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3 Crisis-driven EU reforms in and beyond treaty limits: Is it time for a treaty change?

Abstract: The idea of crisis as opportunity is a recurring theme in the European Union. Although crises may sometimes have been beneficial for the EU, they have rarely impelled treaty change, one of the main vehicles for EU reform and renewal. None of the major treaty changes in the history of the European Community, and later the European Union, was due primarily or even largely to a prevailing crisis. Those major treaty changes, culminating in the Lisbon Treaty of 2007, proved politically costly, which greatly reduced the appetite among national governments for further treaty change. It is striking that the EU undertook only one treaty change – a relatively minor reform of Economic and Monetary Union – during the series of crises that has buffeted the EU since 2010 (the so-called poly-crisis). Recent developments, notably the conclusion of the Conference on the Future of Europe, Russia's invasion of Ukraine, and the revival of interest in EU enlargement, have prompted efforts to reopen the door to further treaty change. Given the legacy of the long and difficult road to the Lisbon Treaty, however, and the capacity of the Lisbon Treaty to meet new challenges, the possibility of further, far-reaching treaty change seems remote.

Keywords: Crisis/crises; Poly-crisis; Treaty/treaties; Reform

Introduction

Crises are endemic in the European Union (EU). Rather, events described as crises are endemic in the EU. Despite being inherently harmful, crises are generally seen as potentially beneficial; as providing an opportunity for EU reform and renewal, often by means of treaty change. This has been a constant supposition throughout EU history. Yet, the origins of treaty change are rarely rooted in crises. Even during the recent so-called poly-crisis – the series of crises that has buffeted the EU since 2010 – treaty change was almost non-existent. The exception that proves the rule is a minor revision of a treaty article in order to facilitate the establishment of the European Stability Mechanism during the euro crisis.

Change can come in many ways. Indeed, the EU is a dynamic polity; it is constantly in flux. For one thing, its membership has increased dramatically over

time. For another, its scope has broadened over the years, as more and more policy fields have come within the orbit of the EU. At the same time, the EU has adapted its institutional arrangements, not least because of the need to cope with the expansion of its membership and the extension of its policy scope. An additional and related development, which further propelled institutional adaptation, has been the acquisition by the EU of a constitutional character based on liberal democratic norms and values, and the need for the EU to strengthen its political legitimacy.

Those major maturations of the EU polity have come about largely, but by no means exclusively, through the negotiation, ratification, and implementation of new treaties or changes to existing treaties, notably the founding treaties of the European Communities and the EU. Since the Single European Act (SEA) of 1986, the trend in EU treaty change has been towards more ambitious and extensive reforms, notwithstanding the relatively narrow Amsterdam Treaty of 1997 and Nice Treaty of 2000, culminating in the Lisbon Treaty of 2007, an all-encompassing change that altered the EU's policy reach, institutional arrangements and effectiveness, and constitutional complexion.

Looking at the record of treaty change, a number of driving forces become apparent. One is the mobilization of political support for a big project requiring deeper European integration, such as completion of the single market (in the case of the Single European Act of 1986) or the launch of monetary union (in the case of the Treaty on European Union of 1992). Other, usually complementary, reasons include a desire to deepen European integration or strengthen cooperation among member states in other policy fields, such as the environment, science and technology, or foreign and security policy; to improve the efficiency of legislative decision-making, notably by the more widespread use of qualified majority voting; and to tackle the problem of weak democratic legitimacy, for instance by extending the power of the European Parliament.

In view of their multi-faceted origins, and in light of EU history, this chapter explores the extent to which treaty revisions have been linked to crises. Related to this is the extent to which the current crises besetting the EU may drive new treaty changes and whether, instead or as well, they may bring about reform through means other than treaty change. First, it briefly discusses the mantra of crisis as opportunity for the EU. It then notes the absence of major treaty change during the poly-crisis, with the exception of the euro crisis. The chapter next goes back in time, before the poly-crisis, to examine the relationship between crises, reform, and treaty change, notably with respect to the Empty Chair Crisis of 1965–1966 and the SEA. A subsequent section looks at the role of crises, if any, in post-SEA reform and treaty change, including the long road to the Lisbon Treaty. The final substantive section discusses current prospects for treaty change, not

least because of the impact of Russia's invasion of Ukraine and the momentum generated by the Conference on the Future of Europe. The conclusion ties the preceding sections together.

Crisis as opportunity?

It is difficult to know what, exactly, constitutes a crisis for the EU (Dinan et al. 2018). The difficulty is compounded by a tendency to use the word “crisis” liberally to describe events and developments of varying seriousness or consequence affecting the EU. Whereas the same may be true of all political systems, perhaps because of journalistic embellishment or political opportunism, the liberal use of the label “crisis” with respect to the EU is deeply embedded in the history and political culture of European integration. One of Jean Monnet's most quoted aphorisms is: “Europe will be forged in crisis and will be the sum of the solutions adopted for those crises.” It is ironic that the founding father of the European Community, an entity that sought to transcend national politics and develop a serene, technocratic, supranational demeanor, inculcated in the new, post-war project a veneration of crises as a driving force of deeper integration.

