

EDITORIAL COMMENTS

From Conference to Convention? Ideas and prospects for reform of the EU Treaties

Insofar as it was hoped that the Lisbon Treaty would provide the Union with a period of relative constitutional stability, that hope has been only partly fulfilled: it is true that, bar a little tinkering, the Treaties as such have remained the same for over a decade – but the political, economic and social contexts in which those Treaties are expected to operate has experienced significant upheaval, while the Union legal system has been forced to evolve and adapt to cope with the tumult and strife. Unsurprisingly, events have prompted various attempts to reflect on the Union’s design and priorities – such as the Commission’s *White Paper on the Future of Europe* (2017) – though without producing concrete steps towards any more far-reaching revision of the Treaties as such.¹ But there are signs that a more recent reflection process – the Conference on the Future of Europe – is generating fresh momentum that could well pave the way for reforms to Union primary law.

The Conference outcomes

The Conference project was formally endorsed by the European Council in December 2019.² The European Parliament, the Council and the Commission agreed on the more precise terms for the Conference’s work in March 2021,³ and the adoption of its Rules of Procedure in May 2021 then enabled the Conference to commence its wide-ranging activities and deliberations.⁴ There is no doubt much to explore concerning the Conference’s composition and methods – the Multilingual Digital Platform, European Citizens’ Panels, National Citizens’ Panels, thousands of events across the Union, all coordinated and collated through an Executive Board, Common Secretariat and Conference Plenary. As an exercise in transnational participatory democracy, the Conference was certainly innovative and ambitious. The fact that (as is discussed below) its outcomes are now tangibly influencing

1. COM(2017)2025 (read together with its associated “reflection papers”).

2. European Council Conclusions of 12 Dec. 2019, paras. 14–16.

3. O.J. 2021, C191/1.

4. See <futureu.europa.eu/uploads/decidim/attachment/file/9340/sn02700.en21.pdf>.

approaches to Union law and policy, including potential Treaty change, surely justifies further scrutiny of the Conference's credentials in terms of effectiveness and legitimacy.⁵ Such scrutiny might seem all the more important, given the Commission's public commitment to adapting certain aspects of the Conference's working methods into more mainstream Union decision-making.⁶ But for now, our interest will focus on the proposals that emerged from the Conference Plenary and which form the centrepiece of the final report published on 9 May 2022.⁷

The Conference Plenary adopted 49 "proposals" – each of which in fact comprises a relatively high-level thematic statement, which is then broken down into a series of more tangible "measures", thereby accumulating into over 300 separate suggestions all told. Despite being grouped and presented together under nine broader headings – such as "climate change and the environment", "EU in the world" and "digital transformation" – the Conference outcomes can still feel like a rather sprawling collection of highly disparate ideas (sometimes overlapping, occasionally contradictory). Even some of the more tangible "measures" are rather broad or generic in nature (e.g. promoting research into new materials and technologies,⁸ or promoting collective economic performance through autonomous, competitive industry);⁹ while others are much more focused or specific in character (e.g. making CO₂ filters mandatory at fossil fuel power plants,¹⁰ or granting appropriately qualified asylum seekers access to the EU labour market).¹¹ Some measures simply demand that existing Union activities be better enforced (as with the Working Time Directive),¹² or at least better communicated (such as the Union's data protection rules).¹³ However, many proposals call for additional Union action based on new legislative and non-legislative initiatives: for example, stricter production standards and labelling rules concerning sustainability and longevity,¹⁴ and a formal "competitiveness check" for all new EU policy initiatives.¹⁵ It must be said, though, that in some cases the legal basis and / or practical purpose of the

5. An issue already anticipated well in advance of the Conference's main work even getting underway: see, e.g. <verfassungsblog.de/the-conference-on-the-future-of-europe-an-open-letter/>.

