on the future of workers right in Britain and the Union it seems to be difficult, to avoid to mention it. So I grasp the Brexit as a symptom for the crisis of the European Union. This crisis is caused by different constructional deficiencies. I will try to outline these shortcomings and use them to evaluate some plans, how to change the EU.

But first of all: What have constitutional deficiency in common with the absence of democracy? When lawyers define democracy, they think of the procedural rules and institutional arrangements of a society, a state or an organisation. This concerns one side of the lack, we have to talk about.

1. Neoliberal Determination

But talking of democracy has other implications. It is commonly accepted, that elections do not mean the right, to see different faces, who are going to rule a country. Democracy means – we may have forgotten this –, that elections can lead to a policy change. Democracy means, that the constitution is open in the sense, that different concepts of policies, different ideas of a good life, ideas of the way of living, have the chance to be transformed into policies. The European constitution precludes this possibility. The rules of the European constitution, the Lisbon treaties, are detailed in a way, that a policy change is unlikely or impossible. I will mention some issues, which show clearly the determination and the sort or direction of the determination. The Treaties are a set up for a policy of open markets and competitive economies, in other words for a neoliberal concept of economy.

Art. 119 of the Treaty on the Functioning of the EU (TFEU) declares unadorned, that the economies of the EU and the member states should be based on the principle of "an open market economy with free competition." We can find this "open market principle" four times in the TFEU and another three times in the protocol on the statute of the European central banks.

The rules of the treaties are giving the open market philosophy a concrete form. The most important principles are:

- The fundamental freedoms in the interpretation of the European Court of Justice (ECJ). The court suggested that human rights are less important than these market rules.
- The general prohibition of subsidies in Art. 107
- The expenditure from any act has to be capable of being financed within the limit of the Union's own resources (Art. 310.4) – which means deficit spending, suggested by Keynes, is not in accordance with the treaties.
- primary objective of monetary policy and exchange-rate policy shall be to maintain price stability. That means a low rate of unemployment or an equal balance of trade are no equal targets of the Union policy.
- The duty to avoid excessive government deficits (Art. 126) – the famous Maastricht criteria, which is not only binding for Euro-states, but also for other Members of the Union.
- Last but not least Art. 170 demands privatisation and competition for important former public services as railway, telephone, post services or electricity.

These are important rules not only for a market economy, but for a special form of a market economy, the neoliberal form of it.

In the next step, I will focus on the problematic regulations, which led to the deep crisis of the Union.

2. The Competitive State

The Union is build as competition system. The treaties explicitly commit the member states „to avoid distortion of competition” (Art. 113). Competition is not only the order for the economy, for enterprises and corporations. More or less indirectly it is also the principle for the states. The states find themselves necessarily in the role of competitors for industrial settlement or capital investments. We have an European competition for business location. Now what are the areas, where the states are competitors? The single market and the regulations of the Union are having the effect, that states can not change their rules or their laws arbitrarily in harmonized areas in order to attract international capital. For example: we have environmental regulations and directives for every environmental medium, therefore we will find the same or similar environmental standards in every member state. The states are – in accordance

with European law – not able to lower their standards in order to have an advantage in investors location decisions.

There are two areas in which the law is not harmonized and in which the EU does not have the competence of harmonisation. This is tax law, and the law of social security systems. The Union has only the competence to harmonize indirect taxation (Art. 113) Therefore we do not have any European rules for direct taxes. So this is the area for the states to compete against each other, to gain an advantage of location. What do they do? They invented flat taxes for companies like in Ireland. Or the government starts to negotiate taxes with big international companies like amazon or starbucks – like in Ireland or Luxemburg. Tax avoidance of multinational companies, medium and small sized enterprises is a problem for the budget of states and the Union. Lately the commission became aware of this problem and started to use the prohibition of subsidies to charge for example Ireland to reclaim tax reductions. The chief dealer became the chief drug inspector, which means president of the commission. As a result of the shown structure the business tax decreased everywhere in Europe initiated by the European competition system. In the consequence tax revenues of the states also decreased, which produced public poverty and private richness, what means, that the states are not able to keep their welfare system.

