



Department of Political Science

Chair of European Union law

The European Union of the Spinelli Treaty, lessons learned for the next stage of the integration process.

Prof. Francesco Cherubini

Gregorio Vichi
088702

SUPERVISOR

CANDIDATE

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Introduction

“With a view to continuing and reviving the democratic unification of Europe, (...), and convinced that it is increasingly important for Europe to assert its identity;
(...) aware of the present need to redefine the objectives of European integration, and to confer on more efficient and democratic institutions the means of attaining them;
Basing their actions on their commitment to the principles of pluralist democracy, respect for human rights and the rule of law;
Determined to increase solidarity between the people of Europe (...);
Convinced of the need to enable local and regional authorities to participate by appropriate method in the unification of Europe;
Intending to entrust common institutions in accordance with the principle of subsidiarity (...)”

It is almost forty years since the Treaty establishing the European Union was drafted and adopted by the European Parliament (‘EP’) on February 14th, 1984. Nevertheless, only by reading the preamble of the draft, also known as the Spinelli Treaty, can one already understand its relevance and the need to carry forward the process of European integration interrupted since the Lisbon “Reform” Treaty of 2007. A quest for an European identity, to build more efficient and democratic common institutions, to bring the people of Europe closer with a *de facto* solidarity and for the respect of human rights and the rule of law. All quests that still today appears open and to which the various treaties promulgated since then, have not been (or only partially) able to find a solution.

Despite the limited impact of the treaty itself, the work of the EP under Spinelli's coordination has been very productive in terms of new ideas about the political system and the functioning of the European Union (‘EU’). This dissertation thus aims to highlight the innovation and the still very topicality of the treaty also by comparing it with the current institutional framework of the Union and it will be organized in three chapters.

The first chapter will serve to analyse the juridical, historical and political background that led to the drafting of the treaty. In order to better understand the Spinelli project it is in fact essential to begin with a brief examination of the functioning of the European Communities and its institutions up to the proposal carried out by the EP. Equally important are historical and political events, such as compromises, without neglecting the intergovernmental *modus operandi* that had always characterized the elaboration of treaties at European level, and they will also be analysed, while the final part of the chapter will be dedicated to the discovery of the figure of Altiero Spinelli, its undeniable federalist aspirations and further ideologies behind the Treaty.

The second chapter will instead focus on an in-depth analysis on the content of the draft. A first section of the chapter will be dedicated to a general

overview of the text while the second one will thoroughly analyse the main innovative provisions presented in the treaty with a focus on the method used for its drafting. Among the many innovative provisions, a paragraph will be dedicated exclusively to the title III of the fourth part of the Treaty concerning the international relations of the Union.

The third and last chapter will then analyse the legacy left by the treaty, initially by illustrating the constitutionalisation process (carried out mainly through treaty amending) triggered by the work of the EP that led to the Lisbon Treaty and subsequently by highlighting the various provisions not implemented by subsequent treaties but which still feed the political debate around the EU today.

Chapter 1 - From the EU of the founding fathers to the Spinelli Treaty

Along its seventy-years history, the institution today known as European Union ('EU') has witnessed downfalls and accomplishments, alternating periods of great euphoria towards the European integration process with others of greater scepticism and stalemate. What is nowadays clear is that the appeal of former European Commission Jacques Delors on November 5th 1990 for a European "heart and soul" still remains open. And it is precisely this the greatness of Altiero Spinelli that places him on the same level as the founding fathers, the ability to have a vision for the European project and the stubbornness to have carried it forward throughout his life despite the adversities. Thus, in order to better understand the Treaty drafted by the European Parliament ('EP'), knowing Spinelli's relentless life dedicated to the European cause is as important as comprehending the political, juridical and institutional context of the Treaty. The purpose of this chapter is therefore precisely to go backwards, to start from the origins of the European integration process to understand how the initiative carried out by Spinelli came about.

1.1 At the origin of the European Integration Process

Although Europe officially became a Union only in 1993 with the entry into force of the Maastricht Treaty on November 1st, the first signs of European cooperation emerged at the end of the Second World War. In this period, European integration appeared as an antidote to the extreme nationalisms that had previously ravaged the continent¹, and was characterised by the spread of inter-state cooperation and the rise of international cooperation. The various efforts for European cooperation, led from an international law of coexistence to an international law of cooperation with three different organizations: the Organisation for European Economic Cooperation (1948), the Western European Union (1948-54) and the Council of Europe (1949)². However, none of these experiences led to the currently known EU but they were instrumental in creating a favourable climate for a qualitative leap towards forms of closer collaboration between European states. This qualitative leap in the integration process, to be understood as the process of progressive transfer of sovereign powers by the member states ('MS') to supranational entities, was accomplished through the creation of the European Coal and Steel Community ('ECSC') in 1951.

The process for the creation of the ECSC began in May 1950 with the famous declaration, promoted and prepared by Jean Monnet and his team, of the

¹ DESCHAMPS (2016: 2).

² The first counted 18 members and was created to administer the US aids for the European reconstruction. In 1961 was replaced by the OECD, which had a more international outlook. The WEU was a regional organisation of military security and political cooperation, while the Council of Europe is an international organization whose main aim is to protect human rights and fundamental freedoms.

French foreign minister Robert Schuman. They were convinced that, in order to create a lasting peace, it was necessary to create cooperation in economic and commercial matters. To this end, Schuman proposed to start with the normalization of relations between France and Germany with the pooling of the entire production of coal and steel under the control of the High Authority and to ensure its free circulation within the European continent. These resources, which had been the basis of the conflicts between the two states, thus became an instrument of encounter and shared utility that would have made it impossible for new tensions to arise. Not only the German Chancellor adhered to the proposal of the French foreign minister but also Italy, Luxembourg, Belgium and the Netherlands, while it was rejected by the United Kingdom. The six states thus came to the signing in Paris, on April 18th, 1951, of the Treaty establishing the ECSC which then came into force on July 23rd of the following year. With the ratification of the treaty, the following institutions came into existence: the High Authority, the Common Assembly, the Special Council of Ministers and the Court of Justice ('CoJ')³.

The success of the ECSC led the signatory countries to seek greater integration. On May 27th, 1952 they signed the Treaty establishing the European Défense Community ('EDC') in Paris which provided for the creation of a European army, an institutional apparatus and a reaction mechanism to any aggression suffered by one of the member states. This proposal for the creation of a common European army became even more significant when on March 10th, 1953 the statute for the creation of the European Political Community ('EPC') was approved by the ECSC Assembly. The European project therefore intended to take a clear federalist direction, on which the various states' representative, notably led by Alcide De Gasperi and Paul Henri Spaak, were able to reach an agreement. Project concluded following the negative vote of a French National Assembly with growing Gaullist influence which on 30 August 1954 did not ratify the EDC Treaty, and consequently the EPC⁴.

1.1.A The developments of the European project: the context of the Spinelli Treaty

The failure of the EDC was a severe blow to those who dreamed of a political, economic, and military union of European countries. The European integration process then resumed on the initiative of Monnet, Paul-Henri Spaak and Gaetano Martino⁵, and on the example of the customs union of the Benelux countries. Their vision brought to the foundation of the European

³ SALM (2020: 1-2).

⁴ SCHÜTZE (2018).

⁵ Respectively first president of the High Authority, first president of the Common Assembly and Italian foreign minister from 1954 to 1957 which organized the Messina Conference of 1955 among the foreign ministers of the ECSC that led to the signing of the Treaty of Rome in 1957.

Economic Community ('EEC') and of the European Atomic Energy Community ('EURATOM') with the signing of the Treaty of Rome in 1957, which instituted a common market based on the free movement of goods, people, services and capital.

Despite the results achieved in the first post-war decade, the period following the signing of the Treaties of Rome is often referred to as an "era of stagnation or eurosclerosis"⁶. This period from the 1960s to the mid-1980s is characterized by a long period of stalemate in the process of European integration. Conventional explanations of the eurosclerosis interval often state that the overall context of the period was unfavourable to further integration⁷. Various motivations may be addressed as the causes of this phenomenon. De Gaulle election as French President in 1959 is a very prominent cause of this as he had a very definite view of France's place in the world, as a nation-state not beholden to any other entity (may it be a European organization or a multilateral security organization). It was de Gaulle intergovernmentalist attitude which caused in July 1965 the Empty Chair Crisis. General de Gaulle saw as an unacceptable renunciation of sovereignty two institutional reforms forecasted by the Treaty of Rome: the change in the arrangements for voting in the Council of Ministers ('CoM') from the principle of unanimity to qualified majority voting and the strengthening of the budget powers of EP and EC. In disagreement with these developments and refusing any solution based on compromise, the French Government recalled to Paris the French Permanent Representative in Brussels. A threat posed to the activism of the Commission resolved at great cost with the Luxembourg Compromise, deferring every "vital national interest"⁸ decision, a judgement left to the state in question, until an unanimously acceptable solution could be found, regardless of whether Paragraph 1 of Art. 148 of the EEC stated that "except where otherwise provided for in this Treaty, the conclusions of the Council shall be reached by a majority vote of its members", with the qualified majority set at 12 votes, with France, the German Federal Republic and Italy each holding 4 votes, Belgium and the Netherlands 2 votes and Luxembourg 1 vote⁹.

In addition to the Luxembourg Compromise, which in practice was used to make unanimity the normal decision-making procedure, the enlargement of 1973 from six to nine members inevitably increased the difficulty of EC decision-making. These factors, combined with the world economic crisis triggered by the oil embargo by the Organization of the Petroleum Exporting Countries ('OPEC') in 1973, have hampered any further integrative steps, highlighting the lack of Community solidarity and encouraging the growth of

⁶ AWESTI (2009: 40).

⁷ AWESTI (2009: 41).

⁸ Agreement of the Council of the EU, 29 January 1966, *sur le vote majoritaire au sein du Conseil, Compromis de Luxembourg*.

⁹ EEC, *Trattato che istituisce la Comunità economica europea*, Roma, 25 Marzo 1957.

protectionism among member states. Only with the slowdown of the crisis and the improvement of the economic situation in 1976 the discussion on the European cooperation resumed, leading in the same year to the establishment of the European Monetary System ('EMS'), which will prove to be an effective economic tool for all the countries of the European area. But the real democratic turning point in Europe will come in 1979 with the first elections of the EP¹⁰. Although in each country the voting methods followed a different legislation, the elections were a time of great participation and movement with about 63% of the European electorate involved¹¹, rekindling the climate of renewed hope and European fervour in which Altiero Spinelli fits with his reform of the Communities constitutions.

1.1.B The institutional system of the European Communities

As previously asserted, in order to better understand the Spinelli project and its innovativeness, it is necessary to carry out a brief examination of the functioning of the EU and its institutions up to the introduction of the Single European Act ('SEA').

In 1984 Europe was based on three main Treaties, and the corresponding Communities: ECSC, EEC, EURATOM. Each of them regulated distinct sectors and operated with different institutions. They had a common Assembly but three different executive commissions, a CoM but with different functions for each of the Communities and a single Court. With the entry into force of the Merger Treaty in 1967, the three Communities adopted as one their institutions: the Commission of the European Communities, the Council of the European Communities, the European Parliament and the Court of Justice of the European Communities. The institutional architecture of the European Community was conceived in such a way as to make community action subordinate to individual governments¹², depriving the Commission of effective executive powers. Therefore it was the CoM, not accountable to the Assembly, that had the real power, being the latter made up of members appointed by national governments.

Before moving on to a brief analysis of the various institutions mentioned above, let us analyse the three Treaties in broad terms. As already mentioned, the Treaty establishing the ECSC¹³ was signed in 1951 and ratified the following year by the "Original Six". The ECSC was born to address the problem of coal and steel resources, in particular the huge basins present in the Ruhr, which had been one of the major reasons of conflict between France

¹⁰ The Act of 20 September 1976 gave Parliament new legitimacy and authority by introducing election by direct universal suffrage.

¹¹ SALM (2019: 2).

¹² Strong statement not entirely correct but accentuated for the purpose of the speech.

¹³ ECSC, *Treaty establishing the European Coal and Steel Community*, Paris, 18 April 1951.

and Germany. The Treaty established a common market for coal and steel only, abolished customs barriers and any quantitative restrictions on these goods and abolished all discriminatory measures, aids or subsidies granted by the various states to support their national economy. The cardinal principle of the whole Treaty was that of free competition which made it possible to keep the prices of goods as low as possible. To pursue all these purposes, the nation states had to surrender part of their sovereignty to a supranational community, the ECSC. To allow it to function properly, the ECSC was endowed with four institutions: High Authority, Special Council of Ministers, Common Assembly and Court of Justice. The High Authority was the central body made up of 9 members, of which a president and 8 ordinary members (two for Italy, the Federal Republic of Germany and France, one for the other member states). The members were appointed and chosen for their professional competence by the States themselves and had the faculty and duty to act in full independence, being a third of the members renewed every two years. The president was elected by the members of the High Authority. The body had various deliberative powers, being able to issue not only opinions, but also decisions and recommendations, which had binding effects, the former in their entirety, the latter of purpose. The Special Council of Ministers was composed of a representative of the government of each state and had an advisory function with respect to the High Authority. In the event that the High Authority had to deliberate on the assent of the Council, the latter's opinion was however binding. The Common Assembly had consultative functions and brought together parliamentary representatives of the member states. The Court of Justice exercised legitimacy checks on acts issued by the Authority or on the conduct of the various institutions.

