

Schuman Paper  
n°725  
07<sup>th</sup> November 2023

Dimitris TRIANTAFYLLOU

# Revision of the Treaties: is Europe ready for a qualitative leap forward?

The discussion about a future revision of the European treaties[1] is back on the agenda. [In June 2022](#), following the [conference on the future of Europe](#), after consulting European citizens directly, presented its conclusions in May 2022, (including forty-nine proposals and three hundred and twenty-six concrete measures), the European Parliament called for the a [Convention for the Revision of the Treaties](#). On 25 October 2023, the [Committee on Constitutional Affairs](#) (AFCO) suggested relaunching this call, with proposals for revision in a report due to be put to the vote at the plenary session of 20 to 23 November. A [Franco-German Working Group](#) published its recommendations on the same subject in September 2023. The President of the European Commission, Ursula von der Leyen, seemed to support, or at least not rule out, the idea of a Convention in her "State of the Union" speeches in September 2022 and 2023. In a [Manifesto](#) dated 4 October 2023 some thirty leading figures from the world of European politics and academia advocated "progressive and pragmatic" federalism for the European Union.

Union has been strengthened by changes to the way it operates, thereby avoiding obstructions to decision-making.

Although the current geopolitical situation is pushing for enlargement, the need to reform the European Union ought already have been considered in much more neutral terms. For several years now, states such as China and India have been gaining in power on the international stage, competing with the United States and potentially relegating the European Union to a secondary position in the world, both economically and politically. The challenges of climate change, demographics and immigration only exacerbate this risk. The EU needs to be strengthened, independently of and before any idea of enlargement. The prospect of enlargement only serves to accelerate the process, as the catalyst of reform that sets it in motion.

## SIGNIFICANT STEPS WITHOUT TREATY REVISION?

Admittedly, the European Union has successfully tackled the various challenges of the last decade (financial crisis, Covid pandemic, war in Ukraine). The intergovernmental creation of the [European Stability Mechanism \(ESM\)](#) and the [Fiscal Compact](#), joint purchasing of vaccines, gas and even weapons[3], then sanctions against the assailant country[4] are emblematic of its ability to respond to unprecedented situations, as are the new initiatives to borrow on the markets to finance the recovery (*NextGenerationEU*[5]) and support employment, as well as promoting the production of micro-conductors and electrical batteries[6]. These are all initiatives designed

The idea of revising the Treaties is gradually gaining ground in view of a possible further enlargement of the European Union in the medium term. Depending on the state of political resolve[2], this is expected to take place against a turbulent geopolitical backdrop, marked by the Ukrainian and Israeli-Palestinian conflicts and threats to the European Union's direct neighbourhood. The dilemma between deepening and widening has resurfaced, to be addressed by an articulated combination of the two. This means preventing enlargement before the European

[1] The opinions expressed below are strictly personal and do not necessarily reflect those of the Institution to which the author be-ongs, nor of the Institution for which he is writing.

[2] This process is not the focus of the present article.

[3] Regulation on the instrument to strengthen the [European defence through joint acquisitions \(EDIRPA\)](#), adopted on 9 October 2023, and the support given to the manufacture of ammunition.

[4] Based on [article 215 TFEU](#)

[5] (also through subsidies); see [Regulation 2020/2094](#) concerning the instrument for recovery based on Article 122 TFEU ("solidarity", etc.), the centrepiece of which is the Recovery and Resilience Facility ([Regulation 2021/241](#), based on article 175 TFEU, specific action of "cohesion").

[6] See [Regulation 2023/1542](#), (based on articles 114 and 192 TFEU).

to ensure "European sovereignty" in the face of other world powers[7], which were taken following an innovative application of the provisions of the treaties (for example [articles 122](#)[8] and [114](#)[9] TFEU) and, where necessary, using the intergovernmental method (example of the ESM). Once has occurred, the latter is traditionally followed by a switch to the "Community" method, involving a supranational initiative by the Commission and decisions taken by qualified majority voting.