6. See, e.g. COM(2022)404 final.

7. Available via <futureu.europa.eu/pages/reporting?format=html&locale=en>.

8. Proposal 11.6.

9. Proposal 12.9.

10. Proposal 3.7.

11. Proposal 45.2.

12. Proposal 13.2.

13. Proposal 34.1.

14. Proposal 5.1.

15. Proposal 12.21.

Plenary's proposed measures feels unclear or unconvincing: there are multiple calls for the Union to encourage or facilitate a wide range of no-doubt-worthy causes (from improving cycling infrastructure to expanding work placements for high school children) without any real sense of how such Union endorsement would bring real (subsidiarity-compliant) added value.¹⁶ Which is hardly a surprise nor a criticism: if citizens are asked what they would like to get out of European integration, of course they will ask for certain things that do not map so well onto the intricacies of the Union legal system, or tally precisely with existing insider policy preferences.¹⁷

However, it would be unfair to reduce the Conference outcomes to just a bundle of distinct or even jumbled ideas. In fact, many of the Plenary proposals coalesce around certain key themes, several of which inevitably reflect particularly acute contemporary concerns. For example, there is a clear message about protecting Europe's distinctive social market economy: promoting growth and competitiveness, with particular attention to the contribution made by SMEs; but on the basis of high social standards, and with a strong emphasis on sustainable development. Another distinctive theme emerges around the Union's particular responsibility for, and leadership in, advancing inclusion and equality – and not just in the Union's traditional capacity as a regulatory engine, but also by engaging more directly with questions of social justice and wealth (re)distribution. The Conference Plenary also emphasizes that the Union occupies a unique position when it comes to defending common European interests: investing in key cross-border infrastructures, building up shared problem-solving capacities, and developing greater strategic autonomies in fields from medicines through energy to industrial processing.

Yet the Plenary proposals that most tickle the tastebuds of EU lawyers are surely those that call, directly or indirectly, for the reform of Union primary law. True, such measures constitute only a small minority of the Conference's overall outcomes, the great majority of which could be rendered operable within the existing Treaty framework. But perhaps inevitably, it is the Plenary proposals that would entail Treaty change that have attracted the most intense political controversy and that surely warrant closer scholarly attention.

Those proposals can be divided into three main categories. In the first place, there are calls to amend the existing system of Union competences. Several proposals request that education and health be recategorized (in whole or in

16. Proposal 4.7.

17. A lesson the Conference arguably has in common with the experience of the European Citizens' Initiative.

part) as shared (rather than supporting or complementary) competences.¹⁸ Several other proposals seem to suggest an expansion in the Union's existing powers: for example, so as to establish a universal minimum income or pan-European minimum pension;¹⁹ or those asking the Union to introduce equality legislation in fields such as marriage and adoption rights.²⁰ In the second place, there are proposals focused on changes to the prevailing institutional balance and decision-making processes. The Plenary repeatedly expresses support for greater qualified majority voting in the Council – whether in general or in specific fields (such as taxation and foreign policy).²¹ Other proposals focus more on the European Parliament – such as conferring a right of legislative initiative;²² creating a power to trigger pan-European referenda;²³ and enhanced powers to decide on the Union budget.²⁴ And there are other ideas too: for example, either formalizing the Spitzenkandidaten procedure for selecting the Commission President, or even introducing direct elections to the latter position;²⁵ enhancing the role of national and regional parliaments in enforcing the principle of subsidiarity, and possibly granting them their own power of legislative initiative;²⁶ reforming the Committee of the Regions;²⁷ and even renaming the Union institutions using more citizen-friendly language (e.g. from “Council” to “Senate”).²⁸ In the third place, there are changes designed to reinforce the Union's core values: the Plenary calls for the Charter of Fundamental Rights to be made “universally applicable and enforceable”;²⁹ as well as for the Union to enjoy greater powers to penalize Member State infringements of the rule of law.³⁰

Responses from the European Parliament and the Commission

With the Conference's work completed, the initiative to respond passed to the Union institutions.³¹ For its part, the European Parliament was swift to react.

