The Castle Method

Achieving Treaty Change Without Treaty Revision

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The EU leaders' informal competitiveness retreat at Alden Biesen Castle on 12 February produced a joint statement with a familiar ambition: completing the Single Market. Less noticed, however, is that the statement also sketches a programme of institutional and procedural reform. Those are changes to how EU law is initiated, crafted, delegated, reviewed, and repealed, as well as who controls those processes.

Buried in the language of "simplification", it endorses: (i) greater reliance on omnibus packages; (ii) a general preference for regulations over directives; (iii) reduced recourse to delegated and implementing acts; (iv) the systematic use of sunset clauses; and (v) a crackdown on Member State "gold-plating", coupled with a "deep house cleaning" of the acquis via an annual simplification report to the European Council. Commission President Ursula von der Leyen further undertook to report annually to the European Council on "simplification progress and cost reduction."

This is not merely a competitiveness agenda. It is an attempt to re-engineer, through an informal summit, the EU's constitutional and institutional architecture, *without* the safeguards of formal Treaty revision. The joint declaration provides, hidden as political guidance, quasi-instructions on the choice of legislative form, delegation architecture, and temporal validity. Those are matters that the Treaties assign to the Commission's initiative and to the ordinary legislative procedure, and which the Court has treated as components of the Union's institutional balance.

Its most telling symptom – one that deserves more attention than it has received – is the Commission's recent Better Regulation Communication, which seeks to institutionalise the procedural shortcuts pioneered by the first ten omnibus packages – including the departure from the Treaty-enshrined requirement of public consultation and impact assessment. In doing so, the Commission pre-empts the EU Ombudsman's criticism of those packages by proposing to replace the rules they violated with rules that permit what they did.

What's at Stake and Why it Matters: Institutional Balance

To appreciate what is at stake and why it matters, it helps to understand what EU constitutional law actually requires, and what the Alden Biesen commitments systematically disregard.

The EU's institutional architecture rests on a principle the Court of Justice has upheld since its earliest jurisprudence: institutional balance. Unlike the principle of conferral, which concerns the limits of EU power vis-à-vis Member States, institutional balance is an inter-institutional principle: it requires that the specific equilibrium of functions the Treaties distribute among the institutions be maintained, and that no institution may arrogate to itself the functions assigned to another, even with that other institution's consent (Case C-149/85, Wybot, para. 23). In other words, institutional balance is not a right that institutions may waive at their convenience: it is a constitutional guarantee that protects the integrity of the legislative process itself (that is the Community method as reflected in the ordinary legislative procedure, with qualified majority in the Council) and with it those subject to EU law.

If the European Council may define general political orientations, it may not prescribe the form, duration, or procedural design of legislative acts, functions the Treaties assign to the Commission and the co-legislators. That prohibition, enshrined in Article 15(1) TEU, provides a constitutional firewall between inter-

governmental politics and EU law-making: the guarantee that rules binding 450 million people are produced through processes that involve deliberation, democratic scrutiny, and judicial accountability.

Every reform in the Alden Biesen statement crosses that firewall.

The choice between a directive and a regulation, reliance on delegated acts, and the appropriateness of sunset clauses require context-dependent assessments, forming part of proportionality and subsidiarity reasoning specific to each legislative file. They are tasks for the Commission and co-legislators, policed by the Court with considerable precision. Any informal institutional rules that develop "interstitially", as the joint declaration does, are contra legem. As such, it can't be tolerated without fundamentally altering the institutional balance, with major consequences in terms of legitimacy and representation, and without the Court having been able to review that transformation.

Ordering a blanket shift toward regulations, mandating a general reduction of delegated acts, and making sunset clauses a default technique by political instruction pre-empt those decisions. It substitutes a single political preference for the case-by-case constitutional reasoning the Treaties and the Court's jurisprudence demand.

Such instructions are not merely borderline illegal; they are constitutionally impermissible. It is the integrity of the Union's legal order and institutional system that is being undermined.

Most consequentially, Article 17(8) TEU makes the Commission accountable to the European Parliament, not the European Council. Von der Leyen's voluntary commitment to report annually to the European Council on her compliance with its simplification agenda establishes a structural accountability relationship with an institution the Treaties deliberately excluded from holding the Commission to account for its legislative choices. That exclusion reflects the constitutional design of the Community method, in which the Commission's political independence from the Member States – guaranteed precisely by its accountability to an elected Parliament – is the precondition for its role as guardian of the general interest. A *routine* compliance relationship with the European Council on the Commission's legislative technique risks hardening political guidance into supervisory control, in direct tension with the Treaties' design of Commission independence and Parliament-centred political accountability.