However, thanks to these successes, which demonstrate the resilience of the European Union and the will to move it forward despite and against all odds, there is no guarantee that it can continue to do so in the long term, especially if the number of Member States rises above thirty. It is true that EU law already contains a great deal of potential for reform, but this potential has remained unused in most cases.

Beyond the ordinary procedure for reviewing [article 48](#) al.2 to 5 [TEU](#), this includes simplified revision of the [TFEU](#)[10] concerning the part on the Union's internal policies, which cannot extend its competences, specific passerelle clauses[11] - and that concerning enhanced cooperation[12], facilitating a crossover from the unanimity requirement to a majority procedure (or an ordinary legislative procedure), as well as the general passerelle clause, which is subject however to the condition that no national parliament opposes it[13]. As was to be expected, even before the Constitutional Treaty was rejected[14], these same clauses, imbued with the unanimity requirement that must trigger them[15], remained largely unexploited, even in areas where the need for more Europe was strongly felt[16]. Despite the undeniable small steps forward made in recent years, it has to be said that filling in the gaps as crises arise is not enough in the long term to credibly ensure the progress and survival of the European edifice. As for enhanced cooperation put forward by the Commission and facilitated by the current treaties[17], this has only rarely become a reality, and then only in matters of lesser political importance[18].

In all events, even if these various possibilities might still be used, it is legitimate to ask whether, faced with

a "critical mass" of reforms to be carried out, a policy of "small steps", even if accompanied by the gradual establishment of constitutional practices that are still in their infancy, is the right method. Wouldn't it be better to group all the necessary reforms together in a single package and dare to undertake a horizontal revision of the Treaties?

Indeed, seeking solutions on a case-by-case basis each time a problem arises involves additional agreements between Member States or institutions; or even inventive and innovative interpretations of existing provisions, not to mention the delays until the main players are convinced - if some of them do not resist. This also reveals the weakness and dysfunction of the European Union. Crisis management, which can only be fragmentary and provisional, cannot become the Union's leitmotiv, as the authors of the *Manifesto* have emphasised. By way of example: how can we have confidence in the euro when, despite the aforementioned partial initiatives, the European Union does not have - apart from a few preliminary proposals - (such as the "EU Chips Act") - any real industrial policy to support its economy (including champions capable of competing with external giants), which also needs to be supplied with affordable energy? How can we demand respect for borders when the European Union, despite existing initiatives (the European Agency and the Defence Fund), does not yet have a genuine common defence policy comprising its own operational military force that can benefit from sufficient European supplies to assert the Union's sovereignty? How can decisions on arms supplies[19] and sanctions be taken directly if there is no clear, comprehensive geopolitical concept that can be used as a basis for foreign policy, beyond the [Strategic Compass](#)[20]? And how is it still possible for multinational groups to exploit differences between national tax systems to minimise the taxation of their profits, while individual persons still face the risk of double taxation of their inheritance, donations or income?

In other words, if it is to act as a great power and be taken seriously both externally, by other entities competing with it, and internally, by its citizens, who feel the need to be protected, the European Union must be strengthened, both in its competences and in its decision-making processes.

[7] Speech by the President of the Commission on the State of the Union 2022 and 2023.

[8] See [Regulation 2022/1854](#) on emergency intervention to deal with high energy prices and the post-Covid recovery instrument (NextGenerationEU), accompanied by a major loan (cf. Article 311 TFEU)

[9] Only for the creation of new authorities (in the financial field, see for example the [Regulation 1095/2010](#), or accompanying, for example, the foundations of industrial policy (as a simple support policy - see the regulation on semi-conductors [Regulation 2023/1781](#))

[10] Art. 48-6 TEU

[11] Art. 153-2 TFEU on social policy, art. 192-2 TFEU for environmental measures, art. 31-3 TEU for the CFSP, art. 81-3 TFEU for family law and art. 312-2 for the multiannual financial framework.

[12] Art. 333 TFEU.

[13] Art. 48-7 TEU

[14] V. D. Triantafyllou, Les procédures d'adoption et de révision in Amato/Bribosia/De Witte, Genèse et Destinée de la Constitution européenne, Brussels, Bruylant 2007, p. 223 s. (242).

