



FUTURE OF EUROPE OBSERVER

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This issue of the Future of Europe Observer analyses the most prominent visions for reform in the EU in the years to come. A common thread is the importance given to the social policies in order to resolve the democratic deficit within the EU and beyond. The recent social summit in Gothenburg shows that the social agenda plays an essential role in living up to the standards the EU has set for itself. The Authors of this publication comprise ZEI Scholars, Master of European Studies Fellows, Visiting Researchers and Alumni.

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Future of Europe Observer accompanies European politics with analysis and projections. It is published three times a year and each issue focuses on a specific aspect of European governance and regulation.

Testing the feasibility of Macron and Juncker's EU visions

After years of crisis mode, the EU's economy has slowly begun to pick up¹. Commission President Jean-Claude Juncker and French President Emmanuel Macron are trying to make use of this new sense of momentum, presenting their visions on how the European Union should look in the future. Their common goal – expressed within a two week period in Juncker's State of the Union speech and in Macron's "Initiative for Europe"-address – is to kick start and to navigate a public debate on the direction as well as the policy substance of integration. This coordinated approach to put forward opinions on the future of the EU displays both presidents' sense of leadership to accomplish their own goals which point in a similar direction. But whose vision for Europe is more feasible?

Their key shared objective is to deepen integration and to identify unity-building policy projects. This is best visible by the proposals set forth by both presidents with regard to defence, security and migration policies. A key idea is to mandate the European Public Prosecutor, established by 20 member states in a Council agreement in June 2016, with prosecuting cross-border terrorist crimes. Furthermore, Macron's and Juncker's proposals converge on the European Defence Union, specifically involving the already established European Defence Fund and the swift implementation of the Permanent Structured Cooperation (PESCO). This enabled certain EU countries to strengthen their cooperation in military matters in line with Articles 42 VI, 46 and Protocol 10 of the Treaty on European Union (TEU).² Also regarding migration, both presidents voiced the need for reforming the current Dublin system by 2018, reinforcing the EU's external borders and opening legal ways for skilled migrants to enter the EU. Affirming his support for Juncker's proposed European Asylum Office (Migration Package June 2016),³

Macron committed himself to harmonizing asylum procedures throughout the EU. Outside the EU, tackling the sources of migration, especially in Africa was placed front and centre in the two addresses.

Despite these similarities there is a crucial difference in the method of implementation: As opposed to Macron, Juncker intends to achieve all of his policy goals within the current EU treaty framework. Indeed, Macron elaborated on creating a common European defence force, underpinned by a common defence budget. This however would go against the current treaty provisions. Article 41 II TEU prohibits for "expenditure arising from operations having military or defence implications"⁴ to be allocated to the Union budget. The necessity of overhauling the Lisbon treaty in order to implement Macron's vision also applies to the proposal to "gradually establish a European border police force that ensures rigorous management of borders"⁵. If equipped with European staff, the creation of a European border police would require the modification of the Articles 77(1) c) and 77(2) (d) TFEU and / or Article 78 TFEU, which places border control in the hands of the member states.⁶

Beyond treaty reform, the French president's proposals place a strong emphasis on new institutional build-up. Two examples are instructive: First, Macron considers the creation of a European Intelligence Academy to be necessary to forge closer ties between national intelligence services, in order to fight against terrorist groups.⁷ Thereby Macron disregards existing tools for combatting terrorism in the form of Europol's Counter-Terrorism Centre whose competences - as proposed by Juncker - could be expanded to the intelligence sector. Second, Macron put forward the establishment of a new "agency on breakthrough innovation" for funding new fields of research. Here

Macron once more fails to take account of existing structures such as the European Institute for Innovation and Technology (EIT) established in 2008. This type of institution-building, which increases unnecessary overlap as well as fragmentation, is often used by member states to avoid the direct expansion of Commission competences.⁸ It would therefore not be surprising if the French proposals were tabled to increase the national control on key common European institutions.

Irrespective of what vision the EU will pursue on its way to a possible renewal, both Juncker's and Macron's proposals will face obstacles.

The divide between Central Eastern Europe and the Western part of the continent is often seen as one of the major hurdles for reform. This is particularly true in the context of the polemic discussion surrounding the compulsory refugee relocation quota within the EU.⁹ However recent evidence from network analysis suggests that this rift is only a misleading impression entertained by media discourse. Apart from a few notable exceptions in policy fields such as asylum and climate change, central eastern states do not regularly cluster together in a staunch voting bloc in the Council of Ministers.¹⁰ This shows that the necessity for the EU "to breathe with both lungs"¹¹ - as mentioned by Juncker - has already grown into the daily institutional practice.