At face value, Monnet's aphorism has merit. Crises provide a jolt to the system. They threaten the status quo. They may require urgent action and innovative solutions. Moreover, Monnet was writing at a time when Europe was deeply unsettled by the experience of World War II and by the onset of the Cold War. Europe faced the challenges of reconstruction, of a shortage of dollars with which to buy capital and consumer goods, and of the “German Question” – how to incorporate what became the new, Federal Republic of Germany into a stable, prosperous, and secure (West) European state system.

The Marshall Plan and the North Atlantic Treaty were parts of the solution; so was the Schuman Plan. The Marshall Plan and the North Atlantic Treaty were unprecedented in scale and scope, but were otherwise traditional instruments of international relations. The Schuman Plan, by contrast, and the European Coal and Steel Community to which it gave rise, were novel initiatives involving supranational governance, that could only have come about in the peculiar post-World War II environment of acute challenges and perceived crises, and in the shadow of the disastrous failure of the post-World War I settlement.

Regardless of the impetus that post-World War II crises (real or perceived) may have provided to the launch of the European Community, the idea of “crisis as opportunity” became ingrained in the consciousness of advocates of deeper integration. If every crisis provides an opportunity, then a tendency to describe events as crises is understandable. This may help to explain the long list of supposed crises

in the EC and EU, ranging from the crisis of the failure of the European Defence Community in 1954, to the crisis of the rejection of the Lisbon Treaty, following a referendum in Ireland in June 2007.

Clearly, some so-called crises were more serious than others. They constituted a crisis in the generally-accepted sense of providing a shock to the system, perhaps even threatening economic upheaval, political instability, or regime-change. The adjective “existential” is often used to convey the highest level of political risk associated with a crisis. By definition, an existential crisis has the potential to destroy a polity. History is replete with instances of crises bringing national regimes to an end. Recent European examples include the end of the German Third Reich, due to defeat and occupation in 1945; and the collapse of the French Fourth Republic, due to an attempted military coup in 1958.

Such extreme events seem unlikely to afflict the EU, but EU crises may nonetheless be existential. Certainly, the component parts of the poly-crisis that has beset the EU since 2010 – the euro crisis, Russia/Ukraine crisis, migration crisis, Brexit crisis, rule of law crisis, COVID-19 crisis, and the climate crisis – are serious and potentially destabilizing. Whether they are existential is debatable, although that label has generally been used to describe most of them. (On the use of “existential” with respect to the euro crisis, see Menéndez 2013; the COVID-19 crisis, see Deen & Kruijver 2020; the migration crisis, see Balfour 2016; the external relations crises, see Duke 2014; and the rule of law crisis, see van Middelaar 2020). No less an authority than Commission President Jean-Claude Juncker declared, in his 2016 State of the Union speech, that: “Our European Union is ... in an existential crisis.” Perhaps realizing how extreme such a statement may have sounded, however, Juncker included a qualification: his full statement was that: “Our European Union is, *at least in part*, in an existential crisis.” (Juncker 2016: 6; emphasis added).

The absence of major treaty change during the poly-crisis

In order to cope with such serious challenges and crises, whether before or after 2010, whether existential or not, the EU has had to react. Its reaction has included far-reaching measures and reforms, but has rarely involved treaty change. The most clear-cut instance of treaty-change emanating directly from a crisis – perhaps the only such instance in EU history – happened during the poly-crisis, with respect to Economic and Monetary Union (EMU), in the context of facilitating the establishment of the European Stability Mechanism as the permanent Eurozone bail-

out fund. This was one of only two uses made so far of a ‘simplified’ treaty revision procedure included in the Lisbon Treaty, in Article 48 of the Treaty on European Union (TEU).

The procedure in question is applicable exclusively to Part Three of the Treaty on the Functioning of the European Union (TFEU), pertaining to the internal policies and action of the Union, and may be used only if the proposed amendment does not lead to an increase in the EU’s competences. It allows the European Council to agree unanimously on a treaty amendment without having to convene a Convention and an intergovernmental conference (IGC), although the agreement must be ratified in all member states.

The other ‘simplified’ method of treaty reform, so far unused by the EU, is the so-called *passerelle* procedure, under which the European Council may agree, by unanimity, to allow a change from unanimity to qualified majority voting (except for decisions with military implications or those in the area of defence) or from a special legislative procedure to the ordinary legislative procedure. There are also specific *passerelle* clauses in the treaties relating to a number of policy fields. The *passerelle* procedure for treaty reform does not require national ratifications, but gives national parliaments the ability to delay or possibly prevent implementation of the proposed change.

The idea of amending Article 136 TFEU was not uncontroversial. Whereas national leaders generally agreed on the desirability of establishing a permanent bailout fund, most were skittish about embarking on treaty reform, however specific, so soon after a fraught period of wide-ranging treaty change spanning the years 2001 to 2009, from the Laeken Declaration to the eventual implementation of the Lisbon Treaty, a period that included the failure of the Constitutional Treaty. It took a concerted effort by German Chancellor Angela Merkel and French President Nicolas Sarkozy, including a Franco-German Declaration in October 2010, to provide the necessary political push for the treaty change to happen. Leaders agreed to the treaty change – a mere two sentences – at the European Council on 25 March 2011 (European Council 2011). Ratification went smoothly, not least because there were no referendums on the matter, and the treaty change came into effect on 1 May 2013. Fear of ratification, and of ratification referendums, proved an enduring legacy of the odyssey of treaty reform during the previous decade (Mendez et al. 2014). It is still prevalent today, notwithstanding the successful outcome of the Danish referendum of 1 June 2022 on opting fully into the EU’s Common Security and Defence Policy.