[15] As is the case for the strengthening of European citizens' rights (art. 25 TFEU), the addition of cross-border crimes (art. 83-1 TFEU) or the strengthening of the European Public Prosecutor (art. 86-4 TFEU) and the creation of a common defence (art. 42-2 TEU), not forgetting the flexibility clause in art. 352 TFEU (unanimous measures excluding any harmonisation).

[16] On the Commission's recent proposals, see D. Calleja, D. Ladenburger, The future of EU law in 70 Years of EU law, 2022, p. 377 (382 f.), who add the possible amendment of certain protocols and the possible "optional mix" for the conclusion of international agreements under shared competences. Cf. the Commission Communication on the CFSP [COM \(2018\)647 final](#) and taxation [COM \(2019\) 8 final](#).

[17] Since 9 Member States are enough (art. 20-2 TEU).

From another angle, in the light of its specific accomplishments, one can take the view that in the respective fields the European Union needs a policy in its own right, going beyond mere "cooperation or support", (cf. [art.165 TFEU](#)), on the basis of a competence that is now "shared". Support for some productions may show, for instance, that an industrial (or defence) policy is gradually being established and so the current distribution of competences should be reviewed, including the way in which they are exercised, with the aim of increasing the European Union's capacity and credibility.

If policies are to be fully developed in areas where Europe lags behind or is out of date, it is essential for the relevant competences to be supported by a majority decision-making procedure - simple or qualified - with a view to abandoning the paralysing rule of unanimity. It is increasingly clear that it is not politically acceptable for a single country (or a small group of countries) to prevent progress by all of the others. It is only by majority vote that decisions can be taken faster, and coalitions forged based on a convergence of views. Is this possible in all areas? Unanimity weighs on decision-making, delays it and dilutes its content, thereby damaging Europe's image of "unity" and its ability to respond, even if there are sometimes ways of circumventing it: for example, by "constructive abstention" in CFSP matters[21] or "enhanced cooperation". While the policy of "small steps" continues to prove its worth, it could also prove ineffective, or ill-adapted because it is too slow, in a rapidly changing world. Moreover, at the Conference on the Future of Europe, citizens called for greater democratisation of the decision-making process, with more participatory forms of decision-making and greater political legitimacy for the supranational institutions that drive it. Such far-reaching changes can only be made through a proper revision of the Treaties.

#### PROPOSALS FOR PRACTICAL REFORMS: SCRAPPING VETOS AND STRENGTHENING DEMOCRACY

The need for "more Europe" was identified at this Conference, and this is why many of the proposals converge in this direction. It is a happy coincidence

that, on this basis, European elected representatives and experts from the two largest Member States have reached broad agreement on the way forward. Indeed, the European Parliament's AFCO Committee proposes in detail the strengthening of competences in foreign policy, defence (with solidarity in the event of aggression, the supply of armaments and the creation of European military units, etc.)[22] and defence, energy, health, education and industry, making them shared competences that will give rise to integrated policies; for example, a European Energy Union or common standards for education and health (as well as competence for the environment and climate change, which Europe's elected representatives now want to be exclusive), as well as a common framework for space-related activities[23]. On the other hand, exclusive competence for climate change, or even shared competence for education, could run up against national reluctance, since not all Member States are affected in the same way and they will want to maintain room for manoeuvre. Despite creeping coordination (within the OECD), education remains also closely linked to national identities, but it would be possible to focus on specific aspects such as vocational training and the education of migrants, according to the idea of the authors of the Manifesto.

This strengthening of competences is also proposed by the Franco-German group, which suggests the general abandonment of unanimity in the Council and the ordinary legislative procedure in almost all areas (notably for the CFSP[24] and taxation) so that this strengthening would not be illusory. Despite the consensus systematically sought and obtained in the Council, the authors believe that majority voting will facilitate compromise and the formation of coalitions (even if it means, at an initial stage, the possibility of expressing reservations on the grounds of vital national interest, or even the possibility of "opting out", which would certainly weaken this reform at first). It would be easier to achieve the adoption of this example of "progressive and pragmatic federalism", according to the *Manifesto*, (cf. [article 31 TEU](#) on constructive abstention). While the Franco-German group maintains the threshold for this majority at 55% of States representing 65% of the population, MEPs

[18] See enhanced cooperation for unitary patents and cross-border divorces.

