

# How the EU Treaties are modified

## SUMMARY

With the Conference on the Future of Europe now at an end, a new phase has started: that of following up on the more than 320 proposed measures it set out.

This process is however a complicated one. Legally, ways to implement the Conference's proposed measures may require changes to the European Union (EU) Treaties, which is a complex and challenging process. Politically, debating how to implement reforms and deciding to what extent to modify the EU legal system may require intense negotiations.

The current EU Treaties, which are the fruit of successive reforms occurring over the last 35 years, may be modified only according to a complex set of procedures. The ordinary revision procedure may be used to amend any part of the Treaties, including modifications to the institutional set-up and of the Union's competences. The simplified revision procedure may only be used to modify limited areas of EU policies – namely Title III of the Treaty on the Functioning of the European Union – or the Council's decision-making rules.

The measures recommended by the Conference on the Future of Europe, and the recent international crises and political developments, might provide an impulse for a deeper reform of the EU, as the European Parliament has suggested in several resolutions. Whether deeper reform will be attempted depends however on the political will of the national governments, which hold the power to decide on whether to engage in a revision of the Treaties and, ultimately, on the content of the reforms.



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## Introduction

The current European Union (EU) Treaties are the product of a series of modifications over the years that have added competences to the EU, modified decision-making rules and generally affected the powers of the EU institutions. The mechanisms through which the Treaties can be modified however remain quite rigid and are punctually codified in the Treaty on the European Union (TEU).

A first feature of these mechanisms is that, notwithstanding the claim of autonomy of the EU legal system, they are reminiscent of principles of **public international law**<sup>1</sup> in the design of the ordinary and simplified revision procedures. These two procedures give a prominent role to the European Council – the institution that represents EU Member States – as the leading institution in treaty revision procedures, and require a procedure of incorporation in the national legal order at a constitutional level.

A second feature in the evolution of the rules concerning treaty change is the increased relevance gained by the **European Parliament**. After the 2007 Lisbon Treaty reforms, Parliament, together with other institutions, can submit proposals for treaty change and therefore trigger the mechanism that may lead to treaty revision.

A third feature of the treaty revision mechanisms is their **exclusivity**. The EU Treaties may be modified **only** through the revision procedures, or through specific mechanisms, provided in the Treaties. The application of the flexibility mechanism<sup>2</sup> ([Article 352 TFEU](#)) is therefore excluded for purposes that would lead to a substantial modification of the Treaties, as this could circumvent the application of the treaty revision procedures.<sup>3</sup> Likewise, the Treaties may not be modified through secondary law or international agreements.<sup>4</sup>

A fourth feature consists of the fact that they **provide limits *ratione personae* and *ratione materiae*** akin to a 'corset',<sup>5</sup> which binds all actors. In this vein, neither the institutions nor the Member States can issue acts that amend the EU Treaties without following the procedures enshrined therein. Since the exclusivity of treaty revision procedures concerns all parts of primary law, protocols and annexes to the act of accession can also only be suspended, amended or repealed following the treaty revision procedures. This is because the act of accession entails a treaty revision. The exclusivity of treaty revision procedures also affects the role of the European Court of Justice (ECJ), as this latter may not change primary law (i.e. EU Treaties) through case law.

At present, EU Treaties may be modified through the [following mechanisms](#):

- **ordinary revision procedure** (Article 48 (1)-(5) TEU) which consists of two variants:
  - i) ordinary treaty revision with a convention (48(1)-(5) TEU); and
  - ii) ordinary treaty revision without a convention (48(3)(2) TEU).
- **simplified revision procedures** (Article 48(6) and (7) TEU) consisting of:
  - simplified revision for modifications of internal policies i.e. Part III of the TFEU (Article 48(6) TEU);
  - two general *passerelle* clauses (Article 48(7) TEU).<sup>6</sup>
- **accession to and withdrawal from** the EU (Articles 49 and 50 TEU).

This briefing considers the ordinary revision and simplified revision procedures. It does not address accession to and withdrawal from the EU.

# Ordinary revision procedure

## General features

The ordinary revision procedure is the most classic, yet complex, method of treaty amendment.<sup>7</sup> It inherits a schema from public international law, in which negotiations take place within an intergovernmental conference (IGC), i.e. a conference of representatives of Member States' governments. In this arrangement, the modifying treaty is, after negotiation and adoption within the IGC, submitted to national constitutional procedures for ratification and ultimately entry into force. The ordinary revision procedure is shaped in the vein of this model, with further complexities derived by the multifaceted character of the EU institutional system.

