

**Manifesto for the
future of Europe:
A Shared Destiny**

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The Spinelli Group
25 Square de Meeûs
1000 Brussels

www.spinelligroup.eu



MANIFESTO FOR THE FUTURE OF EUROPE

When the time comes for Europe's citizens to elect a new European Parliament in 2019, they will hear many calls for reform of the European Union. Often, those who make them will be unable to say exactly what they mean. Once again, the public will be confronted with confusing discussions of rules and procedures, of competences and powers. Some voters will switch off. Others will remember only quarrels about money, sovereignty, and how harshly or generously to treat would-be immigrants.

Reforming the European Union is a complex endeavour. To be fair to politicians, the decisions that need to be taken are ill suited to the necessary simplifications of electoral politics. But the fundamental divide in European

politics is as simple as ever. There are those who want to continue to unify Europe and find common answers for the common good. And there are those who would destroy the European Union: populist politicians thriving on discord and resentment, risking a return to Europe's nationalist past.

We believe that European disintegration would be a road to disaster, and that strong democratic government organised on federal lines is the best guarantor for the future peace and prosperity of our continent. This Manifesto lays out a path towards a comprehensive reform of the European Union. It explains why reform is necessary, what those changes should be, and how they should be done.

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A SHARED DESTINY

It is difficult to be indifferent about the future of Europe. As always, Europeans may choose whether to pursue the cause of unity or to retreat behind national borders. But if Europe is to be more united, it must be better governed than it is today.

The Spinelli Group brings together politicians from a wide range of political parties. This Manifesto is our contribution to the debate on the future of Europe. Our aim is to work by stages towards a federal union of Europe based on the values of liberal democracy, solidarity and the rule of law. These values are under attack at home and abroad. So the case for

European unity has to be made once again, repeatedly and with conviction.

The elections to the European Parliament in May 2019 and the appointment of the new Commission are excellent opportunities to sharpen and widen the debate. Candidates for the new Parliament and nominees for the Commission should be urged to address the issues of the EU's future political direction and democratic legitimacy. With this Manifesto, we lay out a path towards more European unity and better European government.

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Time for review

Twenty years after the last constitutional Convention, the next general revision of the treaties cannot be too long delayed. The Treaty of Lisbon has been tested and found wanting in some important respects.¹ EU treaty change is a complicated exercise, and needs to be well prepared intellectually, legally and politically. Efforts to deepen integration will not succeed unless supported by Europe's citizens and led

purposefully by those national leaders, MEPs and MPs who will take part in the next Convention.

The first step is to take stock of the state of the Union. We must analyse carefully where it stands and where it fails while avoiding the jump to simplistic solutions to what are intrinsically complex problems. Although the EU can take pride in its many achievements, it is obvious that it continues to promise more than it actually delivers. Public affinity with and understanding of the EU's complicated institutions is weak. The constitutional structure of the Union is only half-built, unstable and ill-

¹ The Treaty of Lisbon was signed in December 2007 and came into force in December 2009. It has two parts: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

equipped to deal with crucial tasks, especially at times of crisis.

We know that the economic and monetary union designed at Maastricht nearly thirty years ago lacks depth and resilience, and that the euro area is under-insured against the next financial crisis. The EU's profile and impact on the world stage is uncertain. In terms of security and defence, the Union is ill-prepared. It struggles to agree on a common approach to the challenges of asylum and immigration. Its budgetary wrangles are perennial. The internal market is still work in progress. Enlargement has almost ground to a halt. And Brexit exemplifies the risk of gradual disintegration.²

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Preparing reforms

The second step towards reform is to lay down a number of guiding principles and objectives:

- Both the methods and aims of reform must be democratic.
- Measures proposed must be coherent and practicable.
- Reform must maintain the main achievements of European integration (the 'acquis').
- The Union must respect the rights of the member states.³
- Reform must be resolute and proportionate to the scale of the challenges faced by Europe.

² The UK voted to leave the EU in a referendum on 23 June 2016. The secession is due to take place on 29 March 2019.

³ States' rights are defined in particular in Articles 4 and 5 TEU.

- Reform must empower the Union to act usefully wherever the old nation states are failing.
- New institutions should be avoided if possible (we have enough).

Building Europe's new polity cannot be accomplished by simply aggregating the national practices and preferences of its member states. Deeper political integration requires adding a new upper tier of government above the level of Europe's nation states. Over the years, governance of the Union has lived with the difficult dichotomy of being part federal and part confederal, building supranational institutions while continuing to take decisions in an intergovernmental way. That compromise has served its purpose, allowing for a stronger European Council to be balanced by a strengthened European Parliament. The European Court of Justice has always upheld steps in a federal direction where they are justified by the EU treaties. The European Central Bank is now responsible for the federal supervision of the euro area banks.

Today, however, we should ask ourselves whether that uneasy trade-off between representatives of the states and the citizens has produced a government democratic, efficient and transparent enough to give citizens a sufficient sense of ownership. The heads of state and government, through the European Council, try to offer strategic leadership, but they do not run the Union on a day-to-day basis: nor should they. Accordingly, the Spinelli Group proposes to

reinforce the role of the European Commission as the Union's supranational executive, subject to stronger democratic control and scrutiny.

Our concept is a federated union of states, regions, municipalities and citizens. We do not want a homogenous centralised super-state. While enjoying primacy in areas where competences have been conferred on it by its member states, the Union is far from all-powerful. The federalist principle of subsidiarity usefully guides the EU as to which level of government is best suited to take decisions and implement them.⁴ Lower levels of government are not subordinate to the EU institutions in Brussels but coordinate with them within a common legal order. Federal governance of the Union is channelled vertically between multi-levels of government — European, national, regional and local — as well as through horizontal, transnational mechanisms.

While conformity with EU law upholds the operation of the single market and the common area of freedom, security and justice, uniformity is not desirable for its own sake. In some cases, the desire to keep decisions close to the people may prevail over the drive to maximise efficiency. There have been times when EU law-makers have seemed out of touch. Closeness to the citizen, a sense of proportion, a commitment to pluralism, and

⁴ The modern concept of subsidiarity was first articulated by the Commission in 1975 in its contribution to the Tindemans Report. Altiero Spinelli, who was a member of that Commission, further promoted subsidiarity in his Draft Treaty of European Union adopted by the European Parliament in 1984.

democratic accountability should be hardwired into the EU's constitution.

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Constitutional government

Government exists to define, defend and promote the interests of the governed. A polity without government is vulnerable and practically impossible to lead. Although it may be true that in good times the half-built EU can manage on its present basis, it is obvious that in bad times it cannot. Mere crisis management by European technocrats working for national leaders will fuel the rise of demagogues threatening our values and our future. As a polity, the Union is insufficiently purposeful. If it is to meet the expectations of its citizens and the challenge of our times, it must organise itself better.

In moving from the Treaty of Lisbon towards an improved constitutional settlement, we are not seeking to pre-empt decisions about the future shape or style of EU policies. On the contrary, we are proposing to create a robust constitutional framework inside which politicians and lawmakers can exercise their contrasting and competing judgements about policy, responding to changing social, natural, economic and political circumstances.

For the EU to justify its existence to new generations of Europeans, its governance must be equipped with the necessary tools and resources to act competently in the general interest of all the Union's states,

regions, municipalities and citizens. That means that every EU institution, and especially the Commission, must become not only more capable and accountable but also more self-confident, not fighting shy of using all its powers in practice, exercising its legitimate political authority to the full at home and abroad. In addition to its accountability to the European Parliament, the Commission should foster its relations with national parliaments. And it must also be prepared to engage more directly with regional and local authorities, the channel of government that is closest to the citizen, delivers important public services and administers many EU policies.