[19] See the European Peace Facility (to supply the Ukrainian armed forces with military equipment and platforms designed to release lethal force) ([Decision CFSP 2022/338](#)).

[20] This, approved by the Council on 25 March 2022, certainly represents progress in this direction, but is not without uncertainties and ambiguities concerning the Union's position vis-à-vis third countries.

[21] See article 31 TEU.

[22] To reduce dependence on Allies who may not always be prepared to sacrifice themselves for the EU (see the authors of the *Mani-festo*, who do not dispute the Transatlantic Alliance).

[23] As the EP's proposal is supported by specific amendments to the provisions of the Treaties, it is well detailed and includes a number of interesting and realistic elements that cannot be included in the present article (e.g. the addition of crimes falling within the competence of the Union by super-qualified majority, the fight against all forms of discrimination, the harmonisation of cross-border aspects of family law and European citizenship under the legislative procedure, a permanent mechanism for monitoring foreign direct investment, the protection of minorities, the inclusion of fundamental rights in trade policy, details on immigration policy and the consultation of the social partners when drawing up economic policy guidelines).

[24] and for all international agreements, for which the EP demands a general right to consent.

are bolder in lowering it to a simple majority of States and 50% of the population of the Union[25], forgetting that the large states are afraid of being in the minority on the first point (number of states) and the small ones on the second (population size). It would take a great deal of democratic spirit for the simple majority rule to prevail.

Another proposal concerns a new clause that would allow the Commission to be granted extraordinary powers in emergency situations[26]. Despite the proven usefulness of Article 122 TFEU, a properly worded emergency clause would undoubtedly be more appropriate when addressing crisis situations. The Member States would still have to have confidence in the Commission, in order to delegate far reaching powers to it. As already provided for in the passerelle clause of [article 312-2 TFEU](#), abandoning the unanimity requirement would allow for the multiannual financial framework to be adopted according to the ordinary legislative procedure, a proposal which would have a chance of success given the recent experience of the *NextGenerationEU* recovery plan; the MEPs are calling for the same procedure to be applied to own resources, which is likely to be more difficult given the control that certain national parliaments exercise over public spending[27].

The Franco-German group is also proposing to make explicit provision for the issue of joint debt, consolidating what is already being done based on [article 311 TFEU](#). This proposal will certainly provoke strong response for fear of seeing a permanent debt borne in the end by certain States alone[28]. The idea of harmonised tax resources to finance the EU budget also promises heated debate (cf. the fate of the proposal for a tax on financial transactions). For the authors, the budget should grow in absolute and relative terms (in relation to GDP), since it is clear that no policy is effective without sufficient resources[29]. To circumvent the unanimity requirement, they advocate enhanced cooperation for the joint financing of certain policies (cf. already Article 332 TFEU). In the same vein, MEPs specifically propose the application of qualified majority voting for the flexibility clause ([article 352 TFEU](#), used less and less in the presence of specific bases) and

for the authorisation of enhanced cooperation in CFSP matters, what would allow for strategic decisions to be taken (that would be followed by the defence policy). In our view, this is where an opt-out on grounds of national security would still make sense.

In terms of democratisation, the AFCO Committee emphasises the importance of European elections, for which the rules should be harmonised. This includes the need for a certain degree of harmonisation in the case of the Parliament, as well as the Parliament's key role in choosing the President of the Commission, whom the MEPs would like to rename "*President of the Union*"[30]. This is an ambitious proposal that the Member States will find difficult to accept, even though the current Treaty does not completely rule out the possibility of the President of the Commission holding office concurrently with that of the President of the European Council ([article 15 TEU](#)). The Franco-German group is proposing a formal, if not political, agreement between institutions for this President, depending on the outcome of the elections, based on the idea of the *Spitzenkandidat*, which has been tried already on the more vague basis of [article 17-7 TEU](#). The increased politicisation that would result for the Commission would certainly run counter to its *objective and impartial technocratisation*. But this is not completely new and would no doubt be worth re-examining, with an uncertain outcome, given the Commission's role as arbiter and protector of the smaller States. Transparency in the legislative work of the Council, the second legislative chamber, is also called for, with Parliament demanding a full right of legislative initiative (in addition to the requests it can make to the Commission)[31].

