Union of European Federalists
Union des Fédéralistes Européens
Union der Europäischen Föderalisten

European Parliament,
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COMMENTARY ON A FUNDAMENTAL LAW OF THE EUROPEAN UNION

The prolonged financial crisis, with its inevitable social and economic consequences, makes it imperative that the European Union returns again to question its own system of governance. The need for more centralised fiscal discipline has already been recognised. The European Stability Mechanism for the eurozone and the Fiscal Compact Treaty of 25 member states, coupled with the important secondary legislation that is putting in place at the EU level a robust system of regulation, surveillance, supervision and resolution of the financial industry mark an important new phase in European integration.

These innovations by way of crisis management stretch the current treaties to their limits. But the pace of change continues to quicken, not least to install credible constitutional mechanisms capable of strengthening fiscal solidarity among the states and taxpayers of the eurozone. The sharing of the fiscal burden will require stronger democratic legitimation than the EU has yet achieved, despite the improvements made by the Treaty of Lisbon.

At the same time, it has become clear that not all EU states share these objectives. The UK, in particular, has requested a renegotiation of its terms of membership.

So a general revision of the treaties is inescapable. There are twin goals: first, for the majority, to transform the eurozone into a fiscal union run by a federal economic government; second, to provide an alternative prospectus for those states which choose not to follow the federal path.

The European constitutional process

The treaty amendment process will start with a Convention, probably early in 2015. It will continue with an Intergovernmental Conference in 2016 and will conclude with ratification by all 28 member states of the Union according to their own constitutional requirements in 2017. In several countries, not least the UK, there will have to be a referendum.

How successful this constitutional exercise will be depends to some extent on the quality of its preparation. The European Parliament has asked for a Convention but is not itself preparing to make a comprehensive package of reforms. The European Commission is not yet ready to present proposals for political union. President Van Rompuy opposes a deeper reflection in the European Council on treaty reform. No group of reflection of the kind which prepared the Laeken Declaration is foreseen. The political agenda in 2013, it seems, is to be devoted only to the re-election of the German Bundestag.

So it falls to the federalist movement to take action, both within the UEF and in the Spinelli Group of MEPs.

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The new treaty so far

For the sake of argument, we call our new constitutional treaty *A Fundamental Law of the European Union*.

We merge the current two Treaties on European Union (TEU) and on the Functioning of the European Union (TFEU) into one, incorporate the Fiscal Compact Treaty and the Euratom Treaty, and integrate the Charter of Fundamental Rights.

Part I Constitutional Provisions [1]

Part II The Charter of Fundamental Rights

Part III The Finances of the Union [2]

Part IV The Policies of the Union [3]

We improve on the drafting of the Treaty of Lisbon by eliminating excessively nervous checks on the powers of the European Commission, European Parliament and European Court of Justice. We reduce the number of different types of decision-making procedure, getting rid of the special *passerelles*, blocking minorities, emergency brakes, automatic accelerators and ornamental transitional measures – all clever devices which may or may not have been intended ever to be used but the inclusion of which in the Lisbon treaty has led in practice to nervous disorder. Likewise, many of the 37 Protocols and 65 Declarations attached to the Treaty of Lisbon which seek to blunt the force or bend the interpretation of original clauses should be deleted.

In making these changes, we will reduce the sense of impermanence. This treaty revision is meant to last: the *Fundamental Law* must reassure the citizen that it provides a durable settlement of the business of the governance of the Union, along with a clearer sense of things to come.

The *Fundamental Law* implies a renewal of the pact on which the Union is founded, along overtly federal lines. Those states and citizens who sign up to it renew their commitment to the euro and to the building of a federal polity. Its effect will be to enhance the capacity of the Union to act in any given field.

The main feature of the Fundamental Law is to transform the Commission into a government. That being said, constitutional checks and balances should reflect more correctly then they do at present the principle of the separation of powers. For example, as the Commission becomes more of a political government, it should shed its quasi-judicial powers, for example in competition policy.

[1] Based on Articles 1-20, 47-50 TEU; Articles 2-6, 223-309, 326-358 TFEU.
[2] Based on Articles 310-325 TFEU.
[3] Based on Articles 21-46 TEU; Articles 7-222 TFEU.

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Policy substance

Mindful of the need to protect the integrity of the corpus of EU law, we make fairly minimal amendments to the substance of EU policy. The purpose of the *Fundamental Law*, after all, is to establish a better constitutional framework of European governance inside which governors and law makers are enabled to make more efficacious choices about the future direction of policy.

At the same time, the new treaty must be responsive to the imperative of dealing with Europe's contemporary challenges, not least the economic and social crisis. We propose, therefore, to redefine the competences shared fully between the Union and its states and to strengthen the social market economy aspect of the Treaty. In particular, we propose to upgrade EU competence in the fields of energy supply, industrial policy, public health and fisheries.

We also seek to extend the rights of EU citizenship in terms of voting rights in national elections, and to expand the scope of the European Citizens' Initiative.