18. E.g. Proposals 8.3, 10.3, 46.1. Note also Proposals 6.6, 6.7, 10.1, 13.5, 14.4, 27.4, 29.5, 32.1, 32.2, 37.1, 48.2.

19. E.g. Proposals 14.1, 15.7, 15.8.

20. E.g. Proposal 15.5. Note also Proposals 37.6, 48.3.

21. E.g. Proposals 6.7, 16.1, 21.1, 39.1.

22. Proposal 38.4.

23. Proposal 38.2.

24. Proposal 38.4.

25. Proposal 38.4.

26. Proposal 40.2.

27. Proposal 40.3.

28. Proposal 39.3. Note also Proposals 21.3, 39.6, 39.7.

29. Proposal 25.3.

30. Proposal 25.4.

31. Note Art. 23 of the Conference Rules of Procedure.

In a resolution adopted on 4 May 2022, MEPs broadly endorsed many of the common themes that underpin the Conference Plenary's final proposals.³² But the European Parliament also offered more targeted support for certain specific Plenary measures: in particular, conferring a right of legislative initiative upon the European Parliament itself; and also calling for "the abolition of unanimity in the Council".³³ More generally, MEPs stressed that the Conference conclusions concerning Union competences, institutions, and decision-making would require changes to the existing Treaties: the Committee on Constitutional Affairs should begin the necessary preparations to ensure a proper follow-up to the Plenary proposals in that regard.

And indeed, on 9 June 2022, the European Parliament adopted a resolution calling for a reform convention in accordance with the ordinary revision procedure under Article 48(2) TEU.³⁴ Many of the initial proposals suggested in that resolution can be traced back to the three main categories of Treaty change proposed by the Conference – though the overlap between Plenary and parliamentary ideas is hardly complete. On competences, MEPs support the call for stronger Union powers in the fields of health and social policy; but also as regards issues such as energy, defence, competitiveness, and the "just, green and digital transitions". Education is not specifically identified; nor are more particular powers over (say) minimum incomes or marriage equality. On institutions, the European Parliament endorses the prospect of full co-decision rights over the Union budget and a right of legislative initiative (including for amendment and repeal); and also supports extending QMV in fields such as Council decisions to sanction third countries (under an amended Art. 29 TEU) as well as for the adoption of European Council decisions extending QMV to further legal bases (under the existing *passerelle* powers of Art. 48(7) TEU). But other Conference ideas – such as pan-Union referenda, direct election of the Commission President, and enhanced powers for national parliaments – are absent from the MEPs' wish-list. On Union values, the resolution agrees with the need for stronger procedures to protect common values as well as clearer rules on the consequences of transgression; whereas, the Conference's rather ambitious suggestion of "universal application" for the Charter is not mentioned by the European Parliament.

As for the Commission, its initial reactions to the Conference conclusions were delivered in a Communication published on 17 June 2022 – again, broadly welcoming the experience and outcomes of the Conference, and offering a more detailed analysis of its proposals and measures, particularly by mapping them out in relation to the Union's existing legal frameworks and

32. See <www.europarl.europa.eu/doceo/document/TA-9-2022-0141_EN.html>.

33. At para 11 of the Resolution.

34. See <www.europarl.europa.eu/doceo/document/TA-9-2022-0244_EN.html>.

policy plans, as well as promising further follow-ups in due course.³⁵ Indeed, in its “Letter of Intent” of 14 September 2022, the Commission states that its 2023 Work Programme will be “largely inspired by the outcome of the Conference on the Future of Europe” – including plans to convert certain Plenary proposals into more concrete Union secondary action, or at least to use the Conference’s work as the inspiration for a series of new Union initiatives: for example, a comprehensive approach to mental health; a review of animal welfare rules; and legislative proposals for a European disability card.³⁶

