Improving the efficiency, democracy and legitimacy of the EU institutions within the current Treaties: possibilities and limits

20 proposals

SUMMARY

As the European Union faces one of the most challenging periods of its history, its institutions and their capacity to adapt to the new situation are sorely tested. This Policy Brief has been conceived as a second contribution to the debate which is taking place in the European Parliament about the potential reforms that could improve the Union’s functioning without the need for treaty change. As a complement to the Policy Brief “Strengthening and deepening the Economic and Monetary Union within the current Treaties: Possibilities and Limits (25 Proposals)” published in May 2015, this paper will focus on the general governance structure of the Union, studying the functioning of the three main institutions (the European Parliament, the Council of the EU and the European Commission).

This paper takes five fundamental benchmarks of governance systems as main objectives (increased parliamentary legitimacy of decisions, streamlined decision-making processes, reinforced accountability of the executive, better implementation of decisions and clearer separation of the executive and the legislative powers). This framework is used to identify the possibilities offered by the Treaty of Lisbon allowing decision makers to address the institutional flaws, dysfunctions and practices that prevent the Union from working in a fully democratic and effective manner. At the same time, it points out actual limitations imposed by the Union’s current legal framework.

The result of this research is a list of 20 proposals that, implemented as a package, could lead to considerable improvements in the functioning of the Union. However, some of them would require as much political will and demanding decision-making processes as Treaty revision. Furthermore the result of their implementation could not be taken as a final settlement, which could only be achieved through a revision of the Treaties or through the adoption of additional Treaties.

RECOMMENDATIONS

- Switch to the Ordinary Legislative Procedure in the policy areas requiring deeper integration
- Democratise the Council with a single legislative configuration and a permanent representative for each Member State
- Reinforce accountability links between the President of the Eurogroup and the High Representative and the Parliament and Council
- Increase politicisation of the Commission through a reduced composition, a greater role for the President-elect in the selection of the College and a simplified administrative structure
- Guarantee operationalisation in the field of Justice and Home Affairs through the reinforcement of its agencies and the normalisation of decision-making processes
INTRODUCTION

This paper constitutes our second contribution to the debate around the report “Improving the functioning of the EU Institutions building on the potential of the current Treaties”, which is being prepared by Mr. Elmar Brok and Ms. Mercedes Bresso for the Constitutional Affairs Committee of the European Parliament. After a first study dedicated to the governance of the Economic and Monetary Union, the present paper will look at the key institutions of the European Union and propose some treaty-compatible solutions to address at least some of the flaws that hinder its democratic and effective functioning.

However, in order to avoid excessive complaisance with the so-called “à traité constant” method and in the belief that the main bottlenecks in the process of evolution of the European Union towards greater democracy, legitimacy and ability to act effectively do require changes to the Treaties sooner rather than later, special attention will be paid to identifying the limitations and legal deadlocks imposed by the current Treaties to the achievement of the European democratic model.

PRELIMINARY REMARKS: THE DIRECTION OF THE UNION

The EU is currently going through one of the most challenging periods since its establishment. Over the last years the Union has made obvious progress in the process of increasing its competences and strengthening its institutional architecture, in particular through the institutional reforms introduced with the Treaty of Lisbon and the considerable reinforcement of the economic governance framework of the euro area put in place in the past five years. However, significant open issues remain in fundamental areas, most notably in finding a definitive settlement for Economic and Monetary Union governance, the role of the EU on the international stage and the completion of the Area of Freedom, Security and Justice (AFSJ). In addition, there remain overarching questions about whether the Union has sufficient democratic legitimation and ability to act, even in the areas where progress to date is more advanced. This shows that the institutional reform process that started with the failed Treaty establishing a Constitution for Europe in 2005, was continued through the Treaty of Lisbon, and most recently incoherently complemented with the Fiscal Compact in 2012, is obviously not yet completed.

The radical transformation that the constitutional structure of the European Union has undergone in the last ten years is obviously not the final stage of the integration process, but rather a transitional phase. Unfortunately, the final stage of this process is not clearly stated in the Treaties and there is currently significant divergence in views among Member States on what it should consist of. Since the inception of the European Coal and Steel Community, those responsible for drafting the Treaties have preferred to leave the final goal of the Union unstated. Instead, they have applied an incremental step approach, i.e. they only implement the necessary changes to deal with the crisis of the moment. For decades even the most integrationist forces in the Union have seemed

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satisfied with this method and have relied on the “spill-over” effect the changes have had to justify their calls for further integration.

However, a retrospective approach contrasting the current Treaties and their immediate predecessors can reveal much, if not about the final goal of the Union, at least about the direction it is heading in. From a structural point of view, the first transformation induced by the Treaty of Lisbon is the depillarisation of the policies of the Union, moving the two former intergovernmental pillars (i.e. the Common Foreign and Security Policy or CFSP and the field of Justice and Home Affairs or JHA) in the direction of the supranational method, although with significant limitations and exceptions, particularly regarding the CFSP.

Thus the Union today preserves a dual constitutional nature: a supranational core with a residual intergovernmental structure around it. However, the intergovernmental and the supranational governance systems are no longer separate and hermetically sealed processes. In contrast with the previous system, a mechanism has now been built into the Treaties themselves to enable further developments towards the supranational method in the areas where the intergovernmental character of the Union still prevails. The so-called “passarelle clauses” that allow for decision makers to decide to move to apply the supranational method (i.e. co-decision between the European Parliament and the Council and qualified majority voting in the Council) where the Treaties provide for an intergovernmental decision. Whereas it is therefore possible to switch from the intergovernmental to the supranational method, no mechanism in the Treaties provides for a move in the opposite direction, which is an important indication of the assumed future course of the Union’s development. Instead, a withdrawal clause was included, which seems to indicate that the only two possible directions are forward or out.

This depillarisation combined with the flexibility clause (art. 352 TFEU) leads to a sequence where the intergovernmental method plays the role of entry gate for new powers being transferred into the Union’s scope, with an expansion of the supranational model as a likely next step.

The second major institutional change brought by the Treaty of Lisbon is the parliamentarisation of the supranational governance of the Union and the politicisation of the Commission as main holder of executive power. It is a direct consequence derived from, or rather a requirement imposed by, the depillarisation process. While in the pre-Lisbon era the supranational method had been designed for policies bringing positive or very positive outcomes in the short term, in the exercise of the new competences conferred upon the Union it needs to provide a basis for a political decision-making system able to address circumstances where short-term individual costs for some or all Member States must be balanced with mid- to long-term collective benefits for the entire Union. However, significant limitations remain both in the parliamentarisation of the Union and in the politicisation of the Commission and its executive role.

Taking into account these three trends (depillarisation, parliamentarisation and politicisation), any attempt to identify further potentialities for improving the functioning of the Union within the scope of the Treaty of Lisbon should not be limited to finding ways to

"THE ONLY TWO POSSIBLE DIRECTIONS ARE FORWARD OR OUT."
speed up or streamline decision-making processes. Suggestions for improved functioning must also draw attention to breaches to the principles underpinning the democratic legitimacy of the Union and propose Treaty-compatible legal and political arrangements to make progress towards improvements.

In the following sections, the functioning of the three major institutions (European Parliament, Council and Commission) will be studied in order to identify democratic dysfunctions and institutional flaws hindering the efficacy of the Union’s decision-making processes and to put forward some tools, available within the limits of the current treaties, to address them.

The proposals presented will strive to:

(a) draw a clearer differentiation between the legislative and executive institutions of the Union by eliminating, when possible, the competence overlaps and the ambiguities in some institutions’ roles and by privileging the European Commission as the holder of executive power;

(b) strengthening executive power at the European level in order to ensure proper implementation of adopted EU decisions,

(c) increase the politicisation of the policy-making processes in the EU, so that decisions made reflect the aggregate orientations of the Council and the European Parliament,

(d) make the existing political responsibility links between the holders of executive power and the representative institutions more effective,

(e) establish new accountability relationships between the holders of executive power and the representative institutions where they appear as necessary and possible but the Treaties do not provide for them.

Along with the “25 Proposals for the EMU”, if the measures proposed here were implemented (and particularly if they were implemented as a package, or within a single roadmap as a stepping-stone to a next and more comprehensive Treaty revision process), they could constitute a considerable improvement in the functioning and democratic accountability of the EU.

Needless to say, the necessity to assemble unanimous consent of Member States for some of the key measures addressed here represents the obvious key challenge, particularly at a time when some Member States (notably the United Kingdom) question even the current stage of EU integration.

Sooner rather than later the Treaties will need to be revised to reach a definitive settlement that enables more integrationist Member States to proceed further and less integrationist Member States to stay at the periphery or potentially leave.
1. WORKING TOWARDS THE END OF PILLARISATION BETWEEN EU POLICIES

1.1 EXTENDING CO-DECISION AND MAJORITY VOTING ALL ACROSS THE SPECTRUM OF EU POLICIES

As explained above, instead of setting a rigid separation of policies between the intergovernmental and the supranational method, the Treaty of Lisbon starts a depillarisation process consisting of an initial set of rules and different so-called “passarelle clauses” offering flexibility to move from the intergovernmental to the supranational method at a later stage. The starting point sets an initial repartition which fitted the circumstances in which the Treaty of Lisbon was signed. Different “passerelle clauses” give the possibility to modify this initial order to allow the institutional framework of the Union to adapt better to future situations without having to trigger the long and demanding exercise of treaty revision.

The switch from the intergovernmental to the supranational method is achieved through the extension of co-decision between the Council of Ministers and the European Parliament that enhances the democratic legitimacy and the efficiency of EU decision making in fields where deeper integration is required.

PROPOSAL 1.

Use of passarelle clauses allowing for the extension of co-decision in the fields of Justice and Home Affairs, Citizens’ Rights, taxation, energy and environment and EU finances.

IMPLEMENTATION:

Activation of specific passarelle clauses:
- Art. 192.2 TFEU (environment – unanimity in the Council required)
- Art. 81.3 (family law – unanimity in the Council required)
- Art. 312.2 (MFF – unanimity in the Council required)

And of the general clause of article 48.7 TEU in other cases (unanimity in the European Council required)

Aside from the Common Foreign and Security Policy (CFSP), where unanimity in the Council and limited or no involvement of the European Parliament are still the rule, the TFEU still contains 27 specific acts which have to be adopted through a special legislative procedure (SLP), i.e. a procedure where the Council still acts unanimously and the European Parliament is not yet treated as a co-legislator. Not surprisingly, the EU policy where an SLP is applied most often is the Area of Freedom, Security and Justice (AFSJ) followed, this time more paradoxically, by the EU Citizens’ Rights chapter. In some cases, the use of a special legislative procedure could be understood either because of the internal and secondary nature of the act or because it is used to delegate new powers to the Union which were not foreseen in the Treaties.

