



The Spinelli Group, Bertelsmann Stiftung

A Fundamental Law of the European Union

| **Verlag BertelsmannStiftung**

A Fundamental Law of the European Union

The Spinelli Group, Bertelsmann Stiftung

A Fundamental Law of the European Union



| Verlag BertelsmannStiftung

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available on the Internet at <http://dnb.d-nb.de>.

© 2013 Verlag Bertelsmann Stiftung, Gütersloh

Responsible: Thomas Fischer, Joachim Fritz-Vannahme

Production editor: Christiane Raffel

Cover design: Elisabeth Menke

Cover illustration: Shutterstock/Adisa

Typesetting and Printing Hans Kock Buch- und Offsetdruck GmbH, Bielefeld

ISBN 978-3-86793-537-1

www.bertelsmann-stiftung.org/publications

A Fundamental Law

The unity of Europe is vital if global challenges are to be met and European values and interests promoted. But how should the new polity of the European Union be governed?

The present constitutional architecture is hardly fit for the purpose. Executive authority is dispersed and democratic accountability weak. Expedient measures needed to address the financial and economic crisis have stretched the present EU treaties close to their limits.

The Union's system of governance must be reformed if it is to deliver much needed public goods at home and decisive leadership abroad. In the face of hostile public opinion, the national governments of its Member States fear to give the EU the powers and resources it needs. National parties and parliaments fail to embrace the European dimension of politics.

So the European Union needs to assert itself. European challenges can be met only in a European way.

This proposal for a Fundamental Law of the European Union is a comprehensive revision of the Treaty of Lisbon (2007). Replacing the existing treaties, it takes a major step towards a federal union. It turns the European Commission into a democratic constitutional government, keeping to the method built by Jean Monnet in which the Commission drafts laws which are then enacted jointly by the Council, representing the states, and the European Parliament, representing the citizens. All the reforms proposed are aimed at strengthening the capacity of the EU to act.

The Union reformed along the lines established in the Fundamental Law will be more efficient and effective, more transparent and accountable. The Spinelli Group of MEPs recommends the Fundamental Law for consideration by the Convention which will soon be called upon to amend the EU treaties.

Table of Contents

Foreword	9
How to Read the Text	10
A Fundamental Law of the European Union: Why Europe Needs a New Constitutional Treaty – Commentary	11
Fundamental Law Text	21
Preamble	22
Part I – Constitutional Provisions	25
Chapter One – Main Articles	25
Chapter Two – Powers and Competences	47
Chapter Three – The Functioning of the Institutions	53
Chapter Four – The Legal Acts of the Union	67
Chapter Five – Enhanced Cooperation	76
Chapter Six – General Provisions	82
Chapter Seven – Final Provisions	85
Part II – The Charter of Fundamental Rights of the European Union	97
Part III – The Finances of the Union	117
Part IV – Economic and Monetary Union	128
Chapter One – Economic and Monetary Policy	128
Chapter Two – The Eurozone	144
Part V – The Policies of the Union	149
Chapter One – General Provisions	149
Chapter Two – Non-Discrimination and Citizenship of the Union	151
Chapter Three – The Internal Market	157
Chapter Four – Competition, Taxation and Approximation of Laws	161
Chapter Five – Employment	170
Chapter Six – European Society	174
Chapter Seven – Agriculture and Fisheries	186
Chapter Eight – Transport	192
Chapter Nine – Trans-European Networks	194
Chapter Ten – Industry	196
Chapter Eleven – Economic, Social and Territorial Cohesion	198
Chapter Twelve – Research and Technological Development and Space	200

Table of Contents

Chapter Thirteen – Environment	203
Chapter Fourteen – Energy	207
Part VI – Freedom, Security and Justice within the Union	211
Chapter One – Area of Freedom, Security and Justice	211
Chapter Two – Civil Protection	229
Chapter Three – Administrative Cooperation	230
Part VII – Association of the Overseas Territories	231
Part VIII – The External Action of the Union	233
Chapter One – General Provisions	233
Chapter Two – Common Foreign and Security Policy	237
Chapter Three – Common Security and Defence Policy	247
Chapter Four – Common Commercial Policy	255
Chapter Five – International Relations	258
Chapter Six – International Agreements	264
Chapter Seven – Solidarity	270
Protocols	272
Tables of Equivalences	291
Last Words	305

Foreword

A Fundamental Law of the European Union is elaborated under the auspices of the Spinelli Group whose board comprises Elmar Brok, Dany Cohn-Bendit, Andrew Duff, Isabelle Durant, Sylvie Goulard, Roberto Gualtieri, Jo Leinen and Guy Verhofstadt. A working party of MEPs was established under the coordination of Andrew Duff.