## Scope

The **ordinary treaty revision procedure** is the most complete and empowering, as it may lead to amending any provision of the Treaties. It applies to Treaties, Protocols and arguably, even to the EU Charter of Fundamental Rights.<sup>8</sup> It is also the sole treaty revision mechanism that can affect the scope of Union competences. In accordance with Article 48(2) TEU, the proposals for amendment may, inter alia, serve either to increase or to reduce the competences conferred on the Union by the Treaties. In this respect, it has been argued<sup>9</sup> that there are no substantive limits to the scope of treaty amendments under the ordinary revision procedure.

## Procedure

The ordinary revision procedure may be triggered by the **government of any EU Member State, Parliament or the European Commission**, who may submit a proposal to the Council for the amendment of the Treaties. The **Council** acts in this respect as an almost **preparatory body**, since it is this latter that submits the request for amendments to the **European Council**, which is ultimately the institution that decides by simple majority (i.e. at least 14 Member States) whether to examine such amendments after consultation of Parliament and the Commission. **National parliaments** are also notified of the proposals to modify the Treaties.

Rules of Procedure regulating Parliament's role in the ordinary revision procedure

### Rule 85

The committee responsible may submit an own-initiative report (Rule 46 and 54) to Parliament containing proposals addressed to the Council.

Where Parliament is consulted, according to Article 48(3) TEU, on a proposal for a decision of the European Council in favour of examining the amendments, the matter is referred to the committee responsible, which draws up a report comprising:

- i) a motion for a resolution stating if Parliament approves or rejects the proposed decision and which may contain proposals for the attention of the convention or of the IGC;
- ii) if appropriate, an explanatory statement.

If the European Council decides to convene a convention, Parliament shall appoint Parliament's representatives to the convention following a proposal by the Conference of Presidents.

Where the European Council requests Parliament's consent not to convene a convention for the examination of the proposed amendments, this request is referred to the committee responsible in accordance with Rule 105.

### Rule 46

Where treaties confer a right of initiative upon Parliament, the committee responsible may decide to draw up an **own-initiative report** in accordance with Rule 54.

The report shall include: i) a motion for a resolution; ii) a draft proposal; iii) an explanatory statement including, where appropriate, a financial statement.

Where the adoption of an act by Parliament requires the approval or consent of Council and the opinion or consent of the Commission, Parliament may, following the vote on the proposed act and following a proposal of the rapporteur, decide to postpone the vote on the motion for a resolution until the Council and Commission have stated their position.<sup>1</sup>

If the European Council is in favour, the President of the European Council convenes a **convention**. According to Article 48(3) TEU, the composition of the convention includes representatives of national parliaments, Heads of State or Government of Member States, European Parliament and the Commission. The European Central Bank is also consulted, if the scope of the revision includes institutional changes in the monetary area. The convention examines the proposals for amendments and adopts, by consensus, recommendations to the IGC.

The recourse to a convention represents an important **constitutional democratic phase** in the process, as it establishes a negotiation forum that precedes the phase within the IGC. The Treaty, however, does not indicate the number of members of such convention, but only the institutions that take part in it. However, the European Council, having taken account of the nature and extent of the proposed amendments, may decide by simple majority that **it is not necessary to convene a convention**. In this case, **Parliament's consent** is necessary and the European Council defines the terms of reference of the IGC ([Article 48\(3\)\(2\) TEU](#)). The possibility of an ordinary **treaty revision procedure without a convention** taking place (Article 48(3)(2) TEU) totally excludes Parliament from any further deliberation and decision. The European Council defines the terms of reference of the IGC, which is the sole body ultimately deciding on the content of treaty modifications in the absence of a draft from the convention.

Once the convention has delivered its recommendations for treaty amendments to the IGC, the President of the Council (i.e. [Council of the European Union](#), not the [European Council](#)) must convene the IGC (Article 48(4) TEU).

The **IGC** (Article 48(4) TEU) is the body that, whether it follows a convention or not, determines the amendments to be made to the Treaties by **common accord**. However, in the academic literature<sup>10</sup> it is argued that the text produced by the convention can be modified by the IGC but **not fundamentally distorted**, as it is the fruit of a democratic process. Those amendments adopted by the IGC by common accord must be ratified by all Member States in accordance with their respective constitutional requirements – the **double unanimity** (detailed below). Depending on national law, a referendum may also be necessary in some Member States. This is a particularly important and delicate step, not least demonstrated by the [referendums](#) in France and the Netherlands that rejected the [Treaty establishing a Constitution for Europe](#) in 2005.

If, however, **two years from the signature** of the amending Treaty, four fifths of the Member States have ratified it and one or more Member States are encountering difficulties, the matter is referred to the European Council to find a solution (Article 48(5) TEU).

Rules [85](#), [46](#) and [54](#) of the Parliament's Rules of Procedure regulate Parliament's working methods in the ordinary revision procedure.

