

A Leap Towards Federalisation?

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On September 14th, co-rapporteurs Guy Verhofstadt (Renew, BE), Sven Simon (EPP, DE), Gabriele Bischoff (S&D, DE), Daniel Freund (Greens/EFA, DE) and Helmut Scholz (The Left, DE) presented in the Committee on Constitutional Affairs of the European Parliament (AFCO) a [wide and ambitious project of Treaty change](#). The latter is attached to a motion calling on the Council to immediately and without deliberation submit the reform proposals to the European Council to facilitate a Convention in accordance with the ordinary revision procedure under art. 48 TEU. The motion is expected to pass without major amendments in AFCO in early October, followed by a plenary vote by the European Parliament in early November.

This short contribution will highlight and evaluate the most important proposals of the AFCO project and argue that, if adopted, the reform will further the Union's federalisation, thus potentially changing its legal nature.

AFCO's Vision and Ambition

One of the first things that catches the eye from the very first lines of the text is the reference to two founding acts of European integration (and European federalism in particular): the Manifesto of Ventotene and the Schuman Declaration. Evidently, AFCO seeks to ideally connect with these documents with the ambition to put forward their political goals.

The motion continues by stating that the Union's structural reform „is necessary, not as an end in itself, but in the interest of all Union citizen“ (point B). In other words, the reform is intended to improve the capacity of EU institutions to act in their interests and create stronger democratic control on EU decisions and policies. Strengthening the Union is considered necessary also in the light of the enduring geopolitical challenges and the future enlargement of the organisation (points C and D). Indeed, European citizens are not just the reform's intended beneficiaries, but are also who requested it. Thus, AFCO's proposal follows on from the work of the [Conference on the future of Europe](#) (point E). The latter put forward important and sometimes radical requests for change in the Union (summarised in 49 proposals), following 12 months of multilevel discussions. This is an important innovation compared to the past when Treaty changes started from intergovernmental initiatives. Despite having reached only a few hundred thousand participants around the Union, the Conference on the future of Europe still represents an unprecedented and rather successful experiment of participatory democracy, which provides EU institutions with a mandate from EU citizens for amending the Treaties.

Three Themes of Change

The reform's proposals would lead to three main changes: a recalibration of the EU's institutional balance with a strengthening of the Parliament and the Commission and the marginalisation of the European Council, a widening of the Union's competences to core policy areas, and stronger EU supervision of national policies.

To change the institutional balance, the reform proposes the Union move towards a bicameral system. To render the Parliament and the Council two equal chambers in charge of law making and key political decisions (point 3), the reform suggests, *inter alia*, to significantly increase the number of areas where actions are taken by ordinary legislative procedure and to grant Parliament the right of legislative initiative (amendments n. 232, 233). To overcome national vetoes, it proposes that decisions in the Council shall be taken by qualified majority voting (QMV). AFCCO also envisions a more compact Commission (to be renamed „Executive“) with only 15 Members: 14 secretaries and the „President of the Union“ (amendment n. 47). The latter is to be elected based on a new procedure, with Parliament nominating a candidate who is to be confirmed by a majority of the European Council (amendment n. 49). The President would choose the other members of the Executive based on political preferences while ensuring geographical and demographic balance. The Parliament will be able to pass a motion of censure by absolute majority (thus easing parliamentary control on the Executive) and address it also towards single Secretaries (amendments n. 211, 212).

If adopted, these reforms would push the Union towards a parliamentary form of government, where the Executive requires the political support of a parliament majority to stay in office. Consequently, the European Council's dominant role of policy maker would be reduced. In this regard, the reform aims to replace the President of the European Council with the already mentioned President of the Union (amendment n. 26), thus strengthening the leading role of the Executive on setting the political agenda. The institutional balance of the Union would further change through the proposed introduction of an EU referendum on matters relevant to the Union's actions and policies (amendment n. 20). Even if the proposal does not clarify the scope and the effects of such instrument, it envisions that citizens shall directly join the decision-making process at European level.