More importantly, the results of the German election and the four-party-coalition which will probably be formed might be the real obstacle to this new momentum for EU reform. Germany as the most powerful actor and biggest net donor to the Union might be limited due to internal coalition politics. Macron's and Juncker's notion that common borders require common protection might be difficult to implement given the opposition of the Green Party to Frontex's extended mandate.¹² This assessment also holds true for the presidents' proposal for the Euro to become the currency of all EU members, as the German Liberal Democrats (FDP) are proponents of creating the possibility for states to exit the Eurozone without exiting the EU.¹³ The next German government will not only be exposed to centrifugal forces but will also face the pressure of the right-wing populist AfD's presence in the Bundestag - a reality which can increasingly be observed in other national legislatures and the European Parliament. This trend has already complicated the work of government leaders at EU summits when faced with critical junctures. The debate on refugee relocation serves as a prime example.

Nevertheless, a window of opportunity for the EU is now opening. The current favourable economic trend combined with the political void left by the relative absence of the United States and the UK, represents a unique chance for the EU to establish itself as a power of stability in the world. Taking this context into account, what path for the EU do these proposals suggest? While Juncker's approach equals repairing the sails of the European vessel, Macron wants to rebuild the ship. The Commission President's plans do not imply treaty changes but rather the strict implementation of his work programme and can therefore be realised within his term. Macron's proposals, on the other hand, would go beyond

the treaty provisions without using the existing scope to its fullest. Proceeding in such a way would produce tiring and long-lasting negotiations, missing the momentum which is presenting a chance to reboot.

However, Macron's commitment gives the much needed impetus to Juncker's aims. In the view of the French president, more common EU capabilities would not weaken the member states but instead europeanise the term of sovereignty. Consequently, he has declared the EU's future a principal topic of his time in office. In his own way, Macron attempts to trigger an atmosphere of enthusiasm within the European Union. It is for Juncker now to spread this dynamic for the sake of the European project.

Thomas Panayotopoulos and Robert Stüwe, ZEI Alumni
"Class of 2014", are ZEI Research Fellows coordinating the ZEI Governance and Regulation in the EU: The Future of Europe project.

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5 key points of the European Council President Donald Tusk's concept for an accelerated EU

1. Goal:

Reconciling dynamism and unity; if not successful: enhanced cooperation among the willing countries

2. Approach:

Increasing the number of leaders meetings per year compared with the minimum of four gatherings prescribed in the EU's treaties

3. Working Principle:

Council meetings will be based on „decision notes“ and „implementation reports“ (e.g. Bratislava implementation report)

4. EMU reform by June 2018:

Establishing the European Monetary Fund; strengthening the stability of the Banking Union

5. Resolving the migration crisis by June 2018:

External border protection, strategy vis-à-vis Africa, finalizing Dublin reform

EU Social Union – from national autonomy towards a European Pillar of Social Rights

When the European Economic Community was just in its early stage, the social dimension of the European project only had a modest role. Member States preferred to keep the social policy a solely national competence. More than that, the preservation of national social policy autonomy was a prerequisite for ratifying the Treaty of Rome¹. Consequently, the Member States decided to separate the ambition to build an economic union from the social one, in order to create the common market. The idea of creating a European Social Standards Union was not taken up as a valid policy subject.

Nowadays, the President of the European Commission Jean-Claude Juncker considers the fight against social fragmentation and social dumping to be of paramount importance for realizing his EU vision. In his State of the Union speech on the 13th of September 2017, he stated that “national social systems will still remain diverse and separate for a long time. But at the very least, we should work for a European Social Standards Union in which we have a common understanding of what is socially fair.” Looking through the lenses of the negotiators of the Treaty of Rome, such a statement highlights that the EU's evolution in social policy can't be regarded as insignificant compared with the influence supranational players had in this field in the 1950s.

This assessment, however, doesn't mean that the Treaty of Rome didn't touch on the social aspects. It actually did; but it was limited solely to the areas related to the common market. Consequently, the Treaty entailed articles on rights to social security for migrant workers, freedom of

movement for workers, equal pay for men and women. The Treaty also set the legal ground for the European Social Fund. It can be maintained that the Founding Fathers didn't really intend on building a European Social Standards Union. Quite the opposite, they touched the social dimension only to the extent to which achieving a uniformly functioning common market was needed.

