Now is the time for a new fundamental law of the European Union

Blog Admin

The eurozone crisis has made reforming the EU's institutional framework an urgent priority. Based on a recent speech to the Federal Trust, **Andrew Duff MEP** *argues that without revision of the EU's treaties to create a fiscal union, the EU's very survival is now in jeopardy. He advocates the merging of the two EU treaties into one Fundamental Law of the EU, and the creation of a federal economic government for the fiscal union.*

Reluctance to embark on the complex and serious business of EU treaty reform is perfectly understandable. Many are intimidated by the relative failure of the last big effort to develop the Union along more federal lines, which started in 2001 at Laeken but stumbled in the humiliation of the French and Dutch referendums in 2005. We can surely do better this time. The scale of the present crisis changes the context in which this latest constitutional exercise is carried out as well as providing the occasion for it.

Treaty revision is inescapable if the Union is to prosper. A new treaty is badly needed to mark the important new stage in European integration in which the eurozone is transformed into a fiscal union. To fail to make this transformation jeopardises the EU's very survival. Not only is it not possible to do enough under the present treaties to salvage the euro, the present treaties are being stretched to breaking point by the welter of crisis management measures. The European Council, for instance, has no legitimate authority to impose on Greece or Portugal tax rises and wage cuts. While such a situation might be tolerable on the grounds of expediency in the very short term, there will soon be a serious reaction in the markets and in the courts, to say nothing of on the streets, if nothing is done to regularise affairs and to restore the democratic rule of law.

The treaty amendment process will start with a Convention, opening probably in February 2015, 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, either those constitutional requirements or political expediency means holding a referendum.

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How successful this constitutional exercise will be depends to some extent on the quality of its preparation. The EU institutions will play their part – although the European Commission plans not to present its proposals for treaty change until spring 2014 (too late to influence the European Parliamentary elections); and the European Council has decided woefully to put off real discussion of these issues until December that year once a new EU leadership is in place. Moreover, 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 is high time that the federalist movement got down to drafting a new constitutional treaty for a federal European

Union. Nobody else will do it. Only the federalists can bring radical fresh thinking to answering the question of how a more united Europe should best be governed.

Form, structure, tone and terminology

For the sake of argument, let us call our new constitutional treaty the *Fundamental Law of the European Union*. Merging the current two Treaties on European Union and on the Functioning of the European Union into one document allows us to substantially shorten the whole by reducing repetition and eliminating duplication (for instance, by having only one preamble). In this way too we reverse some of the obfuscation which was at the time deemed necessary in order to turn the 2003 Treaty establishing a Constitution for Europe into the 2007 Treaty of Lisbon.

We should indicate therefore some reordering of articles – for example, the uniting of all the relevant articles concerned with the international policies of the Union into one chapter. In a similar vein, the articles on categories and areas of Union competence should be shifted to follow the provision on the principle of competence conferral. More of this logical structural amendment can usefully be done, not least with the institutional provisions, to bestow greater simplicity and clarity on the question of 'who does what'.

In view of the distinctly more federal character of the Union, 'Member States' become 'States' and 'national Parliaments' become 'State Parliaments'. And the rather non-federal (because over-centralising) 'ever closer union' becomes, indeed, 'federal union'.

We need a more self-confident tone and less clunky text than that arrived at in the later treaty revisions. The excessively nervous checks on the powers of the European Commission, European Parliament and European Court of Justice should be dispelled. The number of different types of decision-making procedure should be reduced, getting rid of *passerelles*, emergency brakes and automatic accelerators - 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 nervosity. This time, we invite the states to commit themselves without equivocation to stronger federal institutions which will be more overtly political and less officiously bureaucratic. We need to enhance the capacity of the Union to act in any given field, lifting certain prohibitions on the harmonisation of national laws. The Fundamental Law aims to be a durable settlement to the business of the governance of the Union, along with a clearer sense of things to come.

