

October 2017

The European Council and the 2017 State of the Union proposals

Introduction

In his 2017 [State of the Union](#) address to the European Parliament, the European Commission's President, Jean-Claude Juncker, [took stock](#) of EU developments over the past year and outlined his vision for the future of the EU, which would lead to a 'more united, stronger and more democratic Europe'. His vision consists of five proposals which would require a decision by the European Council, as well as one suggestion which would directly impact on the composition and working methods of this EU institution. The five proposals are: 1) using the general *passerelle* clause to shift from unanimity to qualified majority voting (QMV) in the Council on remaining internal market issues and aspects of taxation policy; 2) moving to QMV in the field of Common Foreign and Security Policy (CFSP); 3) setting up a European Defence Union; 4) extending the competences of the European Public Prosecutor's Office; 5) agreeing on a new composition for the European Parliament, including transnational lists. The additional suggestion is to merge the positions of President of the European Council and European Commission.

In principle, all proposed initiatives could be carried out without a Treaty change. The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) include a series of clauses enabling the European Council to go beyond the current status quo. In three cases, the European Council would need the consent of the European Parliament before taking its decision. A comparison between President Juncker's proposals and the views of the European Parliament indicates that their opinions overlap regarding four of the ideas, while on one of them, discussions in the Parliament are still ongoing (see Table 1 below).

1. Shifting from unanimity to QMV on remaining internal market issues and aspects of taxation policy

Juncker proposal

The first call for action was directed towards the Heads of State or Government, and aims to extend the use of QMV on remaining single market policy issues where unanimity applies (e.g. Article 64 and 65 TEU) as well as regarding certain aspects of taxation policy. President Juncker stated that 'when it comes to important single market questions, I want decisions in the Council to be taken more often and more easily by qualified majority – with the equal involvement of the European Parliament'. The *passerelle* clauses included in the current Treaties allow for a move from unanimity to QMV in certain areas – if all Heads of State or Government agree to do so – without Treaty change. In President Juncker's view, the EU should also move 'to qualified majority voting for decisions on the common consolidated corporate tax base, on VAT, on fair taxes for the digital industry, and on the financial transaction tax'.

Treaty basis

Article [48\(7\) TEU](#) allows the European Council to unanimously adopt a decision which authorises the Council to change from unanimity to qualified majority voting in this policy area. The European Council needs the consent of the European Parliament (given by a majority of its component members), as well as the notification of national parliaments. If any national parliament signals its opposition within six months of the date of such notification, the decision to move from unanimity to QMV shall not be adopted. The combination of unanimity in the European Council and the possible objection of a national parliament makes it difficult to activate a *passerelle* clause.

European Parliament view

In its [resolution](#) of 16 February 2017 on 'improving the functioning of the European Union building on the potential of the Lisbon Treaty', the European Parliament 'called on the European Council to make use of the *'passerelle* clause' (Article 48(7) TFEU) authorising the Council to switch from unanimity to QMV in applicable cases where the Treaties currently require unanimity'. In another [resolution](#) adopted the same day on 'possible evolutions of and adjustments to the current institutional set-up of the European Union', the Parliament called 'for a further reduction of the voting procedures in the Council from unanimity, wherever it is still applied, for example in foreign and defence matters, fiscal affairs and social policy, to qualified majority, for the existing special legislative procedures to be converted into ordinary legislative procedures, and for the full replacement of the consultation procedure by codecision between Parliament and Council'.

2. Moving from unanimity to QMV on certain Common Foreign and Security Policy (CFSP) issues

Juncker proposal

President Juncker argued that 'in order to have more weight in the world, we must be able to take foreign policy decisions quicker'. Consequently, he proposed that Member States 'look at which foreign policy decisions could be moved from unanimity to qualified majority voting'. He indicated that the Treaty already provides for this possibility if all Member States agree.

Treaty basis

[Article 31](#) TEU includes a special *passerelle* clause which provides the European Council with the possibility to move some aspects of the common foreign and security policy from unanimity to qualified majority voting in the Council.¹ This *passerelle* clause does not apply to decisions with military or defence implications.

European Parliament view

In its [resolution](#) on 'possible evolutions of and adjustments to the current institutional set-up of the European Union', the Parliament called 'for a further reduction of the voting procedures in the Council from unanimity, wherever it is still applied, for example in foreign and defence matters...'

3. Setting up a European Defence Union

Juncker proposal

With regard to CFSP, the President of the European Commission called for a 'fully fledged European Defence Union' by 2025. Intermediate steps would include a new European Defence Fund, as well as the implementation of [Permanent Structured Cooperation](#) (PESCO) in the area of defence. At its meeting on [22-23 June 2017](#), the European Council already expressed 'its commitment to strengthening EU cooperation on external security and defence', and called for the establishment of 'an inclusive and ambitious Permanent Structured Cooperation' in this policy area. The European Council on 19-20 October 2017 is to discuss this issue, and PESCO should be launched in December 2017, as recently [indicated](#) by the European Council President, Donald Tusk.

Treaty basis

As a first step, the TEU envisages the progressive framing of a common Union defence policy. Moving on to the next stage of setting up a common defence requires, under [Article 42\(2\)](#) TEU, a unanimous decision by the European Council.

European Parliament view

President Juncker's statements on this issue have echoed to a great extent the opinion of the European Parliament. In its resolution on 'improving the functioning of the European Union building on the potential of the Lisbon Treaty', the European Parliament 'called for progressive steps to be taken towards a common defence policy (Article 42(2) TEU) and, eventually, a common defence, which can be set up by unanimous decision of the European Council'. In the above-mentioned second resolution - adopted in February 2017 -

¹ To change from unanimity voting to QMV on Common Foreign and Security Policy issues in the Council, one could use the general *passerelle* clause of Article 48(7) TFEU.

the European Parliament stressed 'the need for the swift establishment of a European Defence Union to strengthen the defence of the EU's territory...'. Previously, in its [resolution](#) of 22 November 2016 on the European Defence Union, the European Parliament 'encourage[d] the European Council to lead the progressive framing of a common Union defence policy'.