Fast forward 60 years we can see that a steep separation of the common market from the social sphere is not realistic since both areas are closely interlinked. Consequently, the dynamics of market integration have led to a substantial spill-over [of the social policy] onto the EU level². This spill-over didn't take place over-night, but rather step by step depending on the Union's needs and on the political will of the Member States.

Already in 1969, at the Hague Summit social policy was brought back onto the EC agenda by arguing that it was a necessary complement to the economic integration envisaged by the EMU³. For the years of 1974 – 1976 a Social Action Programme was put in place. The SAP was regarded as the first major advance for EU social policy since the Treaties of Paris and Rome. In 1989 the Community Charter of Fundamental Social Rights of Workers was adopted which became the basis for the Charter of Fundamental Rights of the European Union. Starting with the Lisbon Treaty, the Charter has the same legal power as the Treaties, meaning that it is legally binding and constitutes an independent source of rights⁴.

In the last two years, wide discussions have been conducted on a potential upgrade of the EU's influence in shaping the

social policies of the Member States through the European Pillar of Social Rights. The Pillar, initially proposed by the EU Commission on the 8th of March 2016, aims to serve as a compass for the renewed process of convergence towards better working and living conditions in Europe⁵. It entails a list of elements among which the most important one is the Commission Recommendation on the EPSR (20 principles and rights). The proposed 20 principles cover crucial aspects like equal opportunities and access to the labor market, fair working conditions, social protection and inclusion. According to the European Commission, the EPSR's central objective is to be a reference framework to drive the process of reforms in the social field at the national level.⁶

Despite the fact that EPSR is regarded as a truly ambitious project, there are many shortcomings which have been pointed out by numerous stakeholders across the sector. The legal form of the Pillar is therefore considered by some as its primary weakness⁷. As stated in the Commission's Communication on EPSR, most of the tools required to deliver on the Pillar are in the hands of local, regional and national authorities, as well as the social partners, and civil society at large⁸. Given the fact that the EPSR is not bringing any legally-binding provisions, a question mark can be put behind the efficiency of the whole project.

Another issue concerns the Commission's intention to air out the differences in the social systems across the Member States. Understandably, this intention raises concerns especially in countries with well-functioning welfare systems. For example, the Commission's intention for setting minimum wages doesn't seem to attract much support from the Nordic states. The labor ministers from the Nordic countries in a joint declaration stated that the Pillar must respect the important role which the social partners play in the Nordic region. Their autonomy and right to bargain collectively on wages and other terms of employment must be upheld.⁹

The business community is also difficult to accommodate under the Pillar. In a press release published by Business Europe, it is argued that EPSR will rather undermine job creation because of the pressure it puts on the employers.

A major issue brought on the table by the business sector is related to the parental leave envisaged by the Proposal for a Directive on work-life balance for parents and carers as part of the EPSR, which was put forward on the 26th of April 2017. It is argued that many Member States simply could afford to grant sickness pay levels to people taking parental leave and that the Commission would propose unfinanced additional social expenditures.¹⁰

Given the dimension of the EPSR and the multitude of stakeholders involved, self-evidently the policy is exposed to extensive criticism. Taking into account the non-binding nature of the EPSR, the success of the policy depends on how the Commission will manage to handle the critique and accommodate the diversity of interests.

To sum up, the European Pillar of Social Rights has the potential of becoming a major leap in enhancing the EU's role in shaping social policies at least across the EMU countries. However, if its weaknesses are not be addressed, it risks becoming a major failed initiative, since it will simply lack the necessary support for proper implementation.

Christina Palii, ZEI Alumna "Class of 2017".

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ZEI Discussion Paper C 244/2017

The Maltese Presidency of the EU 2017

by Joe Borg

In this Discussion Paper the former EU Commissioner Joe Borg analyses the three most prominent aspects of the Maltese Presidency:

- Setting out of a joint vision for the European Union for the years to come;
- The formal commencement of the Brexit process;
- The particular focus on the EU's Mediterranean Policy and expresses his views on the results achieved and on the way forward.



Business and Human Rights in the EU: No transparency without competitiveness

The vulnerability of people in the developing and emerging states that are exposed to activities of transnational corporations (TNCs) is relatively well documented. The Commission of the European Union explained that ‘a smart mix of voluntary policy measures and, where necessary, complementary regulation’ might be needed to contribute to the implementation of the UN Guiding Principles on Business and Human Rights (2011) in its last Corporate Social Responsibility (CSR) Strategy (2011-2014).¹ The Commission indicated that the following three aims require mandatory measures: to promote transparency; to create market incentives for responsible business conduct; and to ensure corporate accountability.

