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**Directions for reform  
of the European Union treaties**

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*Ignoranti, quem portum petat, nullus suus ventus est*  
Seneca, Letters to Lucilio, LXXI

## **1. Introduction**

The Euro crisis and the critical situation of the economy (and also of politics) in Europe in the era of globalisation have brought about the need – which even governments are now beginning to realise – to reconsider the European Union’s underlying principles and rules on a longer term basis.

The clearly inadequate intergovernmental approach, the very serious and still not averted risk of a crisis that, with the Euro, could overwhelm the entire edifice of the Union – the greatest endeavour for Europe and beyond in the 20<sup>th</sup> century – impel towards finding the right way by looking higher and farther. If rigour applied to national accounts is necessary but clearly insufficient and could even provoke a collapse, if sustainable growth must form one of the main tasks of the Union, also the institutional system must be rethought to this end – today and not in some unspecified future.

Delineating what should be the goal of the process for an integration that took its first steps sixty years ago becomes, at this point, necessary and urgent. Even the inevitable *transition stages* of a naturally dynamic process can only be successfully delineated and navigated if the direction of travel and point of arrival are clear.

The ever expanding belief among the public, independent observers and the governments themselves is that the approach taken up to now to deal with the crisis has not been sufficient to ward off the risks that threaten not just the Euro’s survival but even the whole European construction. This has led to launching the Fiscal Compact Treaty and the ESM Treaty. And yet even though these two instruments are certainly very significant, they seem insufficient for the longer term, as many – and even the German Government – have acknowledged.

The following notes aim to focus on the ways for achieving an institutional order of the European Union running at full capacity, based on the institutional and

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\* “If one does not know to which port one is sailing, no wind is favourable”

regulatory system set out by the Treaty of Lisbon and on the previous history of the European Union.

On many points there are of course several institutional solutions that can be conceivable and effective. The aim here is to open a perspective from which to develop an extensive debate.

The political forces and the national and European institutions – above all the European Parliament – should state their position on the prospects for reform of the EU when preparing for the European elections soon to be held in 2014.

## **2. Two regulatory levels in the Union system**

The reform of the European Union treaties should aim at achieving a twofold objective that has been missing up to now: assuring a *stable constitution* to the EU while, at the same time, leaving the way clear to smaller actions in the future for *adjusting the regulations* by means of sufficiently lean procedures.

For this purpose, it seems necessary to organise an institutional structure of the EU based on the two-level system already adopted by the Convention of 2003 and also partly present in the current combination of the Treaty on European Union (TEU) with the Treaty on the functioning of the European Union (TFEU).

The higher level is one containing a concise set of constitutional nature: a) the principles on which the EU is founded, the fundamental profiles of its institutions, the rules for the future institutional reforms; b) the EU Charter of Rights of the European Union. The lower level, which governs the functioning of the Union, should include the current TFEU with the reforms that the EU requires in this stage and will require in further stages.

For both levels, the new Treaty should, for further future modifications: a) attribute the propositional role to the European Council (EC), to the Commission and to the European Parliament (EP); b) assign the co-decisional role to the EC and the EP. However, the procedure would be differentiated in the two levels. It can be assumed that the modifications of the TUE will be approved by a super-qualified majority of Member States, calculated using the double parameter of the number of States and the total population (for instance, three-quarters of one and of the other). The modifications to the TFEU could, on the other hand, be brought into force without the need for national ratifications, on reaching a super-qualified majority within the EC that represents a similar majority of the population of the EU, for instance two-thirds.

In the new Treaty, the withdrawal of one or more Member States (article 50 TEU) should not be permitted.

For any Member States of the EU (including those whose membership is in progress or will be begun) that do not embrace the new Treaty, there should be guaranteed the functioning conditions of the single market and the maintaining of the *acquis* within the framework of the EU institutions.

For the countries of Eastern Europe and the Mediterranean that are not candidates for entering the EU, institutional systems for joining should be provided, and these should be different in terms of coordination and integration from those of the European Union.

Forms of coordination inclusive of particular procedures for decision and for implementing the decisions could be established for the cross-border Regions sharing geographical and economic characteristics (Alpine regions, seacoasts).