The EEC Treaty¹⁴ has an object of an economic and commercial nature, similar to the ECSC, but unlike the latter, it does not have a sectoral character but aims to have a general scope. The Treaty aims to establish a customs union by eliminating national customs duties and any obstacle that impedes or inhibits trade between member countries, to establish a single customs tariff in trade with third countries, to create a common commercial policy, to progressive creation of a single market characterized by the free movement of capital, persons, services and goods and finally the creation of an authority to supervise compliance with free competition. Together with the commercial part, the EEC Treaty also provided for a whole series of policies aimed at an interventionist profile such as the common agricultural policy, transport policy, social policy and regional policy. The institutional framework of the EEC resumes that of the ECSC, that is, it provides for an Assembly, which will later become the European Parliament, the Court of Justice, the Commission and the Council, which correspond to the High Authority and the Council of Ministers of the ECSC. Unlike the latter, in the EEC there is a re-

¹⁴ EEC, *Treaty establishing the European Economic Community*, Rome, 25 March 1957.

balancing of powers in favour of the Council, and therefore of national governments, with respect to the Commission, a purely supranational body.

The third Treaty, EURATOM¹⁵, bears significant similarities in the institutional framework and legal characteristics to that of the EEC. The objective of this community is described in the first article of the Treaty establishing the European Atomic Energy Community ('EAEC'), shown below:

It shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries.

To pursue these purposes, the EAEC involved the establishment of safety standards, the development of research, the dissemination of technical knowledge, the guarantee and control so that nuclear materials were not diverted from their intended purposes, the creation of a common market for special materials and equipment, the free movement of capital for nuclear investments and the freedom of employment of specialists within the community, the persecution of all suitable links to promote progress in the peaceful use of nuclear energy.

As already briefly mentioned, with the Merger Treaty signed in Brussels on 8th April 1965 and came into force on 1st July 1967, the three European Communities, although remaining legally independent, started to share common institutions that will now be illustrated.

The EP, the place of representation of the citizens of the EU, already existed at the time of the birth of the ECSC and was a common institution, from the moment of their birth, also of the EEC and the EAEC. The name of the EP, previously called the Assembly, was sanctioned with a resolution of the Parliament itself in 1962. The number of parliamentarians that compose it is variable, both due to the progressive incorporation of new states, and because there is no number defined by the law. The number of members, and their assignment to each state is established by a decision voted unanimously by the European Council. Originally the components were elected by national parliamentarians from among their own members as established by art. 138 of the EEC Treaty. This system presented numerous contraindications: poor representation, under-representation of minority parties, dual role of elected representatives as national and European parliamentarians with often greater attention paid to national office. The first direct elections were held only in 1979 with elections by direct, free and secret universal suffrage, without, however, adopting a uniform electoral procedure but only some common

¹⁵EURATOM, *Treaty establishing the European Atomic Energy Community*, Rome, 25 March, 1957.

elements. With regard to the functions of the EP, it should be remembered that, until the SEA, they were very modest. Parliament had no legislative power but limited itself to participating in the legislative function by formulating opinions on the proposals presented by the Commission and on which the decision-making power was reserved solely to the Council. Furthermore, it did not possess any power of initiative or impulse as an institution or through its individual members. On the other hand it had a general power to deliberate and adopt resolutions on any matter concerning the European Community¹⁶. It also possessed control powers but only vis-à-vis the Commission while the Council was completely disconnected from any possible form of control.

The European Council was founded in 1961 with the aim of addressing problems and making important political decisions on the path of European integration. However, it was officially formalized as an active European institution only in 1974 with the Paris summit where the heads of government expressed the decision to meet three times a year accompanied by their respective foreign ministers. The body has a dual function: on the one hand, making crucial decisions for the path towards full integration, on the other, consulting, coordination and planning activities in the field of foreign policy. Until 1986, with the ratification of the SEA, it operated with the status of an intergovernmental conference of a periodic nature, therefore outside the regulatory framework and the organizational system of the European Communities. Although the European Council is an intergovernmental body to all intents and purposes, it stands at the political level as the summit of the European institutional structure, as all the major decisions were taken by it and then be softened by the other institutions. Until the Treaty of Lisbon, the European Council did not have its own president who represented the institution, and therefore Europe, on the international scene. The most recurrent vote in this body is unanimity, a complicated procedure especially with the progressive enlargement of member states and therefore due to the greater difficulty in producing decisions shared in unison. Until the Lisbon Treaty, the European Council was not subjected to any type of control; after the Treaty a form of political control by the EP was introduced.

The Commission, founded by the ECSC Treaty with the name of High Authority, is a supranational body required to operate in the exclusive interest of the European Community in a position of full independence from the MS or any other body or power. In virtue of this it is made up of independent and highly competent individuals, so much that it is often referred as the government of technocrats. Its composition was regulated by Art. 10 of the Merger Treaty¹⁷ which envisioned nine commissioners with each MS

¹⁶ As established by the CoJ in the judgment of 10 February 1983, case 230/81, *Grand Duchy of Luxembourg v EP*.

¹⁷ Merger Treaty, *Traité instituant un conseil unique et une commission unique des communautés européennes*, Brussels, 13 July 1967.

represented, so as per 1984, it consisted of one commissioner per MS¹⁸. Independence was emphasized as a fundamental characteristic for the role of commissioner, as a possible collaboration of one of them with a lobby, or body, would have given them a great advantage to the detriment of the Community. To reinforce this characteristic there was the absolute prohibition for a commissioner to carry out any other professional activity even if not remunerated. The discipline on the appointment of commissioners has had a long and significant evolution. Originally, its members were appointed by mutual agreement by the governments of the member states or unanimously and outside the European institutional framework. The main function of the Commission was the control and supervision of compliance with the European regulatory framework accompanied by a strong investigative power that allowed the Commission to collect the data and information deemed necessary for the checks, taking into account the limits imposed by the Council. The Commission also had a strong organizational role both from an economic financial point of view, as far as the European Communities were concerned, and from a programmatic point of view.

The European Court of Justice was also founded with the Treaty establishing the ECSC in 1951 with the decision of the six founding member states to create a judicial body capable of guaranteeing compliance with European law. With the Treaties of Rome, the Court assumed the role of juridical body also for the two new Communities: EAEC and EEC. It is made up of one judge from each MS with a seven-year term; each judge must be chosen for independence and competence. The Court has played a major role in the path to European integration, often revealing itself as one of the real engines of this process with revolutionary judgments that have overturned the practices or decisions of other institutions. Precisely because of its role and the great confidence gained with its judgments, the Court soon found itself congested with appeals, almost reaching a paralysis that was resolved only in 1988 with the creation of a second degree court.

1.2 Altiero Spinelli

Altiero Spinelli can be defined as an “historical man”, one of those man that according to the German philosopher Hegel are able to “first express what men want”¹⁹, being at the forefront, foreseeing, starting processes that perfectly fit the age. He was only twenty years old when in 1927 as a leader of the Italian young communists was arrested by the Fascist Regime and sentenced to internment. Since then, from his solitary reflections in jail, he first decided to give up communism and afterwards he was able to set a clear long term vision for the United States of Europe. In the summer of 1941, when

¹⁸ With the accession in 1973 of Denmark, Ireland and the United Kingdom, the European Communities were composed of nine MS.

¹⁹ HEGEL (1837: 77).

World War II was raging all across the European continent, from the small Mediterranean island of Ventotene together with Ernesto Rossi and Eugenio Colomni he wrote the manifesto of European federalism foreseeing the future of post-war Europe's development²⁰. A vision for a federal Europe characterized by the idea of current topicality of the European Federation and the will to carry it forward.

Despite the stubbornness with which Spinelli carried out the ideas promulgated in his manifesto with the founding of the European Federalist Movement in 1943, the federal method never predominated as a process of European unification. The Congress of Europe held in The Hague in May 1948 saw the confederal approach prevail, though subsequently it was functionalism, with its policy of small steps and a gradual passage of sovereignty, which asserted itself. In fact, the federalist dream partly ended in 1954 with the failure of the EDC and EPC treaties, defeats that Spinelli experienced first-hand as secretary of the European Federalist Movement and among the main animators.

Following a period as European commissioner that lasted 6 years, in May 1976 Spinelli chose to resign to continue his activity as a reformer within the institution in which he had always believed the most, the European Parliament. Spinelli himself acknowledged the European Parliament as “the institution that was the most independent of governmental choices, the one which had consistently been the most capable of developing transnational groupings of political forces, the one that was the most imbued with European spirit and had been the most resolute in calling for a limitation of national sovereignty and for supranational development”²¹. Thus the institution best suited to carry forward the integration process. In July 1976, following his election to the Italian Chamber of Deputies, he was therefore delegated to European affairs, taking place in three committees: Political Affairs, Budgets, and Economic and Monetary Affairs. It was in 1980 as an elected MEP, the first elections by universal suffrage of the EP had been held in 1979, that Spinelli taking on the situation of impasse that Parliament was experiencing, vested in great moral and political responsibility but relegated to a purely consultative competence, pushed for reforms. It was in a speech to the assembly on 25th June 1980 that he launched the initiative of undertaking a “comprehensive reform” of the European Communities. The speech was then followed by the creation of the “Crocodile Club”, a cross party group of MEPs which within a few months drew up a motion for a resolution for the establishment of an ad hoc committee, “responsible for making proposals on the current state and future development of the Community”. The motion, signed by 180 MEPs was then tabled and adopted and the Institutional Committee began its work in January 1982 with Altiero Spinelli appointed as

²⁰ ROSSI, SPINELLI (1941).

²¹ GRAGLIA (2008: 523).

rapporteur-coordinator. The Draft Treaty establishing the European Union was on its way, and on 14th February 1984 was adopted by the Parliament²². The constituent experience, despite the approval of the body legally elected by European citizens, was lost in the interinstitutional debate. The legacy that the treaty left thanks to Spinelli's tenacity has not been lost and, as we will see in the next chapters, is considered to have had a vital influence on the process of building the European Union. The remainder of this chapter focuses instead on the ideological background of the treaty and its main advocate.

1.2.A The Treaty's ideological background

According to Spinelli, the crisis of contemporary society and WWII could be understood on a double perspective: on one hand the crisis of national states and on the other international anarchy²³. In order to respond to these problems, that with the internationalisation of production process have acquired much wider dimensions than nation-states, Spinelli sought federalism. While the traditional political forces pursued the reform of the national states, the federalist project aimed at a more radical change which affected the very nature of states: their transformations into member states of a federation.

Spinelli believed that a European Federation could be achieved on a double ground: a treaty, in which states agree to give up part of their power, and a constitution defining the structure of the union of states. The Italian politician saw the constituent method as the only procedure possible for the successful construction of a European democratic power, and took the Philadelphia Constitutional Convention as his model. This belief that European integration needed to draw inspiration from the US constitutional experience was assessed in an essay of 1957 entitled *Il modello costituzionale americano e i tentavi di unità europea*²⁴. Functionalists and federalists disagreed on the validity of Spinelli's thesis. According to functionalists many conditions (similar economic development, linguistic and cultural homogeneity and little experience as independent sovereign units) were not present in the European case for a viable federal constitution and the US model represented rather the endpoint than the point of departure of the process of European unification²⁵. Spinelli, as other European federalists, was instead convinced of the necessity to reorganize political authority in Europe based on the US federal model. Indeed, as illustrated in the "Ventotene Manifesto"²⁶, the end of the war presented some favourable circumstances for this purpose: the disintegration of armies and European states (such as the French one) by the German occupation, the end of the British isolation, the crumbling of European

²² LUGARINI (2016).

²³ LEVI (2007: 8).

²⁴ SPINELLI (1957).

²⁵ GLENCROSS (2009: 288).

²⁶ ROSSI, SPINELLI (1941).

colonial empires, the disappearance and weakening of European dynasties. Spinelli founded his analogy on the conceptual premise that the US Constitution was designed as a solution to problems of sovereignty and democracy identical to those faced by European states in the post-war context²⁷. The formation history of the United States of America clearly shows that state sovereignty was the agent of the division of North America and that unity was achieved when a federal government, endowed with limited but real powers, was created. The US federal Constitution of 1789 is thus relevant because represented to Spinelli a system successful in establishing political authority and the specification of its limits, conserving democratic accountability by guaranteeing both the separation of powers and the control of the governed over the governing.