2 See Art. 31.1 TEU
3 See art. 87 and 89 on police and judicial cooperation, art. 22 and 23 on detailed arrangements for the exercise of EU Citizens’ rights and art. 118 on language arrangements in the field of Intellectual Property Rights.
4 See art. 77 TFEU on further harmonisation of identity documents and art. 21 on coordination of social security policies.
However, today most of the special legislative procedures are applied to acts of actual policy making. They have no other justification than the concern of Member States to be put in minority in the Council in fields which are considered part of the core of national sovereignty. This poses a major challenge since, not by coincidence, the areas where a special legislative procedure is applied are the most critical in today’s EU policy making, namely EU criminal law, economic policy, energy and environment.

The general passarelle clause provided for in article 48 TEU gives the European Council the possibility to switch to qualified majority voting in the Council in all the cases where the Treaties provide for unanimity, with the notable exception of decisions having military implications. In the same manner, it allows for the switch to the Ordinary Legislative procedure (OLP) in the adoption of the legal acts that, according to the text of the Treaties, should be adopted through a SLP. In order to activate the general passarelle clause in one way or the other, the European Council needs to give its unanimous approval.

Apart from the general passarelle clause, the Treaty of Lisbon introduces four specific passarelle clauses. Three of them allow the Council to apply the OLP to specific acts that should have been adopted through an SLP (i.e. directives defining the rights of workers in the Single Market, measures concerning family law with cross-border implications and decisions in the field of environmental policy primarily of fiscal nature). One additional specific passarelle clause would entail the use of qualified majority voting for the adoption of the Multiannual Financial Framework. The activation of the specific passarelle clauses requires a unanimous vote in the Council.

Finally, article 333 TFEU also foresees the possibility of switching to qualified majority voting or to the OLP for the adoption of decisions falling into the scope of an enhanced cooperation scheme. This provision is very similar to the general passarelle clause and has the same reach, but is triggered by the Council through a unanimous decision of all of the Member States taking part in the enhanced cooperation.

In a context where the security and economic circumstances are pushing the development of EU criminal law, in particular with the creation of the European Public Prosecutor’s Office, the European Parliament should be able to co-define which new areas of crime with cross-border dimensions should be included in the EU scope. The Parliament could be recognised as co-legislator in this field through the activation of the general passarelle clause. The same applies to EU family law and anti-discrimination policies, or to the extension of the EU Citizens’ rights listed in article 20.2 TFEU.

Similarly, some special legislative procedures are at odds with the current will to strengthen the fiscal, economic and political union underlying the common currency. This is particularly the case for the provisions harmonising corporate income taxes, excise duties and other forms of indirect taxation. With the upcoming debate about the Common Consolidated Corporate Tax Base in the Council, the European Council could consider extending co-decision on this matter.

Furthermore, as regards the establishment of an Energy Union, the four special legislative procedures applied to the EU’s environmental and energy policies would seriously

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5 See art. 113 TFEU

6 See art. 192.2.(a), (b) and (c) and 193.3. TFEU
hinder the achievement of the stated objectives. A first Council decision could lift the restrictions to fiscal measures in the field of environment7. It must be noted that the potential for the Energy Union to be realised will be limited until the European Council extends the OLP to decisions impacting Member States’ energy mix and to energy-products taxation.

The multiannual financial framework of the EU is also mostly defined by a series of acts adopted through a special legislative procedure. This leads to an extremely complex negotiation process, which, as in 2012, can be very damaging for the Union, since the requirement of unanimity at the Council tends to pit net contributors and net beneficiaries against each other. In addition, it has a direct impact on consecutive policy making by drastically limiting the Commission’s room for manoeuvre in setting its priorities at the start of its mandate. The use of the OLP through the triggering of the specific passarelle clause of article 312 TFEU would allow the Council to overcome these difficulties. However, regarding the system of own resources, the necessity to ratify the decision in such matters in national parlaments8 would still provide the Member States with an ultimate veto on any reform of the means of financing the Union.

1.2 STARTING THE COMMUNITARISATION OF CFSP

CFSP remains the only EU policy where depillarisation has not even been initiated. Indeed, its location in the Treaties (it is the only policy fully defined by the TEU) and the exclusion of legislative acts (Art. 24.1 and 31.1 TEU) precludes the establishment of any obligation for Member States under this chapter, and excludes the ECJ’s jurisdiction almost entirely.

Given that the use of directives or regulations is not permitted, no passarelle clause could be used in order to extend the role of the Parliament as co-legislator in CFSP. However, the Treaties provide for three other mechanisms that would allow a switch to qualified majority voting in the Council in certain areas or cases, which would considerably facilitate the adoption of decisions on Union positions and Union actions.

PROPOSAL 2.

Extension of QMV to all decisions not having military implications made in the framework of CFSP

IMPLEMENTATION:

Activation of general passarelle clause by the European Council (unanimity required)

The first of these is the general passarelle clause as regards a switch to qualified majority voting. The European Council could decide by unanimity, that the Council would use

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7 Activation of the passarelle clause provided for by article 192.2 TFEU
8 Art. 311 TFEU
qualified majority voting in all or part of the CFSP. The second concerns the adoption of decisions on Union positions, meant to define the Union’s common approach to a specific topic, region or country. When a draft decision on Union positions is submitted by the High Representative/Vice President of the Commission (HR/VP) on the initiative of the European Council, it can be adopted by qualified majority. This mechanism has already been used, for example for the adoption of the first European regional strategy, for the Sahel region in 2011, and could be used for the adoption of the new EU Global Strategy on foreign and security policy that will be submitted by the HR/VP in 2016. The third case where QMV is applicable in CFSP is the adoption of any decision implementing a Union position.

**PROPOSAL 3.**

**Streamlining decision making in the field of the CFSP through the development of a comprehensive strategic foreign policy framework:**
- List of strategic priorities to be kept by the European Council, complemented with a mandate to the HR/VP to develop specific thematic and regional strategies
- Adoption by the Council of thematic and regional strategies in a proactive manner (QMV)
- Mandate given to the European External Action Service (EEAS) to keep thematic and regional strategies updated by regularly submitting revisions to be adopted by the Council

**IMPLEMENTATION:**
Full application or Art. 29 TEU
[HR/VP initiative]

NB: The decisions adopted within strategic frameworks would require QMV instead of unanimity

Article 32 TEU commits the Member States to try to reach a common approach regarding any matter of foreign policy of general interest through Union positions. In any case, they should bring the topic to the European Council before taking any individual action. Such strategies are not limited to the field of CFSP, and according to article 22 TEU they can also encompass instruments from other EU policies. Furthermore, once a decision on a Union position has been adopted by the Council, Member States shall also ensure that their national policies conform to it (art. 29). It should be noted however that these obligations are not backed by any legal enforcement mechanism and so they remain a simple political commitment.

To this purpose, as a complement to the EU Global Strategy, the European Council could keep a list of the specific areas and regions of common interest as a matter of priority, and mandate the HR/VP with the preparation of specific strategies to be adopted by the Council.

If the EEAS was clearly mandated to keep those strategies updated, by proposing regular revisions to the Council, and given the means to do so, the conduct of CFSP would benefit from a much stronger, more coherent and efficient institutional framework. Given that most of these strategies would involve other EU policy areas, such as development aid, but also the Area of Freedom, Security and Justice or even the Single Market, they would contribute to further coordinating the CFSP with the supranational policies, and would also anchor it in the supranational institutional setting, since the Parliament would inevitably be involved in the consultations necessary for their preparation.
2. THE EUROPEAN PARLIAMENT

Since the entry into force of the Treaty of Maastricht, the European Parliament has gained ever more powers, both through its increased participation in the adoption of EU legislation and through the stronger links of accountability that now tie it to the Commission. It is to be noted that co-decision between the Parliament and the Council is now the rule, and the fields where the former is excluded from the decision-making process constitute exceptions in the EU legal framework, although they usually constitute fundamental areas in national policy-making.

The extension of co-decision has led the way for positive evolutions of the EU political system, such as the increased democratisation of the election of the Commission, and the emergence and increasing expansion of a European public space where political preferences, business interests and organised groups confront their positions, at times with significant involvement of at least certain sectors of the European public opinion. This last development has a deep impact both on the adoption of EU legislation and on the ratification by the European Parliament of international agreements (see, for instance, the rejection of the Terrorist Finance Tracking Programme with the US, also known as SWIFT agreement, in 2010 or of the Anti-Counterfeiting Trade Agreement in 2012).

It is the increased perception of the European Parliament as a political arena where European citizens’ expectations and preferences can have a space that gives it the status of democratic representation needed to legitimise the decisions of the co-legislature9 and its control powers over the European executive.

In order to address the democratic deficit of the European Union, it is necessary to reinforce the European Parliament in two parallel directions. On the one hand, its role has to be raised as to turn it into a co-legislator on an equal footing with the Council in all the policies of the Union. On the other hand, it is also necessary to build its reputation among the citizens by giving it a higher degree of visibility in the Union’s political life, and by offering it the means to be more assertive and influential in case of conflict between the interests of the Member States and those of the citizens. Some advancement in both areas is possible even within the boundaries of the current Treaties.

In the Policy Brief “25 Proposals for the EMU”, several proposals were made in order to address the democratic deficit within the euro area. First, it was recommended that the European Parliament was given the right to require a revision of the draft proposals presented by the Commission to the Council in the framework of the European Semester. It was explained that it would be possible to raise the Parliament’s profile and allow the debate on fiscal issues to become more European if the European Parliament had the right to call a member of the government of the Member State concerned by European Semester procedures for a hearing before voting a binding resolution.

The second major proposal regarding this topic was the creation of a super-Committee for the euro area regrouping all the MEPs elected in euro countries. Although this

super-Committee would have no legislative powers, it would act as a forum for euro area MEPs and decide on the transfer of EMU-related reports to the Plenary for a formal vote. This solution would reflect the current double-speed nature of the Union and provide a more appropriate space for discussion about the political dimensions of the euro area, avoiding debates focused on the political divide between current members and non-members of the Eurozone.

