



...information report

WHAT NEXT AFTER THE CONFERENCE ON THE FUTURE OF EUROPE?

Launched at the initiative of Emmanuel Macron, President of the Republic, and intended to offer European citizens the opportunity to debate Europe's priorities and the challenges it faces, **the Conference on the Future of Europe**, held from May 2021 to May 2022, was an unprecedented democratic exercise.

The conference resulted in 49 citizen proposals, divided into more than 300 concrete measures to help advance the European Union (EU). Some asserted the necessity of making changes to the treaties, an initiative supported not only by the European Parliament but by the President of the European Commission and by President Macron as well.

One year after the conference, this report aims to present a **status report on the follow-up to the Conference** and addresses the possibility of making revisions to the treaties, or of the **possibility of using "passerelle clauses"** or other forms of **institutional flexibility**. The report, signed by the two senators who represented the Senate at the Conference on the Future of Europe, was presented to the Senate's European Affairs Committee, which adopted it on **12 July 2023**.

1. SHOULD REVISIONS BE MADE TO THE TREATIES? A LONG PROCEDURE WITH AN UNCERTAIN OUTCOME

Multiple voices emerged in favour of a revision of the treaties. On 4 May 2022, the European Parliament adopted a resolution to such effect, and formally submitted a request to the Council of the EU to hold a convention to revise the treaties. In her State of the Union speech given 9 May 2022, Ursula von der Leyen, President of the European Commission, spoke in favour of reforming the EU, including "making changes to the treaties if necessary." In his speech at the closing of the Conference on the future of Europe on 9 May 2022, Emmanuel Macron, President of the Republic, stated that "making revisions to the treaties is neither a totem nor a taboo" and went on to indicate that he too would support making such revisions.

Today, however, **revising the treaties seems unrealistic.** Such revisions would need to be unanimously approved by the Council and ratified by all the Member States in accordance with their respective constitutional rules (in France, this would need to be done by Congress or by referendum). However, **Member States are deeply divided on the advisability and content of a possible revision of the treaties**, and certain countries, such as Poland or Hungary, have shown hostility to further integration. Launching a treaty revision process would risk opening "Pandora's box" and causing divisions between Member States, particularly on sensitive issues such as voting rights or jurisdictions. To cite just one example, President Macron has proposed modifying the European treaties to include the right to abortion, but several countries, such as Poland and Malta, strongly oppose this.

Furthermore, embarking on institutional discussions may seem inappropriate at this point in time, when the European Union needs above all to deal with the consequences of the war in Ukraine. Lastly, the outcome of the ratification procedure, in particular if held by referendum, would be very uncertain, as was previously the case with the Maastricht treaties (where the Danish voted no), the constitutional treaty (where the French and Dutch voted no) or the Treaty of Lisbon (where the Irish voted no).

2. THE USE OF “PASSERELLE CLAUSES” DOES NOT AT THIS POINT APPEAR TO BE A REALISTIC OPTION

The Lisbon Treaty includes provisions allowing it to be adapted to suit different circumstances without the need for amendments. Thus, in addition to the normal treaty revision procedure, it provides for the possibility of simplified revision procedures and “passerelle clauses,” thus allowing procedural flexibility.

In fact, there are **several types of “passerelle clauses.”**

In the context of common policies, when it has been provided that the Council of Ministers is to decide unanimously, **the European Council ruling unanimously may authorise the move to qualified majority voting.** This possibility is not available however in the context of decisions with military or defence implications.

Likewise, when a special legislative procedure is provided for (i.e. in cases where the European Parliament does not have co-decision powers), **the European Council, acting unanimously, can resolve that the ordinary legislative procedure will apply** (namely, co-decision).

The treaty provides that national parliaments must be notified if a “passerelle clause” is to be used. The decision can only come into force if no national parliament has expressed its opposition within six months. Thus, **each national parliament has a kind of veto right in regard to the use of “passerelle clauses.”**

However, in certain specific areas, the European Council or the Council of Ministers may unanimously decide to apply qualified majority voting or the ordinary legislative procedure, without national parliaments having the right to object. These areas are: the Union's multiannual financial framework, certain measures concerning social policy or the environment, and certain foreign policy decisions.

The European Parliament, the German Chancellor, and then the President of the French Republic all came out in favour of using these “passerelle clauses” so as to move from unanimity to qualified majority voting in the Council, thus eliminating the right of veto, particularly in regard to foreign policy matters.

In a Europe made up of twenty-seven Member States, maintaining unanimity in the Council does after all entail the risk of paralysis, since it grants the right of veto to each Member State. This risk would be increased in the event of an enlargement of the Union.