The need for stronger governance is evident as the geometry of European integration becomes more variable, and different states seek different relationships with the Union's institutions. Brexit is only one example of how the practice of differentiated integration is increasing and must be managed skilfully if the centre is to hold. While we fully support the practice of a multi-speed Union, where states can advance at different speeds towards the same goal, we are vehemently opposed to the kind of laissez-faire European Union, once advanced by the British government, where different member states can shoot off in different directions. We reaffirm the historic mission of the "ever closer union among the peoples of Europe".⁵

European states which do not share that goal are free to do so — but they

cannot then be allowed to freeride on the Union. They may be associated with the EU in a good neighbourly fashion, but they will have fewer rights than member states in return for fewer obligations. This is one of the lessons of Brexit.

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European sovereignty

Europe's new federal polity will not be a carbon copy of other federations elsewhere in the world (although useful lessons may be learned from them). The reformed European Union will only work if innovative in its forms of government and dynamic in its use of them.

The Treaty of Lisbon records that the EU has legal personality in terms of international law.⁶ The next stage in the process of creating an ever closer union will be to endow the Union with an autonomous layer of federal sovereignty to complement the national sovereignties of its member states. The primary duty of a sovereign Union will be to protect European citizens. Just as individuals residing in the EU enjoy a dual citizenship, so governance of the EU must be endowed with dual sovereignty. The Union needs to be a sovereign power if it is to stand up for European interests and values and do good in the world. Sovereignty means having the capacity to act effectively in terms of economics, diplomacy, military matters and cultural policy.

Yet the European Union cannot lay claim to sovereignty and do nothing

⁵ Article 1 TEU.

⁶ Article 47 TEU.

about democracy. A sovereign Europe must be founded not just on treaties between its states but also on the consent of its citizens. The concept of EU citizenship is relatively under-developed, and the EU's representative institutions are still young. European citizenship must be enhanced, for example by electoral reform of the European Parliament and by extending the franchise for resident EU citizens in national elections. The next democratic steps towards closer integration cannot simply be designed by a technocratic elite palliating the absence of a wider engagement of the political parties, social partners, civil society and citizens themselves. Constitutional reform of a federal type needs to appeal to public opinion.

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Political reform

This is a time to be bold: tinkering at the edges may prove counterproductive. Timidity of purpose may breed dangerous popular disappointment and do further damage to the Union's standing. Unless the reforms succeed in greatly enhancing the Union's capacity to act, they will generate frustration and increase distrust of a political class seemingly too feeble to meet the essential challenges of our times. The main purpose of reform is to inject visible, credible and democratic leadership at the EU level. By streamlining the functions of government and by clarifying how the EU is run, this next round of reforms must strive to bring a sense of constitutional settlement that has

eluded previous revisions of the treaties.

We recognise that not all member state governments or parliaments will be ready, within the next decade, to take the qualitative step towards federal union. The impact of the great enlargement of the Union from fifteen states in 1995 to twenty-eight in 2013 is still being felt. The failure of the constitutional treaty in 2005 and the economic and social crisis that followed the financial crash in 2008 have bashed confidence in the European project. Now the EU is about to suffer the impact of the self-imposed departure of the United Kingdom from its membership after a referendum in 2016 which handed victory to the nationalists. The future of the Union not only as a constitutional polity but also as a territorial entity is speculative. And the values of liberal democracy and the principles underpinning the Union are being contested not only by the EU's Russian and Turkish neighbours but also by rising populist forces within a number of its own member states.

The Union cannot allow itself to be immobilised by nationalist forces that reject its values and purpose. Inaction would be the worst way to counter the forces of disintegration. The Spinelli Group urges those states that are committed to further integration to develop a federal core that can act as a vanguard and pole of attraction for all. In this context, we recommend more use of the existing treaty provisions on enhanced cooperation and propose ways to facilitate this.

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Constituent process

In 2019, political parties need to persuade their electorates to renew the Union's mission and to fulfil its potential. The European Union indulges in seemingly endless debates, consultations, reflections and scenarios about its own future, but it shies away from taking decisions. Federalists love to speculate on how to improve the way the Union reforms itself. The Manifesto proposes some radical changes to the future constituent processes of the EU, based on the Convention. But the legal reality is that the next revision of the treaties has to be undertaken according to the existing provisions of Lisbon.⁷

As things stand, any member state or EU institution, including the Parliament, may take the initiative and trigger constitutional reform. When the time comes, the European Parliament must in the interest of democracy assert its right to insist that a Convention is summoned to prepare the amended treaty. That Convention will be composed of European and national parliamentarians, the Commission and representatives of the heads of government. This Manifesto is written for them.

It is now up to politicians at European and national level to campaign for their own partisan programmes. The Spinelli Group hopes that our Manifesto will help citizens and candidates of many political persuasions to make the case for enhancing the federal dimension of the Union's polity. That is the best basis

on which Europeans can unite in pursuit of a destiny henceforward shared.⁸

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⁷ Article 48 TEU.

⁸ "To lay the foundations for institutions which will give direction to a destiny henceforward shared". From the preamble to the Treaty of Paris, 1951.

Constitutional principles

In the interests of clarity and transparency, the current Treaty on European Union (TEU), the Treaty on the Functioning of the Union (TFEU), the Euratom treaty and the Charter of Fundamental Rights should be streamlined into one constitutional treaty.

Reference should be made to the symbols of the EU: the flag, the anthem, the motto and the 9 May holiday. These dignities befit a sovereign Union.

The EU is already obliged by treaty to respect the domestic constitutions of the states, regions and municipalities.⁹ The new treaty should require the states, when amending their national constitutions, to ensure that the envisaged changes are compatible with their duties stemming from EU membership. Those include, notably, the independence of the judiciary, the primacy of EU law, and the principle of sincere cooperation with EU partners and institutions.

Another new clause could be added to clarify that the European Parliament and the Council form the two chambers of the EU legislature and budgetary authority, and that the Commission is appointed by and is answerable to the legislature.¹⁰

The remit of the European Citizens' Initiative should be broadened to allow demands to be made on the institutions to take either a legislative or

a political initiative, for instance in foreign policy.¹¹

There are two very sensitive issues in the design of any federal system: the balance of power between the representatives of the people and the representatives of the states; and the allocation of power to states of differing size and strength. In the European Union the composition and voting systems of the two chambers of the legislature have developed over the years haphazardly. It is high time to review the situation in a holistic way, taking the Parliament and Council together.

Regarding Parliament, the new treaty should insert a mathematical formula, respecting the federalist principle of degressive proportionality, for the apportionment of parliamentary seats between the states in an objective, fair, durable and transparent way.¹² The effect of introducing an objective method would be to reduce the current over-representation in the Parliament of the middling sized states.

In the Council, a qualified majority (QMV) is at present normally achieved by a vote of 55% of the states representing 65% of the population. A blocking minority has to comprise at least four states.¹³ The smaller states

⁹ Article 4 TEU.

¹⁰ Article 10 TEU.

¹¹ Article 11 TEU.

¹² Article 14(2) TEU. Degressive proportionality was finally defined in the June 2018 decision of the European Council establishing the composition of the Parliament for 2019-24.

¹³ Articles 16(4) TEU. Furthermore, a blocking minority opposing a QMV vote can insist that the Council shall continue to "discuss the issue" (Declaration 7 to the Treaty of Lisbon).

benefit from the first criterion and the larger states from the second. Before the Treaty of Nice (2001) the Council voted on the basis of a system of weighted votes. A return to that principle according to a formula that gave a uniform voting value to every citizen would redress the balance in the Council in favour of the middling sized states.

Such a comprehensive reform of both chambers of the legislature would establish a fairer inter-institutional balance, be easier for the citizen to understand, and be resilient for future shifts in demography and the number of member states. The more constitutional approach would also meet criticism levelled at the present ad hoc arrangements by the German Federal Constitutional Court.¹⁴

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¹⁴ Notably in its judgment on the Lisbon treaty, 30 June 2009.