The same effect has the missing competence of the EU for the social security systems. It causes a rat race to the bottom. The member states are trying to reduce their social security costs, for enterprises, because they expect an advantage in location decisions. The EU has competences for some social issues like equal rights, therefore the Union has done a lot for example for gender equality. Still the member states are controlling the social security systems. Therefore the north-western states of the EU, the states with developed systems of social security started to degrade their systems. The change of the unemployment and health insurance system in Germany under the Schröder government seems to be a good example for the cut in the social system. If you look closer, the cut turns out to be a transfer of the costs from the companies to the insurees and it was a reduction of the benefits for the workers or the unemployed.

3. Free capital flow

Among the fundamental freedoms in the EU Treaty, the Commission declares, “the free movement of capital is the most recent. It became a directly applicable treaty freedom only with the Maastricht treaty.”^[1] (end of quote) Living in a capitalistic society we can not be surprised. But seriously: The free movement of people, goods and services

forbids discrimination and allows the liberalisation of the appropriate regulations. But with respect of the free capital movement, the liberalisation is not only allowed, but demanded. Art. 63.1 TFEU stipulates, that “all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.” And Art. 64.3 is adding, “that only the Council may adopt measures which constitute a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries.” That means, that there is only one direction in regulation of capital movement not only between the member states, but also between EU members and third countries, which includes tax havens. The direction is deregulation. The deregulated financial markets were part of the reason for the crisis in 2008. The toxic assets and certificates of the subprime crisis in the USA could spread worldwide and leads to bankruptcies and to worldwide deep economic and financial crisis.

Therefore the promises, made after the financial crash, were: We want to control and regulate the financial markets in order to avoid the return of a financial crash with severe consequences as seen. In Europe only a few more or less cosmetic corrections were implemented . You may object, that the EU and the US-Government exerted pressure on tax havens to cooperate with the tax administration of other countries. That might work with Switzerland or the Netherlands but will not work with Caribbean tax havens like Panama or the Bahamas. The paradise papers uncovered that. What is needed are capital transfer controls, But these were not implemented, in order to save the so called fundamental freedom of free movement of capital.

Since several years the ECOFIN council is announcing, that they want to establish a Financial Transaction Tax, the Tax, which made Mr. Tobin and attac famous. But nothing had happened. The European regulation of the financial markets falls far behind the action Obama has taken. The reasons for the lack in European reregulation are diverse. The financial industry is powerful and the Lobby in Brussels is strong. But the European legislator is also chained by the free capital freedom in the treaties. So every regulation is connected with the risk, that it is reviewed by the ECJ.

4. Single currency in different economic spaces

The problem of Greece, to refinance the public budget, started with the financial crises and leads to an euro-crisis, because the single currency was imposed on disparate economies in the member states of the union. At the time the Maastricht Treaty was negotiated, economists were discussing the question, if it is possible to have a single

currency in a disparate and inconsistent economic space. This issue disappeared when the German unification was established.

The French president Francois Mitterand demanded to introduce a single currency. That was his condition to accept the four plus two treaty. Not only Trump would call this a bad deal. Mitterands intention may have been to control the bigger and more powerful Germany and to participate in the strength of the German currency. Whatever his intention exactly was –

the Euro was introduced and there was only one provision to avoid economic disruption in the new Euro zone: the so called Maastricht criterias. The German Government enforced the Maastricht Criterias, because of the German Angst of inflation. The financial crisis in 2008 and the Greek problems to get fresh money on the international financial markets in 2010 illustrate, that this approach was insufficient.

More progressive economists re-discovered the idea, that a single currency area needs compatible and coherent economic surrounding conditions. They suggested to move the EU towards a transfer union. The most popular suggestion was to create Euro-Bonds. They would introduce the same interest rate on the financial markets for the Greek and the German state. But the German government and the German constitutional court said: “No! Eurobonds are obscene. A tranfer-union is not compatible with the European Treaties.”