The revision of Article 136 TFEU was not intended to be the only treaty change stemming from the euro crisis. Indeed, at the same time that leaders agreed to that reform, Chancellor Merkel was advocating a more ambitious change: the inclusion in the Lisbon Treaty of a so-called Fiscal Pact, a set of binding rules on national

deficits and debts intended to bolster the foundations of monetary union by strengthening fiscal discipline. At the December 2011 meeting of the European Council, however, entrenched opposition from UK Prime Minister David Cameron thwarted agreement on revising the Lisbon Treaty in order to incorporate the Fiscal Pact. The other leaders decided instead to negotiate the pact as an intergovernmental arrangement, outside the formal EU framework, which, arguably, was tantamount to a minor treaty change. All of the then member states, except the Czech Republic and the UK, signed the Fiscal Pact, formally called the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union on 2 March 2012.

Taking the Fiscal Pact outside the EU treaty framework facilitated the ratification process. Because it was not an EU treaty reform, the Fiscal Pact was not subject to the usual ratification procedure, and did not require ratification in all member states in order to come into effect. Accordingly, the new treaty entered into force on 1 January 2013 for the 16 states that had completed ratification by that time.

The establishment of the European Stability Mechanism and implementation of the Fiscal Pact were two of a number of significant steps taken by the EU and its member states in response to the euro crisis. Others include the Euro Plus Pact on stronger economic policy coordination, and legislative measures to strengthen the Stability and Growth Pact. Still, the EU did not go as far in reforming EMU as some national leaders, such as French President Emmanuel Macron, and the Presidents of the EU institutions called for. More far-reaching, fundamental reform would have required more far-reaching, fundamental treaty changes, which most national leader were unwilling to undertake.

Before the poly-crisis: from the Empty Chair crisisto the Single European Act

Looking before the era of the poly-crisis, it is clear that crises often triggered changes in the EU, but not necessarily the kind of change championed by advocates of “crisis as opportunity,” and not necessarily treaty change. Indeed, instances of treaty change in the history of the EU seem unrelated to crises. Two cases are nonetheless worth discussing. One is the Empty Chair Crisis of 1965–1966, perhaps the most serious political and constitutional crisis in EU history. The other is the Single European Act, the first major treaty-change in EU history. What kind of change did the Empty Chair Crisis cause, and was it beneficial for the European Community? Did the crisis provide an opportunity to advance European integration? And was

the SEA propelled, to some extent or other, by crisis? Was it a crisis-driven EU reform?

Empty Chair crisis

The empty chair crisis pitted France, under French President Charles de Gaulle, against the five other member states of the nascent European Community (EC), over the rules of decision-making in the Council of Ministers (Ludlow 2006: 71–93; Palayret et al. 2006). Though not the proximate cause of de Gaulle's boycott of the Council (hence the empty chair), which began in July 1965, the extension of majority voting to new policy areas, due to take place in January 1966 under the terms of the treaty establishing the EC (the Rome Treaty), became the make-or-break issue. For practical, policy-related reasons, as well as principled opposition to supranationalism, de Gaulle wanted to maintain the status quo, whereby decisions in the Council were taken largely on the basis of unanimity. By attempting to block the transition to majority voting, de Gaulle challenged both a core value and a legal obligation of EC membership. Accordingly, the political and constitutional stakes were high. Here was a crisis genuinely worthy of the name, as the outcome could have wrecked the EC, or at least fundamentally changed its character.

As it was, France needed the Community too much for de Gaulle to risk its destruction. In the face of domestic disquiet and a strong show of unity by the other member states, de Gaulle relented. Nevertheless, he wrung a significant concession from his EC partners. Under the terms of the Luxembourg Compromise – a political agreement among the member states – a government could delay or possibly prevent recourse to majority voting in the Council by claiming that “very important interests are at stake” (the text of the Luxembourg Compromise is reproduced in Palayret et al. 2006: 321–322). Though the treaty remained unchanged, the political effect was to give governments a veto in Council decision-making.

The empty chair crisis has been studied in great detail. There is general agreement that it was indeed grave, but there is less agreement on its long-term impact. Some say that the Council continued with business as usual; most argue that the threat or use of a national veto stymied decision-making for years to come. None claim that the outcome strengthened the Community by providing an opportunity for deeper integration. Moreover, none of the protagonists advocated treaty change. De Gaulle wanted only the suspension of an existing treaty provision.