Furthermore, Spinelli, in a lecture of June 13, 1983 to the European University Institute in Florence, to the question “why has the European Parliament taken this constituent reform upon itself”²⁸ gave six reasons all of which related to the functioning of the Communities’ institutional system. At the basis of these criticisms is Spinelli’s direct experience as an MEP, his experience within the Communities procedures which saw the intergovernmental method sponsored by the Council as the only way forward for European integration and to the new pressing needs for a joint approach on certain issues, thus depriving the parliament of its genuine political powers and restricting the autonomy of the Commission.

The decision-making system described does not therefore take note of the European position. Spinelli aims for, decisions of a European dimension, prepared politically through debates, electoral campaigns and compromises which demonstrate the degree of consensus called for among European citizens. Hence, the elections of the European Parliament representing the European will. The demonstrated uselessness of Parliament’s vote and amendments to the budget presented by the Commission in December 1979, the Commission’s failure to consider Parliament’s proposals both in ordinary legislation and in Community policy but also in foreign policy, were proof of how the Council was the real initiator of policies in the Community and thus how decisions were rooted in the political life of member states.

Now that the initiative of the EP has been framed under an ideological, historical and institutional perspective, the following chapter will focus more strictly on the jurisprudence of the treaty highlighting the main innovative elements.

²⁷ SPINELLI (1993: 267-8).

²⁸ SPINELLI (1983).

CHAPTER 2 - The Draft Treaty establishing the European Union

As the first chapter points out, the Draft Treaty establishing the European Union ('EU') was the result of many years of work and reflection. Reflections which for Altiero Spinelli had started from his confinement on the island of Ventotene during the years of the second world war, and which in the context of institutional dysfunction the European Communities were living, took root with the first elected European Parliament ('EP'). The Spinelli project and its main objectives can be summarized in the words of Spinelli himself to the EP preceding the vote on the draft, in his speech of February 14, 1984 as rapporteur of the Committee on Institutional Affairs:

“Our text makes the Commission into a genuine political executive and preserves a legislative and budgetary role for the Council of the Union. It recognizes that there are fields in which problems should be dealt with by the European Council by the method of cooperation. But it prohibits the intergovernmental method from encroaching on the sphere of common action and, at the same time, leaves a way open for certain matters to be transferred from the sphere of cooperation to that of common action”.²⁹

The outline is clear, limiting the role of the Council to the legislative and budgetary function and strengthening the Commission, making it a real political executive in favour of the role of a EP with strong competences and no longer as a mere prompter of opinions. The text does not eliminate the cooperative method between states, but at the same time strengthens the common procedure by prohibiting the first from invading the fields of the second, a measure originating from the belief that through intergovernmental action it is impossible to conceive large-scale projects that require broad consensus and the overcoming of national rigidities. Although the Treaty is often linked only to Spinelli, the role of the EP was fundamental, gave a European dimension to the project and will be highlighted in the following pages.

The chapter, before that on the unprecedented process of treaty-making, will focus on an analysis of the Treaty itself, first with a general summary of the text and then studying the major innovative aspects of the Treaty.

2.1. The Draft Treaty, an overview

The Spinelli Project was intended to be a new EU institutional treaty and not a mere revision of existing treaties³⁰, the text thus embraced all the fields of the Union and aimed to reform it in a structural way. As a consequence, the structure of the Draft Treaty establishing the EU³¹ is more complex and

²⁹ SPINELLI (1984).

³⁰ PONZANO (2007: 8).

³¹ Draft Treaty establishing the EU, EP, 14 February 1984.

articulated: it consists of six parts, which in turn can be divided into titles, for a total of 87 articles.

At the beginning the preamble lists the aims of the Treaty and of the contractors, the member states ('MS'). Nine points summarize the reasons and principles that animate the structure of the Treaty with the corresponding objectives to be achieved.

The first part, consisting of eight articles, deals with the general lines of the establishment of the new supranational organization: the European Union. The accession of new members is dealt with, European citizenship established, fundamental rights governed (the declaration of which must be completed within 5 years following the signing of the Treaty), the territory of the Union and its legal personality are defined, the supremacy of the current Treaty over the precedents is set and in conclusion the institutions belonging to the Union are listed.

The second part, consisting of five articles, outlines the "objectives, methods of action and competences of the Union"³². Two possible methods of actions are described (art. 10): cooperation and common action. The following article highlights the possibilities of a transition from the method of cooperation to the one of common action, denying the reverse transition. In art. 12, on the other hand, competences are defined, which are divided into two categories: exclusive, where the power of the Union is total, concurrent when the Union can act only where there is a clear need for its intervention and where such intervention can prove to be more effective than action by individual nation states. In the last article, art. 13, the procedures for implementing European law are defined.

The third part consists of thirty articles, in turn divided into two titles: the first concerns the functioning of the institutions of the Union while the second deals with the acts of the Union. In articles 14-19 the functioning, competences and composition of the EP are regulated. In articles 20-24 the functioning of the Council of the Union ('CoU') is explained. The following five articles speak instead of the Commission, which as a supranational body plays a leading role in Spinelli's institutional systems. In the last articles of title I the description of the Court of Justice ('CoJ') and of the new institution conceived by Spinelli, the European Council, can be found, while art. 33 is dedicated to the organs of the Union.

Title II, consisting of ten articles, defines everything related to the legislative activity of the Union, from legislative power to publication methods, from voting methods to judicial control and possible sanctions.

³² Draft Treaty establishing the EU, EP, 14 February 1984.

The fourth part consists of twenty-three articles which, apart from the first two articles, 45 and 46, are divided into three titles that deal with the policies of the Union. The first two articles outline the general principles that characterize them and their purpose; they must have as their final objective the creation of a homogeneous judicial area.

Title I deals with economic policy, with particular regard to achieving the completion of the internal market, an objective so dear and common to all MS, and outlines the rules on jurisdiction, credit, economic and sectoral policies in articles 50-51 and 53, the mechanism and the establishment of the European Monetary System ('EMS') in art. 52.

Title II concerns social policy, a topic whose discussion had been lacking until then, contributing to the formation of a negative opinion, on the part of public opinion, of the European Community, which many considered to be an elitist space for technocrats far away from the people's needs. Art. 55 represents the general provision, while in the following articles, from 56 to 62, social, consumer, regional, environmental, education and research, cultural and information policies are dealt with specifically.

The last title defines the Union's international relations. This is another very innovative part of the Treaty, initially defining the principles that move European action and subsequently describing, in articles 64 to 68, the two possible methods of action at the international level: common and cooperative. The last article, art. 69, introduces an absolute novelty in the European international panorama or the right of legation.

The fifth part, consisting of eleven articles, deals with everything related to the financial matters of the Union. The general principles, revenues and expenses, financial equalization are defined, another absolute novelty dealt with in art. 73, the financial programs, the budget, the budgetary procedure, the provisional twelfths, the implementation of the budget, the auditing of the accounts, the revenue and expenditure account and art. 81, discharge.

Part six, consisting of six articles, contains the final and general provisions on the Treaty itself. Art. 82, concerns the entry into force of the Treaty, providing for the first time the possibility of the unnecessary unanimity of ratification, which until then had been the basis of the European integration process. In art. 84 a particularly innovative procedure for revising the Treaty is defined and in the subsequent articles the seats of the institutions, the duration of the Treaty, unlimited, and the mechanisms of possible reservations are defined.

2.1.A The legal characteristics of the Union

The Draft Treaty establishing the EU genuinely presents itself as a constitution: as well as having been voted and drawn up by an assembly, the

text clearly defines institutions, competences and aims of a political body. Another constitutional aspect which draws attention given the lack of this feature in Community treaties is the widely underlined democratic nature of the Union. Art. 2 entails the democratic nature of the state as the main condition of accession, while articles 4 and 44 stipulate that in case a MS might violate a principle of democracy or fundamental rights the European Council could take steps to deprive the country of some of the rights enjoyed under the Treaty. The same art. 4 with the third paragraph advocates the Union to draw up its own list of fundamental rights within a period of five years after the Treaty has come into force.

Despite its inner constitutional nature, the preamble and art. 7 of the Treaty affirm the hereditary character towards the European Communities. The clearest sign of continuity is undoubtedly having maintained the existing institutional structure. The same applies to existing Community legislation. The principle is thus the one of incorporation of the Community's legislative patrimony, in order to avoid any risk of the two systems to co-exist³³. In case of divergence or incompatibility, since new laws take precedence over earlier ones, the provisions of the Union Treaty override any Community law, with the Court settling any dispute that may arise.

All things considered, in spite of the constituent action of the EP and the adoption of the text by the same to a large majority, its entry into force remains bound to the decisions of MS. The draft therefore presents a double legal nature: on the one hand it is a constitution defining the structure of this union of states, with the features listed above, and on the other hand it is a treaty because it requires states to agree to give up part of their power to a supranational government³⁴.

In conclusion, despite the federalist genesis, the Draft Union Treaty turns out to be much less revolutionary than might have been supposed to be. The Union is a direct extension of the Communities and does not constitute a 'superstate'. MS conserve their sovereignty with the Union enjoying limited transfers of competence. In fact, as stated in art. 12, the Union is competent only in those areas where it can act more effectively than the MS acting separately can. It is simply intended to be a more effective structure than the existing ones, hence the focus on its operations and its institutions³⁵.

2.2 Innovativeness of the Treaty

³³ JACQUÉ (1985: 18).

³⁴ LEVI (2007: 11).

³⁵ JACQUÉ (1985: 20).

The Draft Treaty adopted by the EP on 14 February 1984 can certainly be described as visionary, but by no means utopian³⁶. This paragraph therefore aims to analyse the main innovations introduced by the Spinelli Treaty with respect to the past. These innovative provisions are instrumental in understanding the relevance of the EP work, both in drawing the difference with the past European Communities system and in discovering its influence on the current European system.

The first difference is found, as already mentioned, in art. 1 where the Spinelli Treaty is described as a treaty establishing a new institution and therefore replacing the three European Communities structure. This article is very important as it affirms the will of the Italian politician, not to accompany the previous Treaties, not to proceed in small steps but rather to carry out a work of structural reform of the Community, in stark contrast to the functionalist vision³⁷.

In art. 3 is stated, for the first time, the notion of “European Citizenship” in parallel to the national one: the two coexist without one overshadowing the other, with the first conditioned by the possession of the latter. The concept of European citizenship was revived by the Maastricht Treaty on the European Union (1992) and maintained in successive Treaties.

In art. 4 two important innovations can be found: the reference to fundamental rights in an extensive way and the introduction of the possibility of sanctions against states. With regard to fundamental rights, the article does not refer only to those of the European Convention on Human Rights (ECHR) but also to those guaranteed by national constitutions such as social and economic rights. As a guarantee of respect for these rights, the Spinelli Treaty introduces the possibility of sanctioning those states that are guilty of serious and persistent breach of fundamental rights or democratic principles. Both provisions were subsequently adopted: the first through the Charter of Nice and the second through the Treaty of Amsterdam.

Art. 8 of the Treaty, listing to various institutions of the Union, introduced the European Council as one of the formal institutions of the Union for the first time, whose functions and ways of acting are then specified in articles 31 and 32. It is a purely intergovernmental body, made up of the heads of state, or government, of the MS, with various functions: appointment of the President of the Commission, formulation of recommendations in the field of cooperation, addressing of messages to other bodies, information periodical of the Parliament on the activity of the Union and power with regard to the matter of the competences of the Union.

³⁶ BIEBER (2007: 22).

³⁷ PONZANO (2007: 8).

After regulating, in art. 10, the two methods of action of the Union, common and cooperation, art. 11 introduces the possibility of passing, by decision of the European Council, from the intergovernmental to the common method. Therefore, for the first time, it became possible, outside the signing of new treaties but always remaining under strong jurisdiction of the MS, an enlargement of the competences of the Union through the institutions of the Union itself. This provision anticipates the so-called “bridging” clauses introduced in successive treaties to permit the passage from one decision-making procedure to the other.

In the following art. 12, the subsidiarity principle is defined. According to this principle, in the area of concurrent powers, the Union action is necessary if it proves to be more effective than the action of MS acting separately, in particular when the dimension or effect of the action of the Union extend beyond national frontiers. Also in this case, this principle will only be implemented starting from the Maastricht Treaty and then maintained in subsequent Treaties.

In articles 12 and 13, the concept of co-decision and European law is introduced. Co-decision is the process by which European law is adopted through an equal relationship in the legislative procedure between Parliament and the Council. The co-decision, described at art. 38 of the Spinelli Treaty, was subsequently implemented with the Maastricht Treaty and made “ordinary” procedure only in 2007 with the Lisbon Treaty. To date it is described in art. 294 TFEU³⁸. Spinelli also provided for a Conciliation Committee between the two bodies, with the participation of the Commission, in the event of a lack of agreement on the act or amendments between the two legislative bodies. Another practice taken up by the ordinary legislative procedure.

