

# Towards common accord? The European Union contemplates treaty change

**Andrew Duff**

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# Executive summary

Andrew Duff returns to the current debate about EU treaty change. He previews emerging proposals from the European Parliament and European Commission, making reference to the recent report of the Franco-German experts as well as other relevant contributions.

Numerous events, not least the war in Ukraine, conspire to tempt the European Union to reform the way it is governed. Its present constitutional arrangements were

laid down in the Treaty of Lisbon in 2007 and are long overdue for revision. Treaty change, which inevitably disturbs the balance of power within the Union, will always be complex and controversial. The endeavour is “by common accord” among all 27 member-state governments, endorsed by their national parliaments (or, worse, referendums).<sup>1</sup> This means brokering a compromise package deal over a broad agenda, with something for all.

# Introduction

In recent months, parallel efforts have been made by the European Parliament and European Commission to articulate a prospectus for treaty amendment. The Council remains fearful and inarticulate, divided over the content and timing of any such reform.

Reformers in the European Parliament set about corralling their forces as long ago as 2017, but MEPs only managed to trigger a formal demand to reopen the treaties in 2022.<sup>2</sup> The Council has failed to respond to that initiative. As Parliament faces a general election in June next year, the pressure rises. Latterly, a larger report on treaty revision has been drawn up by the Constitutional Affairs Committee (AFCO) under the general rapporteurship of Guy Verhofstadt (Liberal) with the support of the Christian Democrat, Social Democrat, Green and Far Left groups.<sup>3</sup>

The Commission has been much less proactive than the Parliament in constitutional matters, uncertain what to say about its own role in a revised system of governance. But Ursula von der Leyen has now come off the fence, possibly as part of her campaign to win a second term as Commission President. In her State of the Union speech on 13 September, von der Leyen announced a series of “pre-enlargement policy reviews to see how each area may need to be adapted to a larger Union”.

“We will need to think about how our institutions would work — how the Parliament and the Commission would look. We need to discuss the future of our budget — in terms of what it finances, how it finances it, and how it is financed. And we need to understand how to ensure credible security commitments in a world where deterrence matters more than ever.”<sup>4</sup>

The Commission’s study will be delivered in the first half of 2024 in time for debate at the European elections. The Commission, according to von der Leyen, will be ready to play its part in a Convention. If Parliament and Commission can agree on a decent package of reforms, they will then expect the European Council, voting by simple majority, to trigger a Convention.<sup>5</sup>

There are many, of course, of a eurosceptic bent who claim that treaty change is not needed, regardless of enlargement. This is, at best, wishful thinking, at worst disingenuous. The Council has already proved itself incapable of fulfilling the potential of the Treaty of Lisbon. It has ducked critical decisions over fiscal union, has been weak in defence of the rule of law, and its foreign policy decisions are often shambolic. Too many member states believe that the rise of nationalism at home can be contained by inertia at the level of the European Union. Brexit is seen as entirely the fault of the British, with no regard to any deficiencies in the way the EU is run. And in any case, ‘Brussels’ is always useful to blame when things go wrong.

French President Emmanuel Macron, on the other hand, is far from alone in insisting that enlargement, not least to Ukraine, will be nigh impossible without a treaty revision. The entry of the Commission to the debate will encourage those who believe reform to be indispensable if the Union is to prosper. I focus here only on the most important institutional questions that require amendment of primary law. The priority is to increase the capacity of the Council to make democratic decisions.

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**To encumber the EU with yet more tasks without giving it more powers is a recipe for more failure.**

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In the constitutional discussions, there will probably be broad agreement on some questions of common policy, such as the need to upgrade public health from a supplementary to a shared competence of the Union.<sup>6</sup> But to encumber the EU with yet more tasks without giving it more powers is a recipe for more failure — further reducing public confidence in the European project and bringing comfort only to the nationalists.

