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## **WORKING DOCUMENT**

on improving the functioning of the European Union building on the potential of the Lisbon Treaty

Committee on Constitutional Affairs

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## ***Challenges***

1. The European Union and its Member States are facing major challenges. The refugee crisis, the foreign policy challenges in the immediate neighbourhood, the fight against terrorism, globalisation, climate change, the weaknesses of the Economic and Monetary Union (EMU) in the context of the financial and debt crisis, the lack of competitiveness and its social consequences in several Member States, and the need to reinforce the EU internal market (for example, in the services and digital sectors) are challenges that are answered inadequately. These challenges can only be tackled by the EU and no longer by the Member States alone.
2. The EU must restore the lost confidence and trust of its citizens by means of enhancing the transparency of its decision making and its capacity to act.
3. Nearly six years after its entry into force, the provisions of the Lisbon Treaty have not been exploited to their full potential. As a necessary revision of the Treaties does not seem likely in the short-term, the EU institutions and Member States need to exploit the current Treaty to the fullest if they are to cope with these challenges.

## ***The Community method***

4. The Community method is superior to the intergovernmental method as it alone allows for transparency, qualified majority voting in the Council, and co-decision between Parliament and the Council. It prevents the fragmentation of institutional responsibilities and the development of competing institutions.
5. Furthermore, in areas where not all Member States fulfil the conditions for participation (e.g. the eurozone, the Schengen Area), the competences of the Union institutions may not be undermined by intergovernmental solutions.
6. This is why, as intended in the Treaties, the Fiscal Compact as well as the European Stability Mechanism have to be integrated into Union Law, and no new institutional and administrative barriers between Member States (e.g. between members of the eurozone and not-yet eurozone states) should be created.

## ***Institutional setup, democracy and accountability***

### **A. Parliaments**

7. The directly elected European Parliament plays an essential role in ensuring the legitimacy of the EU, as well as in making the EU decision-making system accountable to citizens. This is why the European Parliament's legislative powers and control rights must be guaranteed, consolidated and strengthened, *pari passu* with those of the Council (in particular by means of an inter-institutional agreement, and through the use of the corresponding legal base by the Commission). It should also be borne in mind that the European Parliament is the parliament of the whole Union, even in the areas in which not all Member States participate.
8. At the same time, the European Parliament must also be prepared to reform its working method in order to cope with the challenges ahead, including the following:

- a) In addition to its legislative function, it must use its control over the Commission to ensure

the implementation and application of the *acquis* in the Member States;

b) First- reading agreements must be limited to exceptional cases of urgency;

c) The electoral procedure for European elections need to be improved through: the revision of the Electoral Act<sup>1</sup> (already initiated by the Parliament<sup>2</sup>) or via implementing measures on the basis of Article 14 of the Electoral Act, such as the creation of a low minimum obligatory European threshold for gaining a seat in the European Parliament (with the same logic applied to the formation of political groups within Parliament and to the launching of a European Citizens' Initiative (ECI); the visible display in the elections of the logo of the European political party' to which the candidate is affiliated, to ensure that the vote contributes to the European threshold and to the expression of a more European political agenda and debate; the establishment of clear, democratic and fair rules for European parties for selecting candidates for the Commission Presidency; and the abidance by certain minimum democratic standards when candidates for the European Parliament are selected.

9. National parliaments shall exercise their European function on the basis of their national constitutions, in particular via the control of their respective national governments as members of the European Council and Council of Ministers.

10. For reasons of transparency, accountability and enhanced ability to act, there should be no joint parliamentary decision-making bodies. While the European Parliament and the national parliaments should continue to cooperate in the joint bodies (currently the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), the Inter-parliamentary Conference (IPC) on Common Foreign and Security Policy and the conference under Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG, 'Fiscal Compact'), on the basis of the principle of consensus, to consult and share information, and to better control their respective administrations, they should only make decisions in accordance with their respective competencies. The specialised committees of the European Parliament must cooperate better with their national equivalents.

