

Marcelino Oreja, Reform of the EU, a task for society

Caption: In June 1996, in an article published in the magazine *Política Exterior*, Marcelino Oreja, European Commissioner with special responsibility for institutional affairs and for preparations for the Intergovernmental Conference (IGC), describes the business at the IGC and the reforms proposed by the European Commission.

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Reform of the EU, a task for society

Since the end of the Second World War, few international structures have survived and carried with them hopes for the future for as long as the European Union. The EU is a striking example, essentially because of the depth and extent of the integration which it has managed to achieve and consolidate, even after the end of the Cold War: the Maastricht Treaty, despite its shortcomings, is good evidence of that. Before any consideration of the issues involved in reform of the EU at the Intergovernmental Conference which began on 29 March, it may be useful to set out some of the reasons why Community integration has continued to exist, quite apart from the political and economic conditions in which it was born.

Firstly, we must, in my opinion, recall the desire for peace rooted in the consciousness of our peoples. The consequences of forgetting that desire, even to a limited degree, are tragic, as can be seen in the case of the former Yugoslavia. Unification, first economic and then political, based on consensus between states and peoples is the best way to realise that aspiration. Fifty years of peace are evidence of that.

Secondly, we must point to the espousal of certain values and to a model of society which is essentially similar in the various states, and this is one clearly visible aspect which differentiates us from the other states and systems in the world.

Thirdly, we must highlight the effects of economic integration themselves; they have established a significant focal point for a truly European society. We need only think of our emigrants, our businesses and our universities. There is also one very important factor which is the direct result of the means by which we have carried out our integration. I refer to the system of institutions in the broad sense, firstly that of the Community and, subsequently, that of the EU.

Since the outset, our system has been set apart by two factors of equilibrium. Firstly, the balance between the national interest and the common interest; secondly, the balance between the role and influence of large and small states. Those points of balance are not set out in the Treaty but are the product of the institutional structure. They prevent small states from feeling that they are in an inferior position, and they prevent large states from establishing 'boards' which would unquestionably be a precursor to the dissolution of the Union. Viewed in another way, they prevent the Member States from surrendering to an open conflict of interests, which has historically been dangerous for peace, without overlooking the interests of each Member State. Indeed, the consequence of the introduction of the principle of subsidiarity into the Treaty is to strengthen that equilibrium where powers are concerned. An increase in powers pursuant to the Maastricht Treaty would have called the equilibrium between states and the Union into question. Loyal to its tradition, the Union immediately took care to restore the equilibrium.

I should not want to overlook the importance of the specific legal and political achievements of the Community, but the requirement of institutional equilibrium undoubtedly is the most important aspect of those achievements. That is why it must be safeguarded. That does not mean that there must be no tweaking of the system of institutions. Quite the reverse: express changes must be made to those aspects, retention of which could be damaging to the equilibrium. I shall outline only two examples related to enlargement. The unanimity requirement with respect to some issues at the beginning of the process of integration was a necessary safeguard which allowed particularly sensitive powers to be transferred. Good evidence of that was the 'Luxembourg Compromise', when the French Government stressed the question of vital interests. The procedure subsequently ceased to fulfil a balancing role and became an increasingly unacceptable barrier to decision-making. It is, therefore, no accident that, initially, the Single Act and, subsequently, the Maastricht Treaty placed limits on the application of the unanimity system. Nonetheless, it is still required in some important fields. Could unanimity still be applied to the decision-making process if the Union enlarged to 27 members? The answer is no. It would call into question the equilibrium between the institutions, because the common interest would never be able to prevail over the difficulty of securing 27 votes in favour. Furthermore, use of the veto by one of the small states could wreck a decision made by the others. Were that to happen, how could one say that an equilibrium exists between large and small states?

The Intergovernmental Conference

These initial thoughts demonstrate the difficulty facing the Intergovernmental Conference as well as the need for reform. But the Conference is facing two extremely serious dangers. The first is the lack of will to carry out vital changes. That would lead to questions not about progress but about the continuation of the Community *acquis*. We could term the second risk the ‘sorcerer’s apprentice syndrome’; in other words, the risk lies in questioning everything, including things that are working well. That is perhaps as serious a risk as not changing anything.

The debate has been presented in the form of whether minor or major reform needs to be carried out. But that proposal is inaccurate. Why would major reform have to be carried out? In order to give formal approval to a system which is continuously evolving? Today, we are running the risk of drafting a true Constitution, one designed to give definite form to the Union. That idea, which was very attractive at the end of the 1980s, is not as justifiable now because of the enormous change in the international situation. This is the time to choose, not to ‘recap’. It is obviously in the best interest to move towards a more secure system in terms of rights, democracy and prospects: that is the challenge of the Conference! But it must be done by focusing on a system which must find a role in a changed world.