True: each proposed reform, viewed in isolation, can be presented – at least politically – as pragmatic adaptation to geopolitical urgency. Yet, when jointly examined, they amount to a permanent reallocation of legislative power performed in manifest breach of the principle of institutional balance.

The Road Not Taken: The Single European Act of 1986

The Treaties provide a mechanism for exactly this kind of structural change: the ordinary revision procedure under Article 48 TEU, with a Convention, an intergovernmental conference, and ratification by all Member States. It is worth recalling that when European leaders last decided the Single Market needed a decisive relaunch, facing the same competitiveness anxieties and the same urgency, they used the Treaty revision route. The Single European Act of 1986 introduced qualified majority voting, strengthened the Parliament's legislative role, and set a 1992 deadline for completing the internal market. Crucially, it did so by amending the Treaties, not by bypassing them. The Cockfield White Paper was a Commission – not a Member State-led – initiative addressed to co-legislators; the outcome was a ratified constitutional act. What distinguishes Alden Biesen from 1985 is not the ambition. Rather it is the deliberate choice to pursue constitutional reform through sub-constitutional means, in full awareness that the Treaty revision route remains available, albeit politically impracticable.

Ultimately, a dedicated procedure exists aimed at determining where power sits, how it is constrained, and who can call the Commission to account, to ensure constitutional choices are made with democratic legitimacy and not through informal summitry.

The provenance of the agenda

Before drawing conclusions, the provenance of these reforms deserves emphasis. Virtually all of them can be traced, word for word, to a German-Italian non-paper circulated ahead of the retreat, a non-paper by six northern Member States (Estonia, Finland, Latvia, Lithuania, the Netherlands and Sweden), and the Antwerp Declaration, adopted at the European Industry Summit by over 500 business leaders alongside Commission President von der Leyen. These were not Commission initiatives, independently assessed and brought to co-legislators. They were industry and Member State proposals, absorbed into a summit declaration, largely anticipated through a Better Regulation Communication designed to rewrite the procedural rules that the first omnibus packages had violated.

The Castle Method as an expression of EU constitutional drift

The constitutional strategy of the Alden Biesen reforms is to achieve Treaty-level results by sidelining what the Treaty requires: joint declarations, Commission communications, accountability commitments to the European Council, and Better Regulation guidelines designed to legitimise what the rules previously prohibited.

This is part of a broader, largely undetected EU constitutional drift. Unlike formal constitutional reform, which, however imperfect, is reversible, publicly deliberated, and produces legal norms whose content and origin are identifiable and challengeable, constitutional drift operates invisibly, accumulates through small steps each defensible in isolation, and by the time it is recognised for what it is, has already altered the institutional landscape in ways that formal law has not acknowledged and may no longer be able to correct.

The EU has been here before. Each time, from the growth of the European Council's de facto legislative direction in the euro-crisis years, to the proliferation of intergovernmental agreements outside the Treaty framework, to the normalisation of emergency law-making, the justification was urgency. The geopolitical circumstances were always genuinely serious. And in each case, the constitutional costs were borne disproportionately by those with the least influence at the castle retreats: citizens, parliaments, civil society organisations, and the procedural rights that exist to give them a voice in the rules that govern them.

What is new about Alden Biesen is its unhibited departure from any attempt at comply with the constitutional boundaries within which member states may act within the European Union legal order. Five reforms to the structure of EU law-making, endorsed simultaneously, derived directly from industry and Member State non-papers, sealed by a Commission accountability commitment to the European Council, and partly pre-laundered against legal challenge by a Better Regulation Communication designed to rewrite the rules the packages violated.

The castle method denotes a mode of EU constitutional change in which the European Council uses informal summit declarations to prescribe not the policy directions of EU action, but the form, architecture, and temporal design of EU legislation—matters the Treaties assign to the Commission's initiative and the ordinary legislative procedure—without triggering the visibility, deliberation, or democratic safeguards of formal Treaty revision. It operates through the accumulation of soft law instruments: joint declarations, Commission communications, accountability commitments, and regulatory guidelines that together produce Treaty-level institutional effects while never attaining that formal recognition. Unlike the Community method, which it displaces, the castle method is driven not by Commission initiative independently assessed in the general interest, but Member State proposals – typically incubated by the industry – absorbed into summit conclusions and subsequently laundered through administrative channels.

Unlike a Treaty revision, this process has no endpoint, no ratification moment, no constitutional off-switch. That is the defining characteristic of constitutional drift. And that is precisely why it deserves to be named for what it is.

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