## Examples of previous EU Treaty revisions without a convention

The European Parliament was asked to consent to forego the convention in few cases, e.g. for the Treaty adjustments required by [Protocol 35](#) on Article 40.3.3 the Constitution of Ireland.

A prior use of this 'abbreviated' form of ordinary revision procedure without a convention<sup>11</sup> (Article 48(3)(2) TEU) can be traced back to the [Protocol](#)<sup>12</sup> signed on 23 June 2010 by representatives of Member States to increase the composition of the European Parliament by 18 seats for the period until the end of the 2009-2014 parliamentary term. This move allowed allocation of additional seats to those Member States who would have been entitled to a higher number of seats in the European Parliament under the Lisbon Treaty reform (which was not yet in force at the time of the 2009 European elections). The additional allocation took effect as of 2010, without waiting for the subsequent European elections. The Protocol therefore derogated from provisions of the Treaty establishing the European Community and the European Atomic Energy Community, which were in force at the time of the 2009 European election. It derogated also from Article 14(2) TFEU, which was introduced with the Lisbon reform and established the maximum number of seats (750 plus the

president). The addition of these 18 seats to the existing 736 seats provisionally brought the total number of seats in Parliament to 754 until the end of the 2009-2014 parliamentary term.

On 17 June 2010, the European Council took the [decision](#)<sup>13</sup> to convene an IGC for the adoption of the 2010 Protocol without a convention, after having obtained Parliament's consent on 5 May 2010.

## Outlook and innovations introduced under the Lisbon Treaty

The first noteworthy substantive innovation introduced by the Treaty of Lisbon into the previously applicable Article 48 TEU (now Article 48(1)-(5) TEU) is undeniably the **increased role for Parliament**, which can now trigger the treaty revision process together with the Commission and the governments of the Member States. A second innovation is the **involvement of national parliaments** that are now notified of proposals for treaty amendment, adding a further democratic element to the whole process. Nonetheless, Article 48(2) TEU does not give national parliaments the right of initiative to trigger the revision process. The third innovation is the **formalisation of the convention** as a (non-compulsory) forum to design proposals for treaty change. Although formally introduced in the EU legal order by the Treaty of Lisbon, the convention was previously the vehicle for the ad hoc Convention's adoption of the [Charter](#) of Fundamental Rights and for the adoption of the Constitutional Treaty by the [Convention](#) on the Future of Europe in 2002.

Particular elements that remained unaltered by the Lisbon reform and that bestow a certain gravitas upon the ordinary revision procedure are the fact that governments of Member States unequivocally remain in the 'driver's seat' as regards the content of treaty reform and the **double unanimity** requirement. This latter entails that all Member State representatives (common accord) must agree amendments within the

IGC and all Member States must thereafter ratify, according to their own constitutional provisions, the modifications to the Treaties adopted and agreed by the IGC before the amendments can enter into force. However, academics<sup>14</sup> claim that double unanimity is an inadequate method<sup>15</sup> for reforming the Treaties. Moreover, it is not a method adopted by many international organisations, which have tended to opt for the majority rule (often two-thirds of their member states, e.g. United Nations, World Health Organization, World Trade Organization, International Labour Organization).<sup>16</sup>

In addition, to some institutional complexities (the convention is convened by the President of the European Council, while the IGC is convened by the President of the Council), the ordinary revision procedure is also, legally and politically, a **very complex process**. Nonetheless, academics argue<sup>17</sup> that non-observance of one or more of the different steps provided in this complex procedure would not invalidate the whole process, provided that the modifying treaty is adopted and ratified by all Member States. Likewise, the ECJ would not have the power to annul treaty modifications adopted under the ordinary revision procedure that would be valid under public international law and the national constitutional laws of the Member States.

### Treaty revision procedure prior to the Lisbon Treaty

#### (ex) Article 48 TEU

'The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.'

## Simplified revision procedures

The simplified revision procedures are regulated by Article 48(6) and (7) of the TEU. At a closer look, however, those two types of procedures differ greatly in terms of scope and procedure. On the one hand, the simplified revision procedure under Article 48(6) TEU resembles the ordinary revision procedure, except that some steps are absent and the scope of possible modifications is reduced compared to the ordinary revision procedure. On the other hand, the procedures under Article 48(7) TEU, otherwise called **general passerelle clauses**, only modify the Council's decision-making process and allow a **shift from unanimity to qualified majority voting (QMV)**, as well as a **shift from the special legislative procedure (SLP) to the ordinary legislative procedure (OLP)**. *Passerelle* clauses belong to the category of treaty revision procedures because they *de facto* make it possible to alter the Treaty-established decision-making rules of the Council.