Admittedly, major reform can be envisaged with the aim of calling the Community experience into question: returning to the intergovernmental method, reducing the importance of the role of legal controls, abandoning monetary unification and giving up the idea of making progress in foreign policy or in the fight against large-scale crime and terrorism. Is that what we want?

The idea of minor reform also has different roots. Minor reform would prevent the risk of challenging the Community *acquis*, and there would, therefore, be no need to fear that an ‘anti-Maastricht’ atmosphere might endanger our achievements. But that is no answer to the question whether the Union can, at this moment, truly forgo confirming the political and legal pact on which it is based. Expectations are high and no longer affect political circles alone. To reply ‘no’ would be the worst of all reforms. As the history of European integration has always shown, the only response to scepticism is to move integration forward, strengthen commitment and show that Europe can do a great deal for its citizens.

The other root of minor reform lies in the fear that the advance of Europe is becoming increasingly irreversible. A stronger foreign policy, a defence policy, greater political or legal cooperation, European action against unemployment, a common immigration policy or a single currency would effectively strengthen European integration. The purpose of minor reform would be to prevent all that.

Accordingly, the Commission has set those two possibilities aside and come up with the idea of reform appropriate to the situation: there is a need to reform all the aspects which are not working or which could work better, but, equally, there is a need to safeguard the Community *acquis* and the balance between the institutions. The purposes of reform are to make progress along the path towards political union and to prepare for enlargement. Therefore, what is involved is not ideological reform but reform which experience has shown to be necessary. That is why the Commission Opinion dated 28 February 1996, ¹ requested by the Corfu European Council and submitted in May 1995, was based strictly on an analysis of the functioning (and the dysfunctions) of the EU Treaty.

A brief analysis of the title of the opinion allows us to find our bearings. European political union has a very precise meaning, something which is relatively novel compared to the traditional meaning.

Strengthening political union. Traditionally, the expression ‘political union’ has meant a common foreign policy. The Commission wished to introduce a broad concept of citizenship. Citizenship has become a genuine condition for political union for two reasons. The first relates to the acceptability of European integration. Ordinary people, Maastricht *docet*, are less and less willing to ratify a text which, in their eyes, is merely something drawn up by a distant bureaucracy whose goals are difficult to understand. European integration undoubtedly brings enormous benefits to our societies, but it must be visible and give ordinary people not just a passive role as a recipient of such benefits but a role as genuine protagonists.

The second reason is related to the democratic foundation of our societies. European integration has extended to the very core of the life of our societies. Economic, monetary and social aspects, the fight against crime, the regulation of activities such as banking or insurance and agriculture necessarily fall within the Union's remit and affect the daily life of every citizen and every person living in the Union. The absence of a legal link between citizens and the Union is one aspect which distorts democracy.

Accordingly, national citizenship, the pillar of democracy and of national feeling among Europeans, must be enriched through European citizenship, in other words a set of rights and duties which point to a solidarity which is not only national but European in scope. In the absence of such a link, progress in European integration would not now be sufficiently justified.

Preparing for enlargement. This is, unquestionably, the most complex matter for the next few years. It is an astonishing challenge. The Slav world, which with its own particular features has been fully integrated into Europe through Christianity since the Middle Ages, may join with us in political and economic unity. In this way, Europe might free itself from the barriers which were created by the nationalisms of the last century: such an outcome would be extraordinary in itself, the stuff of dreams almost. Finally, now that the Iron Curtain is a thing of the past, we have the opportunity not to reconstruct a 'silver' curtain separating the rich from the poor. In so doing, Europe will be able to demonstrate that solidarity is not only a good sentiment but also a factor in development and progress. The alternative is fraught with dangers. A Europe divided in two is a factor for instability and conflict. Is there really any need to spell out the consequences of the divisions in Europe of the past centuries? A Europe divided into rich and poor is a significant factor in emigration. Should we encourage the development of a flow of emigrants from eastern European countries towards the European Community countries? Finally, a divided Europe cannot be a single market. Can we abandon the opportunity to create, albeit using transitional periods, a market which is sufficiently large to allow European undertakings to face up to international competition? The problems of enlargement go well beyond the institutional reforms which the Commission is planning to address at the Conference, as do the concerns to which they are giving rise. I shall refer to only two.

The first is thinking that the economic price of enlargement will be unbearable if we want to associate the countries of Eastern Europe, as well as Malta and Cyprus, with the single market. I regard that argument as superficial in that it takes no account of the possibility of gradually incorporating those countries into the Union, using appropriate transitional periods, as has always been the case.² At all events, transitional periods are crucial, because vital progress in economic, legal or administrative structures and the consolidation of democracy could not be carried out in a brief period, even if massive funding were provided. Finally, I suggest that we should reflect on the fact that the Union can also act in order to mobilise private resources for investment in those countries: I do not believe that a system based exclusively on assistance from the countries in the Union can function, and, furthermore, I believe that the applicant countries broadly share that view themselves. Integrating them into a free market solely through public intervention is, to my mind, a glaring contradiction in terms.