Art. 16, listing the various functions of the Parliament, proposes some in the relation between the EP and the Commission that will be partially included and improved upon in subsequent treaties. The Spinelli project aimed at creating a real bond of mandate between the Commission and the EP. Therefore, the Parliament, in addition to carrying out supervisory activities and being able to determine its fall through the motion of censure, could decide, on the basis of the program presented by the Commission, whether to enable it to take office or not, in what is a real investiture vote characteristic of parliamentary forms of government. Under the current institutional system, the Commission remain collectively accountable to Parliament through the motion of censure (art. 234 TFEU). The investiture modalities change: the EP elects by a majority of its components members the candidate proposed by the

³⁸ TFEU, 26 October 2012, *Consolidated version of the Treaty on the Functioning of the European Union*.

European Council as President of the Commission (art. 17(7) TEU³⁹), for then later, through a vote of consent, appointing the members of the Commission proposed by the Council, acting by qualified majority, in common accord with the President-elect.

Again, in the part of the Treaty concerning the functioning of the European institutions, art. 20 states that “the CoU shall consist of representations of the MS appointed by their respective governments; each representation shall be led by a minister who is permanently and specifically responsible for Union affairs”. Spinelli thus tries to give a permanent structure of the CoU functional to the great diversity of problems it has to face.

An innovative clause of the Spinelli project that has not been included in subsequent treaties is that of art. 23(3) which provided for the maintenance of the “Luxembourg Compromise” for a transitional period of ten years. According to the provision, majority voting inside the Council could be prevented in the case a representation invocation of a vital national interest is recognized as such by the European Commission. Traces of this provision, which confirms Spinelli’s political realism, can be found in the so-called “bridging” or “*passerelle*” clauses, which allow derogation from the legislative procedures initially provided for by the treaties, making it possible to switch from voting by unanimity to qualified majority voting in given policy area (art. 48 TEU).

Another novelty is introduced by art. 42:

“The law of the Union shall be directly applicable in the MS. It shall take precedence over national law. Without prejudice to the powers conferred on the Commission, the implementation of the law shall be the responsibility of the authorities of the MS. An organic law shall lay down the procedures in accordance with which the Commission shall ensure the implementation of the law. National courts shall apply the law of the Union”⁴⁰.

In short, it can be said that the article consecrates the primacy of EU law over national law, a primacy that will be reaffirmed only 20 years later by art. 6 of the Constitutional Treaty of 2004⁴¹, and the principle of direct applicability. The latter is a principle introduced by the EUCoJ, which allows individuals to directly invoke a European rule before a national or European jurisdiction.

The other innovative provisions which, contrary to those described so far, have not been acknowledged in subsequent Treaties or in the Constitutional Treaty of 2004 will be analysed in the next chapter. This re-reading of the Treaty of 1984 not only proves the vital importance of the project, it also

³⁹ TEU, 26 October 2012, *Consolidated version of the Treaty on the Functioning of the European Union*.

⁴⁰ Draft Treaty establishing the EU, EP, 14 February 1984.

⁴¹ Treaty Establishing a Constitution for Europe, Rome, 29 October 2004.

underlines the foresight and great strength of Spinelli's action. With his perseverance, he initiated a slow but inexorable process of constitutionalisation, which continues today with the recently launched Conference on the Future of Europe.

2.2.A The Spinelli method

In addition to its content, the institutional path of the Spinelli Treaty was innovative in its method. Until then, the process of drafting and then ratifying the treaties had always come from above, that is, by the heads of government, and had often been the result of long and exhausting negotiations, often kept in the dark, between diplomatic delegations without any involvement of European supranational institutions and even less of the population.

Altiero Spinelli was the first to argue the need for a treaty to be drawn up not by an intergovernmental conference but by the most representative European assembly, the EP, in a joint effort with the various national representative assemblies⁴². A method for a European Constituent Assembly that Spinelli has certainly modelled on the US experience of the Philadelphia Convention, with the hope of producing the same constitutional outcome. As seen before, the content of the Treaty also reflected this idea of a Europe not of states but of peoples, enhancing the role of the EP and urging community actions.

Another innovative feature of the action of Spinelli was certainly the widespread diffusion of the initiative in the MS through frequent speeches or visits to national parliaments and the process of debate which, through the foundation of the Crocodile Club, saw the participation of the whole parliamentary spectrum without distinction of party groups. The Draft Treaty is in fact an initiative that originated, developed and also unfortunately concluded within the EP, the most representative institution of the European society.

It all began with an invitation from Spinelli to act, to take a step forward, to not leave the reform of the communitarian institutions in the hands of statesmen and diplomats, in a letter addressed to his colleagues dated June 25, 1980. This invitation was followed by the responses of other parliamentarians (initially 8) who, starting in July of the same year, began to meet at the *Au Crocodile* restaurant in Strasbourg. The first action of this Crocodile Club, that recognized itself as "a group of parliamentarians wanting to reform the European institutions"⁴³, was a motion for a resolution (B1-0889/80) on the setting up of an ad hoc committee, presented in July 1981 plenary session. The resolution was adopted on 9th July 1981 with 164 votes in favour, 24 against and 2 abstentions, and created a permanent committee on institutional affairs

⁴² PONZANO (2007: 8).

⁴³ HISTORICAL ARCHIVES (2014).

with the purpose of revising the Treaties and elaborating a new constitutional plan for the Community. The first meeting was held on 27th January 1982 and Altiero Spinelli named coordinating rapporteur. After several hearings with representatives of the economic and social authorities and representatives of the Community institutions, the “Report on the European Parliament’s position concerning the reform of the Treaties and the achievement of the European Union (A1-0305/82)”, was submitted in July 1982. Spinelli’s belief was that a positive vote on this resolution “will signal the beginning of a democratic political battle for the Europe of the 1980s, for a Europe made by Europeans for Europeans”⁴⁴. After a positive outcome of the Committee’s report (258 votes in favour, 37 against and 21 abstentions) and a year of hearings and seminars, the EP discussed the motion for a resolution on the Substance of the preliminary Draft Treaty establishing the European Union (A1-0575/83). The motion was adopted on 14th September with 201 votes for, 37 against and 72 abstentions, and its purpose was a redefinition of the institutions, “so that each is able to function effectively in the framework provided by the Union”⁴⁵. From September to December, the Committee managed to accomplish its task and sent a motion for a resolution on the Preliminary Draft Treaty establishing the European Union (A1-1200/83) to the Assembly, which was discussed and approved on 14th February 1984⁴⁶.

Despite the unsuccessful result of the whole action, this innovative approach was instead taken up again in 2004 with the convening of a Constitutive Assembly that went towards the definition of a new European Constitution. Constitutional convention which drew its members from the national parliaments of MS and candidate countries, the EP, the European Commission, and representatives of heads of state and government, but which was rejected by the French and Dutch voters and thus unable to bring any effective result.

Nevertheless, the example of the Spinelli method was recently revived again with the Conference on the Future of Europe which began on 9th May 2021. In this case, the conference does not set itself any constitutive objective. The conference, organized in plenary sessions, decentralized events and a multilingual digital platform, is an occasion in which the three European institutions, by mutual agreement, listen to the proposals of European citizens on the main challenges and priorities of the Union in the upcoming years. By spring 2022, the Conference is expected to reach conclusions and although the revision of the Treaties has been excluded, the EP, the Council and the European Commission have committed themselves to listen to the voice of Europeans and to follow up, within their respective competences, to the recommendations received.

⁴⁴ SPINELLI (1982).

⁴⁵ HISTORICAL ARCHIVES (2014).

⁴⁶ *Ibid.*

2.2.B International relations of the Union

Beyond internal affairs and the effective redefinition of the institutional framework, the Treaty also aimed at the positioning of Europe as a Union at the international level. After the failure of the European Defence Community ('EDC'), Spinelli tries to give a strong definition of the European Union, understood as an international entity. In particular in the fourth part, in Title III there are a series of provisions concerning international relations.

First of all, in art. 63 the principles and methods of action of the Union in the international field are outlined. The Union carries out all its efforts in the pursuit of peace and security and does so through peaceful action, dissuasive against the use of violence, reduction of arms, aid to states with low standards of living, improvement of economic relations and trade exchanges. War represents for the Union the ultimate and most serious tool to be used only if other ways are impracticable. A more precise definition of the purposes of the Union's international action is referred to in art. 9 of the same Treaty.

Articles 64-67 and 69 define the two main methods of action, at the international level, of the European Union conceived by Spinelli: common and cooperative. The Union uses common action in all fields of exclusive and competitive competence, which are defined by the Treaty and in particular, as stated in the second paragraph of art. 64 in matters of trade, it has exclusive jurisdiction. In the following paragraph, of the same article, the policy of development aid is defined as the Union policy and a transitional period of 10 years is decreed, starting from the ratification of the Treaty, within which this policy must be the subject of common action by the Union.

Art. 65 illustrates specifically the methods of carrying out the common action between the various institutions. The representative body of the Union at the international level is the Commission; it negotiates international agreements on behalf of the Union and ensures, in collaboration with the Council of Europe, relations with third-party international organizations and in matters of cultural policy. When the Commission participates in the drafting of acts or in the negotiation of treaties that create international obligations for the Union, the CoU can issue directives to the Commission, but only after having approved them by an absolute majority. At this point, a link is maintained between the Commission, a supranational body, and the CoU, an intergovernmental body, but this relationship is very weak. The third paragraph provides that parliament is informed periodically and in good time of any action by any institution involved in the conduct of international relations. In conclusion, after the absolute majority vote by the EP and the Council, the two institutions approve international agreements and subsequently instruct the President of the Commission to deposit the instruments of ratification.

Articles 66-67 regulate the matters and methods of conducting the cooperative action. The cooperation method is adopted where it is not possible to act, as provided for in art. 64, with the common method and in four other possible cases: issues directly concerning the interests of various MS, fields in which the states acting individually cannot act with greater or equal efficacy to that of the Union, fields in which the policy of the Union appears necessary to complete the foreign policies conducted within the framework of the competences of the MS and the questions relating to the economic and social aspects of security policy.

Art. 67 describes the development of the cooperation in the cases defined by the previous art. 66. In matters of cooperation, the responsible body is the European Council while the Council has the task of ensuring its implementation. The European Council, if it deems it necessary, may ask the President of the CoU or the Commission to act as a spokesman for the Union at the international level. In general, the Union monitors the work of individual MS and their orientations in international politics and coordinates the positions of MS in the negotiation of international agreements.

Art. 68 represents a bridging, as already seen before, from cooperation to common action. The body predisposed to a hypothetical transfer from one method to another is the European Council, and it can do so in the following areas: armaments, arms sales to third countries, defence policy and disarmament. In the other fields, the European Council may decide to move specific fields to common action, under the conditions described in articles 11, 23 and 35 of the Treaty. Inspired by the principle present in art. 35, the European Council may exceptionally, by unanimous vote, authorize one or more states to derogate from the provisions taken in the relevant field of community policy. In the cases just dealt with, the European Council may decide to transfer a cooperative field to common action if a problem, which has arisen in the latter, due to lack of time, jeopardizes the solution. Therefore, here too Spinelli foresees the concrete possibility of an enlargement of common action, which in Spinelli's political horizons should have become the pre-dominant method of action.

Art. 69 introduces an absolute novelty in the field of international relations, for a supranational organization, namely the right of legation. It consists in the possibility for the Union and in particular for the Commission, with the approval of the Council, to open representations in third countries or in international organizations. These representations are in charge of managing all affairs concerning the Union as well as, in collaboration with the diplomatic agent of the MS which ensures the Presidency of the European Council, coordinating, in matters falling within the common action, the diplomatic activity of states. The Commission therefore, in Spinelli's plans, becomes a real representative of the Union which would become the first

international organization to enjoy its own equal representation with that of third countries.

In any event precedent to the Spinelli Treaty, it has been difficult to mount the Community as an actor on the international scene and to explain its legal personality⁴⁷. The mission of Title III described above is precisely to give an international dimension to the new established EU. Giving true international competences to the Union, an idea that did not manage to become concrete in the 50s at the height of the enthusiasm in the European project and which in the 80s with the accentuation of globalization and competition between MS seemed utopia, but that never as today, in the panorama of the many European states succubus to the will of the American ally, seems necessary.

⁴⁷ BRÜCKNER (1985: 140).

CHAPTER 3: The Legacy of the Treaty

The genuine process of constitutionalisation initiated by Spinelli inside the first elected European Parliament ('EP') produced many new ideas in terms of political system and functioning of the European Union ('EU'). Even though in the first years following the EP's approval of the treaty, the member states ('MS') and their governments saw no need to establish a EU, looking back after decades over subsequent treaties, it can be clearly identified the influence of the Treaty establishing the EU.