2.1 REINFORCING THE CONTROL POWERS OF THE EUROPEAN PARLIAMENT

The European Parliament has greatly benefitted from the last revision of the Union’s Treaties in terms of control powers. It has gained the essential power to dismiss the College of Commissioners if it does not approve of the way it is carrying out its role. Although according to the Treaties the Commission is collegially responsible to the Parliament, the current Framework Agreement between the Commission and the Parliament gives to the latter the right to ask the President of the Commission to discharge a Commissioner. The President is not bound to comply with the Parliament’s request, but in such case the reason for refusing to do so must be explained and the President is exposed to a collective censure motion. This power of dismissal complements the power of electing the European Commission, which constitutes a considerable ex-post control mechanism.

These control powers have also taken other forms, like the assent procedure for the ratification of international agreements. Unlike in the pre-Lisbon era, today the Parliament’s consent is required for any treaty concluded by the EU to be approved and to regularly enter into force, except in the case of international agreements falling within the scope of the CFSP. Initially the confidentiality requirements of international negotiations left little space for the Parliament to effectively control the activity of the EU’s negotiator, which was a source of inter-institutional conflict and criticism from some Members of the European Parliament. However the Parliament has learnt how to exploit the “hard power” provided by the assent procedure through the adoption of resolutions across the negotiation process, which the Commission takes more and more seriously by adjusting its positions accordingly. In this framework, the European Parliament now has a role closer to the one played by national parliaments, based on the threat of involuntary defection.

However, in the current state of play, it is problematic that the system of accountability to the European Parliament does not cover the entire spectrum of executive tasks. This is particularly the case of those policies which, according to the Treaties, should be based on compliance with a series of rules (mainly the economic and the monetary policies, and to some extent, the field of Justice and Home Affairs).

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10 Article 218 TFEU


12 Tom Delreux, The EU as international environmental negotiator, ed. Université de Louvain, March 2011
As was explained in the Policy Brief “25 Proposals for the EMU”, the economic policy of the euro area has been greatly strengthened during the financial and sovereign-debt crises of the last years, bringing it much closer to a type of policy based on actual political decision making instead of a purely rule-based policy. However, the governance framework has remained intergovernmental, resting on peer-to-peer review in the Council and crisis-driven political decisions made by the European Council, which prevents any system of accountability, either national or European, from working effectively. To address this problem, some recommendations were made, such as the merger of the positions of President of the Eurogroup and Vice-President of the Commission to create an accountable EMU Finance Minister, the inclusion of the European Parliament in the key stages of the European Semester and to grant the Parliament the right to push Alert Mechanism Reports.

**PROPOSAL 4.**

**Power given to the European Parliament to dismiss intergovernmental positions with executive mandates (President of the Eurogroup and High Representative)**

**TRANSNATIONAL SOLUTION:**
- Unilateral commitment by the European Council + Extension of the HR/VP Political Accountability Declaration
- Adoption of Political Accountability Declarations by the President of the Eurogroup

**FOR LASTING SOLUTION:** Revision of Title III of the TEU required
Commitment by the President of the Commission to dismiss double-hatted Commissioners if they are dismissed from their intergovernmental positions by the European Parliament

In the case of intergovernmental policies, the little executive power initially foreseen by the Treaties was delegated to EU positions outside the Commission. Apart from the President of the Eurogroup, those are the HR/VP in the role of High Representative, the President of the European Council and, more recently and still informally, the President of the Euro Summit.

Arguably, the total disconnection of these positions from the European Parliament was justifiable by the fact that they are embedded in the intergovernmental institutions of the Union and that their role in the decision-making processes was the one of an honest broker between Member States. Yet as their influence in agenda setting grows and their respective policy fields evolve into policy making, the question of accountability needs to be addressed.

It would be positive to establish an accountability relationship between intergovernmental positions holding executive powers and the Parliament comparable to the one with the Commission. Although the Treaties do not provide for such a control mechanism, the HR/VP has committed to keep the Parliament informed of her activities through the so-called Political Accountability Declaration annexed to the EEAS Decision, and is subject to possible individual dismissal from her Commission’s mandate through the 2010
European Parliament—Commission Framework Agreement\textsuperscript{13}. This model could be taken as the basis for a reinforced relationship between the other intergovernmental positions and the Parliament.

\begin{quote}
\textbf{PROPOSAL 5.}

Conferring control powers upon the European Parliament over the activities of prudential supervision of financial institutions carried out by the ECB and over the economic activities of the EIB
\end{quote}

\textbf{IMPLEMENTATION:} European Council decision extending the OLP to the modification of the European Investment Bank’s Statute (Art. 308 TFEU) and to the provisions conferring specific tasks of banking supervision upon the ECB (Art. 127 TFEU) through activation of the general passarelle clause (art. 48.7 TEU unanimity required)

In the case of supranational rule-based policies, such as the monetary policy, the other solution found in order to isolate the executive power from political influence is the creation of separate agencies or bodies. For instance, the European Central Bank enjoys a great degree of independence. Although according to the Treaties the ECB is accountable to the Parliament, in practice, this accountability is only partial\textsuperscript{14}, since it is only bound by a series of mere information requirements, implemented in the form of the so-called Monetary Dialogues\textsuperscript{15}. The Parliament has only a consultative role in the appointment procedure for members of the ECB’s Executive Board.

Some improvements could be made if the European Parliament were able to fully exploit the Monetary Dialogues by turning them into genuine evaluations of the ECB’s performance regarding its two primary objectives and through efforts to give them greater media coverage\textsuperscript{16}. Even so, the impact of those initiatives would remain limited.

While there is broad consensus that a strong and independent ECB is fundamental for carrying out monetary policy tasks in defence of monetary stability, the expansion of the ECB’s role to other areas (such as bank supervision and the safeguarding of financial stability, in particular of the banking system) has raised greater issues of transparency and accountability.

Although it goes beyond the scope of this paper, on the occasion of the next Treaty revision, a reflection could be made on whether political independence of the ECB outside its monetary policy tasks actually requires total isolation from representative institutions. In the EU architecture other supranational rule-based policies are integrated into political bodies, such as competition. Their link with the Parliament and the Council does not undermine their independence, but still allows the co-legislature to exercise control powers.

\begin{quote}
\textquote{THE EXPANSION OF THE ECB’S ROLE TO OTHER AREAS HAS RAISED GREATER ISSUES OF TRANSPARENCY AND ACCOUNTABILITY}
\end{quote}


\textsuperscript{15} Article 284.3 TFEU

In fields outside monetary policy, such as bank supervision, the situation is quite different. Indeed, the legal framework for the ECB’s activities linked to the prudential supervision of financial institutions is not laid down in the ECB Statute, but in a Council regulation adopted through a special legislative procedure.

In order to hold an agent accountable, if the principal cannot exercise a direct influence on the delegated policy or on the individuals holding executive mandates, as is the case for the ECB, it must at least keep the power to modify or withdraw the mandate conferred upon the agent\(^\text{17}\). The potential to exercise such right has in itself a positive effect on the behaviour of the agent and it is likely to multiply the effect of soft accountability instruments, such as the Monetary Dialogues. In the current state of the Treaties, this is theoretically possible as regards the ECB’s bank supervision activities, since it is up to the Council to define the extent of the powers of the ECB in this field by unanimity\(^\text{18}\). Nevertheless, in a situation where one agent, in this case the ECB, is delegated powers by multiple principals (the Member States) the requirement of unanimity among the principals to modify the agent’s mandate makes this type of control virtually impossible to implement\(^\text{19}\).

This also applies to the European Investment Bank (EIB)\(^\text{20}\). Article 308 TFEU provides for an amendment procedure for the EIB’s Statute through a special legislative procedure, still requiring the unanimity of the Member States.

In both cases, the switch to the OLP would increase the control powers of the European co-legislature over the two financial institutions. Indeed, the use of qualified majority voting and co-decision would make the modification of the ECB’s bank supervision mandate and of the EIB’s Statute effectively possible, thus giving the Council and the Parliament actual leverage to keep the members of their executive boards accountable. This would constitute a considerable evolution in a context where both institutions are endorsing growing responsibility in the EU’s economic stability (see, for instance, the array of projects already proposed to increase the scope of application of the European Fund for Strategic Investment or the creation of the Single Supervisory Mechanism).

\textbf{PROPOSAL 6.}

Reinforcing the role of the European Parliament in the ex-ante control of implementing acts in order to put it on an equal footing with the Council.

- Revision of the Framework agreement between the Commission and the European Parliament in order to allow for European Parliament experts to participate in comitology committees (suppression of last paragraph of Annex 1)

\textbf{IMPLEMENTATION:}

Modification of the Framework Agreement between the Parliament and the Commission

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\(^{18}\) Art. 127.6 TFEU

\(^{19}\) Hans Agné (2009), Op. Cit.

\(^{20}\) Its Statute is laid down in Protocol 5, based on Art. 308 TFEU. According to the same article, this protocol can be amended by means of a Council Decision adopted through a special legislative procedure.
- Maintenance of the delineation criteria proposed by the Commission in Annex 1 of the proposed new IIABR in spite of Council’s opposition

Adoption of the IIABR
- Reform of the Appeal Committee for adoption of implementing acts in order to include same number of experts from the Member States and the European Parliament.

Modification of the 2011 Comitology Regulation

The reinforcement of the powers of the Parliament in the Treaty of Lisbon also concerns the acts adopted by the Commission in the implementation of EU legislation. These are acts whose adoption is delegated to the Commission by the Parliament and the Council, first, when a regulation or directive requires regular updates of non-essential elements, which the Commission does through the adoption of non-legal instruments called delegated acts. When the implementation of the basic act requires uniform conditions to be defined (e.g. determination of thresholds stemming from rules defined in the basic act), the Commission is mandated to adopt legally binding instruments, called implementing acts. Delegated or implementing acts cannot modify the nature of the obligations provided for by the basic act. In any case, the legislator has the duty to clearly delineate the extent of the decision-making powers delegated to the Commission.

According to the letter of the Treaties, the Parliament and the Council should be on an equal footing when it comes to monitoring delegated and implementing acts adopted by the Commission. However, in the case of the implementing acts, later developments in the practice and the new 2011 Comitology Regulation have left the Parliament short of the potential influence it had been promised. Both the Council and the Parliament can prevent the adoption of an implementing act at any stage, but only if they consider that it exceeds the implementing powers conferred upon the Commission. However, Member States have much greater mechanisms of influence during the adoption process. In the framework of the so-called Appeal Committee they have the possibility to modify the content of implementing acts or to require their withdrawal, without having to justify their decision on any grounds.

