



TOWARDS TREATY REFORM

The AFCO treaty reform proposal lays the foundations for a federal constituent process

by Luca Lionello



FOLLOW UP OF THE CONFERENCE ON THE FUTURE OF EUROPE

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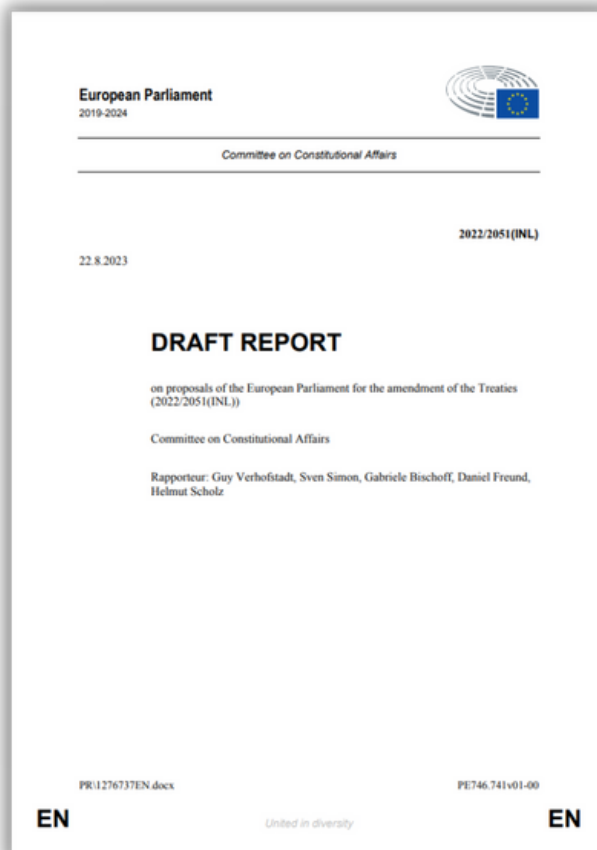
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Introduction

At the 14 September 2023 meeting of the European Parliament's Committee on Constitutional Affairs (AFCO), a proposal for a motion was presented together with an attachment setting out a detailed draft reform of the Treaties². The text arises from the compromise reached between the representatives, in the European Parliament, of the main pro-European parties: the Left, the Greens, the Socialists, Renew Europe and the EPP. Once the text has been approved by a plenary vote in the European Parliament, the process of reviewing the Treaties pursuant to art. 48 TEU will formally begin. At this point, the European Council will be called upon to convene a Convention by majority vote, and it will then fall to the latter to prepare Treaty amendments on the basis of the text already drawn up by AFCO.



The proposal concerns an extremely advanced project of reform towards a federal Union, capable of creating genuine and democratically legitimised European sovereignty. This important development was made possible by the debate that unfolded during the Conference on the Future of Europe (CoFoE) and the conclusions reached by the same, upon which AFCO, with its proposal, now seeks to act. Unlike the 2004 Treaty establishing a Constitution for Europe, AFCO's proposed reform sets out the conditions to allow a European political power to take shape, and the Union to substantially emancipate itself from the member states.

Obviously, this is still only the start of an extremely difficult and dangerous reform process that will likely unfold over the months and probably years to come. If we want to make a meaningful contribution and make sure that this historic opportunity is not wasted, we need to identify and closely monitor progress on the most important points of the reform, those constituting the "red line" that will trigger the breakdown of the current framework, and allow those in favour of a federal re-founding of the Union to press ahead with it.

1) https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-constitutional-affairs_20230914-1000-COMMITTEE-AFCO?fbclid=IwAR3wfh09-oFxI2jHd-31hD5qwqxr5Io2xsYnV49qa54lQb6-K_z75pvm9mE

2) https://www.europarl.europa.eu/doceo/document/AFCO-PR-746741_EN.pdf

What the Treaty revision proposal contains

A new institutional order

The first set of reforms is designed to modify the EU's institutional framework by giving a greater role to institutions with a supranational vocation, in other words, the Parliament, the Commission and the Court of Justice.

Once the ordinary legislative procedure has been extended to most decisions, the Parliament will become a permanent political co-decision maker of the Union, alongside the Council, which will be required to reach decisions by majority vote. This will have the effect of consolidating what is, substantially, a bicameral model. There will also be a strengthening of the Parliament, which will be given the power of legislative initiative and the right to bring infringement procedures before the ECJ against member states that fail to implement EU law.

Alongside this strengthening of the Parliament, it is envisaged that the Commission (renamed "Executive") will also be able to increase its autonomy from the member states. This will be possible thanks to a reform of the procedure for appointing its president, who will become the "President of the Union".

The European Parliament, [...]

– having regard to the Manifesto of Ventotene¹,
– having regard to the Schuman declaration of 9 May 1950 ,
– having regard to its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties

whereas amending the Treaties is necessary, not as an end in itself, but in the interest of all Union citizens, as these amendments aim to reshape the Union in a way that will enhance its capacity to act, as well as its democratic legitimacy and accountability; [...]

whereas the Union's institutional framework, and in particular its decision making process, especially that in the Council, is barely adequate for a Union of 27 Member States; whereas the prospect of future enlargements makes a reform of the Treaties inevitable;

Highlights the importance of reforming decision-making in the Union to more accurately reflect a bicameral system by further empowering the European Parliament, and by changing the voting mechanism in the Council;

The President of the Union will be chosen by the Parliament initially, and then confirmed in the role by a majority of the European Council. The Executive will have just 15 members (secretaries), chosen on a political basis by the President of the Union, striving to ensure a geographical and demographic balance. The strengthening of the Commission (or Executive) is also reflected in the reform of the European Council, which will comprise only the heads of state or government and the President of the Union (i.e., the head of the European Executive).

