AN “OPEN” CONSTITUTION FOR EUROPE

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I. THE PROBLEM: THE MARKET-LIBERAL BIAS OF EUROPEAN INTEGRATION
The market-liberal bias of European integration

Basic problem: Asymmetry between social regulation and economic liberalization

1. Problems of political decision-making:
   - High majority thresholds (unanimity, qualified majority)
   - Institutional and macro-economic heterogeneity of member states
   - Limited capacity for problem solving of European politics
The market-liberal bias of European integration

Basic problem: Asymmetry between social regulation and economic liberalization

2. Dynamic of integration through law:
   - Unilateral rulings of ECJ/decisions of Commission
   - Primacy over national law
   - Basis: market-liberal elements of EU-law (fundamental freedoms, competition law)
   - Political correction by governments and parliaments barely feasible

► Fundamental conflict with institutions of social market economy (autonomy of collective bargaining, right to strike, co-determination, public services)
The market-liberal bias of European integration

Basic problem: Asymmetry between social regulation and economic liberalization

- Social regulation only by political decision-making
- Legal integration: economic liberalization
- Structural imbalance between social regulation and economic liberalization
II. A PROPOSAL FOR AN “OPEN” CONSTITUTION FOR EUROPE
Basic elements of “open” constitution

What do citizens want?

Figure 17
European Matters: Institutions and Authority
Which Institutions Should Gain, Which Institutions Should Lose Influence?

<table>
<thead>
<tr>
<th>Institution</th>
<th>Should Gain Influence</th>
<th>Should Lose Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens via Referendum</td>
<td>70</td>
<td>14</td>
</tr>
<tr>
<td>National Governments</td>
<td>48</td>
<td>27</td>
</tr>
<tr>
<td>European Parliament</td>
<td>44</td>
<td>32</td>
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<tr>
<td>National Parliaments</td>
<td>43</td>
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<tr>
<td>European Council</td>
<td>39</td>
<td>34</td>
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<tr>
<td>European Commission</td>
<td>38</td>
<td>37</td>
</tr>
<tr>
<td>Trade Unions</td>
<td>36</td>
<td>38</td>
</tr>
</tbody>
</table>

**Question:** Who should gain and who should lose influence in European matters?

Figures in percent. Gap between figures shown and 100 percent is the equivalent of categories “do not know,” “prefer not to say.”

Basis: Eligible voters

Source: FES 2016
Basic elements of “open” constitution

Basic idea:

- Triad of (1) simplification and (2) democratization of decision-making processes with (3) flexible integration
- Exchange of veto points of EU legislation by politically controlled Opt-outs
Basic elements of “open” constitution

De-constituionalization of single market law [1]

– Reduction of EU constitution to elements typically included in constitutions: provisions about institutions, procedures, competences, social and civil rights

– Single market law not part of constitutional law but of ordinary law [acquis communitaire] → no constitutional status

– Removal of the primacy of economic freedom rights over social collective rights
Basic elements of “open” constitution

Multiple right to initiative [2]

– No monopolized right to initiative for Commission → no watering down of initiatives contradicting market-liberal preferences of DGs Market, Competition or Trade

– Right to initiative for qualified minorities in the EP and the Council → Upgrading of the European Parliament → democratization of the EU
Basic elements of “open” constitution

Lower majority thresholds for ordinary legislation [3]

– Approval of ordinary legislation with simple majorities in the EP and Council
Basic elements of “open” constitution

Politically controlled opt-out options for ordinary legislation [4]

– Protection of national specifics of single/ small groups of member states from being constantly overruled by simple majorities

– Opting-out politically controlled: absolute majority of EP and qualified majority in the Council can deny opt-out
## Basic elements of “open” constitution

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restoration of primacy of democratic politics over single market</td>
<td>Uniform application of EU law</td>
</tr>
<tr>
<td>Institutional architecture open for social and economic policy alternatives</td>
<td>Europe of different speeds</td>
</tr>
<tr>
<td>Increase of political problem solving capacity of European legislation</td>
<td></td>
</tr>
<tr>
<td>Higher public attention, politicization of European decisions on national and European level</td>
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<tr>
<td>Stronger role for national parliaments → increase of democratic quality in the member states</td>
<td></td>
</tr>
</tbody>
</table>
III. CONCLUSIONS
Conclusions

– Reform no guarantee for realization of a social Europe
– Social Europe result of political struggles yet to come

BUT

– Removal of institutional obstacles preventing political majorities from implementing alternative social and economic policy conceptions
– Social distribution of power ➔ leveling playing field