

ECR Group briefing on Verhofstadt/Simon/Bischoff/Freund/Scholz report on changes to EU treaties in accordance with the procedure of Art. 48 TEU

Background

On Wednesday 22 November, the European Parliament is expected to approve a report and resolution, initiating the procedure to amend the EU Treaties under Article 48 of the Treaty on European Union (TEU). This move is a sequel to the Conference on the Future of Europe (CoFoE), a forum criticised for its lack of diversity and open debate, largely amplifying voices supportive of an empowered EU.

In place of the open discussion promised in the "Joint Declaration on the Conference", the CoFoE turned into a carefully supervised, top-down jamboree, pretending to form a definitive consensus among European citizens on the direction the EU should take. Procedural manipulations were used to fabricate a so-called demand for changes in the institutional structure of the EU as if it were a grass-roots initiative of citizens. From the very beginning and throughout the process, the pro-federalist majority called the shots. It was not hidden that the aim of the entire project was to create an atmosphere in which the establishment of a convention to amend the Treaties and give more competences over from the Member States to the EU Institutions, such as the European Parliament and the European Commission, would be encouraged.

This prompted the ECR Group's eventual departure from the conference. In terms of public relations, the conference fell short in garnering support for more centralisation, its partial and managed nature being overt, with Mr Macron, who originally championed the idea, rapidly losing interest. Given that the ensuing process was conducted with scant public visibility in numerous countries, we feel compelled to express our concerns about the product developed by the Parliament's majority group negotiators, Mr Verhofstadt and four German MEPs. The text proposes a radical, revolutionary reform plan designed to irreversibly turn the EU from a community of sovereign nation-states into a centralised, hegemonic, technocratic super state, with a significant democratic deficit. This plan, far exceeding any laudable aim, presents a threat to the EU's functionality and future at large.

Harmful to the Member States

- Firstly, the scale of the proposed changes is downright revolutionary, as the report envisages a massive transfer of competences to the EU level, taking away competences from the Member States. It includes demands to shift the decision-making process towards a highly centralised structure that escapes democratic control and, above all, to eliminate unanimity in decision-making in almost all treaty areas. The report proposes replacing the unanimity voting system (which guarantees the maintenance of the veto by Member States) with qualified majority voting (in some situations, unanimity would be replaced by a new double majority, and in exceptional cases, the so-called enhanced qualified majority would apply). The proposed change affects approximately 65 voting areas. For example, qualified majority voting would apply to decisions regarding, among others: defining and implementing the common foreign and security policy (Article 24(1) TEU), new rights for EU citizens (Article 25 TFEU), adopting restrictive measures (Article 215 TFEU) or increasing the number of

Advocates General (Article 252 TFEU). The new so-called double majority (defined as a majority of the members of the Council representing at least 50 per cent of the population) would apply to decisions such as those on the harmonisation of national legislation on direct and indirect taxes (Article 113 TFEU), the multiannual financial framework (Article 312 TFEU), adopting rules on passports, identity cards, residence permits (Article 77(3) TFEU), operational cooperation between police forces (Article 87(3) TFEU) and family law with cross-border implications (Article 81(3) TFEU)

- Secondly, there are proposals to further weaken the Member States by creating two new exclusive EU competences (Article 3 TFEU) and a significant extension of shared competences covering seven new policy areas (Article 4 TFEU). The report proposes the establishment of exclusive EU competences in the field of environment and biodiversity, as well as negotiations on climate change. Furthermore, the document calls for the establishment of new shared competences, covering: public health matters, and the protection and improvement of human health, in particular cross-border health threats, including reproductive health and the "One Health" approach; cross-border transport infrastructure; external borders policy; foreign affairs, external security and defense; civil defense; industry; and education.

- Thirdly, a number of changes of a purely political and ideological nature were proposed, which should never be included in the constitutional and statutory text. For example, the report proposes replacing "equality between men and women" with the concept of "gender" in the Treaties. Moreover, after the vote in the AFCO Committee on 25 October, 2023, the wording of amendment No. 84 was changed, modifying Article 4, section 2 TFEU by extending shared competences to include "public health matters". The new formulation includes "reproductive health" - which is tantamount to transferring decisions on the right to abortion from the level of the Member States to the EU level.

Unfair practices

Work on the report was conducted in an undemocratic and unfair manner from the very beginning, i.e. from mid-2022. Although skeptical about an artificially forced procedure being carried out too hastily and convinced that the current treaty arrangements should first be fully exploited, the ECR Group, decided in the spirit of compromise, loyal cooperation and good faith to engage in joint work on changing the Treaties.

The ECR Group presented well-reasoned and concrete proposals, in particular:

- Amending Article 7 TEU by introducing automatic termination of the procedure described in Article 7(1). 1 and Art. 7 section 2 if six months have passed since its initiation (so-called sunset clause).

- Establishing a Subsidiarity Chamber to monitor EU legislation, composed of the presidents of national constitutional courts.

- Removal of the committee assessing candidates for the positions of judge and advocate general at the Court of Justice and the General Court of the EU. (Article 255 TFEU)

- Strengthening the principles of subsidiarity and proportionality by amending Art. 5 TEU and Protocol No. 2 on the application of the principles of subsidiarity and proportionality.
- Strengthening the role of national parliaments by increasing their participation in EU affairs thanks to:
 - Extension to 12 weeks of the period during which national parliaments can issue reasoned opinions;
 - Introducing a new politically binding “green card” mechanism, obliging the Commission to recognise a reasoned opinion or resolution calling for a proposal for an EU legal act as politically binding if it reaches a threshold of thirty percent of national parliaments;
 - Introducing a new politically binding “red card” mechanism, obliging the Commission to recognise any reasoned opinion of non-compliance with the principle of subsidiarity as politically binding if it reaches the threshold of 60 per cent of national parliaments, and consequently the Commission should immediately and completely remove the contested draft act;
 - Introducing a new politically binding “late card” mechanism, allowing national parliaments to express their concerns at a later stage of the ordinary legislative procedure, which would strengthen democracy by taking into account the fact that national debates very often start when the legislative process is already in progress.

Unfortunately, all proposals were rejected and the ECR Group was de facto excluded from the decision-making procedure. Abuse of procedure and the omission of "problematic" political groups facilitated the submission of radical and centralising proposals. Moreover, despite the importance of topics related to constitutional changes in the EU, there was not a sufficiently in-depth discussion and comprehensive analysis of all topics.

Overall assessment

The changes forced through are purely political and ideological in nature. The massive transfer of competences to the EU level and a complete change of the Community system proposed in the report means a radical centralisation of the EU by transforming it de facto into a centralised, oligarchic, European super state, escaping democratic control. The possible adoption of these changes will mean weakening the Member States by taking over their competences and reducing them to the role of federal states.

Further steps

If the report is adopted by the European Parliament, it will be discussed by European affairs ministers. As announced by the Spanish Presidency, there is a sufficient majority to transmit this to the European Council, which, by a simple majority, can convene the Convention provided for by the Treaty, composed of representatives of the Member States and EU institutions. The Convention works on the treaty and submits the result to the European Council. The President of the European Council convenes an Intergovernmental Conference and then the agreed Treaty is submitted for ratification by the Member States.