It is also proposed that the size of the Commission be reduced to two-thirds of the Member States or to fifteen members, as initially provided for in the Constitutional Treaty and the Convention's 2002 draft. This would reassert the set aside principle[32] of article 17-5 TEU, or even, subsidiarily, a hierarchical structure of its members (giving rise to two categories of Commissioners). This would reflect a commonly accepted need for coordination, as shown by the current organisation of the Commission.

[25] The EP is also considering a qualified majority (with 2/3 of the Member States) and an enhanced majority (with 4/5 of the Member States).

[26] This would replace Article 122 TFEU (solidarity clause). It is questionable whether the abolition of the latter is necessary, since this article can prove useful in a number of circumstances.

[27] Especially the German Bundestag

[28] See Bundesverfassungsgericht, decision dated 6 December 2022 (2 BvR 547/21, 798/21) regarding the ratification of the 2020 decision regarding the EU's own resources (2020/2053) taken based on article 311 TFEU.

[29] This is why the authors of the Manifesto emphasise budgetary capacity.

[30] This would relegate the President of the Council to simply chairing the Council (which the Franco-German group wants to see managed not by a trio but by a "quintet", to ensure that projects are monitored over the longer term).

[31] Its proposal also distinguishes between collective and individual motions of censure.

[32] On Ireland's request.

Another of the common priorities is to strengthen the procedure under Article 7 of the Treaty on European Union to ensure that Member States respect the values of the Union (Article 2 TEU). This implies the facilitation of decision-making by abandoning the unanimity requirement, which should be acceptable since its overriding aim is to protect the democratic rule of law. A super-qualified majority of four-fifths would thus be sufficient to trigger automatic sanctions, according to the Franco-German group, which supports the generalisation of budgetary conditionality to sanction violations of the rule of law and the values of the Union, persistent non-compliance with which would lead recalcitrant States to eventually leave the Union. The texts already provide for this conditionality with the endorsement of the Court of Justice<sup>[33]</sup>.

Democratisation should go hand in hand with a greater role for citizens through means of participatory democracy (in particular the citizens' initiative) and citizens' panels to be instituted, as well as with the organisation of control of the institutions by an independent office of transparency and probity. These proposals are designed to bring the Union closer to its citizens.

Finally, it is worth noting the Franco-German group's proposal to create a Joint Chamber of Supreme Courts, which would provide a forum for dialogue between them and with the Court of Justice of the European Union. The aim of this would be to prevent conflict between courts in the future, with national Supreme Courts invoking their Constitution or democracy at national level to obstruct EU policies<sup>[34]</sup>, while the principles of subsidiarity and proportionality are already monitored by the Court of Justice<sup>[35]</sup>. The organisation of dialogue like this might be accepted with a view to the peaceful coexistence of national constitutions with Union law (Article 4-2 TEU on the respect of national identities).

This panorama of ideas to strengthen competences, to render the decision-making process more flexible and to increase the democratisation of the European Union is therefore characterised by a convergence of views between the various discussions underway, even if they

are not all likely to succeed. The Commission for its part has already expressed, via its President, its general openness to reforms, including by conventional means. Generally speaking, the closer these proposals are to the current *acquis* (including "passerelle" clauses), the easier it will be to secure their acceptance. The reforms concerning public finances will be the most difficult to obtain, but they are essential if the Union is to be genuinely strengthened.

However, there is one horizontal issue that has not been addressed by the proposals put forward and which is crucial to the success of the exercise and to dealing with the vagaries of national politics: the procedure for the reform of the Treaties.