## **B. The European Council**

11. In recent sensitive negotiations, notably the negotiations of the 2014-2020 Multi-annual Financial Framework (MFF), the European Council attempted to expand its role into the legislative process by taking decisions on provisions of legislative nature, even though the Treaties explicitly excludes such a role for the European Council. This unlawful interference by the European Council in the legislative process should therefore be curbed in the future.

12. The function of the President of the European Council could be merged with that of the President of the European Commission. The European Council could, on the basis of an Interinstitutional Agreement (IIA) signed by the relevant institutions, engage politically to

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<sup>1</sup> Act concerning the election of the members of the European Parliament by direct universal suffrage, OJ L 278, 8.10.1976, p.5, amended by Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, OJ L 283, 21.10.2002, p. 1–4, in the following called 'European Electoral Act'.

<sup>2</sup> Report on the Electoral law of the European Union, A8-0286/2015 (possible mention of the resolution when adopted? [October II part-session...])

appoint as its President the Commission President, elected by the European Parliament on the proposal of the European Council on the basis of the European election results, as happened in 2014.

13. The European Council should start activating the ‘passerelle clause’ (Article 48 (7) TEU).

14. It should publicly explain and motivate its policies before the European Parliament, also by presenting its intentions before its meetings.

### **C. The Council**

15. In order to transform the Council into a truly legislative chamber, the existing Council configurations should be reduced to a single one by a European Council decision. Such institutional change would establish a bicameral legislative system involving the Council and the Parliament, with the Commission acting as the executive. The currently existing specialised formations of the Council could act as preparatory bodies of the legislative Council, similar to the Committees of Parliament.

16. The transparency of the Council’s legislative decision-making should further be enhanced, and Parliament representatives should be given access, as observers, in meetings of the Council and its bodies when legislation is discussed (requiring a change in the Council’s Rules of Procedure).

17. Moreover, there should be a complete switch to qualified majority voting (QMV) in the Council, and contentious issues of legislation should, to the extent possible, be kept off the agenda of European Council meetings, as this is against the letter and the spirit of the Treaty. (Decisions by the European Council are in almost all instances decided by unanimity, and, according to the Treaty, this should only be used in matters pertaining to broad political goals, not legislation.)

18. In the field of economic and monetary policy, a new position of European Finance Minister, combining the existing roles of the permanent President of the Eurogroup and the Commission Vice-President for Economic and Financial Affairs, could be created through an IIA between Parliament, the Council and the Commission.

19. In order to fully implement the Treaty provisions on enhanced cooperation, Parliament should commit itself not to give its consent to any new enhanced cooperation proposals unless the participating Member States, in their turn, commit themselves to activating the special ‘passerelle clause’ enshrined in Article 333 TFEU triggering the switch from unanimity to QMV and from the special to the ordinary legislative procedure.

### **D. The Commission**

20. The role of Parliament in the election of the Commission President should be strengthened by reinforcing the formal consultations between the European political parties and the European Council President, as foreseen in Declaration 11 annexed to the Lisbon Treaty Intergovernmental Conference (IGC), to ensure that the European Council takes full account of the election results in presenting a candidate for nomination by the European Parliament.

21. To support the function of the European Finance Minister described above, an EU Fiscal

and Treasury Administration (similar to the US Congressional Budget Office) should be established on the basis of Article 352 TFEU.

22. Furthermore, a single representation of the EU/eurozone within the International Monetary Fund (IMF), the World Bank and other international financial institutions (Article 138 TFEU) should be ensured by the Vice-President of the Commission / European Finance Minister and the President of the European Central Bank (ECB).

23. Overall, the Commission and Parliament should ensure better application and implementation of European Union law.

#### **E. Court of Auditors**

24. In view of the fact that the role of the Union has expanded, it is of growing importance that Parliament focus on monitoring the proper implementation of EU legislation and verify closely how taxpayers' money is spent. Given that the role of the Court of Auditors is crucial for improving how European funds are spent, the need for a stronger European Court of Auditors as well as closer cooperation between the Court of Auditors and the European Parliament should be stressed.