While all support its publication as an important contribution to the debate on the future of Europe, members of the Spinelli board are not bound individually by all aspects of the draft treaty.

The writing of *A Fundamental Law* has been shaped by discussions in the wider group of Spinelli MEPs and in the Union of European Federalists. A number of officials from the EU institutions, who remain anonymous, have helped us with sound advice, as have our own collaborators: Matteo Adduci, Philip Drauz, Maria Laura Formisano, Daniel Freund, Guillaume McLaughlin, Fabian Pescher, Maxime Rolland-Calligaro, Miriam Schoeps, Pierre-Jean Verrando, Christian Wenning and Sietse Wijnsma. Pier-Virgilio Dastoli gave us the benefit of his long experience in the federalist circles. From outside the institutions, we thank Christophe Hillion and René Repasi, and our many interlocutors in governments and parliaments, think-tanks and academic circles who, perhaps unwittingly, have shaped our approach.

We thank the Bertelsmann Stiftung, which shares with the Spinelli Group the leitmotif for a federal Europe, for its support. The Bertelsmann Stiftung publishes the *Fundamental Law* as a major contribution to the debate on the future of Europe.

How to Read the Text

The text of the *Fundamental Law of the European Union* postulates a general revision of the Treaty of Lisbon (2007). It amalgamates the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), and updates and amends them. It integrates the Charter of Fundamental Rights (CFR). It incorporates the essence of the Euratom Treaty (1957) and of the Fiscal Compact Treaty (2012). The 1976 Act on the direct election of the European Parliament, as amended, is transported into a protocol.

There are 437 articles in eight parts, plus a preamble, and 18 protocols. Each chapter is preceded by a short explanatory comment summarising its main features.

Part I (Articles 1–144) contains all the constitutional and institutional provisions.

Part II (Articles 145–198) is the Charter.

Part III (Articles 199–217) concerns the finances of the Union.

Part IV (Articles 218–246) is the policies and organisation of economic and monetary union.

Part V (Articles 247–376) lays out the sectoral policies of the Union.

Part VI (Articles 377–398) deals with the area of freedom, security and justice.

Part VII (Articles 399–405) covers the association of overseas territories.

Part VIII (Articles 406–437) provides for the external affairs of the Union.

The new treaty is laid out in the right-hand column. Equivalent clauses from the TEU, TFEU and CFR are laid out in the left-hand column.

No change is indicated by ‘.....’ in both columns. Words emboldened seek to draw attention to the more important changes and novelties. In stylistic changes, ‘Member States’ become ‘States’, and ‘national parliaments’ become ‘State Parliaments’.

The official text of the current treaties and the Charter is found at: <http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

Finally, a table of equivalences marries the old and the new.

Last Words

by Thomas Fischer und Joachim Fritz-Vannahme, Bertelsmann Stiftung

For many observers of the current political debate about Europe's future, publishing a constitutional draft for a federal Europe at this point in time seems highly ambitious at best – or even unrealistic at worst. Alerted by the sharp decrease in public support for the European project since the beginning of the Euro crisis, even those political decision-makers who are in favour of further deepening integration consider another reform of the EU Treaty to be an incalculable political risk.

Most of them are still suffering from the extremely cumbersome exercise of giving life to the Lisbon Treaty. The memory of this long and arduous journey is too fresh in their minds to already embark on the next fundamental revision of the EU's primary law. From the perspective of the so-called pragmatists, pleading now for a qualitative constitutional leap towards a federal Europe is coming close to denying a reality characterized by the resurging idea of national sovereignty.

With reference to the subsidiarity principle, a growing number of member – state governments seem to seriously question the EU Treaty's objective of "an ever closer Union". By launching its "Balance of Competences Review" aiming at the repatriation of EU powers, the British government has been the forerunner in this trend. Another striking example is the Dutch government, which has recently published its "wish list" naming those policy areas where the Netherlands does not want to see additional power transferred to the EU.

Whether due to so-called pragmatism or the conviction that the creation of the "United States of Europe" would point in the wrong direction, the project of a federal constitution for Europe apparently has to face strong headwinds in the current political debate.

Against this backdrop, the reader of this book may wonder why the Bertelsmann Stiftung has joined forces with the Spinelli Group to publish the draft for "A Fundamental Law of the European Union". The reason is not that we agree on every detail of the proposal or that we have fallen victim to pro-European idealism. On the contrary, we think that heading for our foundation's leitmotif of the "United States of Europe" is a much more pragmatic position these days than shying away from ambitious treaty reforms.