## Ordinary Legislative Procedure

Central to its mission, Parliament proposes the widest possible extension of the ordinary legislative procedure involving qualified majority voting (QMV) in the Council plus codecision with the Parliament. It thus conforms to the main conclusion of the recent Conference on the Future of Europe, involving citizens.<sup>7</sup>

What Parliament proposes would have a dynamic effect on the pace and scope of European integration. Applying QMV to hitherto controversial areas, such as direct and indirect taxation, could hasten the achievement of fiscal union, without which the future of the eurozone can hardly be secured.<sup>8</sup> Significantly, too, decisions on economic

policy guidelines and the excessive deficit procedure would become subject to the ordinary legislative procedure.<sup>9</sup>

The recent reflection paper of twelve experts appointed by the French and German governments supports the generalised introduction of the ordinary legislative procedure. The Group of 12 advise that a “sovereign safety net” — in other words, recourse to the European Council where vital national interests are at stake — should be introduced to all those areas that newly switch to QMV.<sup>10</sup>

To soften the impact of the extension of QMV on less populous states, the Group of 12 recommend that the system of QMV in the Council changes from the Lisbon formula of 55% of states representing 65% of the population to 60% of states representing 60% of the

population.<sup>11</sup> AFCO also proposes a modification, but a different one: normal QMV would be 2/3 of the states representing 50% of the population. ‘Super-QMV’ would be 4/5 of states representing 50% of the population, as against the Lisbon formula of 72% of the states representing 65% of the population.<sup>12</sup> Other views are available — including square root methodology (which I prefer), or a return to the original banding system of the Treaty of Rome.<sup>15</sup>

Parliament is proposing to expedite the passage of laws under the ordinary legislative procedure by introducing a time limit (of one year) on the first reading of a draft law.<sup>14</sup> At the second reading, Parliament wishes to reduce the threshold of votes it needs to reject the Council’s position from an absolute to a simple majority.<sup>15</sup>

## Deploying the passerelle

The ‘passerelle’ or bridging clause of the Treaty of Lisbon allows for the abolition of special laws of the Council and for any unanimous Council decision to be transferred to QMV.<sup>16</sup> However, the requirement for unanimity to deploy the passerelle has rendered the clause inoperable. Parliament repeats its previous demand that the passerelle should be triggered by QMV and not by unanimity. Crucially, the scope of the passerelle is widened to include decisions on EU revenue (‘own resources’), the multi-annual financial framework (MFF), the so-called ‘flexibility clause’, and the rule of law measures.<sup>17</sup> We discuss these further below. Curiously, however, no proposal is made to eliminate the possibility of a veto against the use of the passerelle by one national parliament.<sup>18</sup>

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If the Commission and Council can agree to nothing else, they should agree to the modification of the passerelle clause (Article 48(7) of the Treaty on European Union (TEU)). Without facilitating gradual steps towards more democratic voting in the Council, the EU’s constitutional evolution will be hobbled, and its capacity to act effectively limited. Retaining national veto powers as they are could make the enlarged Union of 30 + members unmanageable.

## Parliamentary powers

Several adjustments are proposed to strengthen the powers of the Parliament. At present, the Commission has the sole right to initiate legislative acts of the Union.<sup>19</sup> Parliament can and does request the Commission to initiate draft legislation.<sup>20</sup> Parliament, however, now seeks to seize the right of initiative from the Commission, interpolating itself as the instigator of a draft law at the first reading stage of the ordinary legislative procedure.<sup>21</sup>

This rather crude proposal disturbs the institutional balance of the treaties by undermining the Commission’s prerogative, the central feature of the supranational method of Jean Monnet. If carried, the reform would have unintended consequences: the Council would no doubt seek the same legislative right for itself.<sup>22</sup> It is a myth

peddled by nationalists that the European Parliament lacks legitimacy because it cannot initiate laws directly. In most states it is the government not the parliament that controls the legislative agenda. The EU’s main problem is the lack of a credible government, not the absence of an effective parliament.

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More sensible is Parliament's proposal to enhance its committees of enquiry by attaining the power to subpoena witnesses.<sup>23</sup> Significantly, Parliament seeks the right to take a member state to the Court of Justice for failure to fulfil an obligation under the treaties.<sup>24</sup> MEPs would also improve access to the Court for the citizen by modifying the stipulation under which proceedings can be initiated for breaches of EU law.<sup>25</sup>

As already noted, Parliament is demanding full powers of codecision with the Council over EU revenue ('own resources') and the setting of the MFF.<sup>26</sup> AFCO and the Group of 12 want to renew the MFF every five years, during each parliamentary term. These reforms would represent a big breakthrough in the consolidation of the parliamentary character of the Union. It cannot be presumed that all members of the Council will object to this democratic advance: the onus on national finance ministers to agree on European fiscal matters by unanimity produces lengthy and neuralgic quarrels — not always with optimum results. The change to QMV in the Council and the introduction of Parliament as a full fiscal player will be transformative.