In its June 2022 Communication, the Commission also added its support to the idea that the Conference outcomes should now inspire a formal Treaty amendment process. Then, in her “State of the Union” address, delivered also on 14 September 2022, the Commission President explicitly endorsed the European Parliament’s call for an Article 48 TEU convention.³⁷ Yet the Commission President’s ideas for what should be on the agenda for Treaty reform (such as we can, for now, discern them) do not entirely coincide with those of MEPs. In the first place, the Commission President called for the principle of “solidarity between generations” – the idea that we should do no harm to our children’s future, that we should leave the world a better place for the next generation – to be enshrined in the Treaties. That is an original contribution to the Treaty reform agenda – though arguably still inspired by the general tenor (sustainability, fairness) of the final Conference report. But given the increasing legal weight and significance attached to Union values by the Court of Justice – for example, in its *OPAL* judgment on energy solidarity – it will be interesting to see what precise text the Commission has in mind here, so that we can judge its procedural or even substantive implications for the lawfulness of Union secondary action.³⁸ In the second place, the Commission President also justified her call for an Article 48 TEU process on the grounds that “we... need to improve the way we do things and the way we decide things... if we are serious about preparing for the world of tomorrow, we must be able to act on the things that matter the most to people. And as we are serious about a larger union, we also have to be serious about reform”. It is difficult to know what to make of that rather vague reference to institutional

35. COM(2022)404 final.

36. See <state-of-the-union.ec.europa.eu/system/files/2022-09/SOTEU_2022_Letter_of_Intent_EN_0.pdf>. Note, e.g. Proposals 9.1 on mental health and 30.1 on animal welfare; the Conference link to a “European disability card” is less clear, though several proposals do stress the importance of addressing the needs of disabled persons.

37. See <ec.europa.eu/commission/presscorner/detail/ov/SPEECH_22_5493>.

38. Case C-848/19 P, *Germany v. Poland*, EU:C:2021:598; 2021:31. Consider also, e.g. Case C-896/19, *Repubblika*, EU:C:2021:311; Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2022:97; Case C-157/21, *Poland v. Parliament and Council*, EU:C:2022:98.

change: we can take for granted that the Commission would support greater use of QMV in the Council; conversely, we might assume the Commission would be much cooler about sharing its right of legislative initiative with MEPs. And otherwise, there is nothing tangible (yet) on the Conference's other ideas for institutional reform, the expansion of Union competences or the defence of Union values.

Crystallizing an agenda for Treaty reform

Despite the various imprecisions in their ideas, and apparent differences in their interest or emphasis, we can nevertheless discern from the Conference, the European Parliament and the Commission a growing body of support for Treaty reform – with a likely focus on Union competences and decision-making procedures (and going beyond whatever extensions to QMV are already possible through the various *passerelle* clauses contained in the existing Treaties). That will be an important debate, about which we now offer a few additional thoughts.

First, as regards Union competences, the overall Conference outcomes arguably illustrate, maybe even reinforce, a point already identified and discussed in political and social sciences, i.e. that a decade and more of serial crises, coupled with a widespread foreboding about chronic global instability, is fundamentally changing popular perceptions of and expectations about European integration. Many citizens seem to want “more Europe”, not less, particularly when it comes to those challenges and aspirations that are best, or can only be, managed and delivered through common action. The themes are big, the agendas are ambitious. Yet the corresponding Plenary proposals on reform of Union competences are relatively specific and narrowly focused. If the Union really wants to assume the roles and fulfil the mandates that are broadly expressed in the Conference outcomes, Treaty change in this field may need to go further.

Of course, there would be value in formalizing certain competence shifts that emerged through the exigencies of ad hoc crisis-management – not least for reasons of legal certainty and greater legitimacy – by codifying and ratifying specific examples of what some have admiringly called “legal creativity” but others have regarded as unwarranted “competence creep”.³⁹ But beyond that? Perhaps we should debate the idea that many of the Union's post-Lisbon competence controversies have arisen from the sheer scale, breadth and inter-connectedness of the strategic challenges facing the

39. Consider, e.g. the legal debate – also conducted in the pages of this Review – about the legality of the competences required to adopt the *NextGenerationEU* (NGEU) package.