The previous chapter 2 has already focused on the text of the treaty and the main provisions which have been reintroduced later on. This chapter will instead analyse what happened in the years following the EP manoeuvre, how the European integration process developed since the failure of the Spinelli constituent attempt drawing a comparison between the two frameworks and thus depicting the legacy of the treaty which remained open on the basis of the points of the treaty which were not followed up, but which still today represent major issues of discussion in the European political debate and obstacles to the correct functioning of the European system.

3.1. From the Spinelli Draft to the Lisbon Treaty

Behind the failed entry into force of the Spinelli project there are various reasons, one above all the very nature of the initiative: despite the choral and democratic work conducted by the European assembly, the EP did not have, and still does not have nowadays, the power to adopt international treaties. The text adopted in the resolution of 14 February 1984 was therefore only a draft of a treaty, which did not have any legal effect by itself⁴⁸. The EP had prepared the ground for the actions of the MS of the European Communities, with the hope that members could discuss, approve, sign and ratify this draft turning it into a treaty that would transform the European Community into a more integrated EU. The choice by the MS was instead that of preferring once again the intergovernmental method, letting the enthusiasm for the unprecedented initiative of the Parliament dampen, neither rejecting nor adopting the draft. In the months following the vote of the EP, the draft Treaty establishing the European Union did not appear on the agendas of the MS.

The widespread political support that it enjoyed and the fact that it is still remembered and drawn as inspiration today, not only for its "treaty

⁴⁸ DE WITTE (2009: 65).

architecture”⁴⁹ but also for its content, demonstrates the scope and the legacy of the Spinelli project, however it is important to underline that it was not the only treaty proposal on the table at the time. The main alternative inside the EP was represented by the European People Party (‘EPP’)’s constitution, which was more far reaching in terms of human rights. The initiative, also known as Luster/Pfennig proposal, gathered more than fifty signatures in favour and was characterized by “a whole section devoted to listing basic human rights and freedoms, something absent from the Spinelli Treaty”⁵⁰. It is also worth mentioning in addition to the Crocodile Club there was another grouping in the EP, the “Kangaroo Group”, the main interest of whom was to increase awareness on the importance of achieving the internal market⁵¹. At the same time, outside the EP while the Committee on Institutional Affairs was conducting its work, on 19th June 1983, the leaders of the MS gathered in Stuttgart and adopted a “Solemn Declaration on EU” which was based on the Genscher/Colombo plan⁵². The Declaration appealed for the strengthening of common policies, defined the European Council as the main decision-making body and also extended the use of majority voting in the Council threatening the right of veto, but it found modest implementation attempts.

Despite the decision to ignore the proposed reforms, the governments were aware of the need to reform the Community, as they showed at the Fontainebleau summit in June 1984. Starting from January 1985 something started to change with the appointment of Jacques Delors as President of the Commission: he began a period of meetings with the heads of state evaluating which reform was felt most necessary among monetary union, common defence policy, reform to make the institutions more effective and democratic, or completion of the internal market⁵³. Thus once again the federalist dream of a constituent operation was shattered by the functionalist and pragmatic method carried forward by Delors. The project that gained unanimous assent was the single market and the new Commission began by preparing a very detailed White Paper on a programme for completing the internal market by 1992. Therefore, after an intergovernmental conference based on proposals

⁴⁹ The term “Treaty Architecture” refers to the way in which the Treaties and annexed Protocols on which the European Union is founded are arranged in relation to each other and to the internal structure of those Treaties. It has become a term of art among European Union scholars and politicians of growing importance because connected to the matter of constitutional politics.

⁵⁰ BURGESS (1989: 142).

⁵¹ YILDIRIM (2014).

⁵² It was a joint declaration made in 1981 by the German and Italian foreign ministers for a stronger political cooperation for the EU.

⁵³ DELORS (2004: 185).

advanced in the Stuttgart Declaration and on the Commission's White Paper, the Single European Act (SEA) was signed on 17th February 1986. The main reforms incorporated by the SEA were confined to provisions for qualified majority voting on single market legislation, a 'cooperation' procedure allowing Parliament access to legislative power and an assent procedure for accession treaties and association agreements⁵⁴; and there were some new competences in fields such as the environment, social policy and a fund to support the Community's less-developed regions, together with a commitment to the goal of monetary union⁵⁵. The act thus expanded the Community's supranational competences, but equally left important aspects outside the structure of the European Communities. Indeed, the SEA did not bring the European Monetary System under a supranational roof, did not integrate foreign affairs, did not bring justice and home affairs ('JHA') within the scope of the European Treaties and did not elevate the European Council to the status of Community institution⁵⁶. Although the Act differs strongly from the constituent action Spinelli had envisioned, Delors pointed out in his *Mémoires* the decisive role of the Draft Treaty without which he would have not been able to insert in the SEA so many "factors of progress"⁵⁷. The SEA did bring forward the dynamism started with the Spinelli project, initiating a period of reforms during which important federal elements of the Draft Treaty came into effect⁵⁸.

Indeed, on 7th February 1992 the Maastricht Treaty, officially known as the Treaty on European Union ('TEU'), was signed. The TEU represented, using the words of the preamble, "a new stage in the process of European integration"⁵⁹, legally creating the EU. The creation of the EU was yet based on a constitutional compromise: solely economic and monetary policies were introduced under the supranational structure of the European Communities, while the European Council as well as Foreign and Security Policy and JHA would retain their international character. This was achieved by placing all the areas under the common legal roof of the EU, for then organizing it in three pillars, respectively: European Communities (1st pillar), Common Foreign and Security Policy ('CFSP') (2nd pillar) and JHA (3rd pillar). The Maastricht Treaty incorporated a large number of provisions of the Spinelli Treaty. It introduced the political status of citizen of the Union, it expanded the

⁵⁴ Articles 6 and 7 SEA.

⁵⁵ PINDER (2007: 35).

⁵⁶ SCHÜTZE (2018: 21).

⁵⁷ DELORS (2004: 175).

⁵⁸ PINDER (2007: 36).

⁵⁹ TEU, *Treaty on European Union*, Maastricht, 7 February 1992.

constitutional prerogatives of the EP through the new legislative procedure of co-decision and made the subsidiarity principle applicable. Most notably it set out and defined a supranational monetary policy inevitably leading toward an economic and monetary union ('EMU')⁶⁰.

The period following the Maastricht Treaty is referred by the Luxembourg jurist Pierre Pescatore as a "decade of constitutional bricolage"⁶¹. With the fall of the Berlin Wall in 1989, many eastern European states wished to access the new-born European Union: the need to readjust an institutional system tailored for twelve states⁶² combined with the willingness of MS to proceed towards greater political integration, increased the demand for constitutional change to which the Union was able to respond only by means of treaty amendments. The results were the 1997 Treaty of Amsterdam and the 2001 Treaty of Nice, pragmatic and temporary political compromises unable to produce institutional solutions. While the Treaty of Amsterdam had postponed a "comprehensive review of the provisions of the Treaties on the composition and functioning of the Institutions"⁶³, the Nice meeting of the European Council brought out three distinct documents: the draft of a Treaty amending both the EU and European Communities Treaties, including a Protocol on Enlargement, a European Charter of Fundamental Rights and a Declaration on the Future of the Union to be inserted into the Final Act. However, none of these documents were able to produce a change in the institutional structure and decision-making system of the Union.

The Treaty of Nice thus resulted in the umpteenth failure of the formal intergovernmental method of negotiating major Treaty reforms, the failure of the process of treaty amendment based on political compromise and legal pragmatism which turned the treaty architecture of the Union into an "accumulation of texts, breeding ever deepening intransparency"⁶⁴. Following the Nice Treaty's Declaration on the Future of the Union, the European Council convened in Laeken to issue a Declaration on the Future of the European Union aiming for "better division and definition of competence", "simplification of the Union's instruments", "more democracy, transparency and efficiency in the EU" and a move "towards a Constitution for European

⁶⁰ SCHÜTZE (2018: 23- 26).

⁶¹ PESCATORE (2001).

⁶² Up to the Maastricht Treaty, the MS of the EU were 12: Belgium, France, Germany, Italy, Luxembourg, the Netherlands (the founding members), Denmark, Ireland, the United Kingdom (first enlargement) Greece, Portugal and Spain (Mediterranean enlargement).

⁶³ *Protocol on the institutions with the prospect of enlargement of the European Union*, Amsterdam, 2 October 1997.

⁶⁴ WEATHERILL (2000: 8).

citizens”⁶⁵. The meeting paved the way for a major Treaty reform convening a Convention on the Future of Europe tasked to draw up a final document which would then evolve into the 2004 Constitutional Treaty (‘CT’). CT which in many respects collects the legacy of the Spinelli Treaty, starting from the method used for the drafting of the Treaty with the involvement of national parliaments and civil society, followed by its general structure not aimed at revising the existing Treaties but which takes the form of a new Treaty establishing the EU thus superseding the three pillars structure, and concluding with the many provisions from the work of the EP proposed again. Working from February 2002 to July 2003, the European Constitutional Convention created one Union, with one legal personality on the basis of one Treaty, fulfilling the mandate for a comprehensive reform⁶⁶, yet it failed ratification by the people of France and of the Netherlands with two negative referendums in 2005.

This constitutional debacle was then followed by a two year reflection period ended by the European Council of June 2007 calling for an intergovernmental conference with the mandate of abandoning the constitutional concept while rescuing the substance of the CT. The EU was thus to be refounded not on the basis of a new Treaty, but on the substantive amendment of the existing Treaties. In legal terms, the Reform Treaty signed in December 2007 in Lisbon would be “the same in most important respects as the CT”⁶⁷. Its art 1 thus confirm the orientation of the Treaty by establishing the EU and stating that “the Union shall replace and succeed the European Community” with at the same time building on the *acquis constitutionnel* created by the Rome Treaty establishing the European Community and the Maastricht Treaty establishing the EU, retaining a dual treaty base. The new Union would thus be based on two Treaties both concerning the EU: the (new) TEU and the Treaty on the Functioning of the EU (‘TFEU’). This matter of Treaty architecture leaving in existence two separate treaties for one single organization can be explained only in a logic of tactical-political nature to make it appear that the CT was effectively dead and buried⁶⁸. This ambiguity underlying the Treaty highlights how the constitutional process that brought to the current framework is almost exactly the reverse of what Spinelli was trying to achieve. Spinelli made a serious attempt to avoid ambiguity, especially in areas that continue to cause difficulties, such as the Union's legal

⁶⁵ Laeken Declaration on the Future of the European Union, Laeken, 15 December 2001.

⁶⁶ SCHÜTZE (2018: 34).

⁶⁷ CRAIG (2010: 23).

⁶⁸ DE WITTE (2009: 73).

personality (art. 6) and the primacy of European law (art.42). Furthermore, the 1984 text aimed to be clear legible and coherent, while the text of the Lisbon Treaty is deliberately avoiding clarity, legibility and coherence⁶⁹. The text drafted by the EP was drawn up in a totally transparent manner following parliamentary procedures. The current text is being drafted by a committee of jurists working entirely behind the scenes.

In conclusion, having retraced treaty by treaty, amendment by amendment, the constitutional process that led to the signing of the Reform Treaty of Lisbon, it can be stated that despite the Laeken declaration⁷⁰ and the safeguard of the CT substance, the Treaty is marked by less democratic scrutiny, less transparency and more distance between the citizens and the institutions.

3.2. The unresolved questions of the Treaty

Although a good part of the innovative provisions of the Spinelli Treaty have been taken up in subsequent Treaties, other provisions have not been incorporated yet. This sub-chapter therefore aims to analyse the latter, paying particular attention to articles 82 and 84. Equally worth mentioning are articles 71 and 73 concerning the finances of the Union.

Art. 71 provided for the possibility of creating new financial revenue sources by organic law, without modifying the Treaty and thus without requiring ratification by MS, to cover the new expenses necessary for the functioning of the Union. This proposal, highly innovative at the time, still remains so today⁷¹. The same art. 71 explicitly states that when the Draft Treaty enters into force “the revenue of the Union shall be of the same kind as that of the European Communities”, the revenue sources of the Union were thus customs duties, agricultural import levies and VAT. The importance of this provision is clear and evident: beyond the moral and political significance for a Parliament to have taxation powers, for a Union aiming to further the integration process it is fundamental to have the power to call up the amount of revenue necessary to finance its common policies⁷² not having to negotiate consensus among MS. Instead, art. 311 TFEU (former art. 269 TEC) sets out that to carry through its policies, the Union shall be financed wholly from own

⁶⁹ DE SCHOUTHEETE (2007: 50).

⁷⁰ The declaration the European Council adopted in 2001 said that ‘the European institutions must be brought closer to citizens’ and that ‘the Union needs to become more democratic and more transparent’ because citizens ‘feel that deals are all too often cut out of their sight and they want better democratic scrutiny’.