The Court of Justice will see its supervisory powers over the member states increased; in particular, under the new procedure pursuant to art. 7 TEU, the Council, voting by majority, can report breaches of the rule of law in member states on which the Court of Justice will be required to rule, imposing, where necessary, significant financial penalties. The Court might also be required, by the Parliament, to handle preliminary complaints concerning the conformity of draft laws with the Treaties.

The institutional balance of the Union will also change following the introduction of pan-European referenda, which will become key instruments of participatory democracy in the EU's decision-making processes.

The European Parliament, [...]

Calls for Parliament to gain the right of initiative for legislation, in particular the right to introduce, amend, or repeal Union law, and to become a co-legislator for the adoption of the multiannual financial framework; [...]

Proposes to strengthen and reform the procedure in Article 7 TEU with regard to the protection of the rule of law by ending unanimity and by making the Court of Justice the arbiter of violations; [...]

Suggests providing for jurisdiction for inter-institutional disputes at the Court of Justice of the European Union; [...]

Reiterates its call for decisions on sanctions, interim steps in the enlargement process and other foreign policy decisions to be taken by QMV; [...]

Calls for the establishment of a defence union including permanently stationed European military units, a permanent rapid deployment capacity, under the operational command of the Union; [...]

Broader competences

The second set of reforms concerns the extension of the Union's competences and political autonomy. The Union will acquire exclusive competences in the field of environmental policy and the protection of biodiversity. This is a very important step because environmental protection is an issue that cuts across numerous other policies.

As a result, there will be an increase in shared competences in the fields of energy, industry, civil protection, health and education.

The Union, through extension of majority voting in the Council, will strengthen its foreign and defence policy. The initial core of a Defence Union will come into being through the creation of rapid intervention units under a single integrated command. Extension of the majority vote to decisions on own resources and the multiannual financial framework will allow the Union to become master of its own budget, able to use it to pursue its own objectives and influence the actions of the member states through policies of conditionality along the lines of the NGEU model. The introduction, in the Council, of majority voting to activate the flexibility clause pursuant to art. 352 TFEU will provide the Union with a subsidiary legal basis for the adoption of acts necessary for the pursuit of its objectives.

Finally, another important aspect is the introduction of a new procedure for the revision of primary law, which in the future will require the approval of only four-fifths of the states participating in the intergovernmental conference and subsequent ratification process. And even should this majority fail to be reached, it will in any case be possible to convene a pan-European referendum to confirm the revision.

The European Parliament, [...]

whereas amending the Treaties should enable the Union to more effectively tackle geopolitical challenges;

Proposes that the composition of the European Parliament become Parliament's exclusive competence;

Proposes to establish exclusive Union competence for the environment and biodiversity as well as negotiations on climate change;

Proposes the introduction of an EU referendum on matters relevant to the Union's actions and policies; calls for the strengthening of instruments for citizens' participation in the EU decision-making process within the framework of representative democracy;

Saving the reform from “the sharks”³

AFCO’s bold proposals will now have to go through a series of difficult steps, in which there will be no shortage of government attempts to sabotage them. It could be that the text will be amended as part of efforts to reach a compromise and secure a wider consensus. That said, there are at least three fundamental aspects on which the success of the Union’s federal leap depends:

- **the extension of majority voting and the involvement of the European Parliament**, on an equal footing, in essential issues such as: the adoption of own resources (overriding the veto of national parliaments if necessary); the adoption of the multiannual financial framework; foreign policy decisions.
- **easier use of the flexibility clause through the extension of majority voting**: in this way, the Union, should circumstances necessitate it, will be able to act even in cases not provided for by the Treaties, without needing to fear individual national vetoes;
- **the introduction of the principle whereby Treaty reform must be decided by majority vote**; even though this rule is really designed to be applied to subsequent revisions, breaking the unanimity taboo is crucial to the success of the current reform. In fact, during the process regulated by art. 48 TEU, **a fracture may even occur** between, on the one hand, the states that, together, wish to move towards a federal Union with the supranational institutions (Parliament and Commission) and, on the other, the more recalcitrant ones still attached to a nationalist mindset. If the convention and intergovernmental conference should reach an impasse, **it would be possible to add a transitional clause allowing ratification of the reform** by a sufficient number of signatory states.

3) On 14 September 1983, the European Parliament approved the Motion for a Resolution on the Content of the Preliminary Draft Treaty Establishing the European Union, whose content would become the basis for the Draft Treaty Establishing the European Union also known as the Spinelli Project. On that occasion, Altiero Spinelli spoke in Parliament and warned of the precariousness of the first approval by the European Parliament and of the need to continue to be vigilant about the subsequent steps:

"You must all know the short story by Hemingway', about an old fisherman who, after catching the biggest fish in his life, tries to get it back to shore. But bit by bit the sharks eat it, so that when the old man returns to shore, all that remains is a skeleton.

Mr. President, with the vote it will take in a few minutes, Parliament will have caught the biggest fish of its life. But it must bring it back into port. So let us be careful, because there will always be sharks will always be there waiting to devour it. Let us try not to return into port with a skeleton."

From EP archives 14.09.1983

<https://ep-archives-archibot.s3.eu-central-1.amazonaws.com/root/vol1/770/N20170118221442929-226C1AD9EDA94.pdf>

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Altiero Spinelli
Speech in the European Parliament
14 September 1983