For Luuk van Middelaar, a prominent Dutch public intellectual and former EU official, the significance of the Luxembourg Compromise is not only that it provided a clever way out of a political cul-de-sac, thereby allowing “the Community to

continue to exist,” but also that it fundamentally transformed the EC by “allowing it to operate in a brave new world between the strict interpretation of treaties and the geopolitical world of international relations – the intermediate sphere of the [member states]” (Van Middelaar 2013: 88–89). Thus, the Luxembourg Compromise, “a political accord of historical importance,” marked “a decisive moment of passage for the European order as a whole” (Van Middelaar 2013: 92, 94).

While not endorsing the view of crisis as opportunity, this interpretation highlights a beneficial, though unintended, consequences of the dramatic events of 1965–66. The EC was indeed a new kind of polity with a new kind of politics, which were only beginning to take shape in the 1960s. Even before the crisis, the EC seemed to be moving in the direction that Van Middelaar described. The crisis may have hastened that move, without necessarily having caused it. Regardless, even Van Middelaar concedes that the impact of the crisis on day-to-day decision-making was far from benign. The shadow of the veto (the possibility that a government would invoke the Luxembourg Compromise) hung over the Council for the next two decades, until eventually displaced by the shadow of the vote (the possibility that the Council Presidency would call for a vote to be taken) in the aftermath of the SEA. Few proponents of crisis as opportunity in the history of European integration cite the events of 1965–66 to bolster their case.

Single European Act

The Single European Act was a major breakthrough in the history of European integration, one that was built on treaty change (Gillingham 2003: 228–58). Completion of the single market programme, a core objective of the European project, was the centerpiece of the SEA. Political pressure to complete the single market had been building since the early 1980s, fueled by an elite, transnational business lobby; shifting ideological winds; and a convergence of national interests.

The record of European integration had been mixed during the previous decade. Within the EC, as elsewhere, widely fluctuating exchange rates were a feature of the 1970s, as were sluggish growth, soaring inflation, and high unemployment, although national experiences varied considerably. Frequent financial and economic shocks generated an atmosphere of chronic crisis among European decision-makers. Protectionism was on the rise, and efforts to break down national barriers to cross-border economic activity through EC legislative measures were hobbled by frequent recourse to the Luxembourg Compromise. This was the era of “Eurosclerosis.”

The most notable institutional initiative with response to these developments was the launch of the European Council in 1975 (Wessels 2015). The European Coun-

cil, which would later become a powerful EU institution, began as an informal arrangement for national leaders to meet occasionally in order to direct Community affairs. Born at a time of economic instability, the European Council initially saw itself as a crisis management mechanism. Its original purpose was to hold the Community together, not to provide a means to drive European integration forward.

The most striking policy initiative of the late 1970s was in the monetary sphere. Then Commission President Roy Jenkins, who first proposed what became the European Monetary System (EMS), deliberately exploited what he saw as an opportunity to revive both European integration and the fortunes of the Commission. Having been taken over by French President Giscard d'Estaing and German Chancellor Helmut Schmidt, what eventually emerged as the EMS, in March 1979, was not as ambitious as what Jenkins had called for, and operated outside the EC treaty framework. The EMS nonetheless helped to rescue European integration and contributed to the eventual achievement of EMU (Mourlon-Droul 2012: 132–260).

By the early 1980s, buoyed by the apparent success of the EMS, weary of persistent economic underperformance, concerned about Western Europe's declining global competitiveness, and lobbied by a group of elite business leaders, national leaders began to coalesce around the idea of deeper market integration. Jacques Delors, who became Commission President in 1985, seized this opportunity and fashioned a legislative agenda – the famous White Paper – to fully liberalize the movement of goods, services, and capital within the Community (Cockfield 1994). For Delors, the single market programme was a means towards the greater end of EMU and, ideally, political union. Delors was ambitious and opportunistic, though the opportunity that he exploited in 1985 existed because of a decade-long series of economic and financial setbacks, not because of an immediate crisis.

It was one thing for the single market programme to enjoy broad political support; it was another for national governments to take the necessary steps to bring it about. The decision-making rule of unanimity, in some cases, and the ability to invoke the Luxembourg Compromise, in other cases, stood in the way. A possible solution was for governments to reach an informal agreement to enact the legislation specified in the White Paper, as well as other decisions on regulatory harmonisation, on the basis of qualified-majority voting in the Council, regardless of the formal rules and informal practices. This is what UK Prime Minister Margaret Thatcher, a leading proponent of the single market, proposed. In her view, the obstacle of the Luxembourg Compromise, which had bedeviled decision-making in the Council, could easily be removed by a political agreement among national leaders to do so. After all, the Luxembourg Compromise was itself a political agreement. Thatcher did not see any need for a treaty change, being fearful that negotiations among governments to revise decision-making rules in the treaty, in order

to facilitate completion of the single market, would open a Pandora's Box of other treaty changes (Thatcher 1993: 551–554). She lost the argument, and the vote in the European Council in June 1985, on whether to hold an IGC to reform the Rome Treaty.