As an illustration, this would mean allowing European Union sanctions (for example against Russia) to be adopted by a qualified majority in the Council, and not unanimously, as is the case today, which would make it possible to overcome the reluctance of Hungary, for example.

The use of “passerelle clauses,” however, would require unanimous agreement of the Member States.

However, **there does not seem to be a consensus on the matter.** Many EU member states would be opposed to making such a move from unanimity to qualified majority voting. This would include various countries staunchly attached to their sovereignty, such as Poland and Hungary, as well as “smaller nations,” such as Cyprus or Malta, that are staunchly attached to their right of veto.

Thus, despite the European Parliament's request and the wishes of the President of the French Republic and the Chancellor of Germany, **the use of “passerelle clauses” seems unrealistic today.**

3. PROGRESS IS POSSIBLE WITH THE TREATIES REMAINING AS THEY ARE

It can be noted that there are other forms of institutional flexibility provided in the treaties that may make it possible to advance the unification of Europe without the need to go through a revision procedure.

For instance, the Treaty of Lisbon provided the possibility of capping the number of European commissioners and using a system of equal rotation. However, as a result of the negative Irish referendum, the Member States gave this up and returned to the one commissioner per State rule; it would however be possible in theory to cap this number without making any revision to the treaties.

Furthermore, there are two articles of the treaties in particular that could play a significant role in reinforcing European integration.

The first is **Article 352 of the Treaty on the Functioning of the EU**: under the terms of this article, when within the framework of one of the policies provided for by the treaties a given measure appears necessary to achieve one of the objectives sought by the treaties, but the treaties have not provided the requisite "powers of action" required for such purpose, the Council, acting unanimously, may take such measure in agreement with the European Parliament.

Clauses of this type have always been included in European treaties, and have already been widely used, but their object was limited to "measures necessary to attain, in the course of the operation of the common market, one of the objectives of the Community." With an expanded object, however, Article 352 today represents a powerful mainspring for a potential broadening of the European field of action.

The second article that could possibly have a strong impact in this regard is **Article 122 of the Treaty on the Functioning of the European Union**. The provisions of this article allow the European Union to take temporary measures in the event of a crisis. It allows Member States to take decisions by qualified majority – and avoid the unanimity sometimes required, particularly in matters of taxation – and in particular to do so without the involvement of the European Parliament.

Over the past three years, this article has enabled the Commission to enact legislative proposals in record time, such as for the joint purchase of vaccines against Covid-19, or for the creation of a levy on the superprofits of energy producers, for capping the price of gas, or even for joint gas purchasing.

Lastly, there is the possibility of resorting to various forms of **variable geometry**, within the framework of treaties or outside of them, allowing those States that wish to progress along the path of integration to do so without being hindered by others.

This may include the following forms:

- **forms of variable geometry outside the treaties** (for example the 2012 Treaty on Stability, Coordination and Governance/TSCG);

- **the forms of variable geometry provided under the treaties themselves** (Schengen area, euro zone);

- the **enhanced cooperation** provided under the treaties, with certain conditions (used for example for the creation of the European Public Prosecutor's Office, in matters of divorce, or for the Community patent).

According to the Lisbon Treaty, enhanced cooperation can only be implemented as a last resort and must involve the participation of at least nine member states. Authorisation to implement enhanced cooperation is granted by the Council acting by qualified majority; the Commission and Parliament have a right of veto and participate in the functioning of enhanced cooperation together with all associated members. For common foreign and security policy, however, consultation with the Parliament and the Commission alone is required, and authorisation may be granted by the Council acting unanimously.

In a Europe of twenty-seven countries today, perhaps thirty or more tomorrow, variable geometry may "seem inevitable in order to reconcile enlargement and deepening," as former minister and former member of parliament Alain Lamassoure has put it.

In conclusion, **although the possibility of a revision of the treaties or the use of "passerelle clauses" does not seem realistic today, the treaties provide other possibilities for advancing European integration.** Analyses have shown that only between 5 and 10% of the proposals put forth at the Conference on the Future of Europe would require a revision of the treaties. **Therefore, it is both possible and desirable for progress to be made without changing the treaties.** It is above all a question of political will.

The question of making revisions to the treaties, or at least to European Union EU policies, could however resurface in the future with the prospect of future enlargements of the European Union, in particular to include the Balkan countries, Ukraine, Moldova, or even Georgia at a later date.

This question should be the subject of a broad democratic debate with the citizens of Europe, who cannot be excluded from participation in the development of the European project, on which they will be consulted at the upcoming European elections, to be held in spring 2024.



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