4. Extending the tasks of the European Public Prosecutor's Office to cross-border terrorist crimes

Juncker proposal

With regard to the fight against terrorism, President Juncker argued the case 'for tasking the new European Public Prosecutor with prosecuting cross-border terrorist crimes.' Furthermore, in June 2017, 20 Member States agreed, under enhanced cooperation, on the creation of the [European Public Prosecutor's Office](#) (EPPO). The European Parliament gave its [consent](#) to the Council Regulation implementing enhanced cooperation on 5 October, with the 20 Member States subsequently adopting it on 12 October, enabling the EPPO to be established in the near future. Currently the scope of the EPPO is limited to investigating fraud and other crimes affecting the Union's financial interests. President Juncker's suggestion to task the EPPO with prosecuting cross-border terrorist crimes would significantly expand its competences, but is technically possible under current EU law.

Treaty basis

[Article 86\(4\)](#) TFEU provides the possibility for the European Council to unanimously 'extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension...'. To take such a decision, the European Council first needs to obtain the consent of the European Parliament, after having consulted the European Commission.

European Parliament view

While the European Parliament has been very active² on the issue of the EPPO, it has not made any proposals to expand the EPPO's role beyond its financial remit. In its [resolution](#) of 29 April 2015 on the original proposal for a Council regulation on the establishment of the EPPO, the Parliament acknowledged the possibility, provided for in Article 86 TFEU, of extending the powers of the EPPO to include serious crimes having a cross-border dimension, and considered that this option might be taken up by the Council, once the EPPO has been established and is functioning well.

5. Composition of the EP/transnational lists

Juncker proposal

In his speech, President Juncker expressed his 'sympathy for the idea of having transnational lists', because 'such lists would help make European Parliament elections more European and more democratic'.

Treaty basis

[Article 14\(2\)](#) TEU states that 'the European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph'.

European Parliament view

In its resolution of February 2017 on 'possible evolutions of, and adjustments to, the current institutional set-up of the European Union', the European Parliament supported 'the European Council Decision of 28 June 2013 to establish a system which will make it possible, before each election to the European Parliament, to reallocate the seats among Member States in an objective, fair, durable and transparent way, respecting the principle of degressive proportionality, while taking account of any change in the number of Member States and demographic trends'.

² [European Parliament resolution of 12 March 2014 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office](#), [European Parliament resolution of 29 April 2015 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office](#).

The [draft report](#) on the composition of the European Parliament, currently being discussed in the Parliament's Constitutional Affairs Committee, argues for a reduction in the size of Parliament, following the UK's withdrawal from the EU, thus 'leaving sufficient room for manoeuvre to accommodate potential future enlargements of the EU and members elected in a joint constituency'. Although the rapporteurs envisage a joint constituency with transnational lists being put in place by the 2024 European elections, they argue that the uncertain legal position linked to Brexit means a permanent system could not be introduced by 2019.

6. Merging the positions of President of the European Council and President of the European Commission

Juncker proposal

President Juncker proposed to merge the offices of the Presidents of the European Commission and the European Council, as 'Europe would be easier to understand if one captain was steering the ship'. He adds that 'having a single President would better reflect the true nature of our European Union as both a Union of States and a Union of citizens'.

Treaty basis

As argued by academics,³ the EU Treaties do not rule out the possibility of the offices of European Council President and the European Commission President being held by the same person. [Article 15\(5 and 6\) TEU](#) outlines the [role of the European Council President](#). While the Treaty clearly states that the European Council President 'shall not hold a national office' (Article 15(6) TEU), it does not specify that it is forbidden to hold another European office. In fact, both Herman Van Rompuy and Donald Tusk also served as President of the Euro Summit while holding the post of European Council President.

European Parliament view

In a resolution of February 2017 on 'possible evolutions of, and adjustments to, the current institutional set-up of the European Union', the European Parliament has already expressed the view that 'citizens can barely comprehend the interrelationship of the Presidents of the Commission and the European Council'. Moreover in its [resolution](#) on 'improving the functioning of the European Union building on the potential of the Lisbon Treaty', the Parliament reiterated that 'although not in the interest of the European Parliament, it is possible to merge the function of President of the European Council with that of President of the Commission'.

Table 1 – Comparison of Juncker's State of the Union proposals and European Parliament's views

Issue	Juncker proposal	European Parliament
Using the general passerelle clause	In favour	In favour
Using the specific passerelle clause in Common Foreign and Security Policy	In favour	In favour
Establishing the European Defence Union	In favour	In favour
Extending the role of the European Public Prosecutor's Office to terrorism	In favour	In favour, after a certain period
Transnational lists for the 2019 European Parliament	In favour	Discussion ongoing
Merging the positions of Presidents of European Council and European Commission	In favour	Acknowledged the possibility

To contact the European Council Oversight Unit, please e-mail: EPRS-EuropeanCouncilOversight@ep.europa.eu

Manuscript completed in October 2017. Brussels © European Union, 2017.

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www.europarl.europa.eu/thinktank (Internet) – www.eptthinktank.eu (blog) – www.eprs.sso.ep.parl.union.eu (Intranet)

³ e.g. Frederic Eggermont, 'The changing role of the European Council in the institutional framework of the European Union, published by Intersentia METRO, 2012.