As Thatcher feared and as proponents of deeper integration, such as French President François Mitterrand, German Chancellor Helmut Kohl, and Commission President Delors, hoped, the ensuing IGC did, indeed, result in far-reaching treaty change, covering the EC's institutional arrangements and policy scope. The impact of the SEA, which emerged out of the IGC, and which finally came into effect in July 1987, was immediately apparent. The extension of majority voting to specific single market measures had a knock-on effect on decision-making in other policy areas. Clauses in the SEA covering environmental policy, social policy, and cohesion policy spurred unexpected advances in those fields. The SEA became synonymous with the acceleration of European integration and set the stage for another leap forward within a surprisingly short time (Dinan 2012). But the single market and the SEA represented an imaginative response to internal and external economic challenges confronting the Community, not to a particular crisis. Moreover, the single market programme, at the heart of the SEA, could well have been implemented without treaty change.

Post-SEA reform and treaty change

Implementation of the SEA and the success of the single market programme provided a major impetus for further European integration. The Commission promoted EMU as spillover from the single market and most national governments agreed on the desirability of having a single currency. The UK was again an outlier. Governments had already agreed to hold another IGC, this one on EMU, by the time that seismic geopolitical shocks reverberated through Central and Eastern Europe. The fall of the Berlin Wall on 9 November 1989, was a crisis for the German Democratic Republic (East Germany) and the Soviet Union, but was a gift to the Federal Republic of Germany and the EC, albeit one that required careful handling under extraordinary circumstances. The EC responded, in part, by deciding to hold a separate IGC to include additional policy fields and institutional arrangements, not least with a view to clarifying the putative EU's constitutional character and addressing concerns about its political legitimacy. The ensuing Maastricht Treaty transformed the EC into the EU and marked an ambitious new phase in the process of European integration. The road to Maastricht was full of challenges but free of crises.

Ironically, the road from Maastricht was almost blocked by a crisis: the crisis of treaty ratification caused by the negative outcome of the Danish referendum on 2 June 1992. Unless ratified by all member states, the treaty could not have come into effect. National governments overcame the crisis by giving Denmark opt-outs from provisions of the treaty that were controversial domestically (European Council 1992). This facilitated the success of the second Danish referendum on 18 May 1992. But the crisis portended deep public dissatisfaction with the European project throughout the embryonic EU. Although leaders had tried, in the Maastricht Treaty, to address concerns about the so-called democratic deficit, they would forever find themselves playing catch-up with respect to the alleged weakness of the EU's democratic legitimacy. The EU would introduce a host of measures based on subsequent treaty changes in an effort to bolster its democratic credentials. These ranged from reforming and extending the procedure for legislative co-decision, to establishing the office of European Ombudsman, to linking the outcome of European Parliament elections directly to the nomination of the next Commission President (the so-called *Spitzenkandidaten* process). If the democratic deficit constituted a crisis for the EU, then it triggered several treaty changes. Rather than constituting a crisis, however, weak democratic legitimacy has posed a chronic challenge for the EU that may be inherent in the novel nature of supranational governance.

Apart from the challenge of democratic legitimacy, the challenge of institutional efficiency, accentuated by the prospect of large-scale post-Cold War enlargement, drove subsequent EU reforms and treaty changes. A negative lesson of the Luxembourg Compromise and a positive lesson of the single market project was the utility of qualified majority voting for efficient Council decision-making and effective policy output. Having more member states would mean having more policy preferences and, without the widespread use of QMV, more veto players. The desire to improve the efficiency of Council decision making, which was not new in the EU, became pressing in view of imminent post-Cold War enlargement.

The two treaty reforms that followed in the decade after the Maastricht Treaty were nonetheless disappointing. The Amsterdam Treaty of 1997 was partly a tidying up exercise, notably with respect to the treaty's provisions for the Common Foreign and Security Policy and the incorporation into the treaty of the Schengen acquis (the rules and regulations governing the unrestricted movement of people among countries participation in the so-called Schengen free travel area), that nonetheless included important clarifications concerning the EU's constitutional and political nature (Laursen 2002). The Nice Treaty of 2000 attempted to manage institutional arrangements that were left over from the IGC that resulted in the Amsterdam Treaty, but was generally seen as being unsatisfactory (Laursen 2006).

The rocky road to Lisbon

Disappointment with the outcome of the 1996–1997 and 2000 IGCs contributed directly to the announcement by EU leaders, in the Laeken Declaration of 15 December 2001, that “In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council has decided to convene a Convention composed of the main parties involved in the debate on the future of the Union” (European Council 2001). The Convention would consist of representatives of national and EU institutions, from the existing and prospective member states, who would explore the possibility of wide-ranging treaty change. At no point did the Laeken Declaration refer to a crisis or to the EU being in crisis.

The Convention on the Future of Europe, also known as the Constitutional Convention, met in Brussels in 2002–2003, and produced a Draft Constitutional Treaty. This contained a host of amendments to the original treaties and merged them into a single text. In general, the Draft Constitutional Treaty’s provisions were a significant improvement on the existing treaties, promising a more efficient, effective, and democratic EU (Magnette & Nicolaidis 2004).