The European Parliament

At every election to the European Parliament, and despite the steady increase of its powers, turnout has declined from over 62% in 1979 to under 43% in 2014. Despite the injunction in the treaty to seek a uniform electoral procedure, the 2019 elections will again take place under different national systems. This works against the emergence of a common European democratic space. Although EU level confederations of political parties have been created, the organisation of the European elections is still fully controlled by national political parties. The European dimension of the elections is often lost in narrowly national debates. The ties between the party political groups in the Parliament and the EU level parties are weak, lessening the ability of Parliament to fulfil its role as a democratic counterweight to the Council.

The vast majority of EU citizens know that most important policy choices today entail a strong transnational dimension. In order to reflect this realisation and give EU citizens a better sense of democratic ownership of the supranational institutions in Brussels, there needs to be a further federalisation of the politics of the EU. Democracy in Europe requires real political parties at European level competing with each other for votes and seats. Federal parties will provide that democratic sinew, presently missing, to connect the citizen with the EU institutions and to lever better policy

coordination between the different levels of government.

A first step towards the Europeanisation of the elections to the European Parliament could be to have a certain number of MEPs elected in a single constituency comprising the whole territory of the Union.¹⁵ Citizens would get two votes, one as now for an MEP from the national or regional constituency, the other for an MEP from the pan-European constituency drawn from candidates standing on transnational lists promoted by the EU political parties. An EU electoral authority would be needed to control the electoral process and to account for the running of the pan-EU election, in collaboration with national electoral authorities.

The introduction of transnational lists for the next elections in 2024 would consolidate the practice of the *Spitzenkandidat* whereby EU level political parties champion a candidate for election as Commission President.¹⁶ This experiment, first tried in 2014, adds interest and visibility to the campaign by giving faces to an electoral process that has often felt remote. After the election results are known, and following a *navette* between the heads of government and the newly-elected MEPs, the European Council then nominates the candidate for the

¹⁵ To install transnational lists, the 1976 electoral Act will be amended, followed by secondary legislation in terms of a regulation on the uniform electoral procedure under Articles 223 and 224 TFEU.

¹⁶ At their meeting at Meseberg on 19 June 2018, President Macron and Chancellor Merkel agreed to promote transnational lists for 2024.

Commission President.¹⁷ Finally, the President-elect and his or her college of Commissioners are elected as a whole by the Parliament.

The treaty should be amended to provide that elections to the Parliament are by way of “a free, *fair* and secret ballot”.¹⁸

Two further reforms are needed to enhance the standing of the European Parliament. The first is to give Parliament's committees of enquiry the power of subpoena to summon reluctant witnesses.¹⁹ The second is to revise the statute of privileges and immunity to better protect MEPs from possible political persecution while obliging them, where appropriate, to face criminal prosecution.²⁰

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¹⁷ Article 17(7) TEU. The European Council shall act “taking into account the elections ... and after having held the appropriate consultations”.

¹⁸ Article 14(3) TEU.

¹⁹ Article 226 TFEU.

²⁰ Protocol No. 7.

The European Council and Council

The European Council has grown in importance since its creation in 1974, not least under the Treaty of Lisbon. It has general powers to provide strategic direction to the Union – a duty that, on the whole, it performs well. Donald Tusk, President of the European Council, has worked to promote its agenda-setting role. Less clear is the role of the European Council in law making, where it is officially prohibited from enacting legislation.²¹ But the European Council has some specific powers to arbitrate as a court of appeal in cases where the junior Council of ministers is deadlocked.²² Formally, it sets the legislative agenda in justice and home affairs.²³ It is often tempted to trespass on the legislative work of the Council, and frequently intervenes, contrary to a strict reading of the treaties, for example to define the Union's own resources and set the multi-annual financial framework.²⁴ In 2012 the European Council peremptorily altered a draft law on unitary patents. Arrogating executive powers to itself, the European Council has set the EU's energy emission targets, laid down peremptory fiscal policies for countries in excessive deficit, and made a pact directly with Turkey in the matter of refugees.

The rise of the European Council has prompted recurring questions about its democratic legitimacy. Its President

has to report back to the European Parliament after every formal meeting of the European Council.²⁵ We recommend that he appears more frequently at the Parliament – and not just in plenary and at the closed meetings of the Conference of Presidents but at open meetings of parliamentary committees.²⁶ The European Council President should also agree to answer oral and written questions from MEPs about the work of his institution.²⁷

We accept the logic of how the European Council is evolving and suggest removing the essentially fictive prohibition on law making. Instead, the European Council should be charged explicitly with bringing direction, coordination and consistency to the work of the ministerial Councils. The General Affairs Council (GAC) should play a critical role in this respect.

It would be logical in these circumstances to abolish the rotating six-monthly presidency of the ordinary Council. This system had its rationale in the early years of the European Community, but has outlived its efficacy and has led to confusion in the matter of agenda setting and to error and inconsistency in terms of law making.²⁸ By way of reform, in a more

²¹ Article 15(1) TEU. The heads of government have to meet from time to time in the composition of the Council in order to take legally binding executive decisions.

²² Articles 31(2) TEU and 48, 82(3), 83(3) TFEU.

²³ Article 68 TFEU.

²⁴ Articles 311 and 312 TFEU, respectively.

²⁵ Article 15(6)(d) TEU.

²⁶ The Six Pack legislation already requires the President of the European Council to appear before the Economic and Financial Affairs Committee of the Parliament, although this has not happened.

²⁷ Herman Van Rompuy, European Council President 2009-14, agreed to answer written questions from MEPs, but only with regard to his personal agenda and not about meetings or decisions of the European Council.

²⁸ Article 16(9) TEU.

meritocratic process, each Council formation – as well as the informal Eurogroup body of eurozone ministers - should elect its own president from among its number for a period of two and a half years. The President of the European Council (or a deputy) should chair the GAC (without a vote).

Jean-Claude Juncker, President of the Commission, has proposed to fuse his job with that of the President of the European Council. He argues that the concurrent existence of the two presidencies is confusing, not least for third countries and international organisations. Merging the two posts, possibly one day directly-elected, would create a super-president.

President Tusk, however, fears that the reform favoured by Juncker would weaken the autonomy of the heads of government. The Spinelli Group believes, conversely, that a merger of the two posts would offend the separation of powers and lead to a virtual take-over of the Commission by the European Council. It would certainly compromise the Commission's classic role as guarantor of the treaties. The logic of our intention to strengthen the executive authority of the Commission, on the one hand, and the legislative authority of the European Council, on the other, militates against the merger.

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The Commission

The European Commission is the nucleus of the government of the federal union. We propose to shift certain executive functions from the Council to the Commission, subject to a new call-back procedure that builds on the existing rules for delegated acts.²⁹ Executive decisions that are now the responsibility of the Council on a proposal of the Commission (often consulting or informing the Parliament) would be transferred en bloc to the Commission. Either chamber of the legislature should have powers, under certain time constraints, to call in the Commission's decisions for review.

Such a transfer of executive power would mainly affect decisions on internal market measures, such as tariffs, tax and capital movements.³⁰ The Commission would also take over the duty to fix agricultural prices and fisheries quotas.³¹ With its executive authority enhanced, the Commission will be better able to insist on the equal application of EU law by and in all member states.

The fiscal union will need a treasury, housed in the Commission. A Vice-President of the Commission will be Treasury Secretary, responsible for running the fiscal policy of the Union as a counterpart to the single monetary policy run by the European Central Bank. The Treasury Secretary would

represent the Union in negotiations on international monetary affairs.³²

With greater executive power comes greater democratic scrutiny and accountability. Members of the Commission should be available to be summoned before the European Parliament or Council on a more regular basis and at any time, like government ministers before national parliaments. Scrutiny arrangements should not be subject to polite 'inter-institutional agreements' but should be entrenched as a matter of course in the constitutional treaty.