In the light of our more permissive approach, the institutions, especially the Commission, will need to live up to the assumption of new governmental responsibilities. The necessary constitutional checks and balances should reflect more correctly then they do at present the principle of the separation of powers. For example, we propose that if the Parliament sacks the Commission, it itself is dissolved and the MEPs face new elections. And as the Commission becomes more of a political government, it should shed its quasi-judicial powers, for example in competition policy. The spirit of Montesquieu will be gratified.

Substance

Mindful of the need to protect the integrity of the corpus of EU law, we need to make fairly minimal amendments to the substance of EU policy. The purpose of the Fundamental Law, after all, is to establish a better framework of European governance inside which governors and law makers can 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 social crisis. We may propose to enlarge the competence of the Union over the choice of energy supply, to resurrect industrial policy and to upgrade public health.

The main purpose of the exercise, however, is to install a discernible federal economic government of the fiscal union. The precise balance between executive and legislative authority will be contested at the Convention. But it is our conviction that it was the failure of the Treaty of Maastricht (1991) to erect a serious political pillar in the construct of economic and monetary union that has led the single currency to near disaster. That lack of economic government was left unrectified by the subsequent Treaties of Amsterdam (1997), Nice (2000) andLisbon: it must not be neglected again.

So, 'common economic policy' should replace the mere coordination of national economic policies, becoming a fully-fledged shared competence of the Union run under the auspices of an EU Treasury Secretary. The new treaty must incorporate the essence of last year's Fiscal Compact Treaty as well as provide for the European Stability Mechanism. It will also embrace the new supervisory powers of the European Central Bank and make other statutory adjustments to codify the establishment of the banking union. It will permit the progressive mutualisation of a portion of sovereign debt.

Institutional reforms

In terms of institutional change, the Fundamental Law needs, first, to render the two chambers of the legislature more equal and, second, to transfer most of the residual executive powers now held by the Council to the Commission. Bearing in mind the need to streamline the governance of the Union, we must invite the Economic and Social Committee and the Committee of the Regions to justify their continued existence.

In addition, I would:

- restrict the legislative procedures to two, ordinary and special;
- adjust the voting weights in the Council in favour of smaller states;
- promote the President of the Commission to the chair of the European Council;
- reduce the size of the Commission to fifteen members, essentially picked by the President-elect;
- introduce a pan-European constituency for the election of a certain number of MEPs;
- lift the restrictions on the scope of jurisdiction of the Court of Justice;
- introduce a more democratic procedure for seats and languages;
- give Parliament the right of consent to treaty changes and to enlargement.

There are two further reforms of major constitutional importance. The first concerns the method of future treaty change. Whereas unanimity must be kept for the decisions of the Intergovernmental Conference, the unanimously agreed revised treaty should be allowed to enter into force once ratified by only four fifths of the States (and the European Parliament). This more flexible approach would bring the EU into line with all other international organisations and federal states.

The second change flows directly from the first. States cannot be forced against their will to take the federal leap. A new category of associate membership would allow such states to move to an outer tier, keeping the Union's values but reducing engagement in the Union's political tasks. Associate membership would also cater for the needs of Norway and Switzerland, seeking to improve on their present unsatisfactory arrangements; of the Western Balkans, needful of a long and stable phase of preparation for full membership; and for third countries, choosing for reasons of their own not to join the EU but desiring and deserving a permanent, structured relationship with it.

Such a Fundamental Law would strengthen the governance and cohesion of the Union and bolster democratic confidence in our common endeavour to build a better Europe. Alternatives are hard to envisage. The Union which emerges from its present difficulties will not be the same as the Union which went into them. So 'more of the same, but less' – which seems to be the strategy of the coalition government in Britain – is not a realistic option. Better by far that the UK joins in the federal core, albeit with time to catch up, than that it distances itself from the federal project entirely. Doubtless Prime Minister Cameron will address these issues squarely when he gets round to making his Speech.

This is a version of Andrew Duff's speech to the Federal Trust in London on 10 January.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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