We share the conviction of the Spinelli Group that by voicing support for a federal EU constitution, we are making a much more important contribution to the much-needed democratic debate on Europe's future than those who desperately avoid the notion of federalism and vaguely talk about deeper integration or the advantages of a political union. With the publication of this book, we primarily want to provoke an open dispute about competing political options between supporters and opponents of the idea of the "United States of Europe" and provide a sort of sounding board that allows for the mapping of alternative ideas about how to shape the future EU.

To put it slightly differently, we are driven by the deep conviction that Europe will not progress if the public and political debate gets stuck in TINA (“There is no alternative”) thinking. Although we support large parts of the Spinelli Group’s constitutional draft and its philosophy, we see the primary purpose of its publication as triggering an open process of deliberation which allows those alternatives to win for which the best arguments are put forward.

From our viewpoint, one of the key merits of the Spinelli Group’s blueprint for the constitutional architecture of a federal Europe is that it clarifies from the very beginning its main purpose: According to the authors, “All the reforms proposed are aimed at strengthening the capacity of the EU to act”. Completely in line with their understanding of federalism, we do not promote a centralized European superstate but “a constitutional union in which different levels of democratic government are coordinate, not subordinate”.

Regarding political priorities, we share the Group’s conclusion that completing Economic and Monetary Union (EMU) is the key challenge for Europe’s policy-makers and that “more of the same” will not be sufficient to achieve this objective. Several aspects of EMU featuring high on Europe’s current political agenda already raise the question of to what extent they will be possible without changing the EU Treaty.

Actually, the Treaty on Stability, Coordination and Governance (better known as the “Fiscal Compact”), which aims to foster fiscal discipline and structural reforms, provides for its incorporation into the EU Treaty before the end of 2017. The introduction of a fiscal capacity or a “solidarity mechanism” for Eurogroup members based upon bilateral contracts between single member states and the EU institutions might require revisions of the EU’s primary law.

The same applies to the need to extend democratic control by the European Parliament to the European Central Bank in its new role as Single Bank Supervisory Authority and – at least in the longer run – for the creation of a European Banking Resolution Fund and a European Deposit Guarantee Scheme. And if it should prove necessary to introduce new mechanisms for the mutualisation of debts at the EMU level, such as a European Debt Redemption Fund or a European Debt Agency, the German Constitutional Court has clearly decided that this will not be possible without changes to the “no bail-out” clause of the Lisbon Treaty.

Against this backdrop, we think the Spinelli Group is perfectly right in highlighting that the installation of a true “economic government of the fiscal union” in Part IV of the Fundamental Law constitutes the main innovation in their constitutional draft. Most of the reform proposals presented there, such as the introduction of the new post of Treasury Minister to foster the Commission’s role as the EU’s fiscal and economic government, the measures suggested to make sure that member states observe stronger fiscal discipline or the introduction of a special fiscal capacity for the Euro countries, we can fully support.

Beyond that, we welcome the proposed extension of the Treaty rules on enhanced cooperation to the eurozone. This would allow for a multi-speed Europe that does

not run the risk of growing fragmentation between the ins, pre-ins and outs of EMU. Without this remedy, eurozone members might be increasingly tempted to fall back on separate intergovernmental agreements outside the EU Treaty, such as the Fiscal Compact or the Treaty on the European Stability Mechanisms, to live up to the functional requirements resulting from the single currency.

Since we are convinced that, in parallel, the Treaty objective of a socially balanced market economy has to be implemented more efficiently within and across member states, we agree with the Spinelli Group that the role of the Commission and the European Parliament in formulating employment and macro-economic policy guidelines ought to be strengthened and that the Treaty's horizontal social clause should be tightened.

Beyond that, the other proposals presented in the Fundamental Law to "refresh" European powers in the fields of energy, agriculture and common fisheries, the internal market, competition, transport, R&D, environmental protection and climate change, justice and home affairs, and external affairs also make, by and large, sense from our point of view – as far as the EU's capacities to act more efficiently are concerned. Details still have to be further discussed, of course.

Our overall impression is that the Fundamental Law of the European Union is perfectly fit for the purpose of re-initiating the debate on the EU's future constitution and, if another European Convention should be set up within the next few years, of contributing to the preparation of the next Treaty reform. For that reason, we have decided to publish this book jointly with the Spinelli Group.

The Bertelsmann Stiftung will, however, further elaborate on some questions which the present publication can only touch upon. The authors of the Fundamental Law basically assume that EU institutions will become "more responsive to the needs and aspirations of the people they serve" if the EU's capacity to act (i.e. its "output legitimacy") is strengthened and if its institutional setup is further developed along the lines of a fully fledged federal two-chamber system – made up of the European Parliament and the Council – with the European Commission turning into a democratic constitutional government.

The basic intention of the Spinelli Group may also be circumscribed along the lines of the official motto of the Union, which the Fundamental Law provides for: "Unity in diversity". First of all, the group seeks to strengthen unity to overcome excessive diversity. This approach is hardly surprising given that the authors of the constitutional draft are Members of the European Parliament. From their perspective, more unity – that is, the allocation of additional powers at the EU level – is crucial for restoring citizens' trust in the European integration project. This, however, will only be possible if, at the same time, there is more democratic accountability and legitimacy of European policymaking.

Accordingly, the Fundamental Law includes a number of excellent proposals for democratic reform. To provide for a clearer separation of powers, the Council (as second legislative chamber) is deprived of its executive powers which are transferred to the European Commission as democratic government of the Union. The Funda-

mental Law co-decision between Parliament and Council applies throughout – including in those areas where the Council currently enjoys the right to legislate alone.

The European Commission President is made more accountable to the European Parliament, and the role of the President of the European Council is limited to directing and coordinating the affairs of the Council. Last but not least, a certain number of deputies of the European Parliament ought to be elected from a pan – European constituency in future, which shall also contribute to the emergence of truly European parties.

These institutional reforms are complemented by treaty changes aiming to foster democratic legitimacy by upgrading the status of European citizenship. In this context, the most significant innovations are – from our viewpoint – the incorporation of the EU's Charter of Fundamental Rights into the Treaty text, the simplification of access to the European Court of Justice for individuals, the extension of the voting rights of EU citizens living in EU member states other than their own to national parliamentary elections, and the widening of the scope of the European Citizens' Initiative to include political agenda-setting.

We do not doubt that this package of reform measures would contribute to making the democratic foundations of EU institutions much more solid. Nevertheless, we think that they are only insufficiently apt to solve the profound dilemma the European Union has to face: On the one hand, from a purely functional perspective, there are rather strong arguments in favour of transferring additional powers to the Union level. On the other hand, however, political and public acceptance in member states is fading away the more the Union interferes in fields of national high politics constituting the core of nation-statism and the closely related construct of national sovereignty.

This dilemma is not at all new. Since the Maastricht Treaty and the introduction of the EMU at the latest, it has been an increasingly difficult exercise to find the right balance between the requirements of efficient policymaking and the political preferences of citizens. However, since the outbreak of the Eurocrisis, this dilemma has assumed a completely new quality. The most ambitious European project, the single currency, which had been perceived since its introduction as a success story by most European citizens, has turned into one of the most controversially discussed issues in the political and public debate about the EU. In the meantime, the surge of Euro-scepticism we have witnessed in recent years has spread to the EU as a whole and triggered much more fundamental national debates about the added value of European integration.

It goes without saying that representatives of national governments – in their role as members of the Council or the European Council – are particularly affected by this growing gap between efficient EU policies and predominant public attitudes at home. Former Eurogroup President Jean-Claude Juncker has perfectly summarized their difficult position. When responding to the question of why the Europeans only have halfhearted answers to the sovereign debt crisis, he said:

“We all know what to do; we just don't know how to get re-elected after we've done it.”

The Spinelli Group implicitly refers to this problem in its Fundamental Law by stating that “at the level of the heads of governments, meeting in the European Council, the response to the financial and economic crisis has tended to be too little too late.” At the same time, this is exactly the reason why the authors strongly plead for replacing the intergovernmental model of decision-making with a federal EU government. Nevertheless, this approach can only be part of the solution. It does not give a persuasive answer to the question of how to tackle the issue of increasingly divergent public policy preferences and the revival of the subsidiarity principle in the political debates at the member-state level.

It is against this background that, from our point of view, the success and viability of the European project will largely depend on the ability to develop a completely new system of federal checks and balances tailor-made to keep a sound balance between efficiency requirements at the EU level and public acceptance at the national level.

Accordingly, this will be one of the key priorities in our foundation's work on Europe's future for the next few years. Amongst other issues, it might be particularly worthwhile in this context to have a closer look at the role of national parliaments in European policymaking and at potential patterns of interparliamentary collaboration between them and the European Parliament. With regard to this crucial issue, the Fundamental Law of the European Union hardly goes beyond the status quo of the Lisbon Treaty. Hence, we would be delighted if we could cooperate with the Spinelli Group to further elaborate on the future role of national parliaments in EU decision-making.

When talking about the future of the EU, we are actually talking about the question of how to provide for a functioning democracy able to cope efficiently with the internal and global challenges Europe is currently facing. This is the key issue we have to address – and we urgently need answers. With the publication of the Fundamental Law of the European Union, the Spinelli Group and the Bertelsmann Stiftung give a possible response to this essential question.