This is the first CSR strategy in which the Commission states that CSR measures might have a mandatory component. This observation is perhaps remarkable given the fact that the European Parliament has pressured the Commission for decades to take such measures. The EU’s new approach to ‘CSR’ seems to render account of extensive business research, which has been conducted by economic scholars. Michael Porter famously stated that all business decisions need to make business sense.² A business manager will be reluctant to invest in human rights capabilities if such capabilities are not (or – at least – not in the short run) expected to result in a sustainable competitive advantage. This fact is closely connected with the observation that business managers are – just like other people – reluctant to change things.

Which mandatory regulation has the EU issued so far? Three initiatives set out mandatory rules to increase transparency. Apart from the Non-Financial Reporting Directive (2014), two other regulatory frameworks have been adopted which touch upon the EU’s ‘business and human rights’ policy. It concerns the Country-by-Country Reporting rules for exploiting natural resources within the public domain (2013) and the Conflict Minerals Regulation (2017).³ The Commission stressed on various occasions that the long-term benefits of increased transparency are believed to be lower funding costs, fewer business disruptions, and better relations with stakeholders, including investors and consumers.⁴ It should, however, also be noted that the key performance indicators are not well defined in the existing mandatory regulation. There is therefore a substantial risk that they might only serve a ‘tick-box’ purpose. Or worse, they might serve as a vehicle for business managers to publish abstract or misleading information.

The Council of the EU rightly noted that there has not been much discussion as to why transparency

measures made progress at the level of EU.⁵ Two reasons might explain why such measures might have been prioritised. First, the interests of victims might coincide with the interest of stakeholders with a corporate interest. Stakeholders’ access to transparent information has been high on the agenda in the aftermath of the financial crisis at the beginning of this century. Second, transparency measures might be perceived as relatively easily achievable because relatively small legal compliance costs for business enterprises are attached to them. It was in this regard indicated above that the EU’s transparency initiatives leave a rather broad margin of appreciation to corporate managers.

Despite these relatively small costs, the Commission seems to be reluctant to enforce rules on TNCs that are ‘based’ in the EU, which would be not applicable to their competitors. The issued transparency regulation has some impact on TNCs that are incorporated outside the European Union. Due to space constraints, it is not possible to discuss the scope of these frameworks in detail here. It suffices to state that the extent to which such practices might be successful is largely determined by its powerful single market, which forces external parties to respect EU rules, in order to get access to its market.

A study of the impact assessments of the EU’s transparency rules points out that TNCs that are based outside the EU could easily undercut EU-based TNCs when they do not have to bear the same legal compliance costs. EU-based TNCs may suffer immediate losses of output, market share, jobs and investments. The European Commission stressed, for example, that some EU-based TNCs might transfer their headquarters outside the EU when it discussed its Country-by-Country Regulation.⁶

This study also points out that the competition from TNCs based in developing and emerging states are perceived to be more intense than the competition from TNCs based in other economically developed states. The reason seems to be that developing and emerging states have significantly fewer capabilities and less willingness to impose ‘business and human rights’ requirements than economically developed states due to a number of factors. Such factors include limited resources, the need to attract foreign investments, unfair international trade regimes and corruption. The US had, for example, already established the Dodd-Frank Act – which serves similar aims as the EU’s rules – at the time.

Interestingly, this Act has been turned back under President Trump’s reign. This will most likely have an impact on the EU Commission’s willingness to put in place

more effective transparency regulation that touches upon 'business and human rights'.

Aleydis Nissen, *ZEI Visiting Fellow, is a Doctoral Candidate at the University of Cardiff.*

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[euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en) for information on the Country-by-Country reporting rules.

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White Paper of the European Commission on the future of Europe: five scenarios

1. Carrying On :

The EU27 focuses on delivering its positive reform agenda

2. Nothing but the Single Market:

The EU27 is gradually re-centred on the single market

3. Those Who Want More Do More:

The EU27 allows willing Member States to do more together in specific areas

4. Doing Less More Efficiently:

The EU27 focuses on delivering more and faster in selected policy areas, while doing less elsewhere

5. Doing Much More Together:

Member States decide to do much more together across all policy areas

The EU ahead of a *relance européenne*: How about Europe's democratic deficit?

The democratic deficit of the European Union, colloquially understood as a deficit in the competences of EU institutions, has not grown bigger during the crises of the past ten years, but our confusion has grown over what we citizen's may expect from the content of democracy and how our political leaders deal with their genuine accountability.

The current status quo is impossible, to recall the title of a 1997 book edited by Renaud Dehousse. But it is not impossible because of a "deficit in democracy" per se. It is rather untenable because of a deficit in the meaning of democratic politics and because of enhanced confusion about the expectation we may have into a consistent political process.

The language of politics in the EU has become shallow, misleading, confusing: The "Greek rescues packages" were not aimed at rescuing Greece but the financial system in the Eurozone – the "Euro crisis" was not a crisis of the Euro but a systemic crisis in the monetary union – the terms "two pack" and "six pack" reminded us of fitness studio's or the way beer is sold but disguised or even ridiculed the fundamental (and much needed) pooling of budgetary sovereignty – "populism" is a label for anything we do not like but does not help to understand the return of identity politics and the reconfiguration of political loyalties we are experiencing all over.

In short: The poverty of our political language undermines the aspiration of our democratic system.

The procedures of politics – or better: the way distinguished actors behave – diminishes clarity about the concept of democracy and the political accountability so essential to it.

The referendum illusion has produced an ugly track record: When democratically elected governments are longing for even more popular applause, they tend to initiate a referendum, which are most likely doomed to fail and yet make all the rest of us in the EU hostage to its results. It started with Chirac in 2005 and culminated with Cameron in 2016, but also Tsipras, Renzi and Orbán manipulated the boundaries between accountability in representative democracy and the invocation of a presumed popular will.

The Lisbon Treaty has tried to square the circle between representative democracy and direct democracy ("citizen's initiative") but the cloning of the two has only aggravated problems of accountability and democratic legitimacy. The old dispute between John Locke and Jean-Jacques Rousseau is haunting the EU once again.

The democratic deficit of the European Union, colloquially understood as a deficit in the participatory

nature of EU institutions, has not grown during the crises of the past ten years, but our clarity in the relationship between legitimacy, power and popular will has somewhat vanished.

Two "culprits" stand out in the current EU governance system:

a) Governments in member states:

They are champions in undermining the reputation of the EU and they betray their own credibility by resorting to the widely spread game of agreeing to common rules in EU institutions but avoiding or undermining their implementation. The EU does not a democratic deficit but a rule of law deficit. Disrespect for commonly agreed norms does more harm to the EU than any so-called democratic deficit.

In the absence of clarity about the nature of obviously unavoidable power games, all too often the EU legitimacy as such is questioned. The instrument of "sanctions" is no remedy for power struggles or legitimate conceptual differences over commonly agreed norms. It would be worth to better reflect on possible incentives which can enhance respect for commonly agreed legal norms.

b) The civil society hype:

It begins with confusion over the term as such: who is the adversary of "civil society" – is it the military or is it "militant" traditional society unwilling to change? Variants of civil society are often empowered by self-acclaimed morality and competence without democratic mandate. We are far away from the ancient Roman notion of "societas civilis" or Tocqueville's notions of free association or syndicates. Gramsci and Lenin saw civil society as the ugly supporter of political regimes, jointly generating a form of bourgeois hegemony which ought to be destroyed. Is that what civil society has come to aspire?

Is "civil society" the equivalent of a social movement or of a dissident movement? Confusion over this question is at the root of the gap between Western and Central Europe on this issue: Central European anticommunist governments are so suspicious of "civil society" because they see it as a dissident phenomenon, a dangerous challenger of legitimate power structures. Western intellectuals are often enthusiastic about civil society because they see it as progressive social movements modernizing society and states as a whole.

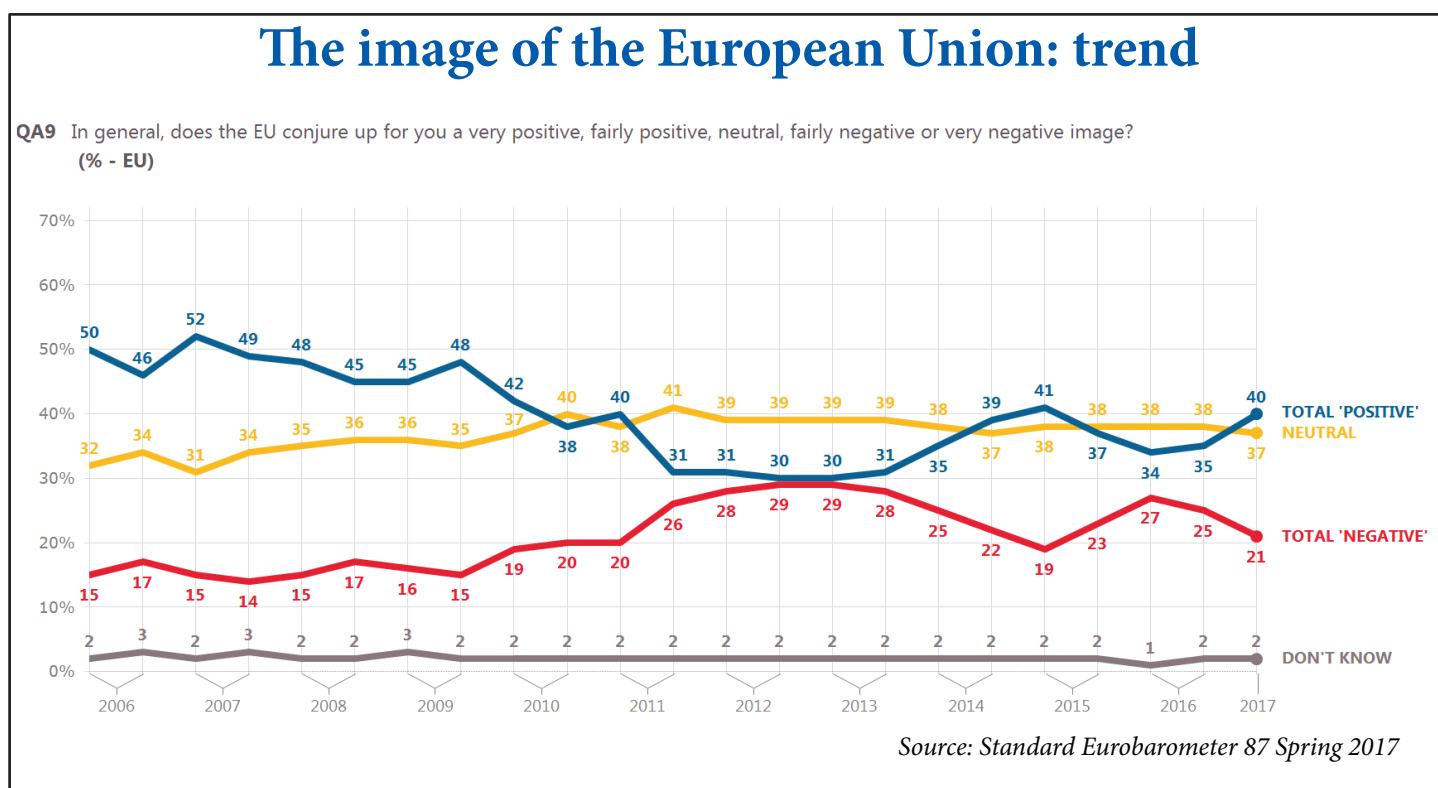
The real democratic deficit of the European Union, understood as the absence of a European society, has grown, because this most important missing link between EU institutions and European citizens is more painfully felt than ever.

We live in a European Union of states and institutions and we live in a European Union of citizen's claim rights. But we do not have a European Union society in the Tocquevilleian sense or at least ingredients of what Montesquieu would have called a "society of societies". The EU has enough lobbying structures in Brussels or directed towards Brussels – but the EU lacks sufficient professional associations (in the academic and think tank community including). There is no EU-wide synchronized political talk show on public TV. An EU-wide Olympic team would revolutionize symbolic politics and an EU-wide Church Convention would help to revitalize the value foundation of the EU so often alluded to in shallow political discourses.

The lack of an organized EU-society (which is different from the European public space often talked about or

the Brussels-orientated lobby activities of many organized interests) is the fundamental obstacle to advancing the idea of EU-wide political parties. A genuine European electoral law might facilitate the creation of EU political parties. But we need to think beyond: The creativity of the best is needed in the search for the sociological equivalents of coal and steel to lay the foundation of a European society of societies. This is certainly a job for years and decades to come. Yet, any possible step forward in this area would help overcoming the biggest (and real) deficit the EU is facing today.

Prof. Dr. Ludger Kühnhardt, *Director at the Center for European Integration Studies (ZEI), University of Bonn.*



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ISSN: 2196-1409
 Center for European Integration Studies
 Genscherallee 3
 53113 Bonn
 Germany

Editors:

Sally Brammer
 sbrammer@uni-bonn.de
 Thomas Panayotopoulos
 thpanayotopolous@uni-bonn.de
 Robert Stüwe
 rstuewe@uni-bonn.de

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