### **3. Principles and competences**

The reforms outlined here are in line with the fundamental principles contained in the Charter of Rights and in the TEU: *dignity, freedom, equality, solidarity, citizenship, justice*, to which should be added the *right to peace*. The reforms are based on four fundamental principles of the Union's legal system, all endorsed in the Treaties:

- *subsidiarity* (as a means for jointly implementing the minimum government, the level of government appropriate for the problem to be resolved, and the government closest to the citizen);
- *efficiency* (that is possible if the rules ensure the real opportunity to decide, and therefore only by generally adopting the majority principle, which the experience of centuries has proved the only one able to allow a voting body to decide and also the only one consistent with the very existence of a collective body, whose unity is assured if (and only if) in the field of its competence every member accepts to be minority and yet complies with the majority);
- *democracy* founded on people's sovereignty (which, at European level, is only possible by attributing full powers of co-decision to the European Parliament for legislation, for the budget and for control of the government of the Union). The channels of direct democracy instituted by article 11 TEU must remain open.
- *balance of powers* between the Member States Chamber (EC and Council) and the European Parliament.

The *competences* of the EU are those established in the treaties. By now it is necessary to make them consistently operative within the Union – in keeping with the aforementioned principles – in the fields of *economy* (European government of the economy, European fiscal system, at least partial sharing of the public debt), *defence* and *security*, attributing the Union with the necessary powers and tools,

including external action, far beyond the sheer coordinating among governments of the Member States. In this direction, it is necessary to review Title 5 of the TEU and the corresponding parts in the TFEU.

#### **4. The institutions**

##### **European Parliament**

In addition to the functions assigned to it by the current treaties, it is essential that the EP be attributed with: a) *the power for co-decision for all decisions of a legislative nature* by the EU, including the proposals for reforms of the European constitution and the TFEU treaty; b) *a direct fiscal power at the European level (as a European VAT tax, a European Financial Transactions tax, a Carbon tax) in co-decision with the European Council*; c) *budgetary powers regarding the amount and destination of the EU's own resources, co-deciding with the Council* and (for the multiyear planning of resources transferred from national budgets) with the cooperation of the national Parliaments; d) *defining directions for foreign policies, common defence and allocating the corresponding funding*, e) *designating the president of the Commission and the whole Commission* by majority vote as a co-decision with the European Council.

Bearing in mind the growing role of the EP in the constitutional structure of the EU and the considerable broadening of the co-decision system, it could be established that, for minor decisions and on the basis of a procedure decided by the EP, it will be possible to give the vote power to the competent Commissions, each of them composed so as to reflect the proportions of the Groups constituted in the EP.

A deadline should be set for establishing an uniform electoral law (article 223 TFEU), which will similarly need to be passed by the EP with a qualified majority.

##### **European Council and Council of Ministers**

*For all matters pertaining to the EU* and for all the decisions of the European Council and the Council of Ministers – laws, actions, appointments, future reforms of the treaties – the *principle of majority decisions* must apply, with the double computation of the number of States and the population: simple, qualified or super-qualified majorities, depending on the issue concerned.

The person appointed by a qualified majority as president of the Commission in co-decision with the European Council could be (and perhaps even should be) the same person to be chosen as president of the EC, what is already possible according to the current TEU.

The European Council would retain the role of highest body for defining the EU's policies, which would be further increased if chaired by the president of the Commission.

Concerning the procedure of the Council of Ministers in the legislative area, the sessions could be public, or the minutes of the meetings could be published, or otherwise the current system could be maintained. The second of these solutions could be preferable, but the question remains open.

### ***Chamber of the States***

The system of co-decision between the EP and the Council for laws and for some decisions and appointments seems to be preferable to a sharp separating of functions; but it is conceivable even rational to leave some categories of decisions and appointments to the sole States Chamber, so to the EC and the Council of Ministers, in line with the United States Senate model. However, one must not forget that in the USA the Senate has been elected by direct suffrage since a century, while the model the EU is pursuing is that of a “Chamber of States” composed by premiers and ministers of the national governments.