#### AMENDING THE REVISION PROCEDURE

If we can no longer be satisfied with the *passerelle* clauses, which presuppose unanimity to cross them, it will be necessary to envisage a reform of the Treaties which would not require unanimity on the part of the Member States. This became clear after the rejection of the Constitutional Treaty that preceded the Lisbon Treaty. Although this treaty was conceived using the original "conventional" method, it could not be adopted in 2005 following the results of referendums in France and the Netherlands. The Treaty of Lisbon, which salvaged the substance of the Treaty by integrating it into the existing treaties, initially came up against the Irish "no" vote, which necessitated a number of adjustments, including the abandonment of the idea of a Commission with a reduced composition.

Unanimity has proved to be the main stumbling block in the revision process, both at the level of the Intergovernmental Conference (IGC) and at the time of national ratification, since it allows each State, or its parliament, to block the progress of the European Union as a whole, contrary to any democratic logic. The prospect of a 'no' vote at the time of ratification also puts the brakes on the boldest reforms from the outset, for fear of future rejection by the most recalcitrant states.

The AFCO Committee's proposal is not explicit on this point since it only envisages amending the procedure

<sup>[33]</sup> ECJ, C-156/21, 157/21 Hungary and Poland vs Parliament and Council

<sup>[34]</sup> See the jurisprudence of Bundesverfassungsgericht and the Polish Supreme Court.

<sup>[35]</sup> According to Protocol 2 of the Lisbon Treaty, which the AFCO Committee proposes to incorporate into the TFEU from now on.

[36] Especially because it would circumvent one of the legitimising pillars of the EU, its Member States, to the benefit of a European 'demos' which would see its emergence, despite its traditional negation.

[37] See the WHO, WTO, ILO, even the UN (albeit with the agreement of the permanent members of the Security Council). The IMF also uses a majority formula to amend its Articles of Association.

[38] S. Ackermann, Our unconstitutional founding, University of Chicago Law Review 1995, p. 478 s.

[39] As recommended by H. Bribosia, Revising the European Treaties : a plea in favour of abolishing the veto, (based on ideas put forward by Bruno De Witte, Renaud Dehousse, Jean-Guy Giraud, Franz Mayer, Paolo Ponzano and Gaétane Ricard-Nihoul).

[40] See article 41 of the Vienna Convention on Treaty Law.

[41] Unlike the draft agreement on its entry into force, drawn up as part of the feasibility study within the Commission commonly known as "Penelope", the Constitutional Treaty was supplemented by a simple Declaration providing only for referral to the Euro-pean Council if, after ratification by 4/5ths of the States, the remaining States encountered difficulties (idem Article 48-5 TEU). For criticism of this declaration, which did not dare to make a "constitutional leap", see D. Triantafyllou, La Constitution de l'UE, Brussels, Bruylant 2005, p. 150.

[42] The conditions for future enlargement are not the focus of this article.

[43] See the seminal text on this subject by Wolfgang Schäuble and Karl Lamers, 1994

for revising the Treaties (in principle) by four-fifths of the Member States (at the IGC and for ratification). It does envisage a European referendum in the event that four-fifths of the Member States have not ratified the revision of the Treaty after a period of two years. This would be tantamount to giving citizens the last word by bypassing the respective Member States[36]. With or without a referendum at European level, this is a bold proposal but, to implement it, we would first have to decide to bring forward its application to the adoption of the revision now proposed. This would imply a break with the unanimity rule laid down in Article 48 TEU, but would follow the example of several international organisations which have already amended their constituent charters by majority vote[37], or the Confederation of American States at the time of the adoption of the American Constitution[38]. On the other hand, if such a rule were not applied to the adoption of the proposed revision, it would probably be doomed to failure, to the detriment of the majority of the States and (if we add that these States should represent four-fifths of the population[39]) to the detriment of the expectations of the majority of European citizens. The entry into force of the revision following ratification by four-fifths would give rise to a kind of "enhanced cooperation" at the level of primary law ("inter partes" modification permitted by international law[40]) which we advocated, but were not followed, when the Constitutional Treaty was drawn up[41].