The second group of reforms pertains to widening the Union's competences. AFCCO's proposal envisions a new exclusive competence regarding the protection of the environment and biodiversity, including negotiations on climate change (amendments n. 82, 83), with a concomitant inclusion in art. 3 TEU of the aim of reducing global warming and safeguarding biodiversity (amendment n. 4). Additional reforms concern new shared competences on public health matters and the protection and improvement of human health (especially cross-border health threats), civil protection, industry, education (especially on transnational issues) and energy (amendments n. 84-94). In the area of freedom, security and justice the reform seeks to strengthen the role of both Europol (amendments n. 127, 128.) and the European Public Prosecutor's Office (amendments n. 123, 124). A new „defence union“ would establish a permanent rapid deployment capacity, under the

operational command of the Union, and a dedicated budget for the joint procurement and the development of armaments (amendment n. 61). Most foreign and security policy decisions would be taken by QMV in the Council after having obtained the consent of the European Parliament (amendments n. 53, 62). Accordingly, the extension of European competences is tied with a vision of EU decision-making that is less intergovernmental and more attentive to the citizens' voice.

The reform's third priority is to strengthen European supervision of Member States' compliance with EU laws, particularly the Union's values. A proposed change to Art. 49 TEU on the admission of new members adds a requirement that Member States must continue to respect Art. 2 values *after* their accession, in accordance with the CJEU's findings in *Repubblika* (amendment n. 78). To bolster Art. 7 TEU on the protection of EU values in the Member States, the reform suggests to the current procedure which is based on a political assessment and a unanimous vote be changed to empower the Council to adopt an early warning by QMV and to grant the CJEU the jurisdiction to sanction violations of the rule of law (amendments n. 9-11). Moreover, both Member States and the European Parliament shall be provided with the right to start an infringement procedure under art. 259 TFEU before the Court (amendments n. 220, 221).

The EU as a Federal State?

If adopted, the proposals would profoundly change the nature of the European Union: the latter would stop being an organisation derived by the will of the Member States and arguably move more towards the structure of a federal state.

Goodbye Herren der Verträge

Thus, the proposal clearly diminishes the Member States' role as the real masters of the Treaties. While art. 50 TEU would still allow individual departures, the amendment would displace the principle of unanimity. This would diminish the ability of single Member States to stop the decision-making process at the European level. Accordingly, the influence of national parliaments would also shrink. In the event a Member States opposed a majority decision, it would have to withdraw from the Union to prevent its application. A similar situation would occur with the procedure for Treaty change: following the proposed revisions of art. 48 TEU a reform would require only four-fifths of the Member States or alternatively the majority of EU citizens in an EU-wide referendum (amendments n. 72-75). This effectively forces dissenting MS to choose between reluctantly accepting Treaty amendments or exiting the Union altogether.

Moreover, the Union would develop its own *Kompetenz-Kompetenz*. This is clear by looking at the new formulation of the flexibility clause under art. 352 TFEU which grants the Union a subsidiary legal basis to pursue its objectives by a majority vote of the Council instead of by unanimity (amendment n. 260). The resulting emancipation of the Union from the Member States would be furthered by the extension of the ordinary legislative procedure to the adoption of the own resources' decision and the multi-annual financial framework (amendments n. 248- 252). Once

national governments and their parliaments can no longer use their veto, the Union would significantly increase its fiscal autonomy, which is notably a fundamental instrument of political self-determination.

The rise of European citizens

At the same time, AFCO's proposal implies a new democratic dynamic. The reference to the Conference on the future of Europe already suggests that European citizens are implicitly the real advocates of the reform. The amendment's adoption would further strengthen their voice, both by empowering their representatives in the European parliament, and through the addition of a EU referendum process. Most importantly, EU citizens would emerge as the ultimate source of power legitimation at a European level to the extent that – again through a referendum – they can confirm treaty revisions that Member States themselves might not accept. In this way, citizens who favour a Treaty change without success at the national level, can join a European majority that will eventually confirm it. Of course, national people can still vote to make their Member State leave the Union.

Thinking the Unthinkable

Most will view the AFCO's proposal as a provocation or – at best -a dream of a group of federalist MEPs that will never see the light of day. Perhaps. Regardless of its future, the project represents the most advanced proposal of treaty revision since the Spinelli project of 1984. If it succeeded in obtaining sufficient parliamentary support, it could become the basis for a future „constituent battle“ of all pro-European forces around the continent. Furthermore, the idea of amending the Treaty by majority has finally come out. Of course, the treaty revision proposed by AFCO would still be governed by the current procedure under article 48 TEU, which requires unanimity of national delegates in the intergovernmental conference and then of national ratifications. It is not impossible, however, that if the AFCO project was rejected by some Member States, its adoption by majority could become a politically viable option. Certainly, this would represent a moment of fracture of the existing constitutional framework (think only of the Court of Justice's [Defrenne](#) judgement). But, is this not what the reform intends to do anyway?

