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## EUROPEAN POLICY BRIEF

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## Institutional Reform in the EU

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**This Policy Brief discusses the potential reforms of the EU institutions that can take place during the 2014-2019 legislative term. It argues that negotiations on Treaty change are a possibility, but they should only start in the second part of the legislature. In the meantime, several institutional reforms that can improve the functioning of the EU – and hence increase its legitimacy – should already be considered.**

### TREATY CHANGE?

The appetite for treaty change was seriously dampened in the European Union in the aftermath of the Lisbon treaty. Public opinion, European institutions, and above all Member States, were reluctant to consider a new exercise of the type which had been at the centre of the stage, from the Laeken European Council in 2001 to the final entry into force of the new treaty on 1 December 2009. There was large agreement that long and intricate institutional debates, negotiations and re-negotiations, failed referendums with risks of catastrophic failure were to be avoided at all cost.

Is this changing? Perhaps!

In her first speech in the Bundestag as newly re-elected Chancellor, on 18 December 2013, Angela Merkel clearly advocated treaty modifications. “We belong to those who say: when the treaty bases are not sufficient, then we must re-examine the treaties. However, after the Lisbon treaty, we have a situation in Europe where everybody says that we can re-examine everything but the only thing we cannot change are the treaties. On that base I do not believe that we will be able to establish a Europe that works. I know that it is difficult to push treaty change in member states. But if we want more Europe, we must also accept change in specified fields of competence. Yes, we must make good treaties. But in a world in constant change, we cannot take the view that at a given point we concluded a treaty in Lisbon and will from then onwards never change the treaties again. That is not going to work!” (*Das wird nicht funktionieren*).<sup>1</sup>

Some weeks earlier a group of well-known German academics (lawyers, economists, political scientists) took the unusual step of publishing a joint statement with the title *Towards a Euro Union*. The group, known as the Glienicker Group, also calls for treaty change: “To achieve this political agenda, the euro area needs a new contractual basis of its own. What is called for now is a Euro-treaty to replace

previous piecemeal reforms. With such a contract, collective insights and experiences from the crisis would be stored permanently. A Euro-treaty would re-focus public debate on Europe's political needs and wishes, away from the current preoccupation with what is legally feasible".<sup>2</sup>

Also towards the end of 2013, a group of Members of the European Parliament, called the Spinelli Group and known for sharing the federalist convictions of the Italian statesman, drafted and published a *Fundamental Law of the European Union*, which is "a comprehensive revision of the Treaty of Lisbon (2007). Replacing the existing treaties, it takes a major step towards a federal union".<sup>3</sup>

We also know that, in January 2013, Prime Minister David Cameron indicated that the British Government wanted a "fundamental, far-reaching change". The aim is to reach a new settlement based on flexibility and cooperation leading to an in-out referendum: "To stay in the EU on these new terms; or come out altogether". The Prime Minister adds that "if there is no appetite for a new Treaty for us all, then of course Britain should be ready to address the changes we need in a negotiation with our European partners."<sup>4</sup>

It seems clear that the taboo, that for some time inhibited any suggestion of new treaty negotiation, has faded. It is now promoted by different people, with entirely opposite views of what is needed for the European Union.

Will this new tendency be successful?

In the medium term the arguments seem compelling. As Chancellor Merkel points out, there is no reason to believe that the Lisbon treaty is the last word in a political process which has developed, through various treaties, over sixty years, at the centre of European politics. The Glienicker Group may have a point

when they say that the euro area needs a new contractual basis of its own, a Euro-treaty to replace previous piecemeal reforms. When David Cameron says that his government wants either to reach fundamental far-reaching change or to leave the Union, he clearly accepts that both alternatives imply a new treaty. Arguments may go in opposite directions, but they converge on the necessity of change. In the medium term they cannot be ignored.

The underlying question is about timing, and two considerations come to mind.

In the first instance it seems quite impossible, in the present circumstances, to draft any substantial new treaty which would find the required and unanimous support of all Member States. Public opinion is not in that mood. It feels the anguish created by the biggest economic and financial crisis in recent times, disillusionment, justified or not, about efforts to overcome that crisis, widespread concern about the future. This has led to acrimonious debate and resentment, between creditors and debtors, North and South, euro-ins and euro-outs. Some wounds go quite deep, and they are recent. Treaty negotiation in the European Union has always been a difficult exercise and the difficulty has logically increased with the number of member states. Regular recourse to direct democracy through referendums adds an element of uncertainty. To launch such an exercise in the present atmosphere seems condemned to dismal and dangerous failure.