While envisaging a steady expansion of the size of the EU budget, the Franco-German experts are more cautious than Parliament about introducing QMV. They merely recommend that coalitions of willing

member states should jointly finance specific policies, and that the EU should be enabled to issue common debt "in the future".<sup>27</sup>

Propelling the Union forward in the federal direction is the proposal to switch from unanimity to QMV the decision-making procedure in Article 352 of the Treaty on the Functioning of the European Union (TFEU). This 'flexibility' clause implies powers for the Union not explicitly conferred by member states, allowing the EU to attain the objectives of the treaties by adopting new powers beyond those already laid down. It has been used extensively to deal with new challenges, such as enlargement and the establishment of agencies, but its use under the shadow of the national veto has more recently been limited. Its deployment by QMV would be of major constitutional significance, elevating the doctrine of implied federal powers.<sup>28</sup>

Parliament wishes to strengthen its role in the delegation to the Commission of emergency powers. It would impose codecision for the deployment of the 'solidarity clause' if a member state is under attack or the victim of a natural or man-made disaster.<sup>29</sup> The Commission may feel it sufficient to keep the existing system whereby special measures can be taken in an energy or economic crisis, but to adapt the procedure to codecision (as the Group of 12 suggest).<sup>30</sup>

## Rule of law

After a long struggle to define its 'European identity', the EU has finally lighted upon the concept of the rule of law. This is the leitmotif which justifies the integration of Europe, around which all EU member states and institutions are requisitioned to gather. It is the rule of law that differentiates the European Union from Putin's Russia and Xi's China. Without a common regime of rule of law there would not be not so much to bind the Union together in a federal pact. The rule of law is a practical instrument implying uniform application across all member states of EU legislation and regulation. The rule of law is also an article of faith reflecting the liberal and democratic values enshrined in Article 2 TEU. Constant vigilance by the Commission, backed up by Parliament, is required to police the rule of law. The European Court of Justice is seized when errors and backsliding are detected, as they are.

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In recent years, and in several instances, the right-wing nationalist governments of Hungary and Poland have openly flouted the EU's rule of law. The Commission and Parliament have grown increasingly frustrated in their efforts to rectify these deficiencies. However, under Article 7(2) TEU, the pertinent clause designed for this purpose, the European Council can only act by unanimity (minus the offending state) to determine the existence of a serious and persistent breach of the rule of law.<sup>31</sup> Because Hungary and Poland have protected each other under this procedure, Parliament now proposes to introduce QMV and codecision in order to submit the matter of contention to the Court of Justice for determination.

The Group of 12 propose that the European Council should act here by 4/5 majority. They recommend inserting time limits for the conduct of the procedure.<sup>32</sup> Parliament supports the increased use, already tried by the Commission, of financial penalties to punish offenders, and the Group of 12 suggest the automatic imposition of sanctions after a five-year delay.

# Electoral reform

The European Parliament, like parliaments everywhere, has found it difficult to grapple with electoral reform. It has failed to initiate a fair, durable and transparent system for the apportionment of seats between the member states. Although Parliament has expressed itself, albeit nervously, in favour of the introduction of a pan-European constituency for which a portion of MEPs will be elected from transnational party lists, it has not pressed its case.<sup>33</sup> Unfortunately, in its latest package of proposals, Parliament again passes up the opportunity to establish in primary law the system of transnational lists.

Parliament, however, would prefer the Council to act by QMV and not unanimity in agreeing on its own proposals on electoral procedure. And it would abolish the role of national parliaments in endorsing changes to the European electoral system.<sup>34</sup>

At present, the Commission President is nominated by the European Council, acting by QMV, and Parliament elects or rejects the candidate by an absolute majority.<sup>35</sup> Parliament now proposes precisely to invert that procedure, awarding itself the right to make the nomination. The possibility that no candidate wins an absolute majority in the House is not addressed. The Group of 12 hopes, probably in vain, that a binding inter-institutional agreement can be reached between Parliament and Council over the selection of von der Leyen's successor in 2024.<sup>36</sup>

Without transnational lists, however, federal political parties will not develop, leaving Parliament's claim to full legitimacy vulnerable. Only a uniform electoral procedure and a robustly competitive European party system will justify its claim to be able to appoint a winning party *Spitzenkandidat* to the top job in the Berlaymont. Another of Parliament's proposals, to hold EU-wide referendums on important matters, looks equally implausible without proper political parties to fight them.<sup>37</sup>

Although she favours transnational lists, von der Leyen will find it difficult to criticise these proposals if she herself is a candidate. The Commission is bound to argue the importance of respecting the principle of institutional balance in the constitutional set-up of the Union whose legitimacy is founded on the joint basis of state sovereignty represented in the Council and popular sovereignty represented in Parliament. Because the treaties establish a bicameral legislature of Parliament and Council, it is important to aim for collaboration between them and avoid conflict, not least in control of the executive.