## Modifications of internal policies and EU action (Part Three TFEU)

### Scope

Although simplified ad hoc mechanisms to amend limited aspects of the Treaties existed prior to the Lisbon reform,<sup>18</sup> the **simplified treaty revision procedure** was only introduced with the Treaty of Lisbon<sup>19</sup>. As Article 48(6) TEU states, the simplified revision procedure **may not increase the competences** conferred on the Union by the Treaties. This method is of limited application to 'all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to internal policies and actions of the Union' (i.e. Articles 26-197 TFEU). Part Three of the TFEU includes the core Union policies, such as the internal market, the four fundamental freedoms of the internal market, the area of freedom, security and justice, agriculture and fishery, transport, competition, economic and monetary policies, etc. As a consequence, the simplified revision procedure does not allow modifications to the provisions of the TFEU on the institutional and financial provisions (Part Six), on the Union's external action (Part Five), or on the principle of non-discrimination and the citizenship of the Union (Part Two). Naturally, provisions of the TEU, Euratom Treaty, or Charter of Fundamental Rights as well as Protocols<sup>20</sup> are also excluded from the scope of the simplified treaty revision, as this procedure is restricted to TFEU rules alone (and therefore not to other acts of EU primary law).

### Procedure

Article 48(6) TEU provides that the same institutions and actors that have the power to trigger the ordinary revision procedure (national governments, Parliament and Commission) may do so by submitting proposals for revisions affecting Part Three of the TFEU to the European Council. The amendments are adopted after the European Parliament and the Commission are consulted, by **unanimous** decision of the **European Council**. Consultation of the European Central Bank is needed for institutional changes to the monetary area. For their entry into force, all Member States must **approve** amendments in accordance with their **constitutional requirements**.

Parliament's activity in the simplified revision procedure is regulated by Rules [86](#), [46](#) and [54](#).

#### Rules of Procedure regulating Parliament's role in the simplified revision procedure

##### Rule 86

'In accordance with Rules **46 and 54** (own-initiative report), the committee responsible may submit to Parliament a report containing proposals, addressed to the European Council, for the revision of all or part of the provisions of Part Three of the TFEU.

Where Parliament is consulted in accordance with Article 48(6) TEU, on a proposal for a decision of the European Council, Rule 85(2) shall apply *mutatis mutandis*. In that event, the motion for a resolution may contain proposals for amendments only of provisions of Part Three of the TFEU.

Rule 85(2) provides that the Committee responsible draws up a report comprising: i) a motion for a resolution stating if Parliament approves or rejects the proposed decision and which may contain proposals for the attention of the European Council; ii) if appropriate an explanatory memorandum.'

## Differences compared to the ordinary revision procedure

In comparison, the simplified revision procedure is less burdensome than the ordinary one, as regards the complexity of steps, the number of actors involved and the absence of the need for a convention or an IGC.<sup>21</sup> Two aspects however remain equally demanding: the **unanimity** required within the European Council (whilst the IGC acts by **common accord** in the ordinary revision procedure), and the need, following a unanimous decision by the European Council, that this decision is approved by Member States according to their constitutional requirements. In practice, it is argued<sup>22</sup> that the Member State 'approval' required for the simplified revision procedure differs little from the process of ratification required in the ordinary revision procedure, making this hurdle equally high.

The simplified revision procedure **differs** from Article 48(2)-(5) TEU in other ways, however (see Table in Annex). Firstly, **no convention** is held under the simplified revision procedure (Article 48(6) TEU) to pre-discuss and formulate recommendations to the IGC; secondly, **no IGC** is held to adopt the modifying treaty; and thirdly, **no amending treaty** is concluded between the Member States, but rather a **decision of the European Council** is issued. This third aspect is particularly relevant. It has been argued<sup>23</sup> that such European Council decisions can be challenged under [Article 263 TFEU](#), which allows, inter alia, an **ECJ review of legality** with regard to European Council acts intended to produce legal effects vis-à-vis third parties. According to the same expert, another relevant difference with respect to the ordinary revision procedure is the 'paternity' of the treaty changes (European Council decision). This would also entail that the transparency rules and the rules on access to documents apply to the European Council while these rules do not apply to the IGC – the body adopting treaty amendments under the ordinary revision procedure. A fourth difference is that there is no role for the national parliaments until the national transposition phase (i.e. approval in accordance with the constitutional requirements of the Member States (Article 48(6)(2) TEU)), while under the ordinary revision procedure national parliaments are notified of the amending proposals and also participate as members in the convention. Finally, the simplified revision procedure under Article 48(6) TEU **cannot increase Union competences**. However, according to a literal reading of Article 48(6) TEU, since only an increase in competences is prohibited, it has been argued<sup>24</sup> *a contrario* that a reduction in EU competences would be possible.