The consequences of the crisis for democracy in Europe were disastrous. The Greek and the Italian Government were forced to resign. In both countries a so called “expert government” was imposed. The ESM credits were combined with “memorandums of understanding”, which imposed tight conditions upon the countries concerned. The parliamentarians were forced into the role of claquers, they had to accept the dictate of the Troika. And nobody cared about the Greek referendum against the austerity-policy for Greece. At this time the European democracy was in a really bad condition.

5. Procedural or institutional lack of Democracy

Let's come to the procedural lack of democracy. The first problem is that we don't have an equal voting right. The principle “one woman, one vote” does not apply for the election of the EP. Why that? The German Constitutional Court, das Bundesverfassungsgericht, explained the fact in this way: A French parliamentarian represents 857.000 Citizens, the same number as a MP from Germany. In contrast to that, a parliamentarian from Luxemburg only represents 83.000 Citizens and one from

Malta only 67.000. The Bundesverfassungsgericht named that “over federalized”, which also in German is a neologism. That means: The fact, that the representation of the European nations is more important than the equal representation of the people. So in the end we do not have a democratic representation in the EP.

More important is the second aspect of the institutional lack of democracy. The main legislator in the Union is not the parliament, but the council. Every legislative act has to pass the council, but not every act has to pass the parliament. You may object, that the council represents the member states and the citizens of the states. The council seems to be the form of a democratic federal representation. But: In the council the governments of the member states are acting. The government represents the majority, but no parliamentarian and social opposition.

Worse: the governments will and have to represent the “national” interest in the council. And national interests are not necessarily the general public interests of the Union. The council is not the place of deliberation to find the European general public interests, but the place to negotiate “national interests”. I think, that makes a difference and it is the reason why in federal states the council is the second chamber and not the first. In federal states the first chamber is the parliament. In the EU it is vice versa. And if you reflect on what the “national interest” might be, the conclusion suggests itself: These are economic interests or the interest of powerful business companies. Their interest, we can assume, may be very different from the interest of the majority of the people or different from the general public interests. In my opinion this form of the institutional arrangement are the main factors of the procedural lack of democracy in the European Union.

6. Solutions

After all a fundamental change to rebuild a democratic and social European Union seems to be necessary. The structure of the treaties is the reason for the misguided development and for the recurring crisis of the Union. What is needed is a fundamental revision of the treaties, in which the neoliberal determination has to be erased. The simplest way to create a European constitution like this, is to transfer some competences from the member states to the Union, without any determination of future policy. It means the policy of the Union is open for the democratic process – different social forces and parties may decide in which direction the Union will move. And it means to devaluate the importance of the fundamental freedom rights and to reevaluate the importance of human rights.

But there is a problem: For the fundamental change of the constitution a social movement is needed. A shift in the relation of social powers is the condition for a change of the constitution. And even if we can detect a shift of power relations, this shift leads into the wrong direction, it is a shift, which strengthens national-chauvinist parties and thinking. We only find some small buds and hopes for a renaissance of emancipatory, socialistic and democratic thinking and social movements. Unfortunately it is Britain, Portugal and Greece, which give the most reasons for hope. but Britain is leaving the Union and Greece and Portugal are not very powerful, because their economy and government are still suffering.

Therefore less ambitious steps and strategies should be placed on the agenda. Which strategies are appropriate depends on the relation of social power in the society. It depends on the political culture, history and discussion in every country. I do not think, emancipatory forces can or shall produce an unified or homogeneous strategy for all member states of the Union.

We are able to identify three different strategies. The first one is the exit, even if the British example shows that nationalist and conservative forces usurp such efforts. The second and the third strategy may be used in a combination. The second way will support every reform of the Union into the direction of democracy and solidarity. That means: emancipatory forces have to support all suggestions, which will reduce the competition between the states for flat taxes and lean social security systems. We have to support all steps towards more rights for the parliament. Emancipatory movements have to support every measure, which reduces the heterogeneity and the gap between the national economies of the Union. Eurobonds are an example. And last but not least we have to support more flexibility in the treaty and the opportunity to choose different ways to design a national economy and a national welfare state. That leads to the third strategy.