We introduce the concept of 'common economic policy' – in contrast to the mere coordination of national economic policies. The eurozone is deemed to operate under the provisions of enhanced cooperation, with its own fiscal capacity, while being open to other members who wish to participate. The powers of the Eurogroup are enhanced. The financial and economic policy of the eurozone is run by an EU Treasury Minister, whose main tasks are the stabilisation of the economy and the allocation of resources.

The *Fundamental Law* will permit the progressive mutualisation of a portion of sovereign debt. And it lifts the prohibition on deficit financing, proposing that the federal debt of the Union shall not exceed the sum of its own resources.

The federal Treasury Minister needs financial autonomy. This implies a radical reform of the Union's financial system, involving the abolition of rigid *juste retour* and the current system of direct national contributions. The Union needs substantial, genuine own resources which gives it what it needs to deliver its political objectives. Revenue based on direct taxation accruing directly to the EU will save national treasuries money.

We abolish the unanimity rule for the decisions on own resources and the multi-annual financial framework (which becomes discretionary rather than obligatory). It is proposed to phase out direct national contributions to the EU budget after five years. In the annual budgetary procedure, we oblige the Council to share with the Parliament the responsibility of concluding an agreement. In case of no agreement, we suggest that the system of twelfths should be adjusted for inflation.

Institutional reform

In terms of institutional change, the *Fundamental Law* needs, first, to render the two chambers of the legislature more equal and, second, to transfer to the Commission most of the residual executive

powers now held by the Council. We make it explicit that the Parliament and Council form the legislature and the Commission becomes the government of the Union. The role of the European Council is constrained accordingly, thereby reducing the risk of tension and confusion between it and the Commission.

The treatment of common foreign, security and defence policy needs to be normalised, not least by enhancing the role of the Commission (and the Foreign Minister) in this sector. This reform should give a much-needed impulse to the external action of the Union.

In addition, we would:-

- restrict the legislative procedures to two, ordinary and special, and extend their scope;
- abolish the unanimity rule in the Council for all but very specific decisions, such as the accession of a new state;
- abolish the rotating presidency;
- reduce the number of Commissioners to fifteen, essentially picked by the President-elect;
- establish a legal base for agencies;
- facilitate the use and widen the scope of the enhanced cooperation provisions;
- establish a legal basis to the introduction of a pan-European constituency for the election of a certain number of MEPs;
- remove certain current prohibitions on the harmonisation of national laws;
- lift the restrictions on the scope of jurisdiction of the Court of Justice;
- ease access to the Court of Justice for individuals;
- introduce a more democratic procedure for seats and languages;
- give Parliament the right of consent to the accession of new states;
- give Parliament the right of consent to treaty changes.

Treaty revision

There are two further reforms of major constitutional importance. The first concerns the method of future treaty change.

Although its capacity to act autonomously in coordination with its states is large, our proposed federal union is not a federal state. It will not enjoy the power of general competence. Some key constitutional decisions will reside with the states, such as the accession of new members and the conferral of new specific competences on the Union. The EU institutions share the power to shape those decisions, but the ultimate decision rests with the states. Therefore, we keep unanimity for decisions of the Intergovernmental Conference which affect the competences of the Union, while introducing a more flexible and democratic procedure for treaty changes of lesser importance: we suggest a two-thirds majority.

Once the revised treaty package is agreed and signed off by the governments, it goes for ratification by all states according to their own constitutional requirements and by the European Parliament. However, the new treaty should enter into force either once ratified by four fifths of the states

according to their own constitutional requirements or if carried in a pan-EU referendum by a two-thirds majority. This less rigid approach to entry into force would bring the EU into line with all other international organisations and federal states, and avoid situations in which one recalcitrant state can take the rest hostage.

Associate membership

The second important constitutional change flows directly from the first. EU states cannot be forced against their will to join the euro and take the federal step. At the same time, such states cannot be allowed an open-ended possibility to pick and choose what they want from the EU and discard the rest. The point has been reached when yet more *à la carte* opt-outs and derogations risk fracturing the cohesion of the *acquis communautaire*. Free-riding means disintegration.

Instead, it would be cleaner and more robust to create a new category of associate membership for any member state which chose not to join the federal direction needed and desired by the majority. Each associate state would negotiate its own arrangement with the core. Rights and duties would be clear. Institutional participation would necessarily be limited. Continued allegiance to the Union's values would be required, but political engagement in the Union's objectives would be reduced.

Associate membership could also cater for the needs of Norway and Switzerland, seeking to improve on their present, different, unsatisfactory arrangements. Countries of the Western Balkans, needful of a long and stable phase of preparation for full membership, could find associate membership a useful interim position. And other third countries, notably Turkey, choosing for reasons of their own not to join the EU but desiring and deserving a permanent, structured relationship with it, might find associate membership to be a satisfactory lasting settlement.

A protocol to the Fundamental Law on associate membership is proposed.

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Such a Fundamental Law will strengthen the governance and cohesion of the Union and bolster democratic confidence in our common endeavour to build a better Europe.

It is hoped to publish a final version of the Fundamental Law before the summer in order that it can shape the political debate through to the European Parliamentary elections in May 2014, and to the election of the new Commission thereafter.