This situation creates an anomaly in the governance of supranational policies which needs to be addressed. The Commission has proposed that the scope of application of implementing acts is considerably reduced in favour of a broader use of delegated acts, which will proportionately limit the cases where the Appeal Committee is

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22 See above-mentioned regulation


24 This is done in the framework of the “Appeal Committee”, composed of national experts, but making decisions according to the same voting rules as the Council. See Art. 5 and 6 of the 2011 Comitology Regulation

involved. However, there remain four particular cases where the adoption of an implementing act will still trigger the activation of the Appeal Committee. An evaluation of the implementation of this regulation is due by 1st March 2016. In order to ensure the equal treatment of the Council and the Parliament on the one hand, and the independence of the Commission as the executive body of the Union on the other, the Commission could propose that the role of comitology committees is limited to a consultation and information procedure, including suppressing the excessive powers of the Appeal Committee. To compensate this loss of control over the executive, the control powers of the Council and the Parliament could be reinforced. Before the entry into force of the Treaty of Lisbon, the co-legislators could oppose implementing acts on the basis of three criteria. As today, they could prevent the application of an implementing act when they considered that the Commission was exceeding the powers it had been conferred. However, before Lisbon they could also stop an implementing act because they considered that it was inadequate with regards to the aim or content of the basic act and on the grounds of the principles of subsidiarity and proportionality. The reintroduction of these two additional criteria into the Comitology Regulation would make the Commission more directly accountable to the co-legislature, and not to the Member States.

As regards the procedures, the European Parliament could also be given the same representation as the Member States (in fact, the Council) in the expert committees overviewing the process. This could be done by amending Annex A of the Framework Agreement between the Commission and the European Parliament.

**PROPOSAL 7.**

**Increasing the European Parliament’s control over restrictive measures decided by the Council.**

**IMPLEMENTATION:** Conclusion by the Council and the Parliament of a Common Understanding on compliance with the principles of proportionality and loyal cooperation as regards the use of “community” instruments in the implementation of CFSP decisions imposing restrictive measures against third countries and natural or legal persons.

Another point where the European Parliament does not have any control powers is the imposition of restrictive measures to third countries or individuals. Although such decisions are made by the Council in the framework of the CFSP, their implementation leverages on internal market instruments as the main tool for exerting pressure, either for the freezing of funds of an individual, country or company or for the imposition of commercial embargoes. Indeed, the dual nature of the sanctions (CFSP and internal market) is implicitly recognised by the Treaties since the procedural legal basis for such measures (Art. 215 TFEU) provides for a joint proposal by the High Representative and the Commission.

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26 Namely: the common agricultural and common fisheries policies; the environment, security and safety, or protection of the health or safety of humans, animals or plants; the common commercial policy; taxation (see art. 2.2.b. of the 2011 Comitology Regulation)
In most democratic countries, the imposition of economic or commercial sanctions to other countries or individuals is a prerogative of the executive power. Although in the US the Congress can also adopt sanctions, in most cases the restrictive measures are adopted by the President through executive orders. However, Congress may decide to lift sanctions by terminating the National Emergency underlying them\textsuperscript{27}. Furthermore, the Congress has the obligation to review the relevance of the National Emergency every six months\textsuperscript{28}. In this case, the executive retains considerable discretion, since Congress cannot terminate the sanctions based on their actual content, but only if it considers that the President has overestimated the threat.

Article 40 of the TEU provides for a relationship based on mutual respect between CFSP and other EU policies. In other words, neither the exercise of the exclusive, shared or parallel competences on the one hand, nor the CFSP on the other, can affect the extent of the powers of the institutions in the other field. In order to avoid institutional clashes, the Council and the European Parliament could adopt a Common Understanding on compliance with the principles of proportionality and loyal cooperation in the imposition of restrictive measures against third countries and natural or legal persons. The Council would thereby commit itself to abide by a parliamentary resolution requiring the lifting or modification of the sanctions on grounds of non-compliance with the principles of proportionality and loyal cooperation as regards the use of “community instruments” for their implementation.

2.2 PLACING THE PARLIAMENT AT THE CENTRE OF THE EUROPEAN PUBLIC DEBATE

Apart from control functions, the European Parliament needs to be a central deliberative space that contributes to generating a balance between the interests of the citizens. In the current state of the Treaties, some obstacles related to its competences and its procedures undermine this essential dimension. The first is the fact that the Parliament is currently completely excluded from defining priorities regarding the Area of Freedom, Security and Justice. Secondly, although it is granted a right of “initiative of the initiative”, also known as “indirect initiative”, the procedures in place hinder its actual exercise. Finally, the Parliament’s influence in the appointment of the Commission is not substantial and visible enough in the eyes of the voters, which has consequences going far beyond the recognition and reputation of the Parliament.

PROPOSAL 8.

Providing the European Parliament with a more prominent role in the formulation of AFSJ policies in the field of internal security and EU criminal law through the creation of a framework for the adoption of AFSJ programmes more coherent with the ordinary legislative procedure.

\textsuperscript{27} See Title Chapter 34 of Title 50 of the United States Code, in particular § 1622.(a).1 (retrieved on 20/08/2015 www.law.cornell.edu/uscode/text/50/1622)

\textsuperscript{28} Ibid § 1622.(b)
IMPLEMENTATION: Two step approach:
- Inter-institutional agreement between the European Council, the Commission and the Parliament for a more coherent application of Art. 68 TFEU in the light of the principle of loyal cooperation
- Adoption of own initiative reports by JURI Committee for the full implementation of Art. 83 TFEU

The adoption of multiannual thematic programmes setting the priorities for the legislative activity of the Union for a fixed period of time is a widely spread practice. Yet, in the field of the Area of Freedom, Security and Justice, according to article 68 TFEU the multiannual programmes need to be formulated by the European Council, with no obligation to consult the European Parliament or the Commission. This is one of the remnants of the pre-Lisbon (even of the pre-Amsterdam) era, where the former third (intergovernmental) pillar consisted of a simple framework for coordination and cooperation between ministries of home affairs and justice.

The AFSJ has been described as the “big winner” of Lisbon. Apart from integrating it into the supranational pillar, the lastest treaty revision considerably broadened its scope to include criminal law and some areas of family law, and gave it potentially strong operationalisation means through the reinforcement of its agencies and the recognition of the ECJ’s jurisdiction. In this reinforced framework, intergovernmental programming seems at odds with the spirit of the Treaty.

This system poses problems, since it is hard to see how the European Council can define strategic guidelines for legislative planning without consulting the institution that, in the end, will effectively co-legislate together with the Council29. It is all the more incongruent since the interactions with other policies (economy and growth, security, CFSP, neighbourhood) are becoming increasingly obvious.

Although intergovernmental programming remains a requirement, the extent of detail of the programmes is not described in the Treaties. This leaves place for an agreement between the European Council, the Council, the Commission and the Parliament for an application of article 68 which would be more in line with the principle of loyal cooperation. Other programming procedures could be taken as a model in order to achieve the “Lisbonisation” of the AFSJ. For example, in the area of environment, the Parliament and the Council adopt general action programmes acting in accordance with the OLP. If this model was followed, the European Council would limit itself to set very broad guidelines, as in all the other policy areas, and leave the co-legislature the freedom to debate, amend and eventually adopt a more detailed proposal submitted by the Commission.

In addition to this, the European Parliament could take the initiative in the so far deficient definition of the European criminal law. It should use its status to include national parliaments in the legislative process in order to facilitate the subsequent transposition into national law of European provisions and to strengthen their operationalisation30.

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30 idem
PROPOSAL 9.
Formalisation of the so-called Spitzenkandidaten system, comprising the duties of Member States and national and European parties to:
- inform citizens, before and during the electoral campaign, about national parties’ affiliation with a European political party and their support for its candidate for the commission presidency and for his or her political programme;
- see to it that the names – and, where appropriate, the emblems – of the European political parties appear on the ballot paper;
- permit political broadcasts by the European political parties;
- hold a series of public debates between the candidates nominated for the Commission presidency.

IMPLEMENTATION: Revision of the Council Act of 20 September 1976
For further formalisation: modification of the first sentence of Art. 17(7) TEU, which should provide for a more explicit division of tasks between the EUCO and the EP regarding the election of the EC President (nomination by the EUCO becoming a pure formality)

One of the major constitutive elements of any democratic community is the extent to which elections determine the head of the executive power, who, in general, is appointed by the legislative power, with, sometimes, a greater or lesser degree of intervention by the Head of State. At the European level, the European Parliament has the right to elect the President of the Commission on a proposal by the European Council. Although in theory the Parliament has the last word and thus would be able to defend its preferences against the European Council, in practice political pressure on MEPs from national politics influences the exercise of such power by the Parliament and gives the European Council the upper hand in the process.

The European Parliament has recently adopted a legislative own initiative report on the European Electoral Law31. Although most of the aspects of this project would go far beyond the scope of this paper, we note that the main features of the so-called Spitzenkandidaten system used in the last elections to the European Parliament are included in the Parliament’s proposal.

The most important proposals are the creation of a European constituency and that the European Council should nominate the candidate put forward by the party having obtained the majority of the seats in the Parliament or around which a majority coalition could be formed. A European Electoral Law should endeavour to Europeanise the elections, by shifting the focus of attention from national politics to the Union’s concerns and to strengthen the link between the assembly and the executive. For this, national parties could, in order to be allowed to create a parliamentary group, be obliged to be affiliated to a European party during the election campaign. This affiliation should be visible in all electoral material, including campaigns and voting ballots. Finally, Member States should commit through legally binding means to offer the greatest possible diffusion of official electoral debates between the main parties’ candidates, by, inter alia, lifting language restrictions imposed on their national broadcasters. Most of all, the proposal to create a

European constituency where a number of MEPs would be elected on European party lists (rather than on national lists and in national constituencies) would further strengthen the Spitzenkandidaten system as, on the assumption that the leading candidates would run for election as MEPs in such a European constituency, the President of the Commission would de facto be (indirectly) elected.

**PROPOSAL 10.**

**Strengthening the right of indirect initiative of the European Parliament, through a compulsory debate between the EP Committee having prepared a legislative own initiative report and the Commissioner concerned.**

**IMPLEMENTATION: Interinstitutional agreement between the EP and the Commission or Unilateral Commitment by the Commission**

The European Parliament has what has been called the right of indirect initiative. This initiative means that it may adopt legislative own initiative reports asking the Commission to submit a legislative proposal on a specific topic and list a number of recommendations. The Commission keeps its right of initiative, and may decline the Parliament’s invitation. In such case, the EP-Commission Framework Agreement (FA) binds the Commission to inform the Parliament of the reasons in writing.

According to the Parliament, the actual delivery of legislative proposals has been inadequate, and in many cases, when a proposal has been submitted, the Commission has failed to meet the Parliament’s recommendations.

