

## Improving the functioning of the EU Making fuller use of the Lisbon Treaty's provisions

The EU Treaties were last time amended by the Treaty of Lisbon, which entered into force on 1 December 2009. However, some of its provisions are not (yet) being exploited to the fullest. The own-initiative report on improving the functioning of the EU building on the potential of the Lisbon Treaty aims to identify this potential and ways to better exploit it. The plenary is due to discuss the report, jointly with two related reports, during the February II part-session.

### Background

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) form the legal backbone of the European Union. They were last substantially amended with the Treaty of Lisbon, which was signed on 13 December 2007 and entered into force on 1 December 2009, after having been ratified by all Member States (ignoring the addition in 2011 of [Article 136\(3\) TFEU](#) to enable the establishment of the European Stability Mechanism, using the simplified revision procedure). However, almost a decade after the signature of the Treaty, some of its provisions remain **un- or under-exploited**. This is the starting point of the own-initiative [report](#) on 'Improving the functioning of the European Union building on the potential of the Lisbon Treaty'. The report, on which work started back in 2014, makes suggestions on how to better exploit this potential in order to enhance the Union's capacity to respond to the multiple challenges it currently faces.

In this context, the '**unused potential**' of the Lisbon Treaty refers to different aspects of Union action. This includes, for example, the mechanism of 'Permanent Structured Cooperation' (PESCO) within the area of common security and defence policy, which has been introduced in the Treaties (Articles 42(6) and 46 TEU and Protocol 10) but has not so far been activated. The mechanism allows Member States with the necessary military capabilities, and which 'have made more binding commitments to one another' to intensify their defence cooperation within the Union framework. The 'Lisbon potential' addressed in the report also refers to Treaty provisions regarding, inter alia, the role of national parliaments in the EU and the '*passerelle* clauses'. The latter enable the European Council to authorise qualified majority voting (QMV) in Council in areas otherwise subject to unanimity rule, but have not been used to date. Finally, the sovereign debt crisis, which unfolded after the Lisbon Treaty entered into force, laid bare weaknesses within the current set-up of the economic and monetary union (EMU), which the report suggests to address. The report does not propose any treaty change but makes suggestions for improvements within the current legal framework, acknowledging that 'further fundamental reform' in the longer run would necessitate a revision of the Treaties.

### Suggestions for improvement

The suggestions for improvement put forward in the report are numerous, and cover different areas, including (1) the **institutional set-up** of the Union, (2) the **economic and monetary union**, (3) the Union's **external action**, in particular the common foreign and security policy and defence, and (4) **justice and home affairs**.

The report first and foremost calls for Union-wide solutions instead of unilateral action by Member States in facing the current challenges, and commits to preserving the '**Community method**'. The latter is generally understood as a system whereby the Commission puts forward proposals, Council and Parliament act as co-legislators (whereby the Council decides by qualified majority voting, QMV), and the Court of Justice carries out judicial scrutiny.

#### *Institutional set-up*

Among the various suggestions regarding Union institutions, the report envisages further strengthening the exercise by **Parliament** of the political control functions over the Commission, and expresses the intention to



make more use of *legislative initiative* of Parliament, as provided for in Article 225 TFEU. While the report emphasises the importance of political dialogue with **national parliaments**, it points out that the latter are best placed to exercise parliamentary scrutiny by controlling their governments at *national* level. The report expresses regret that current practice by the **European Council** goes beyond the letter and the spirit of Article 15(1) TEU, which entrusts the European Council an impetus-giving function but excludes the exercise of legislative powers. It encourages the European Council to make use of the '*passerelle*' provisions to switch to QMV, and calls for reinforced consultations of political groups with the European Council President before the election of a new President of the European Commission. The report encourages increased transparency and reform of the **Council** and suggests reducing the number of Council configurations. Such reform could entail a single legislative Council, supported by specialised configurations as preparatory bodies similar to those of parliamentary committees. With the aim of improving democratic legitimacy of euro-area decisions, the report suggests greater accountability of the **Eurogroup** to the Parliament.

#### *Economic and monetary union*

The report encourages further institutional reforms and deepening of the EMU, including its social dimension. This should in particular entail strengthened **democratic legitimacy and accountability** in the area, including the adoption of a 'Convergence Code' following the ordinary legislative procedure. The report calls for a more democratic European Semester process, by formalising the Parliament's scrutiny role within it, and endowing the Commission with adequate enforcement powers regarding EMU instruments. It also expresses the view that differentiated integration 'should remain open to all Member States'. The report reiterates the call to integrate the European Stability Mechanism (ESM) and the Treaty on Stability, Coordination and Governance ('Fiscal Compact') into the Union legal framework. It further cautions against creation of new institutions outside the EU framework and stresses that intergovernmental solutions should remain a measure of last resort.

Regarding the EU budget, the report once again expresses the wish for Union **own resources** which are *not dependent* on national GNI-based contributions ('genuine own resources'), and makes reference to the idea of fiscal capacity within the euro area (see the [draft report](#) on budgetary capacity for the Eurozone and a related 2016 EPRS [In-depth Analysis](#)).

#### *External action*

Against the backdrop of current foreign policy challenges, the report makes numerous suggestions regarding the Union's external action. It calls for, inter alia, strengthening the parliamentary oversight of Union external action and progressively switching to QMV for decisions without military or defence implications (as provided for in Article 31(3) TEU). It emphasises the need for progressive steps towards a **common defence policy**, including the establishment of Permanent Structured Cooperation (Article 46 TEU) as a first step. It recommends setting up a permanent Council of Defence Ministers, creating a permanent civilian and military headquarters, and enhancing EU-NATO cooperation.

#### *Justice and home affairs*

In the face of the terrorist threat, the report makes several suggestions in the area of justice and home affairs. They include, inter alia, a call for a 'systematic, mandatory and structured' **exchange of information** between law enforcement authorities and intelligence services, to be established on the basis of Article 352 TFEU, and for a comprehensive evaluation of EU's counterterrorism measures.

The report emphasises the need to establish a fair and effective **EU common asylum and immigration policy**, including fair redistribution of asylum-seekers within the EU. It calls for an urgent review of the Dublin Regulation, conclusion of agreements with safe third countries to control and reduce migration flows, and tackling the root causes of irregular migration. It emphasises the importance of improving the effectiveness of the EU's *return system* for migrants while upholding fundamental and procedural rights.

## European Parliament

The own-initiative report on 'Improving the functioning of the European Union building on the potential of the Lisbon Treaty' was adopted by the Committee on Constitutional Affairs (AFCO) on 8 December 2016.

A related but distinct report due to be discussed during the same plenary session is the [Verhofstadt report](#) on '**Possible evolutions and adjustments of the current institutional set-up of the European Union**'.

Own-initiative report: [2014/2249 \(INI\)](#); Committee responsible: AFCO; Rapporteurs: Mercedes Bresso, S&D, Italy and Elmar Brok, EPP, Germany.