As the treaty already prescribes, and President Juncker proposes, the size of the Commission should be reduced to eighteen members.³³ Ideally this change should take place in 2019. In practice, however, the reduction might only materialise once the current let-out clause is suppressed. A smaller college will be less bloated, cheaper to run, more efficient in the conduct of business, and less inclined to act like just another Brussels-based ambassadorial committee. To get the best calibre of Commissioner, the President-elect should be allowed to choose the new college from candidates nominated by the states. Commissioners-designate are now subject to auditions by the European Parliament, and this practice should be codified in the new treaty.³⁴

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²⁹ Article 290 TFEU. The unsatisfactory Article 291 (implementing acts) should thereby be suppressed.

³⁰ Articles 26, 31, 66 and 112 TFEU.

³¹ Article 43(3) TFEU.

³² Article 138 TFEU.

³³ Article 17(5) TEU.

³⁴ Article 17(7) TEU.

The European Court of Justice

The European Court of Justice (ECJ) has been evolving over time into the federal supreme court which a more united Union needs. Its judicial authority to ensure that EU law is observed needs now to be fully recognised across the governance of the whole spectrum of Union activity.³⁵ Notably, the ECJ must be given enhanced powers to review the legality of any act of the European Council when challenged to do so by the Commission, Parliament or member state. This would create a level playing field between the European Council and the other institutions.³⁶

The Court must be granted full judicial authority over those increasing aspects of the common foreign, security and defence policies that affect fundamental rights.³⁷ The removal of the present constraints on the ECJ's jurisdiction in these fields would go some way to overcoming the Court's own resistance to the EU's accession to the European Convention on Human Rights (ECHR) – an important injunction of the Lisbon treaty which has not been fulfilled.³⁸ The ECJ is properly concerned to protect its own prerogatives with respect to the interpretation of EU law. Once it has been persuaded to accept the external supervision of the European Court of Human Rights at Strasbourg on ECHR matters, however, the ECJ will be able to develop confidently its own rights jurisprudence for the EU based on

the more modern and wider Charter of Fundamental Rights.

As the European Court of Justice evolves into a genuine supreme court, it will play a constitutional role in arbitrating rule of law issues involving member states, such as those which have concerned Hungary and Poland in recent years. The Court should be more proactive in defending the values and principles of the Union as spelled out in Article 2 TEU, especially that of the rule of law. It matters to the European Court that the courts of the member states which operate in the field of EU law across the Union should enjoy independent judiciaries capable of delivering the expedient administration of justice. The ECJ in Luxembourg has a duty of care towards the national courts on which it relies.

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

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³⁵ Article 19(1) TEU.

³⁶ Article 263 TFEU.

³⁷ Article 24(1) TEU and Article 275 TFEU.

³⁸ Opinion 2/13 on Article 6(2) TEU.

Law making

No constitutional reform of the Union will be complete without the extension of co-decision between Parliament and Council to all legislation. What is now termed the 'ordinary legislative procedure' was first introduced under the Maastricht treaty of 1992 to a very few items. Its scope was extended in every subsequent treaty revision: it is now time to conclude the process so as to simplify and facilitate EU decision-making and to make law making more democratic. Nothing should become law that has not been voted for by both chambers of the legislature. The residual system of 'special laws of the Council', where Parliament is only consulted or simply asked for its final consent, must be abolished. Extending co-decision will have far-reaching consequences. It will permit the deeper integration of all the sectors which flank the internal market, notably in social and environment policies.³⁹ It will transform the powers of the Union to harmonise VAT, excise duties and other forms of indirect taxation.⁴⁰

Nothing should become law unless it is deliberated and enacted in public.⁴¹ To highlight the role of the Council as the second chamber of the legislature, we return to a proposal made by the original Convention to concentrate the act of law making into a single formation of the Council of ministers.⁴² The President of the European Council

(or his representative) will chair this Law Council.

Transparency must be improved in both chambers of the legislature. Those MEPs who are rapporteurs should be obliged to publish their legislative 'footprint', recording those whom they meet on a consultative or lobbying basis in drawing up reports. The Council should submit itself to the same disciplines that the transparency register for lobbyists now impose on Commission and Parliament. Both Parliament and Council should be obliged to publish impact assessments of their amendments to draft laws. The Council should emulate the practice of the Commission and Parliament by publishing its negotiation mandates on every draft law. Because much legislation is now passed at first reading stage - having been settled informally in closed trilogues between ministers, MEPs and the Commission - more attention must be paid to the systematic publication of working documents, agendas and minutes of interinstitutional business.⁴³

Greater transparency in law making assists democratic scrutiny by national parliaments, the media and the engaged citizen. More openness will help to dispel the widespread but sometimes unfair criticism about over-intrusive law stemming from 'Brussels'. Each EU institution as well as every national parliament has a duty to

³⁹ Articles 153(2) and 192(2) TFEU, respectively.

⁴⁰ Article 113 TFEU.

⁴¹ Articles 16(8) TEU and 15(2) TFEU.

⁴² Article 23(1), Draft Treaty establishing a Constitution for Europe, July 2003.

⁴³ Article 294 TFEU. Particularly valuable are the four column documents that record the evolving position of each institution. Such improvements should be subject to revised rules of procedure in both Council and Parliament.

check the quality of draft EU laws on the grounds of subsidiarity and proportionality. Adoption of precise criteria common to all would help improve this scrutiny process; but no revision of the treaties is needed with respect to national parliaments, whose primary role is to check the behaviour of their own national ministers in EU affairs.⁴⁴

The Commission will retain its principal right of legislative initiative. The European Parliament and the Council should continue to have the right to invite the Commission to initiate a draft law.⁴⁵ However, should the Commission refuse to take an initiative having been requested to do so, and having heard a justification by the Commission of reasons for its refusal, either Parliament or Council should be enabled to make a proposal for legislation on their own initiative conforming to their original request.

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⁴⁴ Article 5 TEU and Protocols Nos 1 and 2.

⁴⁵ Articles 225 and 241 TFEU, respectively.

Organic law

Certain European laws of statutory importance should be required to pass higher QMV thresholds in both Council and Parliament than the thresholds applying to ordinary laws. At the top of the hierarchy of norms, we propose therefore to install a new category of organic law. Among the measures to be made subject to organic laws are the following:-

- breach of rule of law (Article 7 TEU)
- composition of the European Parliament (Article 14(2) TEU)
- simplified treaty revision procedure (Article 48(6) TEU)
- new anti-discrimination measures (Article 19 TFEU)
- new citizenship rights (Article 22 TFEU)
- new powers in asylum and immigration (Article 77(3) TFEU)
- cross-border police operations (Article 89 TFEU)
- harmonisation of indirect taxation (Article 113 TFEU)
- stability and growth pact (Article 126(14) TFEU)
- European stability mechanism (Article 136 TFEU)
- electoral law (Article 223 TFEU)
- own resources decision (Article 311 TFEU)
- multi-annual financial framework (Article 312 TFEU)
- enhanced cooperation in foreign and security policy (Article 329 TFEU)
- location of institutional seats (Article 341 TFEU)

- decisions on languages (Article 342 TFEU)
- flexibility clause (Article 352 TFEU)

The passage of organic laws would require Parliament to vote by at least an absolute majority of its members. The Council might pass an organic law by a quota of, say, 75% of the weighted vote. Acts passed under the ordinary legislative procedure would require a simple majority of the Parliament and over half the weighted votes in the Council.⁴⁶ The introduction of the new hierarchy of norms coupled with the reform of Council voting rules will both ease the taking of decisions and render the whole legislative system much simpler and clearer than it is at present.

The Treaty of Lisbon installed a number of bridging or *passerelle* clauses allowing the European Council to change the decision-making procedure in the Council from unanimity to QMV or to shift a special legislative procedure to the ordinary legislative procedure.⁴⁷ There is also one general *passerelle* clause with wider potential.⁴⁸ None of these *passerelles* have ever been used. In the light of our proposed extension of the ordinary legislative procedure and the introduction of organic laws, all these

⁴⁶ Article 238 TFEU. Certain higher thresholds are foreseen in the present treaty for the annual budgetary procedure (Article 314(7)(d)) and the operation of the Article 7 breach of the treaties provisions (Article 354 TFEU). These could be replicated under a reformed voting procedure.