Although the Convention carried out extensive preparatory work for further treaty reform, an IGC was nonetheless required to negotiate treaty change. National governments were not willing merely to rubber-stamp the Draft Treaty. In particular, they disagreed among themselves on some of the Draft Treaty’s institutional provisions. By the time of the June 2004 meeting of the European Council, only a small number of issues remained unresolved. As in the closing stages of the Amsterdam and Nice negotiations, those included the proposed new system for qualified majority voting, and the size and composition of the Commission. The agreement eventually reached on qualified majority voting was for a double majority of 55 per cent of the Member States and 65 per cent of the population of the EU. The Commission would retain one Commissioner per member state until 2014, when it would be limited to a number of Commissioners corresponding to two-thirds of the number of EU countries. Altogether, the IGC approved 80 amendments to the Convention’s Draft Treaty. Nevertheless, the successful conclusion of the negotiations and agreement on the Constitutional Treaty represented a major step forward politically and constitutionally for the EU.

What happened next is well known. Signed in Rome on 29 October 2004, the Constitutional Treaty foundered on the rock of ratification, notably after its rejection in referendums in France and The Netherlands, in mid-2005. Here was another treaty ratification crisis, this one more serious than the others because of the greater importance of the Constitutional Treaty and because Dutch and French op-

position could not be overcome simply with opt-outs and the promise of a second referendum (Hobolt & Brouard 2011).

Notwithstanding the ratification setback, most EU leaders were loath to let the Constitutional Treaty go. They had invested too much time and political capital in the Convention and in the IGC. Their response was to put things on hold and launch a “period of reflection,” before trying to rescue as much as possible of the Constitutional Treaty in a new “Reform Treaty.” Another IGC would therefore be necessary. Leaders resolved, however, to keep it as short as possible and modify the Constitutional Treaty in ways that might make the text of an alternative treaty change more widely acceptable to EU citizens.

Many of the proposed changes were symbolic, such as dropping the adjective “constitutional” and deleting the mention of “European symbols” – the flag, anthem, and celebration of Schuman Day. Another suggestion was to incorporate as much as possible of the rejected treaty into the existing TEU and a Treaty on the Functioning of the European Union. This would help ratification prospects and go some way toward easing public concerns about the allegedly over-ambitious Constitutional Treaty.

Accordingly, the new IGC was not really a negotiation but an exercise in re-drafting the Constitutional Treaty in a limited, technical way. Nevertheless, the concluding summit of the IGC, held in Lisbon in October 2007, was not without drama, as the Eurosceptic Czech and Polish governments, in particular, brought up some touchy, last-minute issues. The most serious of these was Poland’s concern about the “double majority” formula for QMV. Poland preferred to retain the status quo – the arrangement included in the Nice Treaty whereby Poland’s share of the total number of Council votes almost equaled Germany’s. In the end, Poland was assuaged with a slight concession and the IGC ended with approval of what became the Lisbon Treaty (Phinnemore 2013).

Implementation of the Lisbon Treaty was delayed by yet another ratification crisis, this one caused by the negative result of the Irish referendum of 12 June 2008. EU leaders resorted to tried and trusted measures to overcome this setback: they offered concessions to Ireland, relating to the treaty, that would enable a second referendum and help to ensure a positive result. One of the concessions was to keep the Commission at one member per member state, something that many Irish citizens, and the citizens of other small member states, felt strongly about. On the basis of this and other reassurances, Ireland held a second referendum on 2 October 2009, this time with a different outcome (Curtin 2009).

The Lisbon Treaty included most of the institutional and other innovations originally contained in the Constitutional Treaty. Although the Lisbon Treaty is long, complicated, and difficult to read, the EU that it describes is, in many respects, more coherent and comprehensible than the EU that it reformed. The Lis-

bon Treaty struck a better balance between efficiency and democratic legitimacy. It also recast the balance between the main institutions, with the European Council in the ascendant. This would become apparent during the series of crises that would soon beset the EU. Like every preceding treaty change, the Lisbon Treaty was not optimal, but reflected the art of the possible at a particular moment in EU history.

Valuable though the Lisbon Treaty undoubtedly is, it came at the cost of further souring public sentiment on the EU. It is also debatable whether the Convention provided more legitimacy for the treaty reform process (Risse & Kleine 2007). Undoubtedly, it failed to arouse much public interest. The negative results in the French and Dutch referendums in 2005, though due in large part to domestic political considerations, exposed deep-seated public dissatisfaction with the EU's direction. Reaction to the Constitutional Treaty confirmed the impression that the permissive consensus in public attitudes toward the EU was long gone.

The protracted process of treaty revision, lasting almost a decade, robbed national governments of their appetites, and European publics of their patience, for further large-scale treaty reform. Apart from a reluctance to invest the time and effort required to negotiate more than minor treaty modifications, governments were now fully aware of the pitfalls of ratification, especially if it involved referendums. When given an opportunity to vote in a referendum on treaty change, opponents of deeper integration could easily exploit public unease about unrelated issues, thereby derailing the proposed amendments, as had occurred in France and the Netherlands in 2005, and in Ireland in 2008. The conduct and outcome of the Brexit referendum in June 2016, was another salutary lesson for the EU.

Fortunately, the Lisbon Treaty leaves plenty of scope for further EU adaptation, thereby obviating, in many cases, the need for more treaty change. The *passerelle* clauses, which have not yet been used, come immediately to mind. So does the *Spitzenkandidaten* process, which the EP introduced before the 2014 elections, based on its astute interpretation of Article 17 TEU and Declaration 11, on Article 17 TEU (Tilindyte 2019). Further treaty change may well have been desirable, but arguably was not essential in the aftermath of the lengthy process of treaty reform that came to an end in 2009, with implementation of the Lisbon treaty. The experience of the poly-crisis bears out that point.