## Example of prior use of the simplified revision procedure under Article 48(6) TEU

The simplified revision procedure was famously used to **modify Article 136 TFEU** by introducing, with [European Council decision of 2011/199/EU](#) of 25 March 2011, a third paragraph to Article 136 TFEU, providing the legal basis for the establishment of the European Stability Mechanism (ESM). [Article 136\(3\) TFEU](#), as modified, provided that '3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.' The [ESM](#), meant to replace the European Financial Stability Facility and the European Financial Stability Mechanism, was then established under a separate intergovernmental agreement, of an international law nature. The ESM was established by the euro-area countries and began operating on 8 October 2012. In the [Pringle](#) (C-370/12) judgment of 27 November 2012, the ECJ confirmed the validity of European Council Decision 2011/199/EU.

## The two general *passerelle* clauses

The second type of simplified revision procedure, also introduced by the Treaty of Lisbon, consists of the two general *passerelle* clauses<sup>25</sup> contained in [Article 48\(7\) TEU](#), which provide for the possibility to modify certain aspects of the operation of the Treaties, i.e. those related to the

Council's decision-making rules. General *passerelle* clauses, like the previously examined simplified treaty revision mechanism (Article 48(6) TEU), may not modify Union competences.<sup>26</sup>

## Scope

Article 48(7) TEU provides for two type of modifications to the Council's decision-making rules:

- a **shift from unanimity to QMV**: where the Treaty on the Functioning of the European Union (TFEU) or Title V of the TEU on external action and common foreign and security policy provides that the Council acts by unanimity, the European Council may adopt a decision authorising the Council to decide by QMV. This change cannot be applied to decisions with military implications, or those in the area of defence;
- a **shift from special to ordinary legislative procedure** (OLP): where the TFEU provides for legislative acts to be adopted by the Council according to a special legislative procedure, the European Council may adopt a decision authorising the application of the OLP.

The two general *passerelle* clauses allow modifications in one direction alone: from unanimity to qualified majority voting (QMV), and from a special legislative procedure to the ordinary legislative procedure, while modifications in the opposite direction may only take place under the ordinary or simplified treaty revision procedure.

## Procedure

A general *passerelle* clause may be activated by the European Council without the need for a formal proposal from the Commission or any other EU institution. However, the lack of a formal initiator does not rule out informal endorsements by the Commission or any other institution, such as the European Parliament. For its part, the Commission does not have a formal role and remains excluded from the procedure. When adopted, the decision to activate the *passerelle* is contained in a **decision of the European Council**, which should indicate the policy area or the cases to which it applies and the type of general *passerelle* that is activated. However, the text of the Treaties is not formally amended, so the *passerelle* clause can be said to de facto modify the **operation of the Treaties**, but without formally amending their text.

**National parliaments** are substantially involved and can **veto** the initiative within six months from the date they are notified of the specific initiative. If vetoed – by even a single national parliament – the authorising European Council decision is considered not adopted. This possibly confers an even more influential role on national parliaments than in the subsidiarity control procedure ([Protocol 2](#)). Although Parliament's role is not of a constituent type, its **consent**, by the majority of its component Members, is required for the adoption of general *passerelle* clauses.

Once the procedure before national parliaments and the European Parliament is complete, the decision to adopt a general *passerelle* clause is in the hands of the European Council. In this situation, Article 48(7) TEU – by derogation from the European Council's default consensus decision-making method (Article 15(4) TEU) – explicitly requires the **European Council** to adopt the initiative by **unanimity**. This entails that the European Council decides with a formal vote. Unanimity is not precluded by one or more abstentions ([Article 235\(1\) TFEU](#)). In other words, the abstention of a Member State within the European Council does not count as a vote against the initiative. If, however, a single Member State formally opposes the decision (i.e. triggers its right of veto), the decision is not adopted and the procedure concludes without activating the *passerelle* clause.

## Time to reform the EU?

The previous paragraphs illustrate the panoply of existing mechanisms that allow changes of a constitutional nature to the EU. With this in mind, the introduction of major changes to the EU system could be imagined, involving constitutional and institutional modifications through an



ordinary revision procedure (Article 48(1)-(5) TEU). Meanwhile, changes to the 'policy' component of the EU, i.e. those that do not entail modification to either competences or institutions, could be achieved with a simplified revision procedure (Article 48(6) TEU). Moreover, when seeking changes to the Council decision-making rules, *passerelle* clauses could be useful (Article 48(7) TEU).