⁷¹ PONZANO (2007: 11).

⁷² MØLLER (1985: 91).

resources, with the Council retaining the exclusive prerogative to “establish new categories of own resources or abolish an existing category” by unanimity, limiting the EP to an advisory role. It is however difficult to draw a comparison with the current framework based on the revenue sources: the EU budget for the year 2021 lastly approved by the Council with the positive vote of the EP in December 2020 amounts to approximately 164 billions, more than six times the one agreed on in 1984 (27 billions). From a budget almost solely based on the common agricultural policy, the current one has moved to funding innovation and the digital revolution, economy and social cohesion, the struggle against climate change and international aids. The Council, thus, in addition to “traditional”⁷³ and VAT-based own resources, has introduced a GNI-based own resource⁷⁴ consisting of a uniform percentage levy on MS’ GNI set in each year’s budget procedure, and most recently, by the 2020 Own Resources Decision, the new plastic⁷⁵ own resource⁷⁶.

In art. 73, inspired by the German federal system to reduce inequalities between the various *Länder*, Spinelli proposed a financial equalization system with the aim of reducing excessive economic imbalances between the various areas of the Union. The implementation of the system would have been done through the promulgation of an organic law. Despite the crucial importance of this instrument for the creation of a homogeneous economic space and to reduce social inequalities, thus proposing an image of the Union that is new and close to the peoples, financial equalization has not so far been adopted by any of the subsequent Treaties.

3.2.A. Art. 82, Multi-speed Europe?

Art. 82 is one of the most controversial and debated of the Spinelli Treaty, it provided for the possibility of the Treaty entering into force even in the absence of ratification by all the MS. A majority of MS representing two thirds of the population of the Union could decide on its entry into force and on relations with states that have not ratified it. This article was designed with the aim of avoiding what happened with the EDC in 1952, that is, that a treaty could be sunk due to the failure of one or two states to ratify it, but foremost implies the possibility of creating a major differentiation of status between the

⁷³ Customs and agricultural duties.

⁷⁴ Council Decision 88/376/EEC.

⁷⁵ It is a national contribution on the basis of the quantity of non-recycled plastic packaging waste, with a uniform call rate of EUR 0.80 per kg.

⁷⁶ SCHWARCZ (2021).

two groups of MS, those who have ratified it and those who did not⁷⁷. The current framework does not foresee this possibility. For any amendment to the existing Treaties, art. 48 TEU applies. According to art. 48, a new treaty will only enter into force if approved by all the MS in the framework of an intergovernmental convention and if ratified by all states according to their constitutional requirements.

This provision is not the only sign of differentiation present in the Spinelli Treaty, art. 35 provides that any state may take transitional measures in the case where uniform application would encounter specific difficulties. Transitional that does not mean derogation in this case, since “such measures must be designed to facilitate the subsequent application of all the provisions of the law to all its addressees”. Art. 66 is equally innovative since it states that where are involved matters directly concerning the interests of several MS of the Union, and thus not all thereby introducing differentiation, “the Union shall conduct its international relations by the method of cooperation”. Art. 68 goes a step further representing a measure of derogation rather than a transitional one. Under the conditions of art. 11 of the Spinelli Treaty, the European Council may decide to transfer a particular field of cooperation to common action in external policy, subsequently “the Council of the Union, acting unanimously, may exceptionally authorise one or more MS to derogate from some of the measures taken within the context of common action”.

Spinelli resorted to provisions on differentiation that would allow those states that wanted to move forward to do so without being prevented by the veto of other MS. Art. 82 was not incorporated in subsequent treaties, but together with the other provisions listed above lead European integration along the path towards differentiation inspiring other solutions proposed in order to circumvent the need for a unanimous agreement. Differentiated integration is a topic that has acquired growing importance in the European political debate especially with the enlargement that the Union has witnessed since the second half of the 80s, so much that it is variously recognized as differentiated integration, variable geometry and multi-speed or *à la carte* Europe⁷⁸.

Although the issue always brings great controversy, multi-speed Europe is already a reality and in legal terms it has existed since the Maastricht Treaty

⁷⁷ QUERMONNE (2007: 48).

⁷⁸ CHRISTIE, SABBATI (2016: 1).

with the decision of the UK and of Denmark to “opt out”⁷⁹ of the EMU third stage: the common currency. In fact, under the Treaty amendment of 1992, the monetary policies came under the supranational roof of the Union encountering the opposition of these two MS which refused to renounce their sovereignty in the monetary area. In order not to block this integrative measure, Protocol number 15 and 16 were added to the Treaties and the two states were agreed to opt out from the single currency. The following step towards differentiated integration was then taken with the Treaty of Amsterdam, which by adding articles 43, 44 and 45 to the (old) TEU established the procedure of enhanced cooperation⁸⁰. Enhanced cooperation allows MS to set up advanced integration or cooperation in a particular field within the EU. Authorization to proceed with enhanced cooperation is granted by the Council as a last resort, on a proposal from the European Commission and after obtaining the consent of the EP when it has become clear that the EU as a whole cannot achieve the goals of such cooperation within a reasonable period.

Considering the exit of the UK with Brexit, there are currently three states with derogation in certain matters of the EU: Denmark, Ireland and Poland. These opt outs involves the field of JHA (in the case of Ireland and Denmark), the Schengen area (with Ireland), the CFSP (again with Denmark), the European Charter of Fundamental Rights (Poland) and most notably the adoption of the single currency. Although all twenty-seven MS participate in the EMU to some degree, at its core is the euro area which from the initial eleven at the launch of the new currency in 1999, it has grown to nineteen countries, with all the remaining MS (Denmark excluded) at least formally committed to make their economies reach the convergence criteria required and join the euro area. Further EMU’s policies encountered the same differentiated integration, with the EU organized in euro area, banking Union and states signatory of the Treaty on Stability, Coordination and Governance, an intergovernmental agreement which creates a common resolution fund to deal with banks failure⁸¹.

However, these cases pose a great threat to the cohesion and integrity of the EU. Multi-speed Europe is based on the idea that every MS would move forward in the same direction, towards “ever closer union” but no matter in

⁷⁹ The opt out option is an instrument that ensures that when a particular Member State does not intend to participate in a particular area of Union policy, it may not participate, avoiding a general stalemate.

⁸⁰ With the current Treaty asset art. 20 TEU and title III of the TFEU.

⁸¹ CHRISTIE, SABBATI (2016: 1).

what “speed”. In the past years, reality showed that not every MS moves in the same direction: UK chose Brexit, several nations decided not to enter the Euro area and different countries of Central and Eastern Europe did not obey core European Union’s principles⁸². The EP, already in 1984 with a Union of nine states, had envisaged art. 82 to address the possible lack of consensus among MS. In 2021, with the integration process at a standstill since 2007 and the consensus among the twenty-seven MS increasingly difficult, the possibility of pursuing differentiated integration is increasingly real. So much that the European Commission in its “White Paper on the Future of Europe”⁸³ in 2017 analysing possible scenarios for the future of Europe foresaw the possibility of certain MS to more closely cooperate in specific policy areas. Multi-speed Europe could be a solution for further integration, but to avoid the risk of a multi-directional Europe the principle of art. 35 of the Spinelli Treaty must be set clear in mind, and thus that measures must be designed to facilitate the subsequent application by all “slower” MS.

3.2.B. Art. 84, Against the need of Unanimity

Art. 84 continues the strengthening of Parliament’s powers to the detriment of the intergovernmental method which underlines the whole Spinelli Treaty. It establishes a procedure for revising the Treaties by means of the approval of Parliament and the Council according to the procedure applicable to organic laws. This provision thus aimed at removing from the States the competence to revise the Treaty and at abolishing the need for unanimity by simplifying the changes, and ensuring the necessary flexibility, to face a constantly changing reality⁸⁴.

Treaty revision which following the Lisbon Treaty is regulated by art. 48 of the TUE. In the case of ordinary treaty revision, the proposed amendment to the Treaties by initiative of the Government of any MS, the EP or the commission is submitted to the European Council, and not as in the Spinelli Treaty to the legislative authority. The European Council, after consulting the EP and the Commission, may then adopt by simple majority a decision in favour of examining the proposed amendments and convene a Convention composed of representatives of the national Parliaments, of the Heads of State

⁸² CIBULA (2019: 1).

⁸³ The White Paper looked at how Europe was going to change in the next decade (from the impact of new technologies on society and jobs, to doubts about globalisation, security concerns and the rise of populism) setting out five possible scenarios about the state of the Union by 2025.

⁸⁴ PONZANO (2007: 11).

or Government of the MS, of the EP and of the Commission examining the proposals for amendments. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the MS which shall determine by common accord the amendments to be made to the Treaties, amendments that shall enter into force after being ratified by all MS in accordance to their constitutional requirements. The simplified revision procedures concerns only amendments to the provisions of Part Three of the TFUE concerning Union policies and internal actions. According to this revision the European Council, after consulting the EP and the Commission, may adopt a decision amending the Treaty acting by unanimity. Decision that will enter into force only following the approval of MS in accordance with their respective constitutional requirements. Simplified revision which *de facto* grants a constitutional function to the European Council and makes any revision (be it simplified or ordinary) of the treaty the result of the intergovernmental method with the almost exclusion of the EP from the process, exactly the opposite of what Spinelli had envisioned.

However, the area of treaty revision is not the only one where unanimity is required and where the supranational soul of the Union is ignored. Although more policy areas have been subject to qualified majority voting in the Council since the SEA, a number of policy areas which the MS consider to be sensitive remain subject to unanimity voting. It is the case of CFSP, accession of new members, harmonisation of national legislation on indirect taxation, EU finances (such as the multiannual financial framework and the own resources discussed in the last paragraph), the granting of new EU citizenship rights, certain provisions in the field of JHA and harmonisation of national legislation in the field of social security and social protection. These areas may be subject to the second simplified revision procedure enunciated in art. 48(7), the *passerelle* clauses, where the European Council acting unanimously may adopt a decision authorizing the Council to act by qualified majority, a simplification that therefore does not completely resolve the problem of having to find consensus in the intergovernmental dialogue.

Rigidity and submission of European integration to the intergovernmental method are therefore distinctive features of the current Treaty organization. Proof of the above statement is the inability of the Union to carry out any changes to the treaties and the great confusion linked to its foreign policy.

Confusion caused by both the lack of clarity of the treaties⁸⁵ and the tenacity of MS unwilling to leave their national sovereignty and interests on the international stage.

The two articles of the Spinelli Treaty mentioned above, are thus instrumental in understanding the main difference between the system proposed by Spinelli and the one currently established with the Lisbon agreement. Beyond the architecture of the treaty and despite the large number of provisions that are incorporated today, the work carried forward by the EP aimed at the creation of a supranational entity in which the EP, the body democratically elected by the Europeans, could have political influence in the European dynamics. On the contrary, the current system aims at maintaining the "status quo", at the decision-making dominance of MS, at maintaining its precarious identity halfway between political union, international organization and association of states that makes it difficult for the citizens of the MS to identify with it and easy for the national politicians on duty to blame at the first controversy. This chapter will not conclude by saying that the Union shall overcome the veto power of individual MS by extending majority voting to all areas of competence of the EU. This chapter has described thoroughly the constitutionalisation process that from the Spinelli Treaty led to the Lisbon Treaty, and will conclude by saying that the EU is at a stage where, as suggested by the White Paper of the European Commission of 2017, the MS must decide clearly how to follow, if there is a union of intent to continue, and in which direction.

⁸⁵ The current Lisbon Treaty is woefully unclear on who actually decides on the EU's foreign policy. On the one hand, the High Representative "shall conduct the Union's common foreign and security policy". On the other hand, the European Council President "shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative".

Conclusion

The past two years have been crucial for the future of Europe. In the face of unprecedented adversities, the European Union has decided to give a common response demonstrating a shared European spirit. Roberth Schuman in its famous declaration heralding the creation of the ECSC affirmed “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity”. These adversities therefore proved to be an opportunity for the Union to demonstrate the achievement of that solidarity which, as Schuman rightly emphasized, must be at the basis of any integration process. As the current president of the European Commission Ursula von der Leyen mentioned in her latest State of the Union speech to the European Parliament on 15th September 2021:

“In the biggest global health crisis for a century, we chose to go it together so that every part of Europe got the same access to a life-saving vaccine.

In the deepest global economic crisis for decades, we chose to go it together with NextGenerationEU.

And in the gravest planetary crisis of all time, again we chose to go it together with the European Green Deal.”