Another treaty change? – The Conference on the Future of Europe

Nevertheless, the possibility of treaty change returned to the EU's agenda in 2022. The proximate cause was the report of the Conference on the Future of Europe (CFE), submitted in May. Other reasons were the growing frustration in certain member states with the debilitating impact of unanimity on decision making in the Council with respect to the Common Foreign and Security Policy, including the Common Security and Defence Policy, especially following Russia's invasion of Ukraine in February. Discussions about Ukraine's possible EU membership, in the broader context of another round of EU enlargement, notably in the Western Balkans, also contributed to the new debate on possible reform of Council decision-making by means of treaty change.

The Conference on the Future of Europe was an exercise in direct, deliberative democracy at the EU level. President Macron, in particular, was keen to engage citizens in discussions about EU reform. In an op-ed published in several media outlets in March 2019, Macron called, among other things, for the convening of “a Conference for Europe in order to propose all the changes our political project needs, with an open mind, even to amending the treaties.” The conference “will need to engage with citizens' panels and hear academics, business and labour representatives, and religious and spiritual leaders. It will define a roadmap for the European Union that translates ... key priorities into concrete actions” (Macron 2019).

The EP has long been a leading proponent of far-reaching EU reform and of greater citizen participation in EU governance. EP interest in both grew at the time of the 2019 elections. Ursula von der Leyen tapped into this sentiment in her speech to the EP on 16 July, when she asked MEPs to support her candidacy for President of the Commission. Von der Leyen assured MEPs, having “heard your concerns, your hopes and your expectations,” that she wanted “European citizens to play a leading and active part in building the future of our Union. I want them to have their say at a Conference on the Future of Europe” (Von der Leyen 2019).

The possibility of such a Conference, involving extensive citizen participation, percolated throughout the EU in the following months (Kotanidis 2019; Ålander et al. 2021). In November 2019, the French and German governments released a “non-paper” expressing support for the idea and recommending that the conference focus on a wide range of policies as well as institutional issues. However, the Franco-German paper did not mention possible treaty change, suggesting only that “The final document with *recommendations* should be presented to the EUCO (European Council) for debate and implementation” (EULawlive 2020; emphasis in original).

The Franco-German suggestion that the Conference be “chaired by a senior European personality” was potentially divisive. President Macron was known to favour Guy Verhofstadt, a close political ally, a leading Euro-federalist, and a prominent MEP. Leaders did not devote much time to the issue at their December 2019 summit. Keen to affirm its institutional prerogative, the European Council declared in the summit conclusions that “priority should be given to implementing the Strategic Agenda agreed in June, and to delivering concrete results for the benefit of our citizens.” In other words, regardless of the desirability of holding a Conference, the European Council had a special responsibility for directing the EU, which it was determined to assert (European Council 2019).

Inevitably, the outbreak of the Covid-19 pandemic, in early 2020, hobbled inter-institutional planning for the Conference. Nonetheless, the Council managed to agree a position on the arrangements for the Conference in June 2020, paving the way for the opening of discussions with the Commission and the EP (Council of the EU 2020). It took another nine months before the three institutions issued a Joint Declaration on launching the Conference (Council of the EU, European Parliament, and European Commission 2021). The ongoing Covid-19 crisis contributed to the delay, but also masked a protracted inter-institutional squabble over the purpose, scope, and organization of the Conference. A key dispute concerned the Conference presidency. Most national leaders opposed Verhofstadt’s candidacy, fearing that he would push a federalist agenda and privilege the interests of the EP, or at least those MEPs most in favour of deeper European integration. The compromise eventually reached was for a Joint Presidency made up of the Presidents of the Commission, the EP, and the Council, supported by an Executive Board co-chaired by representatives of the institutions (Conference on the Future of Europe 2021).

The Joint Declaration included a list of possible topics, such as health, climate change, social fairness, digital transformation, the EU’s role in the world, and how to strengthen democracy and EU governance. It committed the three institutions “to examine swiftly how to follow up effectively to [the final] report, each within their own sphere of competences and in accordance with the Treaties” (Council of the EU, European Parliament, and European Commission 2021). In deference to most member states, the Joint Declaration did not mention possible treaty change.

The Conference finally began in April 2021, fully a year later than expected. It included a multilingual digital platform for citizens to share ideas and send online submissions. There were also decentralized events – online, in-person, and hybrid – held by non-governmental organisations as well as national, regional and local authorities across the EU. Eight hundred citizens, chosen randomly from the 27 member states, with due regard to location, gender, age, socioeconomic background, and level of education, participated in the Conference. They were organized into four Citizens’ Panels organized on thematic lines, each with 200 people.

The Plenary included 20 representatives from each Citizens' Panel, as well as strong EU institutional representation. Based on input from the citizens' panels, the multilingual digital platform, and other sources, the Plenary drafted proposals for the Executive Board, which drew up the final report (Conference on the Future of Europe 2022a).