European institutions. Those challenges often span and combine various policy fields, so that addressing them calls for correspondingly complex and highly integrated responses, often involving delicate trade-offs and compromises, within and across multifaceted legislative and non-legislative packages. That complexity can sit ill-at-ease with the traditional framework of Union competences as codified under the Lisbon Treaty – a framework that still focuses on the need to assign specific acts to their own legal basis, with the latter characterized by their particular and often different substantive and procedural conditions, and the threat of invalidity to pay as the cost of any infringement. We tend to challenge and judge the legality of the individual parts, rather than the wider package as a whole, sometimes neglecting to recognize that the latter's broader policy trade-offs and necessary political compromises might well possess a constitutional legitimacy of their own, of the sort that can be undermined rather than enhanced by the lawyer's more atomized analysis.⁴⁰ Maybe this problem is simply endemic in a system of conferred powers, however inconvenient the consequences might be. But it is worth asking the question: does our crisis-endemic and ever-more-complex world call for a different approach to defining the existence and evaluating the exercise of Union competences?

Secondly, as regards the Union's decision-making procedures, any future Article 48 TEU convention would no doubt involve the rehearsal of many familiar arguments that have been played out for a considerable time already. Thus, as we have seen, the Commission President's "State of the Union 2022" address directly links the question of institutional reform to the prospect of enlargement. And of course, the central equation remains the same as for previous iterations of this debate: the more Member States there are, the greater the pressure for more efficient and effective decision-making, but the latter must in turn be balanced by measures to ensure greater legitimacy and accountability. Yet as with the question of Union competences, perhaps the Article 48 TEU convention process needs to acknowledge that the wider context of institutional reform has changed in ways that again distinguish the current challenges from those that prevailed during the Amsterdam, Nice and Lisbon negotiations.

Of course, the Union's next round of enlargements will be very different – especially in the case of war-ravaged Ukraine, where the challenges of stabilization and reconstruction will be unlike anything the accession process

40. In a funny way, the European Council Conclusions of 17-21 July 2020 through to 10-11 Dec. 2020 are an exception that helps prove the rule: the Conditionality Regulation was an integral, even essential, part of the overall NGEU package, yet potential challenges specifically to its compatibility with the Treaties were already anticipated, and indeed materialized in Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2022:97 and Case C-157/21, *Poland v. Parliament and Council*, EU:C:2022:98.

has tackled before.⁴¹ But the reform of Union decision-making also has another new factor to contend with: how to respond to the phenomenon of democratic backsliding in certain Member States. The problem is not limited to the obvious situation of Council paralysis under Article 7 TEU; it extends to almost every situation still governed by unanimity, given the shameless (ab)use of national veto powers in order to hold the rest of the Union hostage to populist interests and demands.⁴² Yet the solutions need not be limited to the obvious device of extending the use of QMV; we also need to think about the viability and desirability of alternative or additional avenues for protecting the Union's institutional framework against the internal threat posed by illiberal authoritarianism.⁴³ For example: should we encourage a genuine change of mindset about the merits of flexible integration – including a systematic liberalization of the conditions for enhanced cooperation (including the “last resort” clause), so as to realize the potential once envisaged but never really delivered by the Lisbon Treaty? Or again: there is an exit route for Member States whose membership has run its course, and Brexit has proven that that option does not pose a fundamental let alone existential challenge to the Union itself... but should we be thinking about more drastic changes – faster and more effective powers of conditionality, tantamount to wholesale probation, or even the last resort of expulsion?

Thirdly, it is important that we recognize how the issue of Union competences and the question of institutional reform are both linked to broader debates about external relations. The Conference outcomes suggest that there is popular support for stronger Union action on the international stage, for example, through bolder leadership on global issues such as the climate crisis and the digital revolution. At the same time, the Plenary proposals voice support for more robust Union action to protect European values and interests from external challenges – including threats to the integrity of democracy and the public realm posed by covert electoral interference as well as the scourge of populist disinformation. And in many ways, the Union's own European neighbourhood acts as a microcosm of that broader world stage: we face many common problems, among them the machinations of certain hostile powers; but we also enjoy the steadfast support of close partners, while admittedly having to deal with certain States whose alignment is more functional or unreliable.