The responses to these crises have been excellent⁸⁶ and the Union has acted flawlessly as such, the reasoning behind this thesis does not call this into question. At the base of this dissertation there is the evidence that in the most important decision of recent years for the European Union, the agreement on the Recovery Plan, the organ democratically elected by the European citizens and the real executive body of the Union had little or no saying on it. Instead, it took two European Councils to reach agreement on this extraordinary recovery, but above all, endless hours of secret negotiations to try to convince the "frugal countries" and with the blackmail of veto by Hungary and Poland who contested the link between respect for the rule of law and the disbursement of EU funds, as if the Union did not exist and an agreement in the interest of all European citizens was still a diplomatic matter.

It is in this perspective that analysing the greatness of the Spinelli treaty acquires importance and renewed actuality. The initiative of the European

⁸⁶ It is sufficient to think of the Community debt securities that the commission has undertaken to issue to finance the NextGenerationEU program or to the European Green Deal that makes the Union a global leader in the environmental field.

Parliament under the leadership of Spinelli is characterized by many aspects that are missing from the treaty framework ratified by the Lisbon Treaty. Spinelli made a serious attempt to avoid ambiguity, drafting a text in a totally transparent manner aimed to be clear legible and coherent. Beyond the many provisions which have been reintroduced and which today form an important backbone of the Treaty, it is those ignored that makes understand the will of the Spinelli project to overcome the decision-making limits of the intergovernmental method and rely on the supranational institutions of the Union. Is it time to carry out the Spinelli project? What is certain is that following a period of stalemate and uncertainty regarding the future of the Union, with the joint response to these three crises, a new political season has opened which hopefully, with the Conference on the Future of Europe expected to provide guidance by spring 2022, will lead to a new successful stage in the European integration process.

Bibliography

BIEBER (1985), *The institutions and the decision-making procedure in the Draft Treaty establishing the European Union*, in *An ever closer Union, A critical analysis of the Draft Treaty establishing the European Union*, Brussels, pp. 31-41.

BIEBER (2007), *The Spinelli draft treaty: a remnant of better times or inspiration for a constitutional settlement?*, in *Altiero Spinelli - European Federalist*, Brussels, pp. 18-22.

BRÜCKNER (1985), *Foreign affairs powers and policy in the Draft Treaty establishing the European Union*, in *An ever closer Union. A critical analysis of the Draft Treaty establishing the European Union*, Brussels, pp. 17-31.

BURGESS (1989), *Federalism and European Union: Political Ideas, Influences, and Strategies in the European Community, 1972-1987*, London.

CHRISTIE, SABBATI (2016), *Differentiated integration in the European Union*, in *European Parliamentary Research Service*, available online.

CIBULA (2019), *Would a «multi-speed» EU be a solution?*, in *Visegrad Journal on Human Rights*, available online.

CRAIG (2010), *The Lisbon Treaty: Law, Politics, and Treaty Reform*, Oxford.

DE SCHOUTHEETE (2007), *The constitutional process after the June 2007 European Council*, in *Altiero Spinelli - European Federalist*, Brussels, pp. 50-52.

DE WITTE (2009), *The Question of Treaty Architecture: From the 'Spinelli Draft' to the Lisbon Treaty*, in *European Union Federalism and Constitutionalism: The Legacy of Altiero Spinelli*, Lanham, pp. 65-75.

DELORS (2004), *Mémoires*, Paris.

DESCHAMPS (2016), *The political consequences*, in *The University of Luxembourg's CVCE.eu research infrastructure*, available online.

GLENCROSS (2009), *Altiero Spinelli and the Idea of the US Constitution as a Model for Europe: The Promises and Pitfalls of an Analogy*, in *Journal of Common Market Studies*, pp. 287-307.

GRAGLIA (2008), *Altiero Spinelli*, Bologna.

- HEGEL (1837), *Lectures on the Philosophy of History*, Leipzig, vol. I.
- HISTORICAL ARCHIVES (2014), *The road to the 1984 Spinelli Report*, in *European Parliament Research Service*, available online.
- YILDIRIM (2014), *The “Spinelli Project” and its Legacy*, in *The Federalist a political review*, available online.
- JACQUÉ (1985), *The Draft Treaty, an overview*, in *An ever closer Union. A critical analysis of the Draft Treaty establishing the European Union*, Brussels, pp. 127-140.
- LEVI (2007), *Altiero Spinelli, Founder of the Movement for European Unity*, in *Altiero Spinelli - European Federalist*, Brussels, pp. 7-13.
- LUGARINI (2016) *The role of Altiero Spinelli on the path to European Union*, in *Historical Archives Unit, European Parliamentary Research Service*, Luxembourg, pp. 1-8.
- MØLLER (1985), *Financing European integration: The European Communities and the proposed European Union*, in *An ever closer Union. A critical analysis of the Draft Treaty establishing the European Union*, Brussels, pp. 73-99.
- PESCATORE (2001), *Nice – Aftermath*, in *Common Market Law Review*, pp. 265-272.
- PINDER (2007), *Altiero Spinelli’s European Federal Odyssey*, in *Altiero Spinelli - European Federalist*, Brussels, pp. 24-39.
- PONZANO (2007), *The ‘Spinelli’ Treaty of February 1984: The Start of the Process of Constitutionalizing the European Union*, in *European Union Federalism and Constitutionalism: The Legacy of Altiero Spinelli*, Lanham, pp. 6-11.
- QUERMONNE (2007), *Is Differentiated Integration a way forward towards a more (con)federal Europe?*, in *Altiero Spinelli - European Federalist*, Brussels, pp. 47-49.
- ROSSI, SPINELLI (1941,1943), *Manifesto di Ventotene (Per un’Europa libera e unita. Progetto d’un manifesto)*, in *Quaderni del Movimento Federalista Europeo*.
- SALM (2019), *European elections: A historical perspective*, Luxembourg.

SALM (2020), *Schuman Declaration: 70 years on*, Luxembourg.

SCHÜTZE (2018) *European Union Law*, II ed., Cambridge.

SCHWARCZ (2021), *The Union's revenue*, in *Fact Sheets on the European Union*, available online.

SPINELLI (1982), *The road to the 1984 Spinelli Report*, in *European Parliament Research Service*, available online.

SPINELLI (1983), *Towards the European Union*, in *Florence 13 June 1983*, *European University Institute*

SPINELLI (1984), *European Union: extracts from the speech by Altiero SPINELLI*, in *European Parliament Multimedia Centre*, available online.

AWESTI (2009), *The Myth of Eurosclerosis: European Integration in the 1970s*, in CAIRN (ed.), *L'Europe en Formation*, Paris.

SPINELLI (1993), *Il modello costituzionale americano e i tentavi di unità europea*, in ALBERTINI (ed.), *Il Federalismo: Anthologia e definizione*, Bologna.

WEATHERILL (2000), *Flexibility or Fragmentation: Trends in European Integration*, in *The State of the European Union*, J. Usher (ed.), pp. 1-21.

Summary in Italian

Il trattato Spinelli, originamente conosciuto come il Progetto di Trattato sull'Unione Europea, è stato un processo costituente iniziato e sviluppatosi all'interno del Parlamento europeo sotto la proposta dell'europarlamentare italiano Altiero Spinelli. Seppur il trattato non sia mai entrato in vigore, nonostante la sua approvazione da parte dell'assemblea europea in data 14 febbraio 1984, viene considerato soprattutto per l'attualità delle sue proposte che sono state largamente riprese nei trattati successivi ma anche per l'importanza che ha avuto nel dare dinamicità al processo di integrazione europeo.

Al fine di comprendere a pieno l'iniziativa del Parlamento Europeo è bene analizzare il periodo in cui il trattato è stato redatto e il contesto dei trattati delle Comunità europee che si prefiggeva di sostituire. Ai trattati di Parigi del 1950 e di Roma nel 1957 istituenti le tre comunità europee - la Comunità Economica del Carbone e dell'Acciaio ('CECA') la Comunità Economica Europea ('CEE') e la Comunità Economica dell'Energia Atomica ('EURATOM') - e ai falliti tentativi del 1952, della Comunità Europea di Difesa ('CED') e della Comunità Politica Europea ('CPE'), era seguito un periodo di grande stasi nel processo di integrazione europea. Questo intervallo di tempo dagli anni Sessanta alla metà degli anni Ottanta del Novecento è generalmente riconosciuto come un'era di stagnazione o "euro-sclerosi" e si deve a varie cause. In primis, l'elezione del generale Charles de Gaulle a Presidente della Repubblica Francese nel 1959, che vedeva negli accordi previsti dal Trattato di Roma un'inaccettabile rinuncia di sovranità richiamando i rappresentanti francesi permanenti a Bruxelles e limitando la giurisdizione del Consiglio con il Compromesso di Lussemburgo che, nonostante dove previsto dai trattati, era impossibilitato ad agire tramite voto di maggioranza nel caso in cui si andassero a toccare interessi di importanza nazionale. A questa prima condizione si aggiunse il primo allargamento a nove membri nel 1973, che aveva reso qualsiasi processo più complicato, e la crisi causata dall'embargo petrolifero, che aveva inasprito il rapporto tra gli stati membri delle Comunità.

A livello giuridico, nel 1984 l'Europa si basava su tre Trattati principali e sulle Comunità corrispondenti: CECA, CEE, EURATOM. Ciascuno di essi regolava settori distinti e operava con istituzioni diverse. La CECA, nata per affrontare il problema delle risorse carbonifere e siderurgiche, istituì un mercato comune solo per il carbone e l'acciaio, abolì le barriere doganali e qualsiasi restrizione quantitativa su tali merci e tutte le misure, gli aiuti o i sussidi discriminatori concessi dai vari Stati a sostegno della propria economia nazionale. Il Trattato CEE ha un oggetto di natura economica e commerciale, simile alla CECA, ma a differenza di quest'ultimo non ha carattere settoriale ma mira ad avere una portata generale. Il Trattato mira a istituire un'unione doganale eliminando i dazi doganali nazionali e ogni ostacolo che ostacoli o

inibisca gli scambi tra i paesi membri, a stabilire una tariffa doganale unica negli scambi con i paesi terzi, a creare una politica commerciale comune, alla creazione progressiva di un'unica tariffa doganale mercato caratterizzato dalla libera circolazione di capitali, persone, servizi e merci e infine la creazione di un'autorità di controllo del rispetto della libera concorrenza. L'EURATOM ha lo scopo di coordinare i programmi di ricerca degli stati membri relativi all'energia nucleare ed assicurare un uso pacifico della stessa. Queste tre comunità hanno avuto un'Assemblea comune e tre diverse commissioni esecutive, un Consiglio - ma con funzioni diverse per ciascuna delle Comunità - e un'unica Corte, fino all'entrata in vigore del Trattato di Fusione nel 1967 con il quale le tre Comunità hanno adottato come un'uniche le loro istituzioni: la Commissione delle Comunità europee, il Consiglio delle Comunità europee, il Parlamento europeo e la Corte di giustizia delle Comunità europee.

In questo contesto si delineava la figura di Altiero Spinelli che già nel 1941, arrestato ed internato dal regime fascista nell'isola mediterranea di Ventotene, aveva scritto insieme ad Ernesto Rossi ed Eugenio Colomi il manifesto del federalismo europeo che delineava il futuro dello sviluppo dell'Europa del dopoguerra. Secondo Spinelli, la crisi della società contemporanea e la seconda guerra mondiale stessa potrebbero essere intese in una doppia prospettiva: da un lato, la crisi degli stati nazionali e, dall'altro, l'anarchia internazionale. Mentre le forze politiche tradizionali perseguivano la riforma degli stati nazionali, Spinelli cercava il federalismo mirando a un cambiamento più radicale che toccava la natura stessa degli Stati: la loro trasformazione in stati membri di una federazione. Spinelli riteneva che una Federazione europea potesse essere realizzata su un duplice terreno: un trattato, in cui gli stati si impegnassero a rinunciare a parte del loro potere, e una costituzione che definisse la struttura dell'unione degli stati. Così sul modello della Convenzione costituzionale di Philadelphia basò la sua procedura per la costruzione di un potere democratico europeo di successo. Dopo una vita dedicata al progetto europeo, ma in cui aveva sempre visto il processo funzionalista prevalere, nel 1976 approdò per la prima volta in quella che considerava l'istituzione più rappresentativa e carica di spirito europeo, il Parlamento europeo. Così in un discorso al primo Parlamento eletto a suffragio universale del 25 giugno 1980 lanciò l'iniziativa di intraprendere una "riforma integrale" delle Comunità europee. Alla base di questa iniziativa c'era l'esperienza diretta di Spinelli all'interno delle procedure comunitarie che vedevano nel metodo intergovernativo patrocinato dal Consiglio l'unica via percorribile per l'integrazione europea e alle nuove pressanti esigenze di un approccio comune su alcune questioni, privando così il parlamento di suoi reali poteri politici e limitando l'autonomia della Commissione. Il discorso è stato poi seguito dalla creazione del "*Crocodile Club*", gruppo trasversale di parlamentari europei che nel giro di pochi mesi elaborò una proposta di risoluzione per l'istituzione di un comitato ad hoc, "responsabile di formulare proposte sullo stato attuale e sullo sviluppo futuro della Comunità". La mozione è stata quindi presentata e adottata e la Commissione Istituzionale

iniziò i suoi lavori nel gennaio 1982 con Altiero Spinelli nominato relatore-coordinatore. Il progetto di trattato che istituisce l'Unione europea fu dunque adottato dal Parlamento il 14 febbraio 1984. Il trattato si prefiggeva di limitare il ruolo del Consiglio alla funzione legislativa e di bilancio e rafforzare la Commissione, facendone un vero e proprio esecutivo politico a favore del ruolo di un Parlamento europeo con forti competenze e non più di mero suggeritore di pareri. Il testo non elimina il metodo cooperativo tra Stati, ma al tempo stesso rafforza la procedura comune vietando ai primi di invadere i campi dei secondi, misura che nasce dalla convinzione che attraverso l'azione intergovernativa sia impossibile concepire su larga scala progetti che richiedono ampio consenso e il superamento delle rigidità nazionali.