⁴⁷ Articles 81, 153, 192, 312 and 333 TFEU.

⁴⁸ Article 48(7) TEU.

Lisbon *passerelles* could safely be abolished.

Unanimity will still be required in the Council to amend a proposal from the Commission, as it is today as part of the ordinary legislative or budgetary procedures.⁴⁹ In all other cases, however, unanimity in the Council must be suppressed. The fruits of such a reform will be seen immediately in areas, such as tax evasion, where states have hid behind procedural arguments in the protection of some vested interest, spurious or otherwise.

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⁴⁹ Article 293 TFEU.

Treaty change

The current treaty says that treaty amendments shall be agreed in an intergovernmental conference “by common accord” of all the member states.⁵⁰ The Spinelli Group would put the onus for drafting the revised treaty on to the shoulders of the Convention, working by consensus.⁵¹ We would only retain unanimity at the level of the European Council for a decision to reject an amendment proposed by the Convention.

The EU has mounted two Conventions. The first, under the presidency of former German Federal President Roman Herzog, in 1999-2000, drafted the Charter of Fundamental Rights. The second, in 2002-03, led by former French President Valéry Giscard d'Estaing, drafted the constitutional treaty that failed to be ratified in 2005 but out of which came the Treaty of Lisbon. Composed of representatives of each of the EU institutions and national parliaments, both Conventions took on a dynamic of their own and entered into free discussion of complex constitutional issues, in public, over a period of several months. Unlike the closed diplomatic forum of the intergovernmental conference, good ideas surfaced, bad ideas sank, and no government was able to wield a veto. The Convention method is a proven success and can now be developed as the normal way to conduct constitutional business in the EU.

To the Convention membership already foreseen in the treaty, we would add a formal representation from the EU's Committee of the Regions. The power of Europe's cosmopolitan cities is rising, asserted in counterpoint to Europe's nation states: it is right that this civic phenomenon is reflected in the Union's constituent process. Regional parliaments with legislative powers also find their place in the Committee of the Regions, and can bring to the Convention their unique experience of subsidiarity in practice.

When it comes to ratification of future treaty revisions, the Spinelli Group proposes that the European Parliament obtains the right to vote its consent before the amended treaty is sent to be ratified by member states in accordance with their own constitutional requirements.

Most importantly, future treaty amendments must be enabled to enter into force once they have been ratified by only four-fifths of the Union's states, representing three-quarters of the population.⁵² This change will prevent future treaty revision from being held up, as has often occurred in the past, by only one or two states. It will also bring the EU into line with all other federations and comparable international bodies: it is obvious that any large organisation exposes itself to debilitating chronic paralysis when it can reform itself only by rigid unanimity. An important precedent has been set

⁵⁰ Article 48(4) TEU.

⁵¹ Article 48(3) TEU.

⁵² Article 48(5) TEU.

when the European Council has shown flexibility with respect to the entry into force (albeit outside the framework of Union law) of the treaties establishing the European Stability Mechanism treaty and the fiscal compact treaty.⁵³ Member states which ultimately balk at accepting the amended treaty should have the option, besides secession, of associate membership.⁵⁴

The treaties' current 'simplified revision procedure' that may apply to the internal policies and action of the Union still requires unanimity at the level of the European Council.⁵⁵ As mentioned above, we propose to 'deconstitutionalise' such amendments and render them subject to organic law.

Unanimity in Council should be reserved for the decision to enlarge the Union's membership, subject to the consent of the European Parliament, acting by an absolute majority.⁵⁶ The European Council has established three criteria specifying the terms and conditions of enlargement that could now usefully be inserted into the treaty.⁵⁷ New member states must be able to demonstrate:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the ability to cope with

competitive pressure and market forces within the EU;

- the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.

For EU accession negotiations to be launched, a country must satisfy the first criterion; to be concluded, all three. As with treaty revision, a new state should be admitted to membership once its accession treaty has been ratified by four-fifths of the member states comprising three-quarters of the population.

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⁵³ See page 30.

⁵⁴ See page 22.

⁵⁵ Article 48(6) TEU, applying to Part Three of the TFEU.

⁵⁶ Article 49 TEU.

⁵⁷ The criteria were first elaborated at Copenhagen in 1993 and then strengthened at Madrid in 1995.

Differentiation

At present, enhanced cooperation by a group of integrationist minded states can only proceed as a matter of 'last resort'.⁵⁸ Although all member states should be encouraged to participate in all EU legislation, there are times when a permissive consensus exists behind a proposal by a smaller group (of at least nine states) to pioneer deeper sectoral or regional integration while keeping within the Union framework. Such enhanced cooperation offers a good way forward in important areas of particular controversy, such as tax or immigration, where the vanguard can develop and test specific common policies, acting as a path-finder for all.⁵⁹ The existence of the last resort clause in the current treaty rules has effectively stymied the development of an avant-garde group among federally minded states. We would therefore lift the stipulation of 'last resort' in the interests of well-managed, multi-speed integration. Used to its full potential, the concept of enhanced cooperation will add a fresh dynamic to European integration and provide impetus.

The other criteria that must currently be met for enhanced cooperation to proceed would remain untouched, including the rule that the door should always remain open to latecomers, subject to the approval of the Commission and the consent of the Council and Parliament. Our argument

⁵⁸ Article 20(2) TEU.

⁵⁹ This reform to the enhanced cooperation procedures would allow for the suppression of the anomalous accelerated enhanced cooperation, installed by Lisbon, in Articles 82(3), 83(3), 86(1) and 87(3) TFEU.

in favour of a strong Commission is given added weight in view of the need to manage a more differentiated Union.

As integration reaches new policy areas and the federal character of the EU becomes more strongly defined in the new constitutional treaty, it will become necessary to introduce a new category of associate membership of the Union designed for and open to any current member state choosing ultimately not to accept the terms of the new constitution.⁶⁰ Associate membership could also prove to be the better long-term option for those neighbouring states - Norway, Iceland, Switzerland - which are at present inclined to accept the values of the Union while rejecting the rules and obligations of full membership.⁶¹

The United Kingdom has chosen to leave the EU.⁶² Having left, it intends to negotiate an association agreement with the EU.⁶³ It is not to be excluded, of course, that once the British have experienced life as a third country, they will one day seek readmission as a full member state.⁶⁴ Alternatively, the UK may at some stage want to recast its EU relationship by upgrading its future association agreement into the status of a formal associate member state.

The fraught security situation in Europe should encourage the Union to think

⁶⁰ Putatively, Article 49 bis TEU.

⁶¹ In other words, Article 2 but not Article 3 TEU.

⁶² Article 50(1-4) TEU.

⁶³ Article 217 TFEU.

⁶⁴ Article 50(5) TEU.

creatively of how to establish joint institutions with any friendly neighbour which is committed to developing a close and dynamic partnership that respects EU norms and allows participation in EU programmes.⁶⁵ In this context, Brexit is a test case for the reform of the Union's neighbourhood policy as a whole. The next Convention must aim to design a framework for deep and smooth cooperation turning nervous neighbours into reliable partners.

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⁶⁵ Article 8 TEU.

Competences and powers

The Union is already endowed with a wide range of competences conferred on it by the states either on an exclusive or shared basis.⁶⁶ Recent events suggest a reconsideration of the balance of competences between the Union and its states in three areas.