The current FA puts an end to the indirect initiative process once the Commission has given its final answer, precluding any follow-up questions from MEPs. This restriction to the debate between the Parliament and the Commission should be lifted. Although the new Interinstitutional Framework for Better Regulation is not meant to replace the FA, the occasion should be seized on in order to carry out the necessary procedural reforms to ensure the Parliament’s right of indirect initiative. This could be done by committing the Commission to present a preliminary decision, be it affirmative or negative, in a hearing in front of the EP Committee, which prepared the own initiative report. The Commission would then take into account the debate in the Committee when submitting its final decision. This system would match the practice in the Council, which has much more flexible means to exchange with the Commission, since any Council meeting may invite a member of the College to present or justify the Commission’s decisions.

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32 Article 225 TFEU

33 Point 16 of the Framework Agreement between the Commission and the European Parliament
3. **THE COUNCIL, TOWARDS A SECOND CHAMBER OF THE EUROPEAN LEGISLATURE**

With the consecutive reforms of the Treaties, the Council of the European Union has passed from being the only decision maker to sharing its legislative powers with the European Parliament. As a result, its status has been limited to the representation of the Member States’ interests in the European co-decision procedure. In other words, while the Council has always adopted legislation, its mandate was initially much closer to the one of permanent diplomatic forums that can be found in conventional international organisations. Over time it has been transformed into a prominently political institution inserted into a much more complex democratic structure. Thus, the evolution of its voting system, for instance, is a reflection of the gradual transformation of the Union.

However, the Council is still far from playing a political role akin to the one of a second chamber or a senate in a federal state. Any more steps in this direction would require a transformation of its structure and procedures in order to adapt them to meet the requirements of a democratic institution. Some possibilities to do this exist within the current treaties. The following subsections will tackle the three main features that prevent the Council from becoming a genuine second chamber of the European legislature, namely its composition and multiple configurations, the lack of transparency and visibility and the use of unanimity voting in some fields.

### 3.1 THE COUNCIL AS A SECOND CHAMBER

**PROPOSAL 11.**

Reduction in the number of Council configurations to a single legislative Council composed of permanent ministerial representatives of Member States (instead of thematic configurations) with a view to transforming the Council into a democratic second legislative chamber:

- Maintaining the General Affairs Council and the Foreign Affairs Council as the only legislative configurations while suppressing the legislative powers of other configurations, which would become preparatory bodies
- Permanent representation by the same Minister (e.g. Minister of European Affairs or, preferably, a special representative appointed by the Member States at Minister level but with the sole role of representing the Member State in the Council
- Simplification of Coreper and other working groups

**IMPLEMENTATION:** European Council Decision (Art. 236 TFEU, QMV required)

The Council still has many of the characteristics of diplomatic forums. Most of its political work is prepared by working parties composed of diplomats, and not accountable politicians or their political deputies. At the ministerial level, although according to the Treaties its sessions must be public when it deliberates and votes on legislation34, in practice, only the voting results and the deliberations on very controversial topics are made public.

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34 Art. 16.8 TEU
One of the main reasons for the lack of transparency in the Council is the great number of different compositions with legislative powers. While preparatory work in committees is a fundamental feature of the functioning of most legislative chambers, the fact that each configuration can adopt positions separately only contributes to blurring the identity of the Council as a single institution and hinders the continuity and coherence of its activities. The Council’s functioning should thus be simplified as much as possible.

Only two Council configurations are mentioned as such in the Treaties, namely the General Affairs Council and the Foreign Affairs Council. A reduction in the number of Council configurations to two would already be great progress in terms of clarity, but the single-configuration solution would also be possible without modifying the Treaties. Indeed, the only difference between those two Councils is their presidencies and the policies they are entitled to decide on. Thus, it would be possible for the Council to always be composed of the same governmental representatives, while its chairmanship would alternate between the rotating presidency and the High Representative according to the agenda. The reduction in the number of configurations could be implemented through a decision adopted by the European Council by a qualified majority35.

The single-legislative Council would contribute to more clarity and continuity in the way the Council works, since citizens would have a single national Member of the Council, who would fulfil a role akin to that of a European senator. The suppression of the other configurations’ legislative powers would also increase coherence and consistency in the Council’s positions, given that the final responsibility for the adoption of decisions would fall on the shoulders of the legislative Council. This simplified setup would not prevent thematic Council meetings, but they would deal only with the preparation of the Council’s legislative work, and in fact would act as political deputies to their respective Member of the Council.

Members of the Council, like the Members of the European Parliament, would thus bear the responsibility for decisions covering the entire scope of EU policies, and have the function of focal points for their national constituencies. The only requirement that the Treaties provide for the composition of the Council is that its members need to occupy ministerial functions at the national level and to be able to commit their respective governments36. Although governments are free when it comes to deciding which ministers will represent them in the Council, it could be suggested that, given the complexity of the position, their mandates are fully dedicated to the activities in the Council.

35 See Art. 236 TFEU
36 See Art. 16.2 TEU

“THE COUNCIL STILL HAS MANY OF THE CHARACTERISTICS OF DIPLOMATIC FORUMS”
3.2 INCREASED VISIBILITY AND RECOGNITION OF THE COUNCIL AS AN INSTITUTION

One of the consequences of its lack of transparency is the low level of visibility that the Council enjoys as an institution. The Council is struggling to forge its identity as a distinctive institution in the European public debate. In the eyes of EU citizens, it is mostly identified with their respective national governments. In addition, in recent years, the Council has been overshadowed by the increasing impact and visibility of the European Council.

The Council’s lack of recognition can also be blamed on the system of rotating presidency, which still exists for most configurations. The rotating presidency is a practice inherited from the model of intergovernmental diplomatic forums, intended to provide each Member State with greater agenda setting powers on a regular basis and to increase national ownership of the Union’s policies. But it has serious drawbacks in a larger Union. First of all it undermines institutional continuity and coherence, since every presidency arrives with its own agenda and focuses on fields of its own interest. Secondly it is questionable whether this system still fosters national ownership, since each country only takes over the Council chairmanship every fourteen years. In addition it constitutes an enormous challenge for the smallest Member States, which may not have the necessary financial and human resources to cope with this task. Finally, it prevents the presidency of the Council, and the Council itself, from gaining recognition among European citizens.

In a more and more diverse Union, Member States should reconsider the rotating presidency as a non-optimal solution. Changes in this area, however, would require treaty change.

The same benefits which are expected from this system could be reached through different means. For example, Member States could play the role of rapporteurs on specific issues. This would allow them to take even more ownership of their dossiers, and put forward their national priorities in a positive and constructive manner.

PROPOSAL 12:
Increasing visibility and coherence in the Council by providing the European Council President with coordination powers and mandating him with its representation.

IMPLEMENTATION:
Modification of the Council Presidency Decision (QMV)
A final settlement would require modification of the Art. 16 TEU
In order to gain full visibility and recognition as a representative institution which is greater than the sum of its parts, the Council needs to be provided with recognisable faces. An EU position representing the Council would endorse its decisions and have sufficiently high political status to coordinate its work and to stand up to the presidencies of the other institutions whenever necessary.

In the current situation, the Council has three different presidencies. In some policy areas, such as Foreign Policy or the euro area, the Council has a permanent presidency, i.e. the High Representative and the President of the Eurogroup (still informal but politically very well rooted). For the other policies, the rotating presidency still chairs the meetings. A permanent President, playing a coordination role over the different chairmanships, could help solve the problem of visibility and lead to greater overall consistency as regards political priorities.

Any revision of the Council’s presidency should respect its institutional role of the representation of the Member States’ interests in the legislative process. Currently, only one EU job enjoys sufficient clout and a political position high enough to carry out this task: the President of the European Council. Although according to the Treaties, the President of the European Council could not formally take over the position of the Council chairmanship, he could be granted more important coordination powers by the European Council, so that it acts as an umbrella covering the rotating presidency, the High Representative and the President of the Eurogroup. To do this, the Council could decide to put all its administration at the service of the President of the European Council and to allow this person to represent it in front of the other institutions and of the EU citizens at times when important decisions are made.

This proposal could prepare the field for an institutional rapprochement between the Council and the European Council so that, on the occasion of the next revision of the Treaties, the latter could become a purely political body supervising the main guidelines of the future policies of the Union but not driving the Union as a de facto semi executive providing instructions to the European Commission.

4. THE COMMISSION

The Commission is the third major element of the EU’s institutional structure and it should constitute the executive body of the Union. It ensures the application of EU’s primary and secondary law, and to this end, it is provided with powers of legislative initiative, coordination, implementation and management. Apart from the text of the Treaties, its legitimacy is drawn from, on the one hand, its neutrality regarding the Member States and, on the other hand, its links with the co-legislator, through a series of control and appointment mechanisms.

However, in some specific cases, such as the budgetary surveillance of Member States, programming in Justice and Home Affairs and the conduct of the CFSP, Member States have preferred to hold on to executive power by ensuring that some key implementation
tasks are retained by the Council. This creates a lack of political accountability and efficiency in the conduct of those policies which needs to be addressed. This has been all the more visible during the last years, where peer-to-peer supervision failed to impose the strict rules of the Stability and Growth Pact on large Member States.

One of the lessons that the EU should draw from the economic, sovereign-debt and migratory crises of the last years is that intergovernmental bodies are inadequate for crisis management given their structural tendency to postpone issues and settle for lowest common denominators and the weight of conflicting national preferences on the decision-making dynamics. They are also inadequate both to enforce an exclusively rule-based system (given their condescendence to the most influential Member States) and to apply such rules with political flexibility when the circumstances require. To mitigate such flaws, the Union needs to reinforce the exercise of the executive power, by giving it greater legitimacy and resources.

Due to the Council’s inability to reach the necessary degree of legitimacy, the last reforms of the Treaties have endeavoured to democratise the work of the Commission. Therefore, while transferring new executive tasks to this institution, it is essential to exploit all the means available to increase the political character of the Commission as a potential Government of the Union and to make it evolve from its original technocratic status. The President of the Commission is now indirectly elected at the European Parliament elections and the Commission is supported by a majority in the Parliament. This should strengthen the Commission’s ability to set its own agenda and to enjoy the required political consensus and legitimation for the effective use of flexibility in a largely rule-based system.

4.1 CENTRALISATION AND FULL EXERCISE OF EXECUTIVE POWERS

The last reform of the Treaties left the exercise of executive powers divided between the Commission, the Council and the European Council. Although the creation of the EEAS was meant to smooth this division in the field of the EU’s external action, the administrative divisions within this new executive body make it questionable whether this goal was completely achieved. In addition, the reinforcement of the economic governance of the euro area through the intergovernmental method has accentuated this phenomenon by transforming the European Council into a quasi-executive body of the EU.