The composition of the Council as Chamber of States of the Union could also be shaped in a different way, with representatives of the government and of the opposition of the individual Member States, elected for this function by the national Parliaments, at least as regards exercising the legislative function. This choice could eventually be left open for the future.

### ***Commission***

The president must be appointed by the EP and receive approval from the European Council, taking into account the outcome of the EP election. The Commission and the individual Commissioners (to be selected according to the proposal by the president of the Commission) must be approved by the EP.

The new treaty could state that the number of Commissioners can be reduced, dispensing with the rule of having one commissioner for each Member State and establishing, for this purpose, a rotation procedure.

For the presidency, the possibility of one person acting both as President of the European Council and President of the Commission would have the advantage of ensuring a unity of direction and a personalisation of power of command which are in line with the modern (or rather post-modern) democracies, while maintaining a system in which the head of the executive is chosen by second-order election by the two Chambers of the States and the citizens, in keeping with the outcome of the elections for the EP, as the treaties have already established. This solution – fitting with a constitutional structure of a federation of States in the form of a parliamentary republic, not in the form of presidential republic – seems by far preferable to electing the President of the Commission by direct universal suffrage, which has drawbacks, not least of which is the huge language barrier that has not been overcome and is unlikely to do so for the foreseeable future.

### ***National parliaments***

These are called on to cooperate (in ways and with procedures to be established) with the European Parliament, particularly for the multiyear planning of the EU's budgetary resources, for the transfer of funds and of quotas of taxes from the national budget to the Union budget and for other issues concerning shared competencies. However, the right to veto as in article 48.7.3 TEU must be eliminated.

### ***5. Budget, Union taxation, European Central Bank***

Following on from what has been said above, a basic point of the reform must be to attribute the *decision regarding the Union's own resources* (article 311.3 TFEU) to co-decisions by the European Parliament with the Council by a qualified or super-qualified majority.

The *multiyear financial framework* (article 312.2 TFEU) should similarly be drawn up by means of co-decision by the Council and EP, also involving the national Parliaments either in the form of an agreement-session or by a mandate granted by each Parliament to its own government, which will decide in Council in compliance with such mandate.

The transfer from national level to European level of certain quotas of taxes (such as VAT) or certain quotas of budget (for instance, as regards defence expenditures) should take place by the same procedure: co-decision of the Council and EP, and involvement of the national Parliaments in one of the forms mentioned.

In both cases, the decisions will be taken at European level and will be binding on all the Member States if the co-decision of the Council and the EP – by qualified or super-qualified majority – is achieved.

The annual budget for the EU (article 314 TFEU) can retain the current procedures.

The Union must be able to establish *its own fiscal policy* (European VAT, carbon tax, tax on financial transactions) by the procedure of co-decision between EP and the Council by a qualified or super-qualified majority.

The *European Central Bank* must be recognised as having the role of 'last resort lender', which is essential also for stability purposes.

The same co-decision criterion between Council and EP must apply for the necessary European coordinating of fiscal policies within the Member States.

It is essential that there are '*restricted geometry*' budget sections and items (for instance, for European taxes, or expenditures for defence with resources transferred from national budgets, or the ESM and other), with power to decide and to vote by the European Council and by the European Parliament; in the new treaty, these



powers should be given only to the governments and to the members of the EP of the countries taking part in the projects concerned.

As envisaged for the Fiscal Compact (art. 16), also the European Stability Mechanism (ESM) must be included in the community method with roles appropriate for the EP, for the Commission and for the Court of Justice.

It is essential to impose the rule of breakeven in the Union budget, ensuring a level of *primary surplus* that makes it possible to include, while maintaining breakeven, also the burden of the interests of the bonds for investments at the European level: a major development plan must be outlined for the Union, founded on investments for energy, the environment and research into prospects for compatible growth.

A *European Treasury* has to be created, as a common guarantee for debts in order to avoid the risks of default.

It may be worthwhile establishing a *maximum ceiling of the Union budget*, inclusive of the burdens for defence, covered by transferring the current national allocations for this item.