The issue of the future of the EU, on a bigger or smaller scale, has occupied public discussion in EU circles and institutions for a long time. The different crises (financial, terrorist, and migratory crises) that have affected the EU and its Member States in the last decade have stimulated a public debate that intensified with the 2016 UK referendum on withdrawal from the EU. The European Parliament hosted such [debates](#) in the year preceding the 2019 European elections during its plenary sessions, where Heads of State or Government of Member States were invited to lay out their vision for Europe. Parliament also made concrete proposals, inter alia through two seminal resolutions in February 2017; one that envisaged a set of '[soft reforms](#)' and the other '[more far reaching ones](#)'. The Juncker Commission also delved into the topic, proposing [five working methods](#) in its March 2017 [White Paper](#) on the future of Europe, according to which the EU could advance its integration. Member States also got involved in this debate, either [individually](#) or in [bilateral relations](#), or in [groups of states](#) holding [diverging](#) positions.

With the election of Ursula von der Leyen as President of the Commission, the debate on the future of Europe rose to a political priority. In her [opening statement](#) preceding her election and, in her [political guidelines](#), President von der Leyen reiterated her intention to hold a conference to involve European citizens, in an inclusive, constructive, modern way, to put the future of Europe at the forefront of citizens' debate. The [Conference on the Future of Europe](#) started one year later than expected, on [9 May 2021](#), after months of negotiation between institutions and delays due to the Covid-19 pandemic. Meant to deal with the broadest spectrum of EU policies, including EU governance and institutional aspects, the [Conference](#) was organised around four main components: the [citizens' panels](#), the [conference plenary](#), the [multilingual digital platform](#) and [national events](#). All these components were able to interact, according to defined [rules of procedure](#), with the idea of listening, discussing and proposing concrete ways to improve the EU.

A first outcome of the Conference were the 178 recommendations<sup>27</sup> produced by the four citizens' panels, which were communicated by panel ambassadors to the Conference plenary in two different [plenary sessions](#) in January and March 2022. The citizens' panels' [recommendations](#) were also discussed in the Conference [working groups](#), i.e. the forums that gathered the [different components](#) of the conference (Council, Commission, national panels, citizen ambassadors, organised civil society, social partners). On 9 May 2022, the three co-Chairs of the Conference's executive board delivered the [final outcome of the Conference](#) to the three presidents of the Conference.

These are a set of **49 proposals** issued on nine macro policy areas. Each proposal contains a number of concrete measures – **around 326** in total. Implementing these would require a range of initiatives, including inter alia: better enforcement of EU law, legislative initiatives, treaty change, non-legislative initiatives such as information campaigns, recommendations, etc.

The assessment of the type of follow-up action needed to respond to the calls for action encapsulated in the Conference's proposed measures remains a crucial issue in the post-Conference phase. As diverse as the ways to implement these measures might be, it became clear to the [Parliament delegation](#) within the Conference (even before this latter reached its conclusion), that to provide a meaningful answer to the quest for improving and strengthening the EU, treaty change would be required. For this reason, at the final [plenary session](#) of the Conference on 29 April 2022, Guy Verhofstadt, co-Chair of the Conference's Executive Board, representing Parliament, announced an initiative aimed at triggering a revision of the Treaties. On 4 May 2022, Parliament adopted a [resolution](#) on the follow-up to the conclusions of the Conference on the Future of Europe, in which it praised the innovative participation of citizens in the Conference, stressed that an increased role in EU decision-making requires more transparent, accountable and democratic institutions, and

noted that the current challenges necessitate a European answer. Finally, the resolution called for a convention to activate the procedure for the revision of the Treaties provided in Article 48 TEU.

On 9 June 2022, Parliament adopted a [resolution](#) calling for a convention on the revision of the Treaties under Article 48 TEU. In the same resolution, Parliament also makes specific proposals for treaty change as regards: allowing the Council to decide by QMV for the adoption of sanctions, *passerelle* clauses, and in the event of an emergency; adaptation of EU competences in the area of cross-border health threats; in the completion of the energy union; in defence, social and economic policies; awarding Parliament co-decision rights on EU budgetary issues and the right of legislative initiative.

Treaty change has been and remains a thorny issue. As described above, it is a process in which the role of Member States remains predominant. Traditionally, the Council has been rather cautious in airing the possibility to engage in such a process. The [Council](#) position on the Conference on the Future of Europe, issued in 2021, is proof of this prudent approach, as the Council made it clear that 'The Conference does not fall within the scope of Article 48 TEU'. As much as the vulnerabilities that surfaced with the Covid-19 pandemic or with the recent war in Ukraine might invite consideration of a revision to this prudent approach, the [position](#) of several Member States seems to remain unfavourable regarding engaging in a process leading to modifications of the current EU Treaties.