#### **F. Committee of the Regions and Economic and Social Committee**

25. Parliament, the Council and the Commission should organise better modalities for cooperation with the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC) in order to take into account of their opinions at an earlier stage in the legislative process.

#### **G. Respect for the principle of subsidiarity**

26. Parliament in its daily work, and all EU institutions and bodies, notably the CoR and the EESC, should control and respect horizontal and vertical subsidiarity in the European Union in all their activities.

#### ***Deepening the Economic and Monetary Union (EMU)***

27. Amidst the crisis, the European Union has substantially reformed the rules, instruments and policy procedures at its disposal to strengthen and improve the EMU governance framework.

28. This process towards the completion of EMU now needs to be sustained, as the eurozone continues to face a highly challenging economic and social situation. There is no room for complacency or for reform fatigue. The existing governance system is not yet strong enough to tackle all potential future crises and shocks, as it should be, nor yet sufficiently good at generating higher competitiveness, structural convergence among members, sustainable growth and social cohesion. Furthermore, its democratic legitimacy remains too weak. The risk of a lasting stagnation is at our doorstep and we have to preserve the integrity of the eurozone.

29. We need further EMU reforms in order to provide the EMU with an effective and democratic economic government (for areas where the Commission can act as the executive,

and where Parliament and the Council can act as co-legislators). Any further development of the EMU should be based and built on the legislation in place (such as the Six- and Two-packs and the Banking Union) and its implementation. To be effective and legitimate, such a government should be fully placed within the institutional framework of the Union (see section H below) and should improve its capacities in seven areas (see sections A to G below):

#### **A. A new legal act on economic policy**

30. Convergence guidelines should be enshrined within a convergence code, adopted under the ordinary legislative procedure, creating a more binding framework for economic policy coordination (key economic, competitiveness and social targets, such as in the areas of labour markets, business environment, and public administrations (in particular, as regards the latter, aspects of tax policy)), and should be open to all 28 Member States. Abidance by these standards would guarantee Member States the possibility of participating in a shock absorption mechanism.

31. A limited number of crucial areas for structural reforms, aimed at strengthening the European Social Market Economy (as outlined in Article 3 (3) TEU) by increasing competitiveness, growth potential, real economy convergence and social cohesion over a period of five years, should be identified and laid down.

32. There should be clear division of competences between the EU institutions and the Member States, increasing Member States' ownership of, as well as the role of national parliaments in, implementation programmes.

33. Better use should be made of available instruments in conjunction with Article 136 TFEU to facilitate the adoption and implementation of new measures in the eurozone.

#### **B. A simplified, more focussed and more democratic Semester process**

34. There should be few and more targeted Country Specific Recommendations, based on the policy framework set out in the Convergence Code, the Annual Growth Survey (AGS) and on the concrete proposals presented by each Member State. They will need to define key reform objectives from a broad range of structural reforms, fostering competitiveness, real economy convergence and social cohesion.

35. Parliament's scrutiny role in the European Semester should be formalised, including its formal involvement in the adoption of the AGS through an IIA.

36. Parliament should be provided with a more substantial role in the negotiations between Member States and EU institutions by allowing it to call for hearings with the governments of Member States affected by the Country Specific Recommendations (CSR), Economic Partnership Programmes (EPP), Corrective Action Plans (CAP) and Alert Mechanism Reports (AMRs).

37. Dialogue between Parliament, the Council, the Commission and the Eurogroup should be further enhanced by agreeing on dedicated time slots during the main steps of the European Semester cycle.

38. Furthermore, an overall assessment of the budgetary situation and prospects in the eurozone as a whole, and in the individual Member States, should be performed ahead of the spring European Council, and should be properly implemented.

39. The substance of the Fiscal Compact needs to be integrated into the EU legal framework on the basis of an assessment of the experience with its implementation.

### **C. Ensure better use of the EU budget**

40. The provisions of Article 48 (7) TEU and Article 312 (2) TFEU should be implemented so as to require a switch from unanimity voting to QMV in the adoption of the Multi-annual Financial Framework (MFF) Regulation.

41. The MFF should be established for a duration of five years and, thus, be aligned with the legislative term of Parliament (already possible under current Article 312 (1) TFEU)).