## **6. Enhanced cooperation**

A very important question relates to whether it would be appropriate to also maintain in the institutional system of a new Treaty the procedure of enhanced and structured cooperation (Ecoop, Scoop). On one side it can be argued that a generalised adopting of the co-decision and the majority principle implies that the decisions regularly taken within the EU are always binding, even on dissenters. On the other side, it is possible to decide that the method of pursuing the integration process through a group of Member States, with the opting-out clause of the others – a path frequently adopted up to now by the EU (in social policies, Schengen procedure, the Euro) – deserve to not be removed.

This second choice seems preferable. But under some conditions: a) that the 'restricted geometry' is applied in such way as to not put the single market at risk, altering the rules of competition and international trade; b) that obligations and advantages deriving from decisions taken only by some national governments in the Council (for instance, on own resources or on a harmonised fiscal system) are only borne by – and reserved to the benefit of – the Member States that subscribed to them; c) that in such cases, the future treaty states that, in the European Parliament, the right to vote is reserved to the MP of the Member States taking part in the new project, in analogy with the rules for the ECoop with reference to the Council (article 330 TFEU); d) that the constitutional guarantees provided by the treaties are extended to the ECoop and that, within the Ecoop, the co-decision between the EP

and the Council is valid when passed by simple or qualified majority, with no veto power.

A specific institutional dimension is by the way already operative for the Eurozone, explicitly provided in the current treaties and in the two treaties being approved for the Fiscal Compact and the ESM. Similar rules should apply to common defence, with the procedure of the Structured cooperation.

## **7. European defence**

The principle of Structured cooperation, already established in the treaties (article 42.6 TEU), should become the basis for the future common defence, if not all the Member States are still willing to adopt it. The States who agree would have to transfer to the EU the larger part of the national budget resources currently earmarked for national defence, maybe reducing their amount in proportion to the huge economies of scale made possible by the far greater efficiency of joint management of the common defence.

These resources should be subscribed and regulated according to the principle of co-decision by the EP and the Council, both of them taking decisions under a 'restricted geometry' system (only the ministers and parliamentary members of the structured cooperation will vote), in the same way as stated for the enhanced cooperation.

A commissioner appointed jointly by the European Council and the EP would perform the functions of the minister of defence.

## **8. Planetary cosmopolitan guidelines**

Already now, and since several years, the European Union has been in the forefront in giving preference to a cosmopolitan and planetary prospect to matters that (in line with the principle of subsidiarity) cannot find appropriate solutions except within a global framework.

This relates mainly to maintaining peace, with the instruments of *peace enforcing* and *peace keeping*; international trade; arms control, particularly in relation to nuclear weapons; investments in alternative energies; safeguarding biodiversity; reacting to genocide; a world monetary system.

These are objectives that can be achieved through international institutions and agencies: from UNO to the WTO, from the International Criminal Court to the International Tribunal for the Law of the Sea, from the IMF to the World Bank, and other international Agencies.

The new EU treaty should include: a) a general section similar to article 11 of the Italian Constitution, containing the principle consenting to transfer quotas of the

EU's sovereignty according to the subsidiarity principle to planetary institutions, starting with UNO; b) the obligation to set up a unitary representative of the European Union in the UN Security Council and in the IMF Council; c) the guideline for a basic reform of the UNO Charter which modifies the system of the Assembly, promotes implementing article 43 of the Charter also under a 'restricted geometry' and reforms the Security Council by introducing the continental level representatives and removing the power of veto; d) the stating of measures and steps for transition towards achieving these objectives.

### **9. Modify the Treaties or starting a new Treaty?**

There are two possible routes for reforming the European Union according to the lines indicated here: either continuing with the current regulations and therefore following the procedures of article 48 TEU, or creating a new Treaty.

The first route is clear to see: a Project presented by the European Parliament, or by the Commission, or by one or more governments of the EU; majority resolution by the European Council favourable to examining the modifications proposed and calling the Convention for developing the Project; Intergovernmental Conference (IGC) for approving or modifying or rejecting the Project; ratification by all the Union's Member States according to their respective constitutional rules. While being relatively easy in the first two stages, the regulations of article 48 TUE become very rigid in the last stages: the Convention must decide on the basis of the consensus principle, which implies unanimity; the IGC must decide unanimously; the ratification must take place in all the Member States.