The integration of Euratom into the constitutional treaty requires nuclear safety to be added to the list of the EU's exclusive competences.⁶⁷ It also strengthens the argument for a review of the Union's current limited competences over the structure of energy supply and the exploitation of energy resources. We recommend the creation of a new shared competence in this area in order to pursue the objective of a common energy policy which is secure, efficient, competitive and sustainable.⁶⁸ This reform should be complemented by making a treaty commitment to meeting UN goals of sustainable development.⁶⁹

To protect EU citizens resident in member states other than their own, EU competence should be strengthened so that no citizen may be deprived of the right to vote for a national government to represent them in the Council.⁷⁰ Every citizen of the Union should have the right to vote in elections to the national parliament either of the state of which he or she is a national or of the state in which he or

she resides.⁷¹ Consideration should also be given to extending the franchise of EU citizens to national referendums held on EU matters.

The field of application of the Charter of Fundamental Rights should be broadened, in accordance with jurisprudence of the Court of Justice, from "when they are implementing Union law" to "when they act within the scope of Union law".⁷²

Alongside this modest shift of competence to the EU level is the larger requirement for an adjustment in the powers of the EU institutions. It is clear that in the area of asylum and immigration policy, the Commission needs stronger powers of federal agency, both directly and through the operation of other EU bodies, such as Frontex. We have mentioned above the need for a new electoral authority. There is a very good case for establishing a specialist EU agency to supervise the operation of the digital market along the lines of those bodies set up in recent years to supervise the banking union. The mandate of some existing authorities, such as the EU Agency for Fundamental Rights in Vienna, could well be broadened. Central to the enhanced role for the Commission, of course, is the installation of the Treasury with the power to propose federal taxes.

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⁶⁶ Articles 2-6 TFEU.

⁶⁷ Article 3 TFEU.

⁶⁸ Article 194(2) TFEU.

⁶⁹ Article 3(2) TEU.

⁷⁰ This would meet the terms of the 1st Protocol of the ECHR.

⁷¹ Article 21 TFEU.

⁷² Article 51 of the Charter. The preamble of the Charter could also be dropped, without loss.

Finances

The case for a larger EU budget is strong, and is well made by the Commission and Parliament in the current negotiations on the next multi-annual financial framework (MFF) for 2021-27. Higher EU spending must be linked to reform of the financial system which, essentially unchanged since 1988, is opaque, unjust and inefficient. Even if the Commission's target of increasing commitments to 1.11% GNI is achieved, the EU budget will remain well below the size commensurate with a mature federal system.⁷³

In any case, the European Development Fund should be incorporated into the EU budget at the time of the next MFF in 2028. This transfer would allow for the better coordination of overseas aid with the Union's other common policies, including immigration, as well as for stronger parliamentary control.

The Commission's proposals to introduce new sources of revenue are especially welcome, and conform to the principle that fiscal income directly created by EU policies should accrue to the EU budget.⁷⁴ These are not EU taxes, however: the EU does not have the competence to levy taxes, but only to harmonise the way national taxes are applied.⁷⁵ The Spinelli Group would go further, therefore, and grant the EU Treasury that power to raise both direct

and indirect taxation. As already mentioned, the current budget fixing rules, grounded in unanimity, should be replaced by an organic law. The European Parliament must acquire full powers of co-decision with the Council over all financial decisions, including the raising of revenue.

The euro area needs its own fiscal capacity, to be included as a separate section in the general EU budget. Such a supplementary budget will grow over time into an instrument capable of contributing to macro-economic stabilisation. Where EU rules for fiscal discipline restrict the ability of states to invest in public goods, it makes every sense for social and capital investment by the EU level to act as a counterweight.⁷⁶ Pan-European infrastructure assists growth in productivity, and real added value can be achieved at the EU level in sectors such as R&D, energy, defence, space and cybersecurity. Investment at EU level will be managed by the Treasury, installed within the Commission, equipped to borrow and lend in the interests of financial stability, social cohesion, sustainable economic growth and reduced regional imbalances. New fiscal rules will be needed for the Treasury.

To lessen the possibility of a breakdown in the annual budget process, the final stage of the procedure should be amended.⁷⁷ In the event of no agreement being reached in the

⁷³ The MacDougall Report in 1977 recommended that EMU would require the support of an EU budget of at least 5% GNP.

⁷⁴ The Commission proposes three new own resources from a Common Consolidated Corporate Tax Base, the carbon emissions trading scheme and a scheme to reduce plastic packaging.

⁷⁵ Article 113 TFEU.

⁷⁶ The Commission is proposing a European Investment Stabilisation Function of 0.2% GNI.

⁷⁷ Article 314(8) TFEU.

conciliation committee, Parliament could confirm its amendments by a high qualified majority. The budget will be adopted unless the Council, within a time limit, votes against – thereby obliging the Commission to submit a new draft budget. This change returns to the pre-Lisbon formula whereby both Parliament and Council had to take equal responsibility for the rejection of the budget.⁷⁸

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⁷⁸ In the case of a breakdown, the system of advancing one-twelfth of last year's budget should be rendered adjustable for inflation (Article 315 TFEU).

Economic and Monetary Union

Europe's Economic and Monetary Union (EMU) was launched in an incomplete form. While monetary policy was centralised on the European Central Bank, fiscal sovereignty was retained at the national level – a lop-sided EMU that was expected soon to be overhauled. The time has come, therefore, to deepen fiscal integration and prepare the way forward to political union without which, ultimately, no monetary union can prosper. In the financial crash of 2008 the fact that there was no credible government of the political economy of the euro area provoked heightened uncertainty and risk, driving up the financial and social cost of re-stabilising the eurozone. To continue in denial and not to tackle the reform of euro governance will exacerbate the economic downturn when the next financial shock occurs (which it surely will).

The emergency measures taken to deal with the euro crisis, including the fiscal compact treaty, are also due for review. Some proposals which were dismissed in the middle of the crisis, often peremptorily, should be revived – not least the idea of creating a mutualised safe asset for EMU. By sharing financial risk and incentivising sound economic and fiscal policies, a large eurobond market would lower borrowing costs across the euro area. European sovereign bonds would offer investors an attractive alternative to national sovereign bonds, offering a way out of the doom loop between

shaky national banks and poorly governed states.

The current treaty obliges member states to treat their national economic policies “as a matter of common concern”.⁷⁹ But the mere - inevitably loose and haphazard - coordination of national policy is insufficiently binding for states which have committed or are about to commit to a single currency. The current weak governance of the euro area has allowed dangerous structural imbalances between the richer and poorer regions to deepen further. Not all EU citizens share in the fruits of the single market and monetary union: new fiscal instruments as well as a policy shift are needed to ensure this happens. We recommend, therefore, that the new treaty promotes the objective of a common economic and fiscal policy, alongside that of the single monetary policy, aimed at promoting employment, investment, social cohesion and sustainable development throughout the Union. The aim is not a quick-fix harmonisation of living standards in the eurozone through a massive programme of income redistribution. It is to ensure the future stability of the euro and its better resilience to crisis, thereby creating the basis for a sustainable increase in prosperity and well-being across the euro area as a whole.

The procedure for establishing broad economic policy guidelines at the EU level puts the onus on the European Council and Council to act on

⁷⁹ Article 121 TFEU.

recommendations and reports of the Commission, with the Parliament being merely informed. It would be more efficient and democratic to give the lead to the Commission to make proposals to the Council and Parliament, which, under co-decision, would then endorse them.

As things stand, the European Central Bank (ECB) is prohibited from the monetary financing of national governments in the primary markets.⁸⁰ And the Union is prevented from assuming liability for the sovereign debt of member states.⁸¹ Nevertheless, in the aftermath of the crash the EU is faced with the inevitability of creating a sound mechanism for debt restructuring. There remains strong opposition, especially in Germany, to a reform of EMU that would enable the systematic, progressive pooling of a share of national debt. The Spinelli Group believes, however, that the treaty provisions of EMU are too prohibitive for the long term. As mentioned above, we propose to endow the Commission with consolidated fiscal instruments and all the functions of a treasury, including the running of a cyclical unemployment insurance scheme, the issuance of eurobonds and the levying of taxes. Participation in the common system of debt management will be based on prudential considerations and subject to strict conditionality.