42. On the revenue side, the procedure for the adoption of own resources should be changed through the general 'passerelle clause' (Article 48 (7) TEU), and the EU should move away from a system based on gross national income (GNI) contributions to one based on real own resources for the EU and the eurozone budget (a reformed Value Added Tax (VAT), with the introduction of a Financial Transaction Tax (FTT) and with revenue from other sources such as the Emission Trading Scheme, etc.).

43. Existing structural funds should be used in a better way to foster competitiveness and cohesion.

### **D. An increased EU investment capacity**

44. Innovative approaches like the European Fund for Strategic Investments (EFSI) should be exploited fully and built on further, for example by creating a specific facility to finance and guarantee infrastructure projects in the interest of the Union (linked to the Juncker Plan), and allowing the EFSI to find additional leverage in the financial markets to increase the effects of the Juncker Plan.

45. Full implementation of the existing Six-pack and Two-pack framework and the European Semester should be ensured. Macroeconomic imbalances should be addressed in a specific way, and long-term control over deficit, and still extremely high levels of debt, should be secured by improving spending efficiency, prioritising productive investments, providing incentive to structural reform and taking into account business-cycle conditions.

### **E. Establish a fiscal capacity within the eurozone through part of the EU budget**

46. In order to assist Member States in the implementation of agreed structural reforms based on certain conditions, including the effective implementation of national reform programmes agreed within the Semester, an incentive-based instrument should be created that will contribute to the prevention of any moral hazard.

47. As the euro is the currency of the Union according to the Treaties, and the EU budget is designed to facilitate for less-developed Member States to catch up and become able to join the eurozone, it needs to be further oriented towards a competitive and stable currency union.

This could require additional, conditional capacities, but above all it requires that certain funding is earmarked specifically for this purpose, making more targeted use of existing funds and instruments.

48. The new fiscal capacity should be part of the EU budget, earmarked for the purposes of the EMU.

49. Any new instrument should be placed within the EU budget, but outside the ceilings of the MFF, and based on own resources, following the EU's budgetary procedure.

50. The EMU should increase its resilience when facing economic shocks while any forms of permanent fiscal transfers should be prevented.

51. As already stated the Parliament's resolution of 12 December 2013 on constitutional problems of a multi-tier governance in the European Union<sup>1</sup> in the long term the Commissioner for Economic and Financial Affairs should become a Treasury Minister.

52. Furthermore the European Stability Mechanism (ESM) should be incorporated into the Union legal framework and be transformed into a European Monetary Fund. In view of the constitution of a Redemption Fund, the main findings of the Expert Group on Debt Redemption Fund and Euro bills created by the Commission in July 2013 should be duly considered.

53. The European Fiscal capacity and the European Monetary Fund are steps in the process to create a European Treasury, which should be accountable to European Parliament.

#### **F. Single Market and financial integration**

54. Full exploitation of the growth potential of the Single Market, in particular the Digital Single Market, is still needed.

55. In this connection, better control of the correct application, and better enforcement, of the existing *acquis* is mandatory.

56. The completion of the Banking Union – based on a Single Supervision Mechanism (SSM) and a Single Resolution Mechanism (SRM), and sustained by an adequate backstop – should be sped up. This requires a swift agreement on an adequate bridge financing mechanism until the Single Resolution Fund becomes operational and a European Insolvency Scheme is established.

57. The level playing field inside the single market shall be strengthened by a single rule book applicable to all banks in the EU.

58. A true capital markets union, with a single European Capital Markets Supervisor, should be established; a system of Competitiveness Authorities; should be set up, bringing together the national bodies in charge of tracking progress in the area of competitiveness to be established in each Member State; and the Commission should be in charge of tracking the overall progress of such a system.

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<sup>1</sup> Texts adopted, P7\_TA(2013)0598.



## **G. Establishment of a Fiscal Union**

59. In order to establish a Fiscal Union, the automatic information exchange between national tax authorities should be improved in order to avoid tax planning, base erosion and profit shifting.