However, as Fabian Zuleeg has pointed out “‘[t]here is no effective way in which two bodies can share this kind of executive power; while co-legislation can work due to its sequential nature and the absence of acute time pressure, co-executive power shared by Council and Commission is likely to create uncertainty and delay that can be very costly in a crisis’”40. This configuration is all the more problematic for the EU since the repartition of competences is not clear, leading to turf wars between the Commission and the Council. In many cases, one single policy may require the intervention of both institutions at the implementation stage, which requires time-consuming and conflicting coordination processes.

At a time where the Union is required to act and react with increasing urgency, concentrating the EU’s executive powers is essential. This concentration should be done to the benefit of the Commission for two reasons. First, as a legislative body, the Council cannot hold itself accountable. Second, in the case of the European Council, the impossibility for a Member State to step out from an EU policy without paying an extremely high price breaks the accountability relationship with its own national constituency. Given that no accountability relationship is provided for by the Treaties between the European Council and the European Parliament, the former is completely unaccountable when exercising executive powers.\footnote{Ben Crum, “Saving the Euro at the Cost of Democracy?”, in JCMS Journal of Common Market Studies, Volume 51, Issue 4, pp. 614-630, July 2013}

In “25 Proposals for the EMU”, it was proposed to suppress the executive powers of the Council by repatriating the assessment of Draft Budgetary Plans and the monitoring of the implementation of Country-Specific Recommendations, Economic Partnership Programmes and Corrective Action Programmes into the Commission. Reinforcing the Vice-President of the Commission for Economic and Financial Affairs and the President of the Eurogroup, and merging their competences into the position of the EMU Finance Minister was also recommended. This position would then be accountable to the Parliament, collegially with the Commission in the exercise of supranational competences and individually in the case of intergovernmental prerogatives.

**PROPOSAL 13.**

Tightening the link between the Commission and the Parliament by reaffirming the Commission’s right of initiative in the field of Justice and Home Affairs and its ability to set priorities according to the interests and electoral programmes of its parliamentary majority.

**IMPLEMENTATION:** Inter-institutional agreement (European Council, Commission, EP) for a more coherent application of Art. 68 TFEU in the light of the principle of loyal cooperation.

As noted in section 2.2 above, intergovernmental programming is one of the exceptions to the supranationalisation of Justice and Home Affairs. Apart from a negative impact on the development of legislation, this feature undermines the parliamentary legitimacy that the Treaty of Lisbon aims to give to the Commission. Indeed, one of the prerogatives of any executive body is the setting of the priorities of its mandate, and it is through this endeavour that it can start to fulfil the electoral programme on which its parliamentary majority, or the coalition supporting it, was elected and constituted. So long as the Commission remains a pseudo-executive body, limited to the implementation of the priorities set by another institution, the European democratic process remains seriously flawed.

Proposal 8 above already puts forward the necessity for an Interinstitutional Agreement limiting the extent and detail of European Council’s AFSJ guidelines. Instead, the legislative triangle could endorse the task of defining the actual programme through the OLP.
This Interinstitutional Agreement should, in addition, include provisions mandating the Commission with the preparation and negotiation of European Council guidelines, instead of leaving this essential executive task in the hands of the Council’s secretariat.

The Commission is already asking for a normalisation in the programming procedure in Justice and Home Affairs. The proposal for an Interinstitutional Agreement on Better Regulation, launched by President Juncker and aiming to bind the Commission, the Council and the Parliament, includes the extension of the provisions of article 17.1 TEU, whereby the Commission has the general right of initiative for programmes, to all the cases of annual and multiannual programming\(^42\). However, this proposal does not include any improvement in the Parliament’s role. The Parliament should not miss this occasion to claim its right to participate in priority setting in a key field regarding EU citizens’ rights and the respect of the values of democracy and rule of law.

**PROPOSAL 14.**

Giving effective implementation to Justice and Home Affairs legislation through the operationalisation of Area of Freedom, Security and Justice agencies (Europol, Eurojust, Frontex, the European Asylum Support Office (EASO) and eu-LISA\(^43\)) and by integrating them into the Commission.

**IMPLEMENTATION:** Revision of each agency’s regulation

Among the multiple ways in which the executive powers can be exercised, the establishment of independent agencies for the implementation of technical and support tasks is one of the most prominent in the EU. A certain number of these agencies are gaining importance in the governance of the Union. Among them, Eurojust (which in fact is an EU body) is undergoing a profound transformation. Indeed, in the Treaty of Lisbon Member States committed themselves to transform it into a European Prosecutor’s Office, with strong executive competences. Frontex has also been considerably reinforced in recent years, from a simple platform for coordination, training and practice sharing among national border services to an operational agency with the mandate and the resources to carry out European operations to support Member States experiencing difficulties managing migratory flows.

However, the field of Justice and Home Affairs is still characterised by a deep gap between the formulation of European policies and their actual implementation\(^44\). One of the reasons for this deficiency is the lack of regulatory powers and resources for its agencies. On the one hand, standards are defined at the European level in some fields, such as the criteria defining a safe country of origin in the framework of the assessment of asylum requests. IT tools are also created, like the European SWIFT record. On the other hand, EASO lacks the mandate to establish a common list of safe countries of origin and eu-LISA and Europol lack the powers to process all the information available at the European level to detect suspicious behaviour.

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\(^{43}\) Eu-LISA: European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

In addition to regulatory functions, AFSJ agencies have the potential to mobilise their own staff and resources as well as staff seconded from the Member States to directly implement EU policies and measures. This new feature, which emerged between Amsterdam and Lisbon, aims to ensure the effective application of the principles of solidarity and of fair sharing of responsibility in the AFSJ.\textsuperscript{45}

For the time being, only Frontex has been officially mandated with implementation tasks, through joint operations and pilot projects. The current initiative consisting of the deployment of “hot spots” with the support of the EASO in countries affected by significant migration flows could mean a considerable evolution for the asylum agency.

The operationalisation of AFSJ agencies constitutes a dramatic change in the way executive power is conceived of at the European level. While in the beginning, with very few exceptions, EU policies were implemented by Member States’ administrations under the supervision and coordination of the Commission, now the Union is being equipped with operational arms, allowing it to be present in the field and to execute the Union’s laws on its own. For the moment some Member States are still reluctant to accept the case for stronger European executive bodies, and in most cases, the greatest executive powers of EU agencies are triggered only in case of emergency. Moreover, the complete dependence on Member States’ contribution remains a serious limitation to the nature and powers of the agencies. Nevertheless several legislative proposals due by the end of 2015 and the beginning of 2016\textsuperscript{46} have the potential to take decisive steps in this direction.

Therefore the current Treaties still offer great potential to strengthen and operationalise the Area of Freedom, Security and Justice through its agencies. For instance, the Treaty of Lisbon states that one of its goals is the “the gradual introduction of an integrated management system for external borders”.\textsuperscript{47} This deliberately vague formulation leaves much space for interpretation. Therefore the scope of the competences of the EU in the field of external borders management only depends on the will of Member States and the ambition that the Commission will show in its legislative proposals. A restrictive reading of this article would limit it to simple coordination between national systems, while a more voluntary analysis could allow Frontex to become a European Border- and Coast-Guard Body, composed of EU civil servants and taking care of external border protection in general, including controls on land and at sea, at air borders and playing a role in the fight against trafficking.

The EASO could also be given regulatory and evaluation powers in order to ensure the uniform implementation of the Common European Asylum System. With more human and financial resources it could also quickly deploy missions as required to assist Member States in the processing of asylum requests (art. 78.3), to carry out intra-EU transfers of asylum seekers and returns or process asylum requests made from the territory of third countries (art. 78.2). It would also be possible to enhance the Union’s intelligence services by putting the necessary information processing means at the disposal of Europol and eu-LISA, and by bridging the latter with the EEAS in order to benefit from the expertise provided by EU Delegations.

As democratic counterpart, any increase in the powers of these agencies should be accompanied by a reinforcement of the accountability mechanisms with the Parliament.

\textsuperscript{45} Art. 80 TFEU

\textsuperscript{46} See the recast of Frontex’s mandate that the European Council asked the Commission to prepare in October 2015 and the “EU Global Strategy on Foreign and Security Policy” to be submitted by HR/VP Mogherini

\textsuperscript{47} Art. 77.1.(c) TFEU: “1. The Union shall develop a policy with a view to: […](c) the gradual introduction of an integrated management system for external borders”. 
Currently, Frontex, the EASO and Europol are under the authority of the Commissioner for Migration, Home Affairs and Citizenship, and are controlled through the collegial responsibility of the Commission. Eurojust is collegially responsible to a specific supervisory board composed of national judges, but only regarding personal data management. No other control mechanism is provided, apart from the link between each member of the Eurojust College and their respective government.

Given that these agencies are composed of civil servants or judges, and not of political representatives, dismissal by the European Parliament would not be an option. Instead, it would be possible to draw inspiration from the system put in place for EU Delegations. The European Parliament could be given, through the regulations and directives establishing each agency, the right to require a hearing of the nominated heads of agency and members of the Eurojust College before their actual appointment or the right to summon heads during their term of office to present their views on specific issues or emergencies as necessary.

4.2 INCREASED POLITICISATION AND ACCOUNTABILITY OF THE COMMISSION

Another important development brought by the Treaty of Lisbon is the considerable politicisation of the Commission, through the indirect election of its President on the occasion of the European elections and the dismissal power conferred onto Parliament. This shows the will of the Convention to switch from a system based on output legitimacy to one founded on input legitimacy. In other words, the power of the Commission, regarding the implementation of EU legislation or the proposal of new legislative initiatives, can no longer be justified only by the positive outcomes of EU policies (many of which are not considered particularly successful by many European citizens under the current economic circumstances), but by an increased impact of the European Parliament on the political orientation of the Commission and its political priorities and decision-making processes.

However, the process of appointing the College of Commissioners still contains elements of the pre-Lisbon area, i.e. the principle of one Commissioner per country and the appointment of national candidates by the national governments for the position of Commissioner. These elements are not requirements imposed by the Treaties, but rather customary practices or the product of political compromise.

PROPOSAL 15.

Reduction in the number of Commissioners

IMPLEMENTATION: European Council Decision repealing the Conclusions of the European Council meeting of June 2009 (Art. 17(5) TEU and art. 244 TFEU).