Likewise, there is a concern that integration of the applicant countries may force us to reduce the level of support for current Member States. Viewed as a concern, it can be set aside if enlargement is carried out sensibly and over reasonable periods of time. Viewed as a political 'threat', I shall merely point out that the very existence of the single market is the result of an agreement on a strong system of mutual support which is, in itself, a precondition. What we are therefore seeking to do is to prepare the way for enlargement. We are politically and culturally bound to do so; doing it well would be a safeguard for the future.

The reforms proposed by the Commission

In that context, the Commission could have proposed a long list of reforms but chose instead to do something different. We wished to propose three issues: citizenship, foreign policy and the institutional aspect, in particular insofar as it concerns enlargement.

Citizenship. In this field, we must strengthen the protection of fundamental rights. Such rights do not relate

solely to ordinary people, but their affirmation is one of the key values common to our societies which provides legitimacy for public institutions. The most appropriate solution is to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed by the countries represented in the Council of Europe in 1950, which is significant for two reasons: it enables external control to be exercised over the Union's system of institutions; and it already represents a heritage common to the Member States and to the applicant countries. The difficulty of acceding to it on the basis of the EU Treaty as set out in the recent opinion of the Court of Justice can be overcome through the Intergovernmental Conference.

The commitment of the Union in this area must be supplemented by means of a wide-ranging clause on discrimination, in other words one which is not restricted to nationality or equal pay for men and women. Our society is too extensive, open and multicultural for it to be able to tolerate a system which fails to outlaw discrimination.

The second aspect of the citizenship issue is related to the commitment in sectors of special concern to ordinary people: employment, which leads us on to competitiveness, the environment, social aspects, legal certainty and personal safety, and immigration. I shall merely set out some thoughts on employment and the 'third pillar', namely the background to security and immigration.

The EU cannot, by itself, resolve the issue of employment. If undertakings do not hire staff, if non-profit-making bodies do not change their approach over time away from one based essentially on aid, if local authorities do not do their share, if states do not take action and if the social partners do not establish a balanced social framework, then initiatives taken by the Union will be in vain. Having said that, it is also true that there is a great deal that the Union is, indeed, able to do.

In particular, it can expand the regulatory activity carried out for the purpose of promoting employment by encouraging competitiveness of undertakings; it can coordinate the work of the Member States so as to enable good ideas to be disseminated, and it can strengthen its action in the field of training and put forward pilot programmes. Subsequently, vertical subsidiarity will have to operate where the Member States are concerned and horizontal subsidiarity where civil society is concerned.

The issue of legal certainty and personal safety is, unquestionably, crucial. In short, I believe that legal certainty enshrined in national law and supplemented in certain aspects by the rules of international private law must, because of the integration of our market and our society, be strengthened using common coordinating rules. Thus, for example, it is difficult to accept that the rulings handed down in one Member State are still not, in principle, directly applicable in another or that someone who is considered a terrorist in one Member State is considered a model citizen in another. Such situations are contrary to our sense of justice. In the same way, it is no longer possible to fight national or international organised crime by exclusively national means.

Finally, and I address the issue in this section solely because the Treaty includes it in the third pillar, immigration cannot be regarded as an issue for one European country or another because it is a common issue. Dealing with it at national level amounts to failing to act, because it places the onus on us to take any opportunity to be able to organise ourselves efficiently, in other words to act together in accordance with fundamental rights and in compliance with the established rules.

As a whole, the third pillar was not working in accordance with the provisions of the Maastricht Treaty, to the extent that we refused to act on the basis of Community experience. Intergovernmental action was preferred, something which is inefficient by definition, in a field where the regulatory aspect is very important, and democratic and legal control was abandoned in the very area where there is no room for progress outside a framework in which rights are safeguarded. Thus, the Commission's watchword is simply to communitarise the third pillar or, to put it another way, to make it subject to a more effective system which is democratically controlled and for which legal safeguards exist, making it more compatible with the rights of ordinary people. Surely that is the least we can do?

Common foreign and security policy. In my opinion, this ought to be the second major issue for the

Conference. The current method fails to operate effectively, not only because of a lack of a sufficiently explicit resolve, but also because a lack of the instruments to establish that resolve. The Commission is proposing three such instruments. The first consists in joint reflection on matters of common interest: hence the proposal to set up a joint analysis unit providing the Member States and the Commission with the bases on which proposals can be submitted; the second lies in the adoption of decisions by qualified majority, although military matters would have to be excluded to a certain extent; the third is to strengthen the capability of the Presidency of the Council and the Commission to represent the Union abroad: the Presidency–Commission tandem is necessary because of the interrelationships between powers within the Union. There is nothing to prevent the tandem from delegating tasks to a specific eminent person on the basis of sufficiently conclusive experience. Finally, the three proposals may lay the foundations for greater cohesion and efficiency in the EU.