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It will be useful, therefore, if the Commission comes up with its own pre-enlargement proposal for the installation of transnational lists. This would involve modifying Article 14 TEU to remove the dissonance between the new federal element and the existing principle of degressive proportionality that must apply to the distribution of the national or regional seats.<sup>38</sup> At the same time, the Commission should back the Group of 12 in advancing the fair, simple and durable 'Cambridge Compromise' formula for the distribution of national and regional seats between member states.<sup>39</sup> If progress is not made now, there will be little chance of electoral reform of the Parliament until after the 50th anniversary of the introduction of direct elections in 2029.

# Reforming the Commission and Council

Although Ursula von der Leyen's views on the size of the Commission are unknown, her predecessor Jean-Claude Juncker came to believe that the college would do better without one member per member state. Indeed, the Treaty of Lisbon prescribes a college of 2/3 the number of states.<sup>40</sup> Parliament now proposes to insist on a smaller college not only for reasons of economy and efficiency, but also to reduce the number of bodies in Brussels where member state governments are already fully and adequately represented.<sup>41</sup> Another useful proposal from AFCO is to allow for the censure of an individual Commissioner.<sup>42</sup>

The Group of 12 also want to reduce the Commission's size — otherwise proposing a disconcertingly complicated system of two classes of voting and non-voting Commissioner.

In spite of its evident frustration at the Council's handling of legislative trilogues and the tendency of every Council presidency to kick the constitutional can down the road, the European Parliament misses this opportunity to tackle reform of the Council. The Franco-German experts do not hang back, criticising the variable quality of the

six-monthly rotating presidencies and the incoherence they bring to the Union's political and legislative affairs.<sup>43</sup> Their solution is to extend the current experiment of 'trio presidencies' to quintets, led by a large member state,

spread over two and a half years.<sup>44</sup> I have proposed a more radical solution, abolishing the rotating system entirely and obliging the European Council to take more direct responsibility for the performance of its junior partner.<sup>45</sup>

## International affairs

One of President von der Leyen's motives for embracing treaty change is to prepare the Union to shoulder more responsibility in foreign policy, security and defence. Many people have lamented that decisions of the Council in the area of external relations are so constrained by the need for unanimity.<sup>46</sup> The European Parliament proposes a wholesale conversion to QMV, including on sanctions policy, as well as the lifting of the restrictions currently placed in this sector on the oversight of the Court of Justice.<sup>47</sup> MEPs would demolish the complex apparatus erected in the Lisbon treaty around policymaking in security and defence. They would expand EU competence in arms procurement and military operations. A Defence Union would be established on the assumption of a mutual defence guarantee.<sup>48</sup> Parliament would obtain the powers of codecision with the Council, acting throughout by QMV.

The Group of 12 would transfer decisions on defence initiatives, such as use of the Peace Facility or Defence Fund, to QMV. But national sovereignty would be protected when it came to participation in military operations.

These proposals will be certain to alarm member states, although they should not fight shy of sensible measures intended to simplify Council decision-making procedures in foreign policy. Building common policies in foreign affairs and security and defence policy requires a degree of trust tested and sustained over time — a condition which does not pertain in today's EU and will not be easily remedied by insisting simply on

QMV. Over-simplification of rules of governance in this sensitive area risks unintended consequences.

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Nonetheless, the Commission, for its part, should support the basic introduction of QMV in the Council for common foreign and security policy.<sup>49</sup> This reform should be tempered by the possibility of a last resort appeal to the European Council as well as the more widespread use of constructive abstention.<sup>50</sup> Flexible rules on sanctions are urgently needed. And the judicial authority of the Court of Justice must be enhanced commensurate with the deepening of CFSP. A decent compromise is eminently possible here — made much easier, in truth, by the recent departure of the British.