The Spinelli Group urges the rapid completion of all aspects of the banking union, including a system of deposit guarantee insurance. The

Union's new financial regulatory framework involving surveillance, supervision and resolution needs to be entrenched in terms of primary law. The powers of supervisory oversight held by the ECB should be extended to all credit institutions, including the insurance industry.⁸² This should be enacted by the ordinary legislative procedure. In another adjustment, profits made by the ECB should be channelled to the EU Treasury.⁸³

A shift of responsibility from the Council to the Commission should take place with regard to the excessive deficit procedure. The 'Six-Pack' legislation, launched in 2010, reinforced both the preventive and corrective arms of the Stability and Growth Pact. For years, the Council had been acting by QMV to water down the Commission's recommendations under the Pact to individual states. As part of the Six Pack, Parliament insisted on a new voting mechanism whereby a Commission recommendation is deemed adopted by the Council unless a qualified majority of states is assembled to block it. This method of 'reverse QMV' has greatly strengthened the power and responsibility of the Commission, and needs now to be codified in terms of primary law.⁸⁴

The national parliament of a state under an excessive deficit procedure should be given a statutory right to have a hearing in the European Parliament, with the participation of the Commission and Council. And as we have noted above, amending the

⁸⁰ Article 123 TFEU.

⁸¹ Article 125 TFEU.

⁸² Article 127(6) TFEU.

⁸³ Article 33(1) of the Statute of the ECB.

⁸⁴ Article 126(13) TFEU.

protocol on the excessive deficit procedure should be subject to an organic law.⁸⁵

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⁸⁵ Article 126(14) TFEU.

The euro area

One of the key fiscal instruments of the common economic policy under the management of the Treasury Secretary will be the European Stability Mechanism (ESM). This was established in 2012, by way of a revision of the Lisbon treaty, with the aim of ensuring the financial stability of the eurozone in time of crisis.⁸⁶ The ESM may loan credit by way of precaution, to help structural adjustment and to recapitalise banks. It is run on intergovernmental lines.

It is already agreed in principle to transform the ESM into a European Monetary Fund, although the modalities of the shift are controversial.⁸⁷ All existing pooled funds would be merged in the EMF. Part of that contribution, notably the European Financial Stability Mechanism created in 2010, is funded by the EU budget and subject to the control of the European Parliament.⁸⁸ But the ESM is financed by direct contributions from member state treasuries, and is subject to control by national parliaments. The EMF will remain a hybrid body until such time as all funds are raised through the EU budget and governed federally. But the end point must be established firmly at the start: a federal fund operating wholly within the framework of Union law, protecting the prerogatives of the Commission to monitor the conduct of national economic policies. A worthwhile EMF

would have wide responsibilities, acting as backstop for the Single Resolution Fund, but also be empowered to intervene at early stages of a crisis of the banking union.

The 'Two Pack' legislation obliges the euro area states to present their national budget plans ex ante to the Commission for comment and, if necessary, corrective recommendations, in the context of a 'European semester'.⁸⁹ The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union - otherwise known as the fiscal compact treaty - is signed by all states apart from the UK, and seeks to go further in terms of imposing fiscal discipline within the euro area. The Commission is proposing a regulation to incorporate any still relevant provisions of the fiscal compact treaty into the framework of Union law.

We see no good argument for the creation of a separate parliamentary assembly for the euro area, or for a blurring of the mandates between European and national parliamentarians in some new joint body. The European Parliament is the parliament of the eurozone just as the euro is the currency of the Union. There is deep interdependence between the euro and non-euro states. All MEPs should participate in EMU debates. For specified fiscal laws pertaining just to the euro states, the Parliament should amend its rules of procedure to require special majorities among MEPs elected

⁸⁶ Article 136 TFEU was amended under Lisbon's new 'simplified revision procedure', Article 48(6) TEU.

⁸⁷ Not least is the Commission's proposal that the conversion of ESM into EMF can be done on the basis of Article 352 TFEU, without requiring treaty change.

⁸⁸ The EFSM was created under Article 122(2) TFEU to provide financial assistance to a state in trouble.

⁸⁹ Article 136 TFEU.

in the euro area. Special euro area voting procedures already exist in the Council.⁹⁰

Nineteen member states have adopted the euro and constitute some 85% of the EU economy. Brexit means that there will be only one country left, Denmark, which is not legally committed to joining the single currency. But in practice Denmark already conforms as a member of the euro area, and it should now subscribe to the banking union in full. Joining the banking union should be a prerequisite for all other states, like Bulgaria, which are completing their preparations to join the euro.

One useful addition to the treaty would be to provide clearer lines of engagement between the Eurogroup and those states intent within the near future on meeting the convergence criteria and joining the single currency (officially states "with a derogation"). Participation of ministers from such genuine 'pre-in' states should be guaranteed when discussions in the Eurogroup or at euro summit level concern the architecture of the eurozone and the basic rules of fiscal discipline. Membership of the exchange-rate mechanism (ERM II), at present only held by Denmark, could be one such criterion.⁹¹

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⁹⁰ Article 136(2) TFEU.

⁹¹ Article 140(1) TFEU.

Justice and home affairs

The Treaty of Amsterdam (1997) introduced the concept of an EU area of freedom, security and justice to complement the creation of the single market inside which citizens enjoy freedom of movement. It has led to significant collaboration between member states in terms of administrative and judicial practice and to the development of an impressive corpus of civil and criminal law.

In recent years the salience of integrating the interior affairs policies of the Union has soared. Terrorism and cybercrime are almost always transnational and never resolvable by one member state acting alone. Two and a half million irregular immigrants from the Middle East and Africa have sought safe haven in the Union since 2015. Existing immigration and asylum policies of the EU are broken, the Schengen agreement is suspended and even the principle of freedom of movement is compromised. Europe's respect for the Geneva conventions on the treatment of refugees is in jeopardy. If ever there were a case for the creation of a federal asylum agency applying uniform procedures that respect international law, we have it now.⁹² Equally, Frontex should be upgraded into a properly federal border and coastguard service assisting national forces to control the external frontier of the Union.⁹³

We have already discussed the need in this context, as in other areas, to reinforce the executive role of the Commission and to render the two chambers of the legislature co-equal through the application across the board of either the organic or the ordinary legislative procedure. Without prejudice to our proposal to give the two chambers of the legislature a certain right of initiative, we propose to abolish the Lisbon provision which grants to a quarter of the states the right to make legislative initiatives in the area of freedom, security and justice.⁹⁴ This experiment in bypassing the Commission's right of initiative led nowhere and will not be missed.

Drawing on lessons from the refugee crisis, when faced by emergency influx of irregular immigrants, the Commission and not the Council should be empowered to adopt provisional measures.⁹⁵ As far as the integration of immigrant populations is concerned, and action against crime, we would drop the prohibition on the harmonisation of national laws.⁹⁶ A framework law of the Union would set high standards for the treatment of immigrants based on which member states could formulate their national policies.

In the sensitive field of family law, it may be appropriate to have recourse to the organic law procedure, but we strongly recommend that the veto accorded under the Lisbon treaty to any one

⁹² Article 78 TFEU.

⁹³ Article 77(1)(c) & (2)(d) TFEU.

⁹⁴ Article 76 TFEU.

⁹⁵ Article 78(3) TFEU.

⁹⁶ Articles 79(4) and 84 TFEU, respectively.

national parliament should be dropped.⁹⁷ Likewise, we would abolish all the abnormal procedures that currently govern cooperation in criminal justice and police matters.⁹⁸ The more flexible operation of the enhanced cooperation provisions, which we propose, will be particularly useful as the Union develops common policies in this sector.

EU legislation laying down arrangements whereby judges, prosecutors, police, customs and security services can operate in states other than their own should be subject to an organic law.⁹⁹

The prohibition on the harmonisation of national legislation in the field of civil protection should be lifted, along with the similar restriction in the field of cooperation between public administrations.¹⁰⁰

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⁹⁷ Article 81(3) TFEU.