But the atmosphere may change. A few years of economic growth, albeit slow growth, would make a difference. What would happen if the Union were to address, with what means it has, the problem of unemployment, favour mobility, devise initiatives for better training of workers, act jointly against illegal immigration and unreported employment and perhaps even address minimum social rights? If the Euro zone consolidated its currency by a banking union,

effective macroeconomic policy coordination and credible budgets? If it seriously addressed energy policy and common rules on the environment? Perhaps even some progress on foreign policy coordination! None of this is impossible and the atmosphere would change. With the passage of time, perhaps two or three active years, wounds would heal and resentment decrease. A stronger and more dynamic Union could then consider treaty change with more equanimity.

A second consideration is linked to the position of the British Government. The European policy announced in January 2013 by David Cameron is a two-fold gamble. His first bet is that he will persuade European partners to accept fundamental and far-reaching change of some agreed policies or procedures that are no longer convenient for British public opinion and government. He then further bets that these changes will enable him to win a referendum in 2017 on the UK's future status in the European Union. This gamble may have its justification in British politics but it puts other member states in a quandary:

- They are requested to modify the fundamental objectives of the Union. It should become a flexible, adaptable structure pursuing the ideal of cooperation. Most Member States would look to OECD for that.
- They are requested to engage a negotiation in which each Member State indicates what part of the whole seems inconvenient to it (“outside its comfort zone”). This is, by its very nature, a highly destructive exercise.
- And the end-result would be submitted to a referendum which might well make the whole exercise useless if Britain decided to leave the Union.

But why should other Member States take those risks? Most of them are gradually coming to a completely opposite conclusion, namely that a

higher level of integration will be necessary to consolidate their currency. It would seem, for them, much more rational, and infinitely easier, to invert the premises, namely to await the result of the British referendum announced for 2017, before negotiating issues on the basis of its result. The fact is that you do not negotiate in the same way with someone who is going to leave and someone who is going to stay: you need to know!

Both these considerations lead to the conclusion that it would be most unwise to open negotiations on treaty change in the short term. But, given the justified pressure for change, it would be appropriate to open such negotiations, perhaps around 2018, in the second part of the future European Parliament legislature, in a more congenial atmosphere and at a time when Cameron's gamble would have been played out.

In the meanwhile we should consider what possible reform can be introduced in various institutions *without treaty change*.

## THE EUROPEAN PARLIAMENT

It is well known that each successive European treaty has increased the powers of the European Parliament. This has been most obvious in recent years when the Union's life and activities were dominated by crisis management. The normative power of Parliament was confirmed by the important, at times decisive, role it had in the adoption of the various new legal instruments required, notably the *Six Pack* and the *Two Pack*. The Parliament also sees its control power indirectly increased by the unprecedented implementing powers given, by these new instruments, to the Commission, because, as the treaty says “The Commission, as a body, shall be responsible to the European Parliament”. The December 2012 European Council conclusions say that “any new steps towards strengthening economic governance

will need to be accompanied by further steps towards stronger legitimacy and accountability”.

However the euro crisis has also highlighted two questions, linked to democracy and legitimacy, which need to be addressed.

First, the crisis has shown that many decisions have to be taken at one level (Union or euro area), and implemented at another (by the Member States), and they concern economic and social policies which frequently lie at the heart of the national political debate. Some of these decisions may be intrusive and constrain national decision making. In such cases democratic legitimacy and accountability are required both at European and national level: there is a need for double legitimacy. This implies coordination and dialogue between European and national levels of democracy. The European Council stated that “new mechanisms to increase the level of cooperation between national parliaments and the European Parliament” could be useful, and recommended “the organization and promotion of a conference of their representatives to discuss EMU related issues”.<sup>5</sup> The TSCG asks the European Parliament and national parliaments together to determine the organisation and promotion of a conference of their representatives in order to discuss budgetary policies and other issues.<sup>6</sup> It may be too early to draw any conclusions from the few meetings this “conference” has held: it works on the basis of consensus, which is poorly adapted to such a large gathering. But the newly elected Parliament should obviously seek, by this or by other means, closer cooperation with national Parliaments.

Second, the European Parliament is occasionally called upon to deliberate on legal acts and policies affecting only the euro area. Parliament maintains that it is entitled to intervene in these matters as a unitary democratic representative of the Union polity. Others maintain that only

MEPs from euro area countries could legitimately vote on euro area matters and participate in related accountability mechanisms. What would happen in case Parliament was called to vote on a given decision or recommendation linked to the euro area, and the decision was rejected due to the determinant vote of British MEPs? The potential problem that arises could only be settled in substance by treaty change. But the Commission has underlined that the European Parliament has the possibility of adapting its internal organisation to a stronger EMU. “For instance, it could set up a special committee on euro matters in charge of any scrutiny and decision-making pertaining especially to the euro area”.<sup>7</sup> The future Parliament may also want to consider that suggestion.