41. See Petrov and Hillion, “Guest Editorial: ‘Accession through war’ – Ukraine’s road to the EU”, 59 CML Rev. (2022), 1289.

42. Consider, e.g. <www.lemonde.fr/international/article/2022/07/12/hongrie-plus-isolee-que-jamais-viktor-orban-joue-la-politique-du-veto_6134465_3210.html>.

43. On which point, note the Conference Plenary’s concluding comments on Proposal 24.

Separately from the Conference process, the European Council (at its meeting in June 2022) already took the important step of endorsing the launch of a “European Political Community”.⁴⁴ The latter held its inaugural meeting in Prague on 6 October 2022 – with 17 international partners invited (alongside the EU27 and the Presidents of the European Council and the Commission) to discuss the “security, stability and prosperity of the European continent”.⁴⁵ It will be fascinating to see what eventually emerges from that experiment, not least in terms of new structures and / or tangible actions (if any). But in any case, external relations should also be on the agenda of any future Article 48 TEU convention process, in recognition of the fact that the Union’s outward facing policies are ultimately inseparable from questions about its own internal reform. Only by knowing what it means to be a Member State of the European Union, can we really know what it means to be a third country in relation to the European Union – particularly for those living in the Union’s own neighbourhood, and especially for those close partners with shared core values, and which are already highly integrated in many of the Union’s policies and activities. That means, for example, asking whether those close partners should be offered greater opportunities for participation or at least influence in key strategic, legislative and operational decisions – if necessary, by questioning the boundaries currently imposed by the Court’s strict conception of the “autonomy of Union law”.⁴⁶ After all, the ECJ now recognizes the constitutional specialness of EFTA-EEA citizens in relation to the Union.⁴⁷ So maybe the Court itself has already paved the way for recognizing the constitutional specialness also of the EFTA-EEA States, through the creation of new facilities for their participation and influence, that could now be enshrined in the Treaties as a matter of primary Union law?⁴⁸

44. European Council Conclusions of 23-24 June 2022, paras. 1–3.

45. See <www.consilium.europa.eu/en/press/press-releases/2022/10/02/invitation-letter-by-president-charles-michel-to-the-members-of-the-european-council-ahead-of-the-prague-leaders-meetings/>.

46. Consider, e.g. Opinion 1/91, *EEA Agreement*, EU:C:1991:490; Opinion 1/92, *EEA Agreement II*, EU:C:1992:189; Opinion 1/00, *European Common Aviation Area*, EU:C:2002:231; Opinion 1/09, *European and Community Patents Court*, EU:C:2011:123; Case C-284/16, *Achmea*, EU:C:2018:158.

47. See Case C-897/19 PPU, *IN*, EU:C:2020:262.

48. In which regard, consider the secondary law developments on EFTA-EEA State participation in Union structures as discussed by Bekkedal, “Third State participation in EU agencies: Exploring the EEA precedent”, 56 CML Rev. (2019), 381.

What will the Member States do now?

Whatever the views of the Conference, European Parliament or Commission, the crucial question is: will Member States support the prospect of an Article 48 TEU convention?

It is worth recalling that, right from the original conception of holding a citizens' conference, the European Parliament was keen to stress the possibility that it might lead to the reform of Union primary law,⁴⁹ whereas the Council was much more reticent about any such outcomes emerging from the process.⁵⁰ Soon after the Conference concluded its work, the Council produced a detailed technical report on the Plenary's myriad proposals and measures – again mapping them onto the Union's existing legal framework and activities, but also identifying those which might require primary law amendments.⁵¹ On the basis of that work, the Council is now actively deliberating the Conference outcomes – including preliminary discussions on extending QMV, though only by using the Treaties' already-extant *passerelle* clauses.⁵² And in its conclusions of June 2022, the European Council merely took note of the Conference outcomes and reiterated that there should now be an effective follow-up – remaining conspicuously silent on the question of potential Treaty reform.⁵³

One can understand such reticence: every Treaty change still requires unanimity among the Member States, together with domestic ratification by, or at least approval from, the competent national institutions, so the risks of high profile failure remain uncomfortably high. It is true that, since the Conference concluded its work, several Member States have expressed their openness to the possibility of Treaty amendment.⁵⁴ But another cohort of

49. See <www.europarl.europa.eu/doceo/document/TA-9-2020-0153_EN.html>.

50. See <www.consilium.europa.eu/media/44679/st09102-en20.pdf>; then the revised Council position as expressed in <data.consilium.europa.eu/doc/document/ST-5911-2021-INIT/en/pdf>.