Equally, Parliament is justified in claiming the right of codecision and QMV throughout the treaty provisions on trade negotiations and other international treaties, including association agreements.<sup>51</sup>

## Enlargement

Despite the looming necessity of responding to Ukraine's membership bid, Parliament makes only one proposal to amend the enlargement process. This is to stipulate, in accordance with jurisprudence from the Court of Justice, that a member state must continue also after accession to respect the membership criteria.<sup>52</sup> Parliament is silent on the question of differentiated membership. The Commission can be expected to be more adventurous.

The Group of 12 propose that each chapter in the formal accession catalogue should be closed by QMV rather than unanimity (although they keep unanimity for the final decision).<sup>53</sup> They also suggest that member states newly

acceded should be prevented from vetoing those coming behind — a particularly pertinent stipulation as far as the Western Balkans are concerned.

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The experts envision four concentric circles in the current EU: the first tier is the federal core of the Union, comprising the eurozone; the second is made up of all 27 member states; associate countries, such as Norway, form the third tier, based on membership of the single market; and the fourth tier, including Azerbaijan and Britain, are merely represented in the conference of the European Political Community. The Group of 12 are tempted by the prospect of a more structured European Political Community, coordinated by the Commission.

I have proposed, on the other hand, the invention of a new formal category of affiliate or partial membership of the Union, either by way of a transition stage to full membership, or as a permanent parking place for countries unable or unwilling to become full member states in an increasingly federal union.<sup>54</sup> The European Political Community could be the precursor of a European security council.

## How to change the treaty

Understanding that the current Lisbon rules on how to change the treaty must apply to the next revision, Parliament rightly pays attention to how to change the treaties in future.<sup>55</sup> Annoyed by the Council's refusal to transmit its proposals of June 2022 to the European Council, Parliament would eliminate the Council's discretion in this matter.<sup>56</sup>

Taking the plunge, Parliament wants the Intergovernmental Conference (IGC) to agree on future treaty amendments by 4/5 majority. It demands the right of European Parliamentary consent to the amendments. And it would have them enter into force once ratified by only 4/5 of the member states. In the case that the new treaty is not ratified after two years, an EU-wide referendum would be held.<sup>57</sup>

This is radical stuff. While the member states will hardly agree to the IGC acting by anything other than "common accord", the other changes recommended by Parliament make eminent sense. In particular, the flexible method

of ratification proposed would avoid the procrastination and prevarication that impaired the expeditious entry into force of the Treaties of Maastricht, Nice and Lisbon. It would also bring the constitutive processes of the EU into line with other federal bodies or international organisations. Parliament's proposal is a distinct improvement on the present treaty provision, spun out of the Constitutional Treaty of 2004, which says merely that when 4/5 of the states have ratified but others will not, "the matter shall be referred to the European Council".<sup>58</sup>

The Group of 12 wonder how to cope with unanimity when it comes to treaty revision. Their proposal to squeeze more reform out of the opportunity provided by accession treaties is controversial and probably unworkable. Their suggestion that uncooperative states should apply for formal opt-outs over whole sectors of policy harks back to British days. In case of ultimate constitutional blockage, the experts propose that a core group of states devise a supplementary federalist treaty, effectively leaving the old EU behind.<sup>59</sup>

## Differentiation

Certainly, given the federalist tendencies of Parliament, coupled with the pressures of enlargement, there will be a greater need for more differentiation between the federally minded states and the rest. The enhanced cooperation provisions of Lisbon already allow a core group of integrationist states to go further and faster than those who would hold back. Parliament is right, therefore, to propose to enable the Council to authorise the use of enhanced cooperation in foreign and security policy by QMV instead, as of now, by unanimity.<sup>60</sup> To defend their interests, the eurosceptic states may press for more entrenched rights beyond those already laid down in Lisbon.<sup>61</sup> Equally, one wonders why

Parliament is not proposing the deletion of the "last resort" stipulation that now applies before enhanced cooperation can be envisaged.<sup>62</sup>

It is fair to add that the current debate over differentiated integration, within or without the Union, has a slightly unreal quality to it. When France and Germany continue to disagree with each other over so many matters — including immigration, fiscal and energy policies — it is not easy to see where the federal core group is coming from. Both Paris and Berlin would benefit from a return to constitutional issues that have lain dormant for twenty years.

# Plenary

The AFCO report, supported by 20 votes to 6 in committee, is scheduled for the vote in plenary in late November. Hostile amendments are certain to be tabled by the nationalist right-wing. Inevitably, from such a large parliamentary exercise there will be glitches and inelegance. A decisive contribution from President von der Leyen's 'geopolitical' Commission can help to rectify mistakes, fill some lacunae and build compromises.