Nonostante il trattato non sia mai entrato in vigore, il testo presenta un gran numero di idee in termini di sistema politico e funzionamento dell'Unione europea che sono state reintrodotte in trattati successivi. Le norme innovative sono strumentali per comprendere la rilevanza del lavoro del Parlamento Europeo, sia per tracciare la differenza con il passato sistema delle Comunità europee, sia per scoprire la sua influenza sull'attuale sistema europeo. Già l'art. 1 è indicativo: il Trattato Spinelli è descritto come un trattato che istituisce una nuova istituzione e quindi sostituisce la struttura delle tre Comunità europee. L'articolo 3 per la prima volta menziona la nozione di cittadinanza europea, parallela a quella nazionale. L'articolo 4, oltre ad un richiamo estensivo ai diritti fondamentali, introduce la possibilità di sanzioni contro gli stati membri nel caso di violazione degli stessi. L'art. 8 del Trattato, elencando le varie istituzioni dell'Unione, introduce per la prima volta il Consiglio europeo come una delle istituzioni formali dell'Unione. Dopo aver disciplinato, all'art. 10, le due modalità di azione dell'Unione, comune e cooperazione, l'art. 11 introduce la possibilità di passare, con decisione del Consiglio europeo, dal metodo intergovernativo a quello comune, senza dunque dover passare dalla revisione dei trattati. L'articolo 12 definisce il principio di sussidiarietà e insieme al 13 il processo di co-decisione, il processo attraverso il quale il diritto europeo viene adottato attraverso un rapporto paritario nella procedura legislativa tra Parlamento e Consiglio. Nell'articolo 20 Spinelli prova a dare una struttura permanente al Consiglio dell'Unione. L'articolo 42 consacra il primato del diritto europeo sul diritto nazionale e afferma il principio di diretta applicabilità. Mentre tutto il Titolo III della quarta parte del trattato mira a dare una definizione forte e concreta dell'Unione a livello internazionale.

Oltre che nei contenuti, il percorso istituzionale del Trattato Spinelli è stato innovativo nel metodo. Fino ad allora, il processo di redazione e poi di ratifica dei trattati era sempre venuto dall'alto, cioè dai capi di governo, ed era stato spesso frutto di lunghe trattative, spesso tenute all'oscuro, tra delegazioni diplomatiche senza alcun coinvolgimento delle istituzioni sovranazionali europee e ancor meno della popolazione. Altiero Spinelli è stato il primo a sostenere la necessità di un trattato da redigere non da una conferenza

intergovernativa ma dall'assemblea europea più rappresentativa, il Parlamento europeo, in collaborazione con le diverse assemblee rappresentative nazionali. Questo approccio innovativo è stato ripreso nel 2004 con la convocazione di un'Assemblea Costituente che si è diretta verso la definizione di una nuova Costituzione europea, ed ancora oggi nel 2021 con la più recente Conferenza sul futuro dell'Europa, priva di poteri di revisione dei trattati, ma grandissimo esercizio di democrazia.

Dietro la mancata entrata in vigore del progetto Spinelli ci sono varie ragioni, una soprattutto la natura stessa dell'iniziativa: nonostante il lavoro corale e democratico svolto dall'assemblea europea, il Parlamento europeo non ha avuto, e non ha ancora oggi, il potere di adottare trattati internazionali. Il testo adottato nella risoluzione del 14 febbraio 1984 era quindi solo un progetto di trattato, che di per sé non aveva alcun effetto giuridico. Il Parlamento aveva preparato il terreno per le azioni degli Stati membri delle Comunità europee, con la speranza che i membri potessero discutere, approvare, firmare e ratificare questa bozza trasformandola in un trattato che trasformi la Comunità europea in un'UE più integrata. La scelta degli Stati membri è stata invece quella di preferire ancora una volta il metodo intergovernativo, lasciando smorzare l'entusiasmo per l'inedita iniziativa del parlamento, senza respingere né approvare la bozza.

Nel 1986, grazie al lavoro del nuovo eletto presidente della Commissione Jacques Delors, era arrivata la firma dell'Atto Unico Europeo. Le principali riforme introdotte dall'Atto si sono limitate a prevedere il voto a maggioranza qualificata sulla legislazione del mercato unico: una procedura di "cooperazione" che consente al Parlamento di accedere al potere legislativo e una procedura di parere conforme per i trattati di adesione e gli accordi di associazione. C'erano inoltre alcune nuove competenze in campi come l'ambiente, la politica sociale e un fondo per sostenere le regioni meno sviluppate della Comunità, insieme all'impegno per l'obiettivo dell'unione monetaria. Nel 1992 seguì il Trattato di Maastricht, che, oltre ad inglobare un gran numero di norme del progetto Spinelli, creò legalmente l'Unione Europea andando a introdurre politiche economiche e monetarie nell'ambito della struttura sovranazionale delle Comunità europee.

Il decennio successivo fu un periodo di grande sollecitazione sulla revisione dei trattati in cui il processo intergovernativo dimostrò tutta la sua inadattabilità. Con la caduta del muro di Berlino nel 1989, molti stati dell'est europeo hanno voluto accedere alla neonata Unione Europea: la necessità di riadattare un sistema istituzionale su misura per dodici stati uniti alla volontà degli Stati membri di procedere verso una maggiore integrazione politica, ha accresciuto la richiesta di modifica costituzionale alla quale l'Unione ha potuto rispondere solo mediante emendamenti ai trattati. Il risultato si concretizzò nel Trattato di Amsterdam e in quello di Nizza, entrambi simbolo del fallimento del processo di emendamento del trattato basato sul compromesso politico e sul pragmatismo giuridico che aveva trasformato l'architettura del trattato

dell'Unione in un accumulo di testi, generando una complessità e indeterminatezza sempre più profonda. Il desiderio di una "migliore ripartizione e definizione delle competenze", "semplificazione degli strumenti dell'Unione", "più democrazia, trasparenza ed efficienza nell'UE" e un passaggio "verso una Costituzione per i cittadini europei" come auspicato dalla Dichiarazione di Laeken si concretizzò con il Trattato Costituzionale del 2004 che per molti versi raccoglie l'eredità del Trattato Spinelli: a partire dal metodo utilizzato per la redazione del Trattato con il coinvolgimento dei parlamenti nazionali e della società civile (Convenzione sul Futuro dell'Europa), seguito dalla sua struttura generale non finalizzata alla revisione dei Trattati esistenti ma che si concretizza di un nuovo Trattato che istituisce l'UE, superando così la struttura a tre pilastri, e concludendo con le numerose disposizioni del progetto Spinelli riproposte.

Il Trattato Costituzionale non venne ratificato ed è stato poi seguito da un periodo di riflessione di due anni concluso dal Consiglio europeo del giugno 2007 che ha chiesto una conferenza intergovernativa con il mandato di abbandonare il concetto costituzionale salvando la sostanza del trattato. L'UE doveva quindi essere rifondata non sulla base di un nuovo Trattato, ma sulla modifica sostanziale dei trattati esistenti. Il suo articolo 1 conferma quindi l'orientamento del Trattato istituendo l'UE e affermando che "l'Unione sostituisce e succede alla Comunità europea" ma allo stesso tempo basandosi sull'*acquis constitutionnel* creato dal Trattato di Roma - che istituisce la Comunità europea - e il Trattato di Maastricht che istituisce l'UE, mantenendo una base duale. La nuova Unione si baserebbe quindi su due trattati, entrambi riguardanti l'UE: il (nuovo) TUE e il trattato sul funzionamento dell'UE ('TFUE'). Questa questione dell'architettura del Trattato che lascia in essere due trattati separati per un'unica organizzazione può essere spiegata solo in una logica di natura tattico-politica per far sembrare che il Trattato Costituzionale fosse effettivamente morto e sepolto. Questa ambiguità alla base del trattato mette in evidenza come il processo costituzionale che ha portato all'attuale quadro sia quasi esattamente il contrario di quanto Spinelli stava cercando di realizzare. Spinelli ha fatto un serio tentativo di evitare ambiguità, soprattutto in ambiti che continuano a creare difficoltà, come la personalità giuridica dell'Unione (art. 6) e il primato del diritto europeo (art. 42). Inoltre, il testo del 1984 mirava ad essere chiaro, leggibile e coerente, mentre il testo del trattato di Lisbona evita deliberatamente la chiarezza, la leggibilità e la coerenza. Il testo del Parlamento Europeo è stato redatto in maniera del tutto trasparente seguendo le procedure parlamentari. Il testo attuale è redatto da un comitato di giuristi che lavora interamente dietro le quinte.

Seppur molte delle nozioni del Trattato Spinelli sono state riprese dai trattati successivi, altre disposizioni non sono ancora state incorporate e proprio quest'ultime sottolineano le più grandi differenze tra il sistema attuale e quello previsto da Spinelli. Art. 71 prevedeva la possibilità di creare nuove fonti di

entrate finanziarie per legge organica, senza modificare il Trattato e quindi senza richiedere la ratifica da parte degli Stati membri, per coprire le nuove spese necessarie al funzionamento dell'Unione, mentre l'art 311 del TFUE limita il parlamento ad un ruolo consultivo con il Consiglio incaricato di "istituire nuove categorie di risorse proprie o abolire una categoria esistente". L'articolo 82 prevedeva la possibilità che il Trattato entrasse in vigore anche in assenza di ratifica da parte di tutti gli Stati membri, mentre il sistema attuale non prevede questa possibilità. L'articolo ha guidato l'integrazione europea lungo la strada della differenziazione ispirando altre soluzioni proposte per eludere la necessità di un accordo unanime, tanto che un'Europa a più velocità, oltre ad essere uno dei più grandi temi di dibattito, è un'opzione presa in considerazione anche dalla Commissione europea.

L'articolo 84 prosegue il rafforzamento dei poteri del Parlamento a scapito del metodo intergovernativo che sottolinea l'intero Trattato Spinelli istituendo una procedura di revisione dei Trattati mediante l'approvazione del Parlamento e del Consiglio secondo la procedura applicabile alle leggi organiche. Tale disposizione mirava quindi a sottrarre agli Stati la competenza per la revisione del Trattato e ad abolire la necessità dell'unanimità semplificando le modifiche, e garantendo la necessaria flessibilità, per far fronte a una realtà in continuo mutamento. L'attuale art. 48 del TUE lascia questa competenza all'unanimità del Consiglio europeo ignorando la parte sovranazionale dell'Unione. Obbligo di unanimità nel Consiglio dell'Unione che è applicato anche a diverse altre aree, come la politica estera. Rigidità e sottomissione dell'integrazione europea al metodo intergovernativo sono dunque tratti distintivi dell'attuale organizzazione del Trattato. Questi articoli del Trattato Spinelli sono quindi strumentali a comprendere la principale differenza tra il sistema proposto da Spinelli e quello attualmente stabilito con l'accordo di Lisbona. Al di là dell'architettura del trattato e nonostante il gran numero di disposizioni che oggi vengono recepite, il lavoro portato avanti dal Parlamento Europeo mirava alla creazione di un'entità sovranazionale in cui l'organismo eletto democraticamente dagli europei potesse avere un'influenza politica nelle dinamiche europee. Al contrario, l'attuale sistema mira al mantenimento dello "status quo", al dominio decisionale degli stati membri, al mantenimento della sua identità precaria a metà tra unione politica, organizzazione internazionale e associazione di Stati che rende difficile ai cittadini degli stati membri identificarsi con esso e che causa inevitabilmente una disillusione nel progetto europeo. Le condizioni attuali, con la Conferenza sul Futuro dell'Europa in dirittura di conclusione e la risposta congiunta dell'Unione in quanto tale alle crisi climatica, socioeconomica e sanitaria (queste ultime due legate alla recente pandemia di Covid19), presentano però l'occasione giusta per proseguire con un nuovo capitolo del processo di integrazione europea.