The Conference did not attract much attention during its deliberations. Media coverage tended to dismiss it as extravagant and inconsequential. Overshadowed initially by the COVID crisis, in its final months the Conference seemed eclipsed entirely by Russia's invasion of Ukraine. Nonetheless, the Conference made a surprising splash at its final plenary session, in Strasbourg, on 9 May 2022, when the Executive Board presented the Conference report to the President-in-office of the Council, who happened to be Emmanuel Macron, as well as to the Presidents of the Commission and the EP (French Presidency of the Council 2022). The report included over 200 recommendations for strengthening the EU and improving its effectiveness. These ranged from deeper integration in areas such as climate, social, and health policy, to extending the use of majority voting in the Council in all policy areas (Conference on the Future of Europe 2022b).

For Macron, the presentation of the final report was an emotional occasion. After all, the Conference had been his brainchild. Having just won the second round of the French presidential election, but not yet been battered in the parliamentary elections, Macron looked forward to a second five-year term in the Elysée pursuing an ambitious agenda on European integration. The Conference report could prove useful in that regard.

Most of the recommendations in the final report were neither innovative nor radical. Almost all could be implemented through existing procedures and unused (or under-used) provisions of the Lisbon Treaty. Only a few, such as giving the EP the right of legislative initiative, making health policy a shared competence, or extending the use of qualified majority voting to all policy fields, would require treaty change. A particular benefit of potential treaty change was nonetheless increasingly apparent. For some time, advocates of a more credible and effective EU foreign, security, and defence policy had been calling for the abolition of the national veto in decision-making in these areas. Such calls increased in frequency in early 2022, following Russia's invasion of Ukraine (Blockmans 2022; Russack 2022).

MEPs in favor of deeper integration quickly picked up on the possibility of treaty change. This culminated in a resolution by the EP on 9 June, endorsing the outcome of the Conference and calling for the convening of a Convention, under Article 48 TEU, for the revision of the treaties (European Parliament 2022). Broadly, the EP wanted to see reform of Council voting procedures; more competences transferred to the EU in policy fields such as health, energy, defence, and the economy; full co-decision for the EP on the EU budget; and stronger pro-

cedures to protect the values on which the EU is founded. Specifically, the EP called for two treaty changes extending the use of qualified majority voting in the Council in order to impose EU sanctions (Article 29 TEU); and the use of qualified majority voting in the European Council in order to allow decisions to be taken in the Council by a qualified majority in areas where the treaties provide for the Council to act only by unanimity (Article 48(7) TEU).

In a communication on 17 June, the Commission noted that treaty change “should not be an end in itself and for the vast majority of measures, there is much that can and will need to be done under the existing treaties. Just like constitutional texts of the Member States, the EU treaties are living instruments.” At the same time, the Commission endorsed the EP’s call for a Convention: “the Commission will always be on the side of those who want to reform the European Union to make it work better, including through Treaty change where that may be necessary ... The Commission stands ready to fully play its institutional role in the procedure set out in Article 48 TEU, and in particular to give its opinion in response to a consultation by the European Council” (European Commission 2022).

Most national governments remained equivocal about treaty change, if not outright opposed to it. No sooner had the Conference concluded than 13 countries (Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden) issued a non-paper on 9 May, lauding the Conference method and advocating EU reform, while noting firmly that “Treaty change has never been a purpose of the Conference.” The non-paper warned that “unconsidered and premature attempts to launch a process towards Treaty change ... would entail a serious risk of drawing political energy away from the important tasks of finding solutions to the questions to which our citizens expect answers and handling the urgent geopolitical challenges facing Europe ... The EU’s handling of the crises in recent years ... have clearly shown how much the EU can deliver within the current Treaty framework” (Government of Sweden 2022).

In response, six member states (Germany, Belgium, Italy, Luxembourg, the Netherlands, and Spain) issued their own non-paper on 23 May. They also praised the work of the Conference, especially in light of developments in Ukraine, which reinforced “the goal of increasing Europe’s ability to act, strengthening its shared foundation of values, as well as making it more democratic, social and citizen-oriented” (Tweede Kamer 2022). The authors of the non-paper argued that a distinction should be made between proposals that “are already being implemented, [that] can be implemented quickly within the framework of existing treaties and [that] would require treaty changes,” and “remain in principle open to necessary treaty changes that are jointly defined” (Tweede Kamer 2022). This hardly

amounted to a ringing endorsement of revising the Lisbon Treaty. Because it was in the Council Presidency, France did not join either of the non-papers, but was clearly aligned with the non-paper issued by the six member states.

Apart from an understandable reluctance to open a possible Pandora's Box of treaty reform, there were compelling reasons why governments were not too keen on changing the decision-making rules for foreign and security policy, regardless of the outcome of the Conference or the developing situation in Ukraine. As Jim Cloos, a former EU official who is a veteran of many meetings of the European Council, asked rhetorically: "Do we want a CFSP with an increasing number of areas where not all the twenty-seven are on board? Or is the idea to have QMV decisions binding for all?" His view was that "This is unrealistic ... In the present situation, countries who want the strongest possