I. INTRODUCTION

It is quite difficult to write about my topic, since discussion has just started at the inter-governmental conference in Rome. Particular states are declaring their positions on the draft Constitutional Treaty prepared by the European Convention. My intuition that the constitution and enlargement are closely connected was confirmed by Chancellor Gerhard Schroeder who, in the Palazzo dei Congressi on the 4th October, the first day of the inter-governmental conference, said that "enlargement and the constitution are two sides of the same coin."

It is not easy to write about the so-called eastern enlargement of the European Union. First of all, it is difficult to decide which perspective I should adopt. One possibility is the perspective of an Eastern European, which in fact I am. The second is to look from the perspective of a Western European. It is also possible to adopt a third perspective, that of a sympathetic external observer. In the end I decided to adopt a different approach: not the position of an impartial judge, not the position of a prosecutor or defense lawyer, but that of a skeptical lawyer close to what is known in legal procedure as an expert witness.

The arguments for such an approach are partly obvious. I am an academic lawyer with interest in the constitutional structure of the European Union. I am also an Eastern European with some insight into problems faced by citizens of the future new member states.

The structure of my paper is very simple. I will argue that Eastern Europeans wanted to join Europe, but a Europe from the past, not the European Union. Then I will look at the issues connected with the relationship between enlargement and constitutionalization in the European Union. I will finish with some skeptical remarks as far as prospects for European rule of law are concerned.
There is a tendency to discuss the process of present enlargement from a short time perspective. This is rather normal - that’s what politics is about: not too much past unless it is used politically and not too much future since the electorat does not care too much about it. What is left is the present. So in the media but also in scholarly studies we can find plenty of articles debating the state of preparation of different future member states in adoption of the aquis communitaire (community law) and fulfillment of the criteria for adoption of some polices as mentioned in the accession treaty. But even that topic is in the shadow of a new one – preparation for the new inter-governmental conference in which the 15 plus 10 are supposed to accept the draft of constitutional treaty prepared by the European Convention. The entire presentation of enlargement is overshadowed by constitutional debate. Is that a right or a wrong approach? Well, undoubtedly there is more to enlargement than the new constitutional treaty, but the treaty itself is the most important event which will determine the direction of the process of European integration. So it is justifiable to look at enlargement from the constitutional point of view. Another justification is historical. The collapse of communism was a world-historical event and from the very beginning the aims of Central-Eastern European states in foreign policy were to join NATO and the European Union. Post-communist Central-Eastern European states wanted security and economic prosperity. From the very beginning the Central-Eastern European approach to the European Union was partly utilitarian (money from Brussels) and partly status oriented (being reunited with the West). In other words post-communist Central-Eastern European states had their own image of the European Union and they wanted to join that version of the Union, focusing on the European Economic Community, not so much the European Union. The difference is in perceptions of the constitutional structure of the Union and the scope of state sovereignty.

Eastern Europeans looked, and it seems to me they are still looking, at Europe as an infrastructure for economic benefit. That it was, but a long time ago in the era of the European Economic Communities. Even before the Maastricht Treaty which established the European Union with pillars II and III, and the Amsterdam Treaty which deepened political Union there was more than the European Economic Communities. There was a constitutional structure based on supremacy of European law and shared institutions, especially the European Court of Justice.

The liberation of Central-Eastern European countries from Moscow’s yoke, with the consequent disintegration of the Yalta arrangement after the autumn of nations in 1989, has had a profound influence on the European Communities. It

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