The intention of the authors of the Treaty of Lisbon was to reduce the number of Commissioners to two thirds of the number of Member States48. The organisation of the Com-

48 See Art. 17.5 TEU
missioners in clusters, each led by a Vice-President, has contributed to mitigate the strong ‘silo’ mentality that had dominated the Commission’s work since the most recent enlargements. However, this does not solve the problem of Commissioners seen as national representatives, the excessive size of the Commission as a body with executive functions, the artificial divisions of key portfolios or the multiplication of portfolios of limited relevance. In addition, a body the size of the Commission will find it more and more difficult to take timely, adequate and political action if it wants to keep making decisions by consensus. Thus, it would be necessary either to generalise the use of majority voting, which could undermine the unity of the College, or to reduce the number of Commissioners.

This could be done through a European Council decision, repealing its decision of 2 October 2012 (EUCO 176/12). This decision was made in order to address Ireland’s fears that it would not be represented in the Commission, which was presented as one of the major barriers to the ratification of the Treaty of Lisbon. However it is to be noted that, even if the number of Commissioners were reduced, the President-elect would still not be completely free in the choice of the members of the College, and that safeguards exist in the Treaties to ensure that Commissioners from all Member States are selected over a certain period of time. Indeed the Treaties require that the Commissioners are appointed according to a system of “strict equal rotation between Member States” to be established by the European Council unanimously.\footnote{51}

The Commission’s role is to promote the general interest of the Union with complete independence. The concept of “national Commissioner” has certainly been an obstacle in this respect on numerous occasions and the appointment by national governments of their candidates contributes to putting the Commission’s neutrality into question. It also neutralises the link between a political majority in the Parliament supporting the President of the Commission and the Commission itself. Indeed, the Commission’s composition reflects the political position of national governments at the time of appointment, regardless of the result of the European election. Given that the Commission makes decisions collegially (theoretically by simple majority, but in practice by consensus), the current system prevents a match between the political orientation of the Commission’s decisions and the parliamentary majority supposed to bear it. In addition, the fact that the leaders of the parties in the Parliament cannot enter into negotiations to form “government coalitions” erodes the political character of the European election.

\footnote{49 Fabian Zuleeg (2014), Op. Cit.}
\footnote{50 Philippe De Schoutheete (2014), Op. Cit.}
\footnote{51 Art. 17.5 TEU}

**PROPOSAL 16.**

**Strengthening the role of the Commission President-elect in appointing Commissioners by abandoning the practice of national candidates for Commissioner positions.**

**IMPLEMENTATION:** Interinstitutional Agreement between the Council and the Commission regarding the application of Art. 17(7) TEU
According to article 17.7 TEU, the selection of the other Commissioners has to be based on “the suggestions made by Member States”. Nevertheless this does not mean that each government can make the decision on its candidate alone, but rather that the list needs to gather the consensus of the Member States. In addition, as has been seen in the past, this list can be modified if the President-elect does not agree with it or if the Parliament has reservations about some of the candidates. Therefore, if Member States renounced the practice of presenting national candidates for the position of Commissioner, and with the support of a political majority in the Parliament, the President-elect could have a much more prominent role in the selection of the College among outstanding European politicians, taking into account the majority in the Parliament and a balanced geographic and gender representation.

**PROPOSAL 17.**

**Creation of a better defined cluster structure of Vice-Presidents and Commissioners, with a clearer hierarchy and allocation of responsibilities.**

**IMPLEMENTATION:** Decision by the President of the Commission (partially in place through the Better Regulation policy)

In an attempt to improve the functioning of the Commission in spite of the opposition to the reduction in the number of Commissioners, President Juncker has used his powers to decide on the assignment of responsibilities between the Commissioners. The new Vice-Presidents have powers of coordination and in the implementation of the political guidelines given by the President. The most interesting development is the gatekeeping role they have when it comes to agenda-setting, which is likely to streamline and politicise the work of the institution.

However the clusters of Commissioners differ across the policy areas, and there exist numerous overlaps between Vice-Presidents and Commissioners. Moreover, there are no clear links between the members of the Commission and the supporting bureaucracy. In order to deploy all its potential, the clusters system could benefit from a clearer hierarchy, in order to know who is ultimately responsible for what. For this, the current structure should be improved by eliminating existing overlaps between the Commissioners’ sets of competences and the creation of clear Commissioners clusters, following the example of composite ministries at the national level. In addition, the Vice-Presidents would need to have competences beyond pure coordination. They could have an explicit role, along with the President and the First Vice-President, in the definition of the priorities and strategic directions of their respective policy clusters.

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4.3 A SIMPLER ADMINISTRATIVE STRUCTURE

PROPOSAL 18.

Simplification of the Directorate-Generals (DGs) structure on the basis of a limited number of Policy Clusters.

IMPLEMENTATION: Decision by the President of the Commission (partially in place through the Better Regulation policy)
Revision of the Council EEAS Decision

The structure of the administration which supports the work of the Commission is another essential element that can be tackled. In contrast to the political structure of the College, where efforts have been deployed to ensure better coordination and coherence between policies, the Directorates-General are still characterised by strong hierarchies and separateness.

Vertical structures often pose major problems at the implementation stage of EU policies. A great part of the energy spent in coordinating and ensuring coherence of EU policies at the decision-making phase is lost because of the lack of coordination between DGs during their implementation. Thus, streamlining the administrative structure of the Commission would increase efficiency and transparency. President Juncker has already taken steps to improve this situation, since Vice-Presidents do not currently have their own DGs. Instead they are supported directly by the Secretariat-General of the Commission (which is in the process of being significantly expanded) and are able to draw on the services of relevant Commissioners. While this structure is likely to improve policy making, it remains to be seen whether it will have an impact on the actual implementation.

One of the proposals in “25 Proposals for the EMU” recommended merging the structures of the current DG ECFIN and Council’s DG G within the Commission in order to create a Treasury Administration answering to an eventual EMU Minister for Economic and Fiscal Policy.

Considering the increasingly unclear link between Commissioners and Directors-General, the tradition of each Commissioner having their own DG should be definitively abandoned in favour of clusters of DGs structured around the clusters of Commissioners. Each policy cluster could benefit from having a single administrative structure, regrouping the current relevant DGs under the authority of a single Director-General and sharing a single strategy unit. On the top of that, the Secretariat-General of the Commission could be strengthened to be able to provide day-to-day support to the work of the President and the Vice-Presidents and to coordinate the work of the thematic DGs.

PROPOSAL 19.
Ensuring more coherent implementation of EU external policies through the establishment of a European Foreign Office integrated within the Commission and building on the EEAS.

IMPLEMENTATION: Reform of the EEAS Decision (2010/427/EU) (special legislative procedure, unanimity required)

Finally, a horizontal DG could be created to ensure coherence between external policies and with the external dimensions of internal policies. To achieve this it would be necessary to transform the EEAS into a genuine European Foreign Office, integrated into the Commission, including all the DGs implementing external policies of the Union (currently: TRADE, NEAR, ECHO and DEVCO DGs and the Foreign Policy Instruments Service) and with cross-cutting coordination powers over other DGs.

PROPOSAL 20.
Adoption of a clearer mandate for the EEAS matching the necessities of the triple-hat of the HR/VP.

IMPLEMENTATION: Modification of Art. 2 of the EEAS Decision (special legislative procedure, unanimity required)

A recast of the EEAS Decision should not omit the lessons learned from the first years of existence of this sui generis EU body. The EEAS is still failing in its primary objective: making the EU matter on the international stage and imposing it as a key foreign-policy actor. Although its limitations derive mainly from the intergovernmental nature of European foreign policy and its coexistence with the foreign policy of Member States, the lack of a clear political mandate and organisational difficulties due to its situation in the EU’s institutional set-up (a “body” between the Commission and the Council) constitute additional obstacles to the fulfilment of its missions.

The current EEAS Decision contains a purely functional definition of the body’s missions. It is meant to support, assist or help other institutions in their respective mandates, but, apart from development programming, it has not been assigned policy areas where it is explicitly responsible\(^ {57}\). Although in general its relationships with other institutions is assessed positively, this lack of clear mission has led to turf wars with the Commission and Council services. In order to exploit all the potential of the EEAS it is therefore necessary to review its mandate in substantive policy terms.

The main element that could be included in this recast mandate consists of bringing coherence to the EU external action through a geographic focus by proactively promoting coherent external action across all policy domains and pursuing more strategic guidance. For this, the EEAS could be explicitly mandated with the elaboration of separate geographical strategies and the establishment of permanent integrated task

forces on specific issues. The EEAS could also be made responsible for fostering the external dimensions of EU internal policies, and be given explicit coordination powers across different DGs in the Commission.

Finally, the EEAS could also be made formally responsible for two major support tasks. Firstly, liaising between the EU institutions and the Union’s delegations regarding the external dimensions of any EU policy. The experience of the last years have shown the importance of this role in order to unify the Union’s external representation in all the stances. Secondly, taking care of the preparatory work for the function of chairmanship of the Foreign Affairs Council (FAC) and its preparatory groups and parties, as well as the coordination of and timely communication with Council Members. This would avoid a conflict of competence with the Council’s secretariat and streamline the work of the FAC.

CONCLUSIONS

In the sections above, the main features of the institutional functioning of the EU have been reviewed in order to identify some major structural flaws of the Union. A set of proposals has been put forward with five main goals. The first three objectives regard the democratic functioning of the EU, and consisted of: allowing decisions made in the EU framework to take the political orientation of the European co-legislature fully into account, improving the accountability mechanisms between the executive institutions and their legislative counterparts and, finally, ensuring a clear distinction between the executive and the legislative powers at the European level. The last two objectives, pertaining to the efficiency of the Union’s decision-making processes, amount to improving coherence between EU policies and ensuring their implementation once they are decided.

Regarding the first goal, a better correlation between the priorities of the political majorities in the Council and the European Parliament, on the one hand, and the decisions made, on the other, could be achieved through the extension of co-decision and qualified majority voting to the most critical policy areas. In the coming years this is likely to include Justice and Home Affairs, Citizens’ Rights, taxation, energy and environment and EU finances. This reform could be implemented by triggering the general passarelle clause or the specific passarelle clauses provided by the Treaties. In addition to this, the Commission could be given the same initiative rights in Justice and Home Affairs multiannual programming as it has in other fields, so that the legislative workbench is in line with the preferences set after the European elections.

The current Treaties also allow for significant changes to be made in the way the Commission reflects the priorities of the EU citizens and of the Member States alike. The formalisation of the Spitzenkandidaten system in the election of the President of the Commission is a step in the right direction, but it needs to be complemented by a mechanism for the appointment of the other members of the College that is also based on the European elections, and not only on the preferences of the national governments. A reduction in the number of Commissioners would also be beneficial. Only if the entire composition of the Commission reflected the political majority in the European Parliament, and at the same time was acceptable for the Council, could the Commission reflect the general
interest of the Union. The new composition would allow citizens to keep final control over EU actions, since their vote at the European elections could effectively reward or sanction the outgoing executive.