By contrast, I do not share the view expressed by some Member States that a ‘Mr CFSP’ should be appointed: he would be a hybrid figure, perhaps a new institution, perhaps a high-ranking official, whose responsibilities may conflict with those of the Commission or the Presidency of the Council and who would, in any event, be unable to ensure cohesion between the CFSP and the external economic policy of the Union. No, more bureaucracy is not the way to strengthen the Union’s foreign policy.

However, the foreign policy of the Union lacks a military dimension, something which is crucial if we are to take on a role of providing stability and keeping the peace in Europe. Is there a need to incorporate Western European Union (WEU), an organisation which was established in the 1940s for the purposes of military cooperation but which has not been very active so far, into the Union? That would perhaps be the most efficient method, provided that the decision-making processes are simplified and its capacity in terms of preparation, analysis and, possibly, coordination and authority are strengthened.

It will, of course, be necessary to take account of the fact that some Member States of the EU maintain a position of neutrality which cannot be broken; at the same time, regard must be had to the fact that, sooner or later, military solidarity will have to be a fact.

Institutions which are more democratic and better adapted to enlargement. The reforms envisaged affect both the current situation and the situation in an enlarged Europe because the specific aspects of each enlargement will be the subject of an agreement with the applicant country concerned.³ Such reforms will not be great in number, but they will be vital.

The first is to forgo the unanimity system. Many Community decisions are blocked because of unanimity. The reforms relate, above all, to strengthening some of the rights of ordinary people in respect of culture or the fight against poverty. I also propose that thought should be given to the role that retaining unanimity could play when there are 27 Member States: there would be a one in one thousand million chance (in statistical, rather than political terms, of course!) of securing it. Abolishing unanimity would obviously have certain consequences, for example, better definition of the principles governing the policy of the Union or greater care not to ask Member States to make efforts which they are unable to carry out or not to treat genuinely different situations in the same way.

Another reform relates to the decision-making processes: there are too many of them and their democratic legitimacy is not the same; EU ‘legislation’ should be adopted only by codecision between the Council and the European Parliament in accordance with a simpler procedure than is currently the case.

The size of the institutions should be reviewed with a view to enlargement. That point is particularly important where the Commission is concerned. It will be important to reconcile two principles. Firstly, the Commission will have to maintain its independence vis-à-vis governments: it cannot become an intergovernmental body. Secondly, it will have to be representative of all the Member States. Those two requirements must be borne in mind when decisions are taken on its size.

The most crucial reform, however, although the simplest from the technical point of view, relates to transparency: it involves a provision being written into the Treaty and, above all, a more open attitude on the part of institutions and states. It is important for them to understand that the Europe of the future is the Europe

of neither diplomacy nor of bureaucracy but a Europe capable of entering into a direct relationship with its citizens.

Finally, before suggesting possible dates, I should like to draw attention to the close relationship between the Intergovernmental Conference and other European milestones such as the single currency, the financial perspective, reform of the common agricultural policy and of structural policies, and enlargement. I shall merely suggest that thought be given to the relationship between reform and the single currency administered by a strong central bank. What does the future have in store for monetary union if the Union fails to replicate the equilibrium existing in each Member State between the bank, which by definition is a strong institution, and the political institutions?

The Conference will last for about one year; negotiations will be lengthy but crucial, the particular objective being to draft a text which will have to be ratified by all the Member States. The European Councils in Florence (June), Dublin (December) and Amsterdam (planned for next spring) will be the key moments. Work is already being done on that text by a group composed of representatives of the various Ministers, the President of the Commission and the Ministers for Foreign Affairs. The Conference, however, must prompt a public debate. It is necessary for intellectuals, social forces, parties and associations which represent the interests and values of our citizens to be involved in the discussion. The Europe that we wish to see is a Europe capable of promoting its culture and values, defending its interests, ensuring peace and stability, at least in its own territory, expressing a solidarity which is inherent in the deep-seated consciousness of its people, giving rise to hope and, perhaps, making its people dream. That is not the task of Ambassadors or civil servants. Nor is it the task of politicians. It is the task of society.

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1. Commission Opinion for the Intergovernmental Conference 'Reinforcing political union and preparing for enlargement', submitted pursuant to Article N of the EU Treaty.

2. For example, the full integration of Portugal into the Union took 17 years including the pre-accession and transitional periods, and that did not make Portugal feel any less European.

3. The Madrid European Council established a direct link between the results of the Conference and enlargement; negotiations on enlargement will not begin until after the Conference has ended.