Mario Draghi has agreed to publish a report on improving the EU's economic performance as a complement to the Commission's own pre-enlargement exercise. One expects him to argue that fiscal union is an essential objective and to propose a blueprint to achieve it.<sup>65</sup> Some of his recommendations, for example, regarding the powers of the European Central Bank and the issuance of common debt, will involve treaty change.

The European Parliament has so far remained timid on the matter of the powers of the European Central Bank. However, it wishes to develop the role of the European Court of Justice as a federal supreme court. This will not be well received by those national constitutional courts that seem ready to contest the basic concept of the primacy of EU law. The Group of 12 propose to formalise consultation between the Court of Justice and national courts, although this hardly seems an advance on present informal arrangements.<sup>64</sup>

In a recent flurry of (somewhat rhetorical) 'non-papers', various member-state governments show an inclination for action.<sup>65</sup> Ex-bigwigs get in on the act, late, in favour of a "gradual and pragmatic federalism".<sup>66</sup> Resolution of the EU's constitutional dilemmas, however, can only be expected through the work of a new Convention

that widens the agenda, takes a holistic view of political change in the Union, and focusses debate beyond the binary clash between Parliament and Council. The fact is that all the Union's institutions need improvement. The unique contribution of a democratic Convention is to bring everyone who matters to the same table at the same time to talk about the same thing — and to do so in public.

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The European Council must be persuaded to vote to open a Convention to start in 2025. If the decision to open the treaties is combined with a period of further preparation before the Convention, so be it: a group of independent experts could well be charged to draft options for treaty amendments for the consideration of the Convention.<sup>67</sup>

The delicacy of constitutional reform in the European Union demands careful reflection, powerful persuasion, democratic zeal, and European vocation. Real common accord, indeed.