The EU institutions are currently reflecting on the follow up to give to the Conference's proposed measures. While both the Council and the Commission consider that it is possible to address the great majority of the recommendations within the current Treaties, or with existing or future initiatives, they also consider that, in certain cases, treaty changes might be necessary to implement some recommendations. In its [first preliminary technical assessment](#) issued on 10 June 2022, the Council identified the need to implement the recommendations with treaty changes in around 22 cases. The European Commission, while providing a more general assessment, declared in its 17 June 2022 [communication](#) that it is in favour of treaty change where it is necessary, which could be the case for some recommendations (e.g. on health or defence) that introduce brand-new ideas. The Commission is [expected](#) to announce a first set of proposals to implement the Conference's proposed measures at the [State of the Union address](#) in September 2022, the intention being that those proposals are included in the 2023 Commission work programme and beyond.

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## ENDNOTES

- <sup>1</sup> M. Klamert, in *The EU treaties and the Charter of Fundamental Rights*, M. Kellerbauer, M. Klamert, J. Tomkin, *sub* Article 48 mn. 1, 2019.
- <sup>2</sup> Article 352(1) TFEU provides that 'If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament'.
- <sup>3</sup> [Opinion](#) of the Court of 28 March 1996, 2/94, paragraphs 29-30; [Judgment](#) of the General Court of 19 April 2016, T-44/14, paragraph 51.
- <sup>4</sup> M. Klamert, *op. cit. sub* Article 48 mn. 3. Article 352 TFEU, see *contra* E. Denza; Article 48 in H.-J. Blanke and S. Mangiameli, *The Treaty on European Union (TEU)*, Springer-Verlag Berlin Heidelberg, 2013, p. 1342.
- <sup>5</sup> M. Klamert, *op. cit.* p. 305.
- <sup>6</sup> In addition to the two general *passerelle* clauses of Article 48(7) TEU, the treaties contain six special *passerelle* clauses, which are based on the same mechanism as the general *passerelle* clauses, but apply to specific policy areas. These are: Article 312(2) TFEU on the MFF; Article 81(3) TFEU on family law with cross-border implications; Article 192(2) TFEU on environmental policy; Article 333 TFEU in the framework of enhanced cooperation; Article 153(2) TFEU third subparagraph on social policy; and Article 31(3) TEU on common foreign and security policy.
- <sup>7</sup> E. Denza, Article 48 in *op. cit.*, p. 1343.
- <sup>8</sup> B. de Witte, *Treaty Revision Procedures after Lisbon*, in A. Biondi, P. Eeckhout, S. Ripley, *EU Law after Lisbon*, Oxford Scholarship Online, May 2012, p. 132. However, see *contra* S. Peers, *op. cit.* p. 427, who argues that, the Charter of Fundamental Rights being part of primary law without being an integral part of the treaties, means that EU institutions are not bound to follow the Article 48 TEU procedure, but that the Charter could be revised by the EU institutions alone, in the absence of any express provision establishing the way to amend the Charter.
- <sup>9</sup> M. Klamert, *op. cit.* mn 26.
- <sup>10</sup> F.-X. Priollaud, D. Siritzky, *Le traité de Lisbonne, la documentation française*, 2008, p. 139.
- <sup>11</sup> B. de Witte, *op. cit.* in A. Biondi, P. Eeckhout, S. Ripley, *op. cit.* p. 133.
- <sup>12</sup> [Protocol](#) amending the Protocol on transitional provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community (2010/C 263/01).
- <sup>13</sup> [European Council Decision](#) of 17 June 2010 on the examination by a conference of representatives of the governments of the Member States of the amendments to the Treaties proposed by the Spanish Government concerning the composition of the European Parliament and not to convene a Convention (2010/350/EU).
- <sup>14</sup> H. Bribosia, [Revising European Treaties](#): A plea in favour of abolishing the veto, *Notre Europe*, policy paper No 37, December 2009.
- <sup>15</sup> That the amending agreement enters into force only when all Member States have concluded their ratification process goes beyond what is often provided under international law, where the entry into force of amendments to founding treaties does not depend on ratification by all states. The non-ratifying countries may be safeguarded by not being bound by the amendments. For example, according to [Article 108](#) of the [UN Charter](#), amendments to this latter enter into force for all members of the UN when they have been adopted by a vote of two-thirds of General Assembly members, and they have been ratified according to the national constitutional procedures by two-thirds of the members of the General Assembly including all permanent members of the Security Council. See Denza, *op. cit.* in H.-J. Blanke and S. Mangiameli, *The Treaty on European Union (TEU)*, Springer-Verlag Berlin Heidelberg, 2013, p. 1344.