60. Coordinated actions to fight tax heavens should be promoted.

61. A Common Consolidated Corporate Tax Base directive, with a minimum rate and with common objectives for a progressive harmonization, should be adopted.

62. The EU should embark on a comprehensive review of existing VAT legislation, addressing as well the issue of reduced rates and the introduction of the country of origin principle.

63. Furthermore, a partially automatic stabilising mechanism to foster convergence and counter differences in the economic cycles among the Member States should be set up.

## **H. A more democratic institutional set-up by reinforcing parliamentary and judicial control**

64. The deepening of the EMU requires proper democratic legitimacy and accountability to be ensured at all levels at which decisions are taken and implemented, with national parliaments scrutinising national governments and with an enhanced role for the European Parliament at EU level.

65. The role of Parliament in economic governance, when EU additional powers are required, should be strengthened by extending the ordinary legislative procedure to matters of economic and fiscal affairs, including the harmonisation of tax law and social law, using the flexibility clause in combination with Article 333 (2) TFEU (enhanced cooperation) and the general use of the 'passerelle clause' enshrined in Article 48 (7) TEU in order to strengthen the democratic legitimacy and the effectiveness of EU governance.

66. The simplified Treaty change procedure (Article 48 (6) TEU) may also be used, while the ordinary Treaty change procedure (Article 48 (2 to 5)) shall be put at the end of the cycle of EMU reform.

67. In an effort to enhance accountability and legitimacy, the European Parliament should adopt the Convergence Code (together with the Council), while national parliaments should decide on the specific way of implementation in the Member States.

68. Parliament is the parliament of the euro, as the EMU is established by the Union, whose citizens are directly represented at Union level by the European Parliament.

69. Therefore, interparliamentary cooperation should not be seen as establishing a new joint parliamentary body or any other institution.

70. The Commission should be charged with the implementation and enforcement of any future or existing instruments in the EMU.

71. As a matter of principle, differentiated integration should remain open to non-euro

Member States, namely countries with a derogation but wishing to participate.

72. Priority should be given to ordinary legislative and budgetary procedures at EU level, by making use, when necessary, of derogations, and by the establishment of dedicated budget lines. Eurozone or enhanced cooperation provisions can be used when the aforementioned procedures cannot be used for legal or political reasons.

73. The existing weakness in the system that enables certain parts of the Treaty to be overseen by the Court of Justice of the European Union while others are excluded should be addressed in an appropriately way.

74. The coordination and surveillance of the budgetary discipline of the Member States whose currency is the euro should become binding and subject to the control of the Court of Justice on the basis of Article 136 TFEU, in conjunction with Article 121 (6), together with a strengthened role of Parliament in the detailed implementation of Article 121 (3) and (4) TFEU.

### ***Completion of the internal market as the first generator of growth***

75. The deepening of the EMU should go hand in hand with the completion of the internal market, especially as concerns the Energy Union, the common digital market and the market in services. To that end, all internal barriers in the internal market should be removed.

76. Furthermore, in order to establish an Energy Union, there should be full enforcement of the existing internal energy market legislation according to Article 194 TFEU.

77. A European Energy Agency under Article 204 of the Euratom Treaty should be created.

78. To complete the energy market, a European strategic reserve could be set up and a joint negotiating centre with suppliers could be established.

79. For financing needs, the use of ‘project bonds’, in close cooperation with the European Investment Bank (EIB)<sup>1</sup>, could be better exploited for energy projects, including infrastructure and renewable energies.

### ***The social dimension***

80. In order to ensure a stable social basis for the EMU, the rights of workers when they exercise their right of mobility should be guaranteed, along with their social rights in accordance with Articles 151 and 153 TFEU.

81. Furthermore the idea of minimal wage decided by each Member States should be encouraged.

82. Under the current Treaty provisions, an ‘Employee Mobility Directive’ to reduce still

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<sup>1</sup>Regulation No. 670/2012. The Europe 2020 Project Bond Initiative aims to revive and expand capital markets to finance large European infrastructure projects in the fields of transport, energy and information technology. The scope of this pilot phase is to test the project bond concept at the end of the MFF 2007-2013. The pilot phase of the EU-EIB Project Bond Initiative was established by Regulation No. 670/2012. It began operations in 2012 and is being implemented by the EIB.

existing barriers for employees should be adopted.