## THE EUROPEAN COUNCIL

The European Council became an institution of the EU when the Lisbon treaty entered into force on 1 December 2009, at a moment when the world and the Union faced a major economic and financial crisis. It had been for many years, *de facto*, the major locus of power in the Union. But now it had become an institution, it had a permanent president, and it was operating as a major actor in a major crisis. This modified the institutional balance of the Union. The European Council was recognised as the initiator of new projects, the main crisis manager and the ultimate decision-maker. As a result, the traditional “institutional triangle” looked a bit different.

This institutional development is criticised in Parliament, by the Commission and elsewhere as a dangerous intergovernmental drift endangering the “Community method”, which has been central to European decision making for decennia. It is said to weaken the Commission and the visibility of its president, to be a source

of confusion in the public eye and to escape parliamentary control.

It can be argued that the matter is not quite as clear cut; that the European Council with a permanent president is not purely and simply intergovernmental, that the implementing powers of the Commission are greater than ever and that the Community method is, by nature, essentially legislative (“the ordinary legislative procedure” art. 289 TFEU) and therefore has its limits.<sup>8</sup>

But the negative perception is quite widespread and needs to be addressed.

One option considered in the Convention, and advocated elsewhere from time to time, is to have one single president chairing both the European Council and the Commission. This is supposed to avoid competition between two presidents and two institutions, and give a single “political face” to the EU. It seems at least doubtful whether in fact a single person would be physically able to exercise adequately two such demanding and absorbing tasks with conflicting agendas. More importantly, it seems obvious that the independence of the Commission, so important for the smaller Member States, would be compromised if it was chaired by the President of the European Council, who would be duty bound to defend the positions taken by that institution. This option does not seem very fruitful.

A more promising line of thought is to suggest that the European Council, and its president, should accept a greater level of accountability to the European Parliament. As indicated by Luuk van Middelaar,<sup>9</sup> members of the European Council operate both as national leaders and as members of an EU institution. As national leaders, they answer to their national legislature; as members of an EU institution they should accept some accountability towards the European Parliament. If this was an accepted

practice and not a legal obligation, it would not require treaty change. It would undoubtedly strengthen the democratic legitimacy of the institutional structure.

## THE COMMISSION

There is no doubt that implementing powers of the Commission have been considerably increased by a number of legal instruments adopted as a consequence of the euro crisis. In some ways the Commission is more powerful than it was. “Never in the past have so many competences been exercised at EU level”, as President Barroso has underlined.<sup>10</sup>

Nevertheless, the Commission is generally perceived as weaker than it was in former years. This weakness is commonly attributed to excessive caution in the exercise of its power, and excessive concern not to offend the views of Member States, big Member States in particular. Political choices and personalities obviously have some impact on the strength of any institution, but in the case of the Commission, the following four structural problems can be identified.

First of all, for reasons known to everybody, the number of Commissioners has grown from 9, in the 1960s, to 28 today. It is difficult to establish that there are in fact 28 different functions to be exercised at Commission level, and that this justifies as many cabinets and even more directors general. The structure is top-heavy: some Commissioners, their cabinets, and their director generals are underemployed.

Secondly, the institution was defined as a college which had a mandate to define and formulate together the collective interest of the Community and initiate action. Collegiality has never been easy to apply in practice and experience generally shows that the principle is only workable with a limited number of participants. A bigger group needs a strong

presidency and, as a result, participants, in practice, concentrate on their specific responsibility, not on the whole. Collegiality in the Commission has, compared to former years, diminished.

A third structural problem relates to the fact that the institution was conceived as a supranational and independent body. Upon appointment Commissioners swear to accept no instructions. However, Member States have repeatedly insisted that it was absolutely essential for them that one of their nationals should be member of the Commission. This insistence is, by itself, a source of confusion. Commissioners acquire a national character, and public opinion understands that Commissioners are appointed to defend national interests. Otherwise, governments would not be so insistent.

Finally, according to the treaty, the Commission takes its decisions by simple majority. In fact, for a number of years, it has never taken **votes**: it works by consensus. The fact that a simple majority could, in theory, exclude all major players is an obvious cause for reluctance to vote. Yet decision by consensus is a characteristic of intergovernmental structures and procedures. An institution which has a supranational character, as the treaty says, can be expected to vote. Executive institutions, such as the Commission, must, at times, act decisively and fast: consensus is not the best procedure to that end.