The third way will use every leeway to organize democratic changes to undermine the neoliberal logic, that is the logic of competition. It means to accept breaking the European regulations or to interpret them extensive. Some examples: It would be a good idea, if the ECB would fund public investment programs and special state investments in the member states to stimulate the economy even if the treaties do not allow such measures.

In some cases the law was suspended: In 2015 chancellor Merkel invited refugees in Hungary to Germany. This was not against the rules of Dublin. But it was beside the

Dublin agreement. Afterwards the Schengen Agreement was suspended by some member states, the commission hurried to give her blessing.

Another case: After the financial crisis the prohibition of subsidies was violated by the member states, when they tried to rescue “their national” banks. The commission hurried again to change the guidelines in order to legalize the practice. And I think, it is not necessary to talk about Hungary and Poland.

7. What will happen – the dominant discourse

Some of the problems, I talked about, are recently discovered by the EU commission and some member state governments. They realised, that the destruction of the welfare systems leads to social conflicts, which are destroying the basics of the Union, the principle of non-discrimination between member states and their citizens. The rise of new national-chauvinist parties in Europe has its fundament in the social dislocation produced by the economic and social policy of the Union. And these so called right wing populist parties are denying the principle of non discrimination more or less explicitly and some of them are pleading for an exit. In Britain this means to carry coals to Newcastle. The commission published a White Paper on the future of Europe”. The French president Emmanuel Macron made suggestions to rebuild the Union.

Lets have a look on the proposals for the tax problem. Macron suggested to introduce a special tax for the Euro-zone. The revenue of the tax should not go to the member states, but should flow into a special euro-zone budget. This budget should be administered by a new created euro-zone finance minister, who should be controlled by the parliament. Last but not least the euro-zone budget should include the right of deficit spending. In a progressive interpretation the euro-zone tax may be a step into direction to harmonise the business tax. And the budget can be used for investment programs such as the Marshall plan for some euro-zone countries. Greece is obviously a candidate for such a Keynesian program. The budget may be used to replace the ESM, the monetary fund, which was established to grant credits to the Greek and other governments in 2012.

The German government will not appreciate these concepts. Perhaps it is the German perspective, but from this point of view it is the German government which is undermining every step into a direction of a more social Union. The German Government is ruled by the opinion: “What Germany helps also helps the European Union”. And it follows cranky ideas, which say: “This is our money, you can’t get it.” Instead of a euro-zone budget the German government is favouring a European

Monetary fund – comparable with the IMF. What makes the difference? The EMF could lend money to member states, but – like the IMF – it would be conditioned, it would be combined with policy requirements for the government, who is seeking for the credit. And we know: these requirements will have the shape of an austerity program. And, more important: The EMF will only grant credits to states: On the other hand an euro-zone budget would be able to support regions and states, which needs help. It would be a step in direction to a transfer Union founded on democracy and solidarity. Therefore in Germany it may be a helpful strategy to support Macrons suggestions and to confront the German government with his ideas.

Macron also suggested a reform of the election system. He wants to establish cross national party-lists. That could be a step to dissolve the “over-federalisation” of the Union. In other words: it could be a step to an equal voting right, which is a condition for a democratic parliament.

In the White Paper the Commission had chosen other paths. They discussed five scenarios, how the Union may develop. The scenarios are not very different and there are no suggestions to transform the Union into a democratic and social organisation. But there is one suggestion, which appears in four of the five scenarios: It ranges between the deepening of defence cooperation and the creation of a European Defence Union. My conclusion is: The defence union is on the agenda of the commission. And it is one the agenda of the German government.

It seems to be the minimum consensus of 27 states, which are drifting apart in nearly every other issue. And of course the defence Union should include intervention forces and is combined with measure to close the external borders of the EU. Macron also suggested a deepening of the military cooperation.

Emancipatory movements probably will find themselves in a defensive role. We have to fight against the militarization of the Union, especially against new intervention forces. But we should not forget to struggle for a democratic and social Union, because the militarization is the external answer on internal crisis and conflicts.