83. The Commission should set up social criteria to evaluate Member States' performance and recommend structural reform, which can be done by modifying Regulation No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

84. The Commission should assess better the need for EU action and the potential economic, social and environmental impacts of alternative policy options before it proposes new initiatives (such as legislative proposals, non-legislative initiatives and implementing and delegated acts), in keeping with the Better Regulation Guidelines<sup>1</sup> adopted by the Commission on 19 May 2015.

85. Also, better use of social and regional funds should be ensured.

86. A new Social Pact could be established that is aimed at preserving Europe's social market economy, respecting the right to collective bargaining, under which the coordination of the social policies of the Member States would be enhanced.

### ***External Action***

#### **A. Increasing the effectiveness, coherence and accountability of the Common Foreign and Security Policy (CFSP)**

87. The European Union's comprehensive approach to external conflicts and crises should be reinforced by bringing together more closely the different actors and instruments in all phases of the conflict cycle.

88. The provisions of Article 22 TEU could be used to set-up an overall strategic framework and decisions on strategic interests that can extend beyond the CFSP to other areas of external action.

89. Decisions taken on the basis of such a strategy could, moreover, be implemented by QMV in the Council. Furthermore, the Council and Parliament could start adopting joint strategic documents.

90. Parliamentary oversight of EU external action, including by continuing the regular consultations with the Vice-President/High Representative (VP/HR), the European External Action Service (EEAS) and the Commission, should be strengthened, and the negotiations on the replacement of the 2002 IIA on access to sensitive information of the Council in the field of CFSP be finalised.

91. EU Special Representatives should be integrated into the structures of the EEAS along with the transfer of their budget from the CFSP lines to the EEAS lines, which would increase the coherence of our efforts.

92. Article 31 (2) TEU, which allows the Council to take certain decisions on matters of CFSP by qualified majority, and the 'passerelle clause' (Article 31 (3) TEU) on switching progressively to QMV for decisions in the area of CFSP that do not have military or defence

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<sup>1</sup> SWD(2015)111 final.

implications, should be used.

93. Furthermore, enhanced cooperation (Article 20 (2) TEU) provides additional possibilities for Member States to move forward with CFSP and should therefore also be used.

94. In the budgetary field, the flexibility of the financial rules for external action should be increased in order to avoid delays in the operational disbursement of EU funds and, thereby, increase the EU's ability to respond to crises in a speedy and effective way. The fast-track procedure used for humanitarian assistance should be made available for external action payments as well.

## **B. Towards a common defence policy**

95. Current security challenges, some of which are in the immediate vicinity of EU's borders, have revealed the need to move progressively towards the establishment of a common defence policy (Art. 42(2) TEU) and, eventually, a common defence, which can be set up through a unanimous decision of the European Council.

96. As a first step, the provisions of Article 46 TEU allowing for the establishment of Permanent Structured Cooperation (PESCO), through a QMV vote in the Council, should be implemented. This instrument would enable more ambitious Member States to cooperate more closely in the area of defence and empower them to use the EU's institutions, instruments and budget.

97. To supplement this, an EU white book on security and defence could be elaborated on the basis of the EU global strategy for foreign and security policy, currently under preparation by the VP/HR. Such a document would further define the EU's strategic objectives in the field of security and defence, and identify the existing and required capabilities.

98. A common European capabilities and armaments policy could be defined in line with Article 42 (3) TEU, encompassing joint planning, development and procurement of military capabilities.

99. The European Defence Agency (EDA) should play a leading and coordinating role in capability development, research and procurement, and should therefore have at its disposal the necessary resources and political backing.

100. Full use should also be made of the increased flexibility provided by Article 44 TEU, which introduces the possibility of entrusting the implementation of crisis management tasks to a group of Member States. This group of Member States would carry out the task in the name of the EU and under the political control and strategic guidance of the Political and Security Committee (PSC).