These points combine to create a structural weakness in the Commission, which is detrimental to the authority, legitimacy and credibility of the institution. Over the years its supranational character has been blurred. And all points of weakness are linked to size. The Lisbon treaty had foreseen a reduction of the number of Commissioners on the basis of a “system of strictly equal rotation between the Member States”. This seems to underline the “national” character of Commissioners. Many

observers consider that such a system would be less than optimal, but it could only be altered by new treaty provisions. In any case it has been postponed to a distant future by the European Council.<sup>11</sup>

Some useful modifications of current practice could however be taken in consideration. When collegiality becomes unrealistic, it is advisable to increase the authority and the legitimacy of the Commission President. In the circumstances it strengthens the institution itself.

One option, strongly advocated by the European Parliament, would be to appoint as President the candidate pre-selected by the winning party in European elections.<sup>12</sup> This would give the president of the Commission the democratic legitimacy coming from the support of at least a plurality in Parliament. Some point out however that this procedure carries the risk of politicising the Commission itself and giving a partisan character to an institution conceived as the independent guardian of the treaty. Up to now, the appointment of the President of the Commission has been agreed (sometimes with difficulty) by the Heads of Government. Whether the European Council fully shares the views of Parliament on the new procedure remains in doubt. Presumably this doubt will be clarified in the weeks following the elections.

Another option (which could be additional to, or independent from, the previous one) would be to give to the President elect a dominant role *de facto* in the selection of other members of the Commission. The European Council could agree to leave to him the first choice of each Commissioner. Combined with the following point it would give the President considerable and lasting authority in the Commission.

The President should be free to attribute competences to each Commissioner, and to modify these at a later stage. The Commission could be structured in clusters, each of these

grouping a number of Commissioners, under the effective leadership of a Vice-President, with a collective responsibility for one field of Commission activity (external relations, budget finance and money, internal market etc.). Some Commissioners could be without portfolio, as commonly occurs in national governments. These could work within one cluster or have horizontal responsibilities such as relations with national Parliaments.

The administrative structure of the Commission has grown in parallel with the number of Commissioners, each of these wanting a director general answering to him. That link should be broken. A sizeable reduction of the number of general directorates (as was done some years ago within the Council secretariat) would streamline the administrative structure and facilitate internal coordination.

The Commission should, like the European Parliament, seek closer and more regular contact with national parliaments. This should become a part of its normal task.

## CONCLUSION

Suggestions for renegotiation of existing treaties are relatively new in the post-Lisbon European debate. They come from various quarters and with completely different and opposite motives, but some are put forward at a high level of political authority. The pressure is likely to increase and the most probable outcome, as past history shows, is indeed, in the medium term,

renegotiation. But it would be unwise to attempt renegotiation in the present atmosphere of disillusionment, anxiety and resentment, and without clarifying the final choice of the United Kingdom.

Significant change in the working of the institutions can be made without treaty change. The European Parliament should consider further developments in its relationship with national parliaments and also address the singularity of the euro area. The European Council is also a part of the institutional framework of the Union and should accept, as such, some democratic accountability towards the European Parliament. The Commission suffers from its excessive size, but there are ways and means, outside treaty change, of mitigating that weakness.

There are obviously more pressing issues in the European electoral debate than institutional questions, but they will, as usual, be part of that debate.

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## ENDNOTES

- <sup>1</sup> Merkel, A. 2013. [For a strong Europe](#). Government Statement on the European Council Meeting. December.
- <sup>2</sup> Glienicker Group. 2014. [Towards a Euro Union](#).
- <sup>3</sup> The Spinelli Group. 2013. A Fundamental Law of the European Union. Gütersloh: Bertelsmann Stiftung.
- <sup>4</sup> Cameron, D. 2013. [EU speech at Bloomberg](#).
- <sup>5</sup> European Commission. 2012. [A Blueprint for a Deep and Genuine Economic and Monetary Union. Launching a European Debate](#). COM(2012) 777 final/2.
- <sup>6</sup> European Council. 2012. [Conclusions](#), December, paragraph 14.
- <sup>7</sup> European Council. 2012. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, Article 13.
- <sup>8</sup> De Schoutheete, P. 2012. [The European Council and the Community Method](#). Notre Europe Policy Papers, (56), pp. 1-38.
- <sup>9</sup> Middelaar, L. 2013. The passage to Europe. New Haven: Yale University press; and De Schoutheete, P. & Micossi, S. 2013. [On Political Union](#). CEPS Essay, (4).
- <sup>10</sup> Barroso, J. M. 2012. [The European way forward: Leadership and ownership](#), Europe Day Address, Florence, 9 May.
- <sup>11</sup> The relevant treaty article is art. 17 §5 TEU. See also: European Council. 2013. [The European Council decides on the number of members of the European Commission](#). EUCO 119/13. 22 May.
- <sup>12</sup> The legal basis is Art. 17 §7 TEU, which is open to various interpretations.



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