## REORGANISING THE EUROPEAN AREA

Of course, in such an eventuality, solutions would have to be found for those States that do not follow and whose acquired rights would in principle have to be respected. The Franco-German group of experts, which is outlining the future enlargement of the Union, is attempting to link the revision of the treaties with this enlargement by expressing its preference for a revision according to the conventional method before any enlargement. This would not exclude the alternative of linking the reforms to future accessions (if necessary, by adopting an intermediate framework treaty on enlargement and reform). It plans[42], moreover, as an alternative solution, the creation within the Union of a "hard core"[43], with its own legal bases and its own

budget, while those States that do not follow would remain in the current Union (through the possibility of an "opt out"). Another group of States would remain bound essentially by the rules of the internal market and would participate in a few policies of their choice, without voting rights but with a share in the Union's resources, thus forming a group of "associated" States. A multi-speed Europe, including the euro zone and the Schengen area, with the beginnings of a [permanent structured cooperation](#) for defence (PESCO), are the most notable examples, would thus be solemnly confirmed, possibly coupled with a political community of more random satellite states, which would cooperate with the Union in sectors of mutual interest. However, the creation of a "Union within the Union", as advocated by these experts, using the institutions of the European Union, would give rise to potentially paralysing complexity, since the same institutions would have to apply two different categories of rules. It would be hard to imagine how such a construction would work on a day-to-day basis. More pragmatically, the authors of the *Manifesto* provide for the possibility of following "variable geometries" to suit "all sensitivities"; however, this would not correspond to the systematic organisation sought, but would lead to the complex coexistence of several enhanced cooperations whose scope would nevertheless be reduced following the recommended revision of the treaties.

\*\*\*

It is for this reason that, under pressure from a group of States convinced of the need to reform the Union horizontally, and in order not to frustrate the operation of the current institutions by the coexistence of two parallel horizontal regimes, it seems to us more appropriate to organise the revision process, at best with a Convention that would ensure its legitimacy through transparency and the participation of several types of players (including national parliaments, which would have to be involved in one way or another). This would anticipate from the start of the revision process the application of the enhanced majority rule (that of four-fifths seems appropriate), both at the level of the Member States and at the level of the population they represent. Such a rule would certainly constitute a break

with the status quo of internationalist conception, but it is necessary if the revision exercise is not to fail like the Constitutional Treaty. It would also respect the two legitimating pillars of the European Union (its Member States and its citizens), as well as the democratic rule of majority voting. Holding a European referendum would require an additional political decision and would be an important step towards the recognition of a European demos but would ultimately involve bypassing the Member States and would therefore be more difficult for them to accept, especially if they lost their freedom of rejection[44].

Thus, quite apart from any unfortunate constitutional or federalist symbolism, the next 2030 generation would also be given its own chance to reform and strengthen the European Union in a changing world in which the international order is under threat and new (im)balances are emerging. Doesn't it also have the right to do so, to ensure a better future while also safeguarding its culture, which the above-mentioned proposals tend to forget?[45]

---

**Dimitris Triantafyllou**

Legal Adviser to the European Commission,  
Professor of European Law, University of Würzburg,  
Visiting Fellow at the Université Paris Ouest

[44] The status of "associated" State could then serve as a way out for those who do not ratify (cf. Art 50 TEU to be reviewed).

[45] Cf. Loukas Tsoukalis, [Europe's coming of age, wasn't it meant to be](#), Cambridge, Polity 2022.

You can read all of our publications on our site:  
[www.robert-schuman.eu/en](http://www.robert-schuman.eu/en)

Publishing Director: Pascale JOANNIN  
ISSN 2402-614X

---

**THE FONDATION ROBERT SCHUMAN**, created in 1991 and acknowledged by State decree in 1992, is the main French research centre on Europe. It develops research on the European Union and its policies and promotes the content of these in France, Europe and abroad. It encourages, enriches and stimulates European debate thanks to its research, publications and the organisation of conferences. The Foundation is presided over by Mr. Jean-Dominique Giuliani.