- <sup>1</sup> Article 48(4) Treaty on European Union (TEU).
- <sup>2</sup> OJ C 252, 18-07-2018 and OJ C 493, 27-12-2022. See *Raising the stakes on constitutional reform: The European Parliament triggers treaty change*, Discussion Paper, European Policy Centre, 6 March 2023.
- <sup>3</sup> Draft Report on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).
- <sup>4</sup> [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_23\\_4426](https://ec.europa.eu/commission/presscorner/detail/en/speech_23_4426)
- <sup>5</sup> Article 48(3) TEU.
- <sup>6</sup> In other words, promotion from Article 6 Treaty on the Functioning of the European Union (TFEU) to Article 4.
- <sup>7</sup> Conference on the Future of Europe, *Report on the Final Outcome*, May 2022.
- <sup>8</sup> Articles 113 & 115 TFEU.
- <sup>9</sup> Articles 121 & 126 TFEU.
- <sup>10</sup> *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Report of the Franco-German Working Group on EU Institutional Reform, Paris-Berlin, 18 September 2023, pp.24-26.
- <sup>11</sup> Articles 16(4) TEU & 238(3)(a) TFEU.
- <sup>12</sup> Article 238(3)(b) TFEU.
- <sup>13</sup> *Constitutional Change in the European Union: Towards a Federal Europe*, Palgrave Macmillan (Open Access), 2022, pp.46-47. The Rome treaty formula gave 4 points each to France, Germany and Italy, 2 each to Belgium and Holland, and 1 to Luxembourg: QMV was 12 votes.
- <sup>14</sup> Article 294(4) TFEU.
- <sup>15</sup> Article 294(7)(b) TFEU.
- <sup>16</sup> Article 48(7) TEU.
- <sup>17</sup> Article 353 TFEU.
- <sup>18</sup> For a better formulation, see *Five Surgical Strikes on the Treaties of the European Union*, European Papers, vol.8, no 1, April 2023, pp.13-15.
- <sup>19</sup> Article 17(2) TEU.
- <sup>20</sup> Article 255 TFEU.
- <sup>21</sup> Article 294 TFEU.
- <sup>22</sup> Article 241 TFEU.
- <sup>23</sup> Article 226 TFEU.
- <sup>24</sup> Article 259 TFEU.
- <sup>25</sup> Article 263(4) TFEU.
- <sup>26</sup> Articles 111 & 112 TFEU.
- <sup>27</sup> *Sailing on High Seas*, *op cit*, p. 33.
- <sup>28</sup> See Luca Lionello, *A Leap Towards Federalisation?*, *Verfassungsblog*, 22 September 2023.
- <sup>29</sup> Article 222 TFEU.
- <sup>30</sup> Article 122 TFEU.
- <sup>31</sup> Article 354 TFEU.
- <sup>32</sup> *Sailing on High Seas*, *op cit*, pp. 16-19.
- <sup>33</sup> Election of the Members of the European Parliament by direct universal suffrage, P9\_TA(2022)0129, 3 May 2022.
- <sup>34</sup> Article 223(1) TFEU.
- <sup>35</sup> Article 17(7) TEU.
- <sup>36</sup> See Declaration 11 annexed to the Treaty of Lisbon.
- <sup>37</sup> Article 11(4)(b) new.
- <sup>38</sup> See, for example, the proposal in *Five Surgical Strikes*, *op cit*, pp.10-12.
- <sup>39</sup> The CamCom method gives every state a base of 5 seats plus an allocation proportionate to the size of their total resident population after rounding upwards. See *Constitutional Change*, *op cit*, pp.43-46.
- <sup>40</sup> Article 17(6) TEU.
- <sup>41</sup> Article 285 (TFEU).
- <sup>42</sup> Article 17(8) TEU.
- <sup>43</sup> *Comment on the Exercise and Order of the Presidency of the Council of the EU*, CM2305, Meijers Committee, May 2023.
- <sup>44</sup> *Sailing on High Seas*, *op cit*, p.21.
- <sup>45</sup> *Constitutional Change*, *op cit*, pp.18-21.
- <sup>46</sup> See Nicole Koenig, *Towards QMV in EU Foreign Policy: Different Paths at Multiple Speeds*, Policy Brief, Hertie School Jacques Delors Centre, 14 October 2022.
- <sup>47</sup> Articles 24(1) & 275 TFEU.
- <sup>48</sup> Article 42(7) TEU.
- <sup>49</sup> Article 24(1) TEU.
- <sup>50</sup> Article 31(1) TEU.
- <sup>51</sup> Articles 207 & 218 TFEU.
- <sup>52</sup> Article 49 TEU. See the Court's judgments in *Repubblika*, C-896/19, 20-04-2021 and joined cases *Hungary*, C-156/21 & *Poland*, C-157/21, 16-02-2022.
- <sup>53</sup> *Sailing on High Seas*, *op cit*, pp.35-45.
- <sup>54</sup> *Five Surgical Strikes*, *op cit*, pp.15-16.
- <sup>55</sup> Article 48 TEU.
- <sup>56</sup> Article 48(2) TEU.
- <sup>57</sup> Article 48(4) TEU. See *Five Surgical Strikes*, *op cit*, pp.12-13.
- <sup>58</sup> Article 48(5) TEU.
- <sup>59</sup> *Sailing on High Seas*, *op cit*, pp.37-38.
- <sup>60</sup> Article 329(2) TFEU.
- <sup>61</sup> Article 20 TEU.
- <sup>62</sup> *Constitutional Change*, *op cit*, pp.30-31.
- <sup>63</sup> *Mario Draghi on the path to fiscal union in the euro zone*, Europe's economic challenges, *The Economist*, 6 September 2023.
- <sup>64</sup> *Sailing on High Seas*, *op cit*, pp.31-32. See also Joseph H.H Weiler & Daniel Sarmiento, *The Comeback of the Mixed Chamber: Institutional reform and competence creep in an enlarged Union*, *Verfassungsblog*, 2 October 2023.
- <sup>65</sup> For example, *Joint Statement of the Foreign Ministries on the Launch of the Group of Friends on Qualified Majority Voting in EU Common Foreign and Security Policy*, 5 May 2023; *Joint Non-paper on Open Strategic Autonomy of the EU*, July 2023; and *A French-German roadmap for the Capital Market Union*, 13 September 2023.
- <sup>66</sup> *European Integration at the Time of the New Cold War*, Euractiv.com, 5 October 2023.
- <sup>67</sup> Herman Van Rompuy & Brigid Laffan, *Adding Ambition to Europe's Unity*, 15 June 2022. Open letter co-signed by members of the High-Level Advisory Group of the Conference Observatory. A joint initiative by an international consortium comprising the Bertelsmann Stiftung, the European Policy Centre, the King Baudouin Foundation, and the Stiftung Mercator.

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