- <sup>16</sup> H. Bribosia, *op. cit.*
- <sup>17</sup> E. Denza, *op. cit.* p. 1345.
- <sup>18</sup> B. de Witte, *op. cit.* in A. Biondi, P. Eeckhout, S. Ripley, *op. cit.* p. 134.
- <sup>19</sup> B. de Witte, *op. cit.* in A. Biondi, P. Eeckhout, S. Ripley, *op. cit.* p. 135.
- <sup>20</sup> S. Peers, in R. Schütze and T. Tridimas, *Oxford Principles of European Union Law*, Vol. I, OUP, 2018, p.434.
- <sup>21</sup> J.-C. Piris, *The Lisbon treaty*, Cambridge studies in European Law and Policy, 2011, p. 105.
- <sup>22</sup> S. Peers *op. cit.*, p.435.
- <sup>23</sup> M. Klamert, *op. cit.* p. 307.
- <sup>24</sup> E. Denza, *op. cit.* p. 1348.
- <sup>25</sup> For an extensive analysis of the general and special *passerelle* clauses, see S. Kotanidis, [Passerelle clauses in the EU Treaties: Opportunities for more flexible supranational decision-making](#), EPRS, European Parliament, December 2020.
- <sup>26</sup> Although, see earlier endnote 14 on the possibility that the simplified revision procedure reduces Union competences.
- <sup>27</sup> For an analysis of the position of Parliament on the 178 recommendations expressed by the citizens panels, see: [Stronger economy, social justice, jobs, education, culture, sport, digital transformation](#) | Citizens' recommendations and the EU context: Panel 1 of the Conference on the Future of Europe, Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies, European Parliament, March 2022; [European democracy / Values and rights, rule of law, security](#) | Citizens' recommendations and the EU context: Panel 2 of the Conference on the Future of Europe, EPRS | European Parliamentary Research Service with the Directorates-General for Internal Policies (IPOL) and External Policies (EXPO), European Parliament, February 2022; [Climate change, environment and health](#) | Citizens' recommendations and the EU context: Panel 3 of the Conference on the Future of Europe, EPRS | European Parliamentary Research Service with the Directorates-General for Internal Policies (IPOL) and External Policies (EXPO); [EU in the world / Migration](#) | Citizens' recommendations and the EU context: Panel 4 of the Conference on the Future of Europe, Directorates-General for External Policies (EXPO) and Internal Policies (IPOL) with the European Parliamentary Research Service (EPRS), March 2022.

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## Annex: Ordinary revision procedure and simplified revision procedures under Article 48 TEU

	Ordinary revision procedure (Article 48(1)-(5) TEU)	Simplified revision procedure (Article 48(6) TEU)	General <i>Passerelle</i> clauses (Article 48(7) TEU)
Scope	Amendment of Treaties including protocols and annexes*; increase or reduction of EU competences	All or part of provisions of Part Three of the TFEU (Articles 26-197 TFEU), no increase of competences is allowed	Shift to QMV: where unanimity is provided in TFEU or Title V TEU on external action and CFSP – except decisions with military implication/area of defence  Shift to OLP: where TFEU provides for SLP
Initiators	Governments of Member States, Parliament, Commission	Governments of Member States, Parliament, Commission	Not formally specified
Actors	Governments of Member States, Parliament, Commission, Council, European Council (EUCO)  President of EUCO, national parliaments, President of Council, ECB**	Governments of Member States, Parliament, Commission, ECB**	EUCO, national parliaments, European Parliament
Procedure	Council first examines amendments and submits them to EUCO; EUCO decides (simple majority) to convene a convention (prior consultation of Parliament and Commission); Convention recommends, by consensus, changes to IGC IGC adopts, by common accord, amendments to treaties  If no convention, EUCO defines terms of reference of IGC	EUCO adopts decision after consultation of Parliament, the Commission and the ECB**	Decision of the EUCO allowing a shift to QMV or to OLP, consent of Parliament (majority component members), national parliaments may veto

Decision-making on amendments	Convention decides by consensus IGC decides by common accord	EUCO decides by unanimity	Unanimity EUCO
Role of national parliaments	Notified of proposals to amend treaties and are members of the convention	None	Veto (within six months from notification of the initiative)
Convention	If EUCO decides yes: convened by President of the European Council Composition: representatives of national parliaments, Heads of State or Government of Member States, Parliament, Commission, ECB** If EUCO decides (simple majority) no convention needed, Parliament must give consent	No	No
Intergovernmental conference (IGC)	Yes, whether there is a convention or not (consensus)	No	No
Amending Act	Treaty between all Member States	Decision of the European Council	Decision of EUCO
National transposition	Ratification	Approval according to constitutional requirements	No

\* For inclusion in the scope of the ordinary revision procedure of the Charter of Fundamental Rights, see endnote 8.

\*\* If amendments concern institutional changes in the monetary area.