For the Convention, the consensus principle could be interpreted as agreement for all four of its components (EP, Commission, Governments, National Parliaments), and not in a way that, for each one and then in the concluding resolution, unanimity is required. But by article 48 TUE, unanimity within the IGC and unanimity of the ratifications is an essential requirement, even if the reserve clause of article 48.5 establishes the referral to the European Council in the case of ratification by at least four-fifths of the EU's Member States.

At this point, three seem to be the possible routes for achieving a Treaty reforming the EU along the principles here outlined: a) adopting the Treaty with an *opting out* clause for dissenting countries; b) launching a *treaty within the treaty* on the basis of the Vienna Convention on international treaties; c) *launching a new treaty* passed by the consenting Member States, in which the previous treaties are declared (because of the limitation imposed by article 48 TEU) as being basically unfit for achieving the goals that are clearly set as essential for the EU by those same treaties. This procedure, if adopted, will require either the withdrawal of the countries favourable to the new treaty or the withdrawal of the dissenting countries; and in both cases,

negotiating of the relations to be established after the approval of the new treaty in order to maintain and guarantee the single market.

The new treaty should be submitted, after the national ratifications, to a European referendum and come into force – for the Member States having ratified it – if approved by a qualified majority of the Member States of the EU and of the European population.

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### ***Appendix: Myths to dispel***

The real obstacles to the reform will come from the economic and, above all, political interests in retaining the national sovereignties by the power of veto and by refusing to admit the role due to the European Parliament. They will also come from recourse (whether or not sincere, depending on the cases) to outdated ideologies. Nothing is more dangerous and tenacious than wrong ideas, some of which are shown very briefly below.

***Demos:*** “the EU cannot become a State, not even a Federal State, because it does not have a unitary *demos*”. However, for most European countries national unity was achieved after the State was born, and was not a precondition of it. Besides that, we must admit that a European “common feeling” already exists, as we can see in the concept of the welfare state, in the attitude towards wars and more generally in the openness to the planetary and cosmopolitan dimension of the future of mankind.

***Sovereignty:*** “only the national State is the natural ground of sovereignty and of political democracy”. Not so: the monolithic notion of sovereignty as only pertaining to the national State no longer stands up either as a doctrine or historically. Already now, the exercising of sovereignty is split among various levels, from the town council to the region, the national state, the continent (UE), and the world (UNO). And the true and sole holder of sovereignty is – in line with the principle of popular sovereignty – the individual person, who can delegate sovereignty at various levels on the principle of subsidiarity.

***Identity:*** “the only identity is the national one”. In fact, this is not even the prevailing identity. There is not just the national identity but a band of identities (local, regional, national, european, global): each individual shares all of these, together with many others, that have historical, social, cultural, individual basis. The individual identity consists of this rich array, in a compound which is different in each human being.

***Institutions and European elections:*** “citizens do not give political weight to ‘Europe’, and that is proved by the falling participation of the electorate and the lack of interest in the European Parliament”. But the lack of interest is because citizens are unable to perceive how much their present and future lives already depend on the existence of the Union; it is also because the body representing them legitimately, the European Parliament, still does not have full powers to create laws or to control the government and the budget of the Union. When this comes about, there will be more awareness of the importance of the European vote, and the media will at last be focused on it. It is also not to be forgotten that the crisis in Western democracies and the poor interest in voting are found in other places too (only around 50% of US citizens vote). Remedies and new forms of participation need to be found for all the democracies, also at national level.

***Time factor:*** “political Europe is still not mature, it will be a goal for later generations”. No, the moment for getting there is now, the edifice has already largely been built, and it needs being completed by transferring to European level some tasks, some parts of sovereignty that nominally still belong to the individual states but which they are no longer able to exercise them in a global world. The rapidity with which the world is changing makes Europe need to urgently take the remaining steps for achieving the goal. The future needs to be built today, for Europe tomorrow would be too late.

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