⁹⁸ Articles 82(3), 83(3), 86(1) and 87(3) TFEU.

⁹⁹ Article 89 TFEU.

¹⁰⁰ Articles 196(2) and 197(2) TFEU, respectively.

Europe in the world

Despite some tentative steps taken towards creating a common foreign and security policy and of increasing diplomatic concertation through the European External Action Service (EEAS), the external action of the Union still lacks initiative, cohesion and punch. Despite being able to do so in theory, the Council has never resorted in practice to the use of QMV in this field.¹⁰¹ The Commission does not make proposals in foreign policy. The enhanced cooperation provisions which allow the emergence of smaller groups of states to act on behalf of the Union in foreign affairs have not been deployed.¹⁰²

A greater commitment on behalf of the member states to use the Union as their principal instrument of foreign policy will lead to more effective common foreign policy. The High Representative/Vice-President, who chairs the Council of foreign ministers and runs the EEAS, should use her powers to take policy initiatives and to insist on the coordination of the external relations of the Union under the overall strategic guidance of the European Council. The High Rep should be re-named Foreign Minister of the Union, and accorded a political deputy who should chair the Political and Security Committee.¹⁰³ The member states should back the Foreign Minister more convincingly when she speaks on behalf of the Union as a whole in international fora.¹⁰⁴ EU

members of the UN Security Council should speak and act collectively.

As we have already noted, coherence in respect of the rule of law requires lifting the constraints on the Court of Justice from exercising jurisdiction in CFSP.¹⁰⁵

The EU has an unrivalled capacity in world affairs to wield its soft power to good effect. Acting together, it can exploit its combined international experience, wide range of instruments and considerable resources to expand its role in civilian conflict prevention, crisis management and post-conflict stabilisation. Building on the existing European Medical Corps and European Voluntary Service, the Commission should be made fully responsible for running a civilian corps to engage in civil protection, rescue and aid in international manmade or natural disasters.

As far as the Union's external economic relations are concerned, certain adjustments are needed to ensure systematic equivalence between the rules for the adoption of international agreements and those applicable for its internal rules. In other words, where the ordinary legislative procedure is the norm for domestic legislation, QMV must also apply to the closure of the EU's international agreements. And in an adjustment to those rules, the insistence on unanimity for decisions, both domestic and international, involving the commercial aspects of

¹⁰¹ Article 31 (2) TEU.

¹⁰² Article 329 (2) TFEU.

¹⁰³ Article 27 TEU.

¹⁰⁴ Article 34 TEU.

¹⁰⁵ See page 15.

intellectual property and foreign direct investment should be dropped in favour of QMV.¹⁰⁶

In conformity with the shift of executive authority, restrictive measures taken against third countries, persons or corporate and non-state entities should be taken in the first instance by the Commission, though subject to call-back by either the Council or Parliament.¹⁰⁷

The shift in the inter-institutional balance of power needs to be fully reflected in the procedures for the conduct of the Union's international agreements. The relevant clause, Article 218 TFEU, needs to be codified to reflect the larger role that the European Parliament has already won for itself in practice. Specifically, Parliament and Council should decide jointly, on a proposal of the Commission, to open the negotiation of an international treaty, and to establish and amend the negotiation mandate.¹⁰⁸ The Commission must be designated formally to be the Union's negotiator.¹⁰⁹ Parliament must always be involved in the decision to conclude any agreement, including in the field of foreign and security policy.¹¹⁰ The Commission should be authorised to adopt a decision to suspend the application of an agreement.¹¹¹

Comparable adjustments should be made to the position of the

Commission with respect to the exchange rate policy of the euro.¹¹² The Commission should also be put into the driving seat in the operation of the solidarity clause, subject to a normal regulation decided by co-decision.¹¹³

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¹⁰⁶ Article 207(4) TFEU.

¹⁰⁷ Article 215 TFEU.

¹⁰⁸ Article 218(2) TFEU. Article 218(10) could then be suppressed.

¹⁰⁹ Article 218(3) TFEU.

¹¹⁰ Article 218(5-6) TFEU.

¹¹¹ Article 218(9) TFEU.

¹¹² Article 219 TFEU.

¹¹³ Article 222 TFEU.

Security and defence

The EU has made slow progress towards the development of a common security and defence policy. Despite the creation of a number of EU battlegroups, none have been deployed operationally. The Council has yet to entrust the implementation of a military task to a smaller group of its member states.¹¹⁴ Recently, however, Russia's military aggressions in Eastern Europe and the EU's relative helplessness in Middle East conflict zones have triggered a revival of the concept of a European security and defence union. American equivocation as to the future of NATO as evinced by President Trump adds urgency to Europe's internal debate. Much work of a strategic and operational nature has still to be undertaken before the EU can move forward with confidence towards credible common defence. But first steps have been taken and more are welcome.

The Lisbon treaty already provides for the deepening of military integration in the form of permanent structured cooperation in defence (PESCO) among those member states who combine political will, financial capacity and military capability.¹¹⁵ The decision of the European Council in December 2017 to trigger PESCO is welcome and should lead to a gradual pooling and sharing of military capabilities. A big step would be to expose the defence industries to the normal competition and public

procurement disciplines of the single market, subject to security guarantees.¹¹⁶ The Commission proposes to lift the prohibition on charging military and security operations to the EU budget.¹¹⁷ The normalisation of the financing arrangements for common security and defence policy will result in a commensurate strengthening of the budgetary powers of the European Parliament.

A strong and accountable executive authority is a prerequisite for the development of common defence policy within the framework of the European Union. This poses questions not only about the setting up of an operational HQ for EU security and defence but also about the role of the Commission and Parliament. The European Defence Agency is destined to play a central role in the evolution of PESCO in terms of advancing military capability and the integration of the defence industries. In the longer term the constitutional status of the EDA as being merely "subject to the authority of the Council" will be insufficient for the purpose of democratic and financial scrutiny.¹¹⁸ Likewise, the eventual intervention of EU forces in combat must be subject to votes of consent in the European Parliament as a supplement to but not as a substitute for the concomitant rights of national parliaments.¹¹⁹

¹¹⁴ Article 44 TEU.

¹¹⁵ Article 46 TEU.

¹¹⁶ Article 346 TFEU.

¹¹⁷ Article 41(2) TEU.

¹¹⁸ Article 45 TEU.

¹¹⁹ Article 46(6) TEU.

Lastly, the Spinelli Group welcomes the recent French proposal to launch a vanguard of European states in a military European Intervention Initiative which may also involve armed forces from Britain and Denmark.¹²⁰

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¹²⁰ Article 5 of Protocol No. 22 on the position of Denmark.

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Translations of the text into French, German and Italian will be posted on www.spinelligroup.eu.

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While the Board of the Spinelli Group promotes the publication of this Manifesto as a major contribution to the debate about the future of the European Union, individual members are not bound in all respects to every proposal.

Andrew Duff

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Members of the Board of the Spinelli Group 2018-19

Brando Benifei MEP

Danuta Hübner MEP

Mercedes Bresso MEP

Jo Leinen MEP

Elmar Brok MEP

Marietje Schaake MEP

Andrew Duff, *President*

Tom Vandenkendelaere MEP

Monica Frassoni

Guy Verhofstadt MEP

Sven Giegold MEP



The Spinelli Group is a network of European political leaders committed to the goal of federal union.

Founded in the European Parliament in 2010, the Group brings together MEPs of different party groups to collaborate on constitutional issues. In 2017 a Spinelli Group was formed in the Committee of Regions.

The aim of the Spinelli Group is to work by stages towards a federal constitution of the European Union based on the values of liberal democracy.



The Spinelli Group

Square de Meeûs 25
BE-1000 Brussels

www.spinelligroup.eu

secretariat@spinelligroup.eu