51. See <data.consilium.europa.eu/doc/document/ST-10033-2022-ADD-1/en/pdf>.

52. See <www.consilium.europa.eu/en/policies/conference-on-the-future-of-europe/>: “The follow-up to the Conference is regularly discussed by the Council and its preparatory bodies. EU affairs ministers in the General Affairs Council have for example discussed the possibility of switching from unanimity to qualified majority voting by using bridging (or ‘passerelle’) clauses” (accessed 6 Oct. 2022).

53. European Council Conclusions of 23-24 June 2022, paras. 27-29.

54. See, e.g. *Non-paper submitted by Germany, Belgium, Italy, Luxembourg, the Netherlands, and Spain on implementing the proposals of the Plenary of the “Conference on the Future of Europe”* (13 May 2022) available via <www.tweedekamer.nl/kamerstukken/detail?id=2022D20911&did=2022D20911>. See also, e.g. <www.lemonde.fr/politique/article/2022/05/09/emmanuel-macron-favorable-au-lancement-d-une-convention-de-revision-des-traites-europeens_6125368_823448.html>.

Member States remain decidedly cool about the idea.⁵⁵ In addition, the growth in populist-nationalist governments – beyond Hungary and Poland, so as now also to include Italy and even Sweden – might appear to dash any hopes of reaching agreement on reforms that could be perceived as contrary to such interests – including significantly extending QMV, let alone greater powers of conditionality, never mind a mechanism for expulsion. Moreover, the domestic context for approving potential Treaty reform has also hardened: a greater number of national constitutional courts now seem willing to insist upon limits to further integration, with some leading judicial voices (not least in Germany) apparently prepared to adopt a considerably more abrasive approach.⁵⁶ So, all in all, considerable obstacles remain in the path of meaningful primary law reform.

By the time this editorial comment is published, we should know more about the Union institutions' plans for acting on the final Conference proposals. As matters move forward, we should be careful about over-romanticizing the representative nature or democratic authority of the Conference process. In particular, we should be sceptical about extrapolating from the Plenary outcomes any simplified or artificial sense that they articulate the popular will in some unified, coherent and rational manner: no one should pretend that all citizens want the same thing, or claim that they have attained an internally consistent appreciation of what the Union should be and should do. For those reasons, we also need to be wary about the Conference proposals being selectively instrumentalized so as to serve existing institutional preferences. But wouldn't it be ironic if the Conference on the Future of Europe and its institutional reception were one day cited as evidence of a growing distance between citizens' ambitions and Member State conservatism when it comes to the value and direction of European integration – a Union no longer driven, but rather inhibited, by political elites?!

However we interpret the Conference outcomes, and whatever comes next in terms of policy follow-ups and primary law reforms, the questions for all Europeans ultimately remain the same. What does it really mean to be a

55. See, e.g. *Non-paper by Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden on the outcome of and follow-up to the Conference on the Future of Europe* (9 May 2022) available via <www.government.se/information-material/2022/05/non-paper-by-bulgaria-croatia-the-czech-republic-denmark-estonia-finland-latvia-lithuania-malta-poland-romania-slovenia-and-sweden/>.

56. We are thinking here of the ruling of the German Federal Constitutional Court in the *Public Sector Purchase Programme* case (Judgment of 5 May 2020) 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15.

Member State? Is a given population willing to accept the obligations as well as the benefits of membership, in all its complexity and with all of its dynamism? If not, are they at least prepared to find a new relationship – from among the possibilities on offer, which is another question in itself – while leaving the rest of the Union free to proceed along their own path?