Control over the implementation of EU policies can also be fostered through greater European Parliament involvement in the definition and monitoring of implementing acts adopted by the Commission.

Other measures would further reinforce the accountability relationship between the European Parliament and the financial institutions of the EU. As explained above, the extension of the Ordinary Legislative Procedure to the ECB’s mandate regarding prudential bank supervision and to the EIB’s Statute amendment procedure would allow the co-legislators to exercise real control over the activities of these institutions.

From the point of view of coherence between EU policies, the functioning of the Council could be reformed in order to take it closer to the way legislative chambers work. The existence of one single legislative configuration and of a permanent Presidency would greatly contribute to a more coherent approach to decision making and would provide it with a greater degree of recognition as a legitimate Chamber of the States.

Further synergies could also be found between the different actions carried out in the framework of CFSP through the adoption of a comprehensive foreign policy strategy, complemented by thematic and regional strategies. Apart from providing the Council with a more forward-looking action framework, the adoption of such strategies would streamline decision making in CFSP, since any act adopted on such a basis would require the qualified majority of the Council, and not unanimity, to be adopted. This reinforced policy framework would benefit from a strengthened administrative structure taking care of the implementation of external action. The inclusion of the EEAS into the Commission, its transformation into a European Foreign Office, comprising all the current DGs in charge of external policies, and the definition of a clearer political and substantive mandate would help overcome many of the deficiencies identified during the first years of the EEAS’s existence.

Finally, the actual implementation of EU policies could be improved if the operationalisation of AFSJ agencies were increased to match the final goals stated by the Treaties. Further gains in terms of implementation could also be achieved through a reform of the Commission’s Directorates-General structure. The efforts that have been deployed in order to limit the “silo effect” at the political level should be matched with proportionate efforts to mitigate the deep divisions existing between DGs.

The current legal framework still imposes significant deadlocks to the completion of a fully democratic and effective institutional set up for the Union. Among the examples that have been identified, in the current state of the Treaties, the intergovernmental positions with executive mandates (i.e., the HR/VP with regards to the position of HR and the President of the Eurogroup) are bound by very limited accountability mechanisms. Regarding the functioning of the Council, a complete reform aiming to transform it into a second chamber of the European legislature would require treaty change in order to provide it with a permanent Presidency and set aside the rotating presidency system.

"THE CURRENT LEGAL FRAMEWORK STILL IMPOSES SIGNIFICANT DEADLOCKS TO THE COMPLETION OF A FULLY DEMOCRATIC AND EFFECTIVE INSTITUTIONAL SET UP FOR THE UNION"
In the field of differentiated integration it is worth taking note of one of the conclusions from “25 Proposals for the EMU” 58. Although the latest reforms of the Treaties introduced the concept of enhanced cooperation, which should give a group of willing Member States the possibility to move forward on the path of integration, this mechanism seems to fit only the adoption and implementation of individual measures. It is questionable whether it is an adequate and feasible means to complete the construction of other types of differentiated integration, such as the EMU or the Schengen area, in a coherent manner.

As regards particular policies, the Treaty of Lisbon also comprises significant barriers. In the field of CFSP the potential improvements would be very limited. Its purely intergovernmental structure and the exclusion of the use of legal instruments prevents any type of democratic input from, or control by, European elected institutions and results in an extreme concentration of powers in the Council and the European Council. Furthermore, the preclusion of compulsory migrant quotas laid down in article 79.5 TFEU could hinder the eventual development of a European legal economic migration policy in the medium to long term. The same applies to the establishment of an Energy Union, since considerable barriers persist for EU measures to affect a Member State’s right to determine its choice between different energy sources and the general structure of its energy supply.

The current Treaties have not yet fulfilled all of their potential. There is still space for significant improvements to be made in terms of democratic legitimacy and efficiency, both in the institutional structure and in substantive policy making. However, many of these proposals are likely to require as much political will as treaty change and the activation of legal procedures at least as demanding. At the same time, as pointed out above, a series of specific “no-goes” and legal loopholes mark the final boundaries of the possibilities offered by the EU’s fundamental law which, in some cases, may well have been reached. Therefore, the reform of the Union cannot be limited to the ‘à traité constant’ method.

In a context where the Union is more and more often depicted as a legal, economic and social constraint for national democracies, the implementation of the proposals made in this series of Policy Briefs would allow the EU to improve its political structure and progress on the road leading to a more comprehensive and coherent reform of the Treaties in the coming years. ■

## Annex I: Summary of proposals and implementation methods

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| **Proposal 2.** Extension of QMV to all decisions not having military implications made in the framework of CFSP. | | |
| **Proposal 3.** Streamlining decision making in the field of the Common Foreign and Security Policy through the development of a comprehensive strategic foreign policy framework. | | |
| **Proposal 4.** Power given to the European Parliament to dismiss intergovernmental positions with executive mandates (President of the Eurogroup and High Representative). | | Revision of Title III of the TEU required for definitive settlement |

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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Conferring control powers upon the European Parliament in order to better control the bank supervision activities carried out by the ECB and the economic activities of the EIB.</td>
<td>Ordinary Legislative Procedure (QMV)</td>
<td>Special Legislative Procedure (unanimity)</td>
</tr>
<tr>
<td></td>
<td>Activation of the general passarelle clause by the European Council regarding ECB’s bank supervision activities and the EIB’s Statute (art. 48.7 TFEU - unanimity required)</td>
<td></td>
</tr>
<tr>
<td>Proposal 6.</td>
<td>Modification of the 2011 Comitology Regulation</td>
<td>Simplified Revision Procedure</td>
</tr>
<tr>
<td>Reinforcing the role of the European Parliament in the ex-ante control of implementing acts in order to put it on an equal footing with the Council.</td>
<td></td>
<td>Ordinary Revision Procedure</td>
</tr>
<tr>
<td></td>
<td>Conclusion by the Council and the Parliament of a Common Understanding on the use of “community” instruments in the implementation of CFSP decisions imposing restrictive measures against third countries and natural or legal persons</td>
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<tr>
<td></td>
<td>Revision of Title V of the TEU, in particular art. 31 (exception of legislative acts) and of art. 215 TFEU (adoption of restrictive measures)</td>
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<td>Placing the Parliament at the centre of the European public debate</td>
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<tr>
<td><strong>Proposal 8.</strong> Providing the European Parliament with a more prominent role in the formulation of AFSJ policies in the field of internal security and EU criminal law through the creation of a framework for the adoption of AFSJ programmes more coherent with the ordinary legislative procedure.</td>
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<tr>
<td><strong>Proposal 9.</strong> Strengthening the right of indirect initiative of the European Parliament, by making compulsory a debate between the EP Committee having prepared a legislative own initiative report and the Commissioner concerned.</td>
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<td><strong>Proposal 10.</strong> Formalisation of the so-called Spitzenkandidaten system, comprising a list of duties of Member States and national and European parties.</td>
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<tr>
<td>Transforming the Council into a second chamber</td>
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<td><strong>Proposal 11.</strong> Reduction in the number of Council configurations to a single legislative Council with permanent representation of Member States.</td>
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<td>Increased visibility and recognition of the Council as an institution</td>
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<td><strong>Proposal 12.</strong> Increasing visibility and coherence in the Council by providing the European Council President with coordination powers and mandating him with its representation.</td>
<td>Ordinary Legislative Procedure (QMV)</td>
<td>Special Legislative Procedure (unanimity)</td>
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<tr>
<td><strong>Centralisation and full exercise of executive powers</strong></td>
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<tr>
<td><strong>Proposal 13.</strong> Tightening the link between the Commission and the Parliament by reaffirming the Commission’s right of initiative in the field of Justice and Home Affairs and its ability to set the priorities according to the interests and electoral programmes of its parliamentary majority.</td>
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<tr>
<td><strong>Proposal 14.</strong> Giving effective implementation to Justice and Home Affairs legislation through the operationalisation of Area of Freedom, Security and Justice agencies (Europol, Eurojust, Frontex, the European Asylum Support Office and eu-LISA) and by integrating them into the Commission.</td>
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<tr>
<td><strong>Increased politicisation and accountability of the Commission</strong></td>
<td></td>
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<td><strong>Proposal 15.</strong> Reduction in the number of Commissioners.</td>
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<td>Proposal 16.</td>
<td>Strengthening the role of the Commission President-elect in appointing Commissioners.</td>
<td>Possible within the current Treaties</td>
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<td></td>
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<td>Ordinary Legislative Procedure (QMV)</td>
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<td>Inter-institutional Agreement between the Council and the Commission regarding the application of Art. 17(7) TEU</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Proposal 17.</th>
<th>Creation of a better defined cluster structure of Vice-Presidents and Commissioners, with a clearer hierarchy and allocation of responsibilities.</th>
<th>Possible within the current Treaties</th>
<th>Treaty revision required for definitive settlement</th>
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<tr>
<td></td>
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<td>Decision by the President of the Commission</td>
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</tbody>
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<tr>
<th>Increased coherence in the implementation of EU policies through a simpler administrative structure</th>
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<th>Treaty revision required for definitive settlement</th>
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</table>

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<tr>
<th>Proposal 18.</th>
<th>Simplification of the DGs structure on the basis of a limited number of Policy Clusters.</th>
<th>Possible within the current Treaties</th>
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<td>Decision by the President of the Commission</td>
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<tr>
<th>Proposal 19.</th>
<th>Ensuring a more coherent implementation of EU external policies through the establishment of a European Foreign Office integrated within the Commission and building on the EEAS.</th>
<th>Possible within the current Treaties</th>
<th>Treaty revision required for definitive settlement</th>
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<th>Proposal 20.</th>
<th>Adoption of a clearer mandate for the EEAS matching the necessities of the triple-hat of the HR/VP.</th>
<th>Possible within the current Treaties</th>
<th>Treaty revision required for definitive settlement</th>
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<tr>
<td></td>
<td></td>
<td>Modification of Art. 2 of the EEAS Decision</td>
<td>Revision of art. 17 TEU</td>
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</table>
ABOUT THE ORGANISATION:
The Union of European Federalists (UEF) is a pan-European, non-governmental political organisation dedicated to the promotion of European political unity. Throughout the past 70 years it has been a leading voice in the promotion of European unity and an early campaigner for key milestones in the development of the European Communities and the European Union.

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