101. As a first step towards the improvement of the joint financing of the common defence policy, a start-up fund under Article 41 (3) TEU can be set up for preparatory activities not charged to the Union budget. This fund would allow for a more rapid deployment of Common Security and Defence Policy (CSDP) activities and would be made up of Member States' contributions.

102. Furthermore, common financing should be extended to the area of military expenditure

under CSDP, including through the Athena mechanism. This would reduce financial disincentives on the part of Member States for contributing to military CSDP missions and operations and, thereby, improve the EU's ability to react to crises.

103. The creation of a permanent military operational headquarters that would closely cooperate with the existing Civilian Planning and Conduct Capability (CPCC) would enhance the coherence of common defence actions.

104. Moreover, the institutionalisation of the various European military structures (different 'Battle Groups', Euroforces, France-United Kingdom defence cooperation, Benelux air defence cooperation, etc.) into the EU framework, and the increase of the usability of the EU battlegroups (by, inter alia, extending common financing and considering by default their deployment as an initial entry force in future crisis management scenarios), could further enhance 'the EU's defence capabilities.

105. EU-North Atlantic Treaty Organisation (NATO) cooperation at all levels in areas, such as capability development and contingency planning for hybrid threats, should be promoted and the efforts at removing the remaining political obstacles intensified.

### *Justice and Home Affairs*

106. The current refugee crisis has clearly revealed that the EU needs a common asylum and immigration policy, which must as well provide for the fair distribution of asylum seekers in the European Union. If a truly common asylum policy proves not to be possible, then at least the possibilities for enhanced cooperation should be exploited.

107. To this end, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) must be strengthened and transformed into a European System of Border Guards, to be supported when necessary by military instruments such as the European Maritime Force (Euromarfor) and an upgraded European Corps (Eurocorps), plus the resources pooled through Permanent Structured Cooperation.

108. Furthermore, a distinction should be made clear between the concepts of 'unsafe third countries' (war zones) and 'safe third countries' (mostly Western Balkans), and the procedures for processing applicants coming from these two categories of countries should be improved and accelerated, while applicants with unfounded claims should be returned.

109. Agreements with safe third countries should be encouraged in order to control and reduce migration flows before migrants arrive at the EU's borders.

110. To this end, competences for external border controls must also be enhanced: when Frontex is in charge of an operation, the command should be with Frontex and not with the requesting Member State.

111. The human and financial capabilities of the European Asylum Support Office (EASO) must be upgraded so that it can be deployed to support Member States under particular immigration pressure in the processing of asylum requests, including in its mandate for the deployment of joint operations, pilot projects and rapid interventions similar to the ones added

by Regulation 1168/2011<sup>1</sup> to the mandate of Frontex.

112. Coordination between the EASO, Frontex and the Office of the European Ombudsman, allowing for the smoother adoption of Early Alert Reports in case of particular migratory pressure likely to put at risk the respect of the fundamental freedoms of asylum seekers should be improved, and those Early Alert Reports could be used as the basis for the Commission to trigger the contingency measures provided for in Article 78(3) TFEU.

113. The role of Parliament as co-legislator on an equal footing with the Council should be strengthened through the use of Article 81 (3) TFEU, which makes it possible to switch decision-making in the field of family law with cross-border implications to the ordinary legislative procedure if the Council decides so unanimously, after having consulted with Parliament.

114. For all other policies in the field of Justice and Home Affairs (JHA), decision-making can be switched to the ordinary legislative procedure using the ‘passerelle clause’ enshrined in Article 48 (7) TEU.

115. Furthermore, along with the provisions of the EU Charter of Fundamental Rights the principles set out in the Lisbon Treaty should be put into practice, in particular those of solidarity and the sharing of responsibility among Member States, and of mutual recognition in the implementation of JHA policies (Article 70 TFEU).

116. Last but not least, the Union should accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in line with Article 6(2) TEU, and negotiations to this effect with the Council of Europe should be relaunched without delay.

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<sup>1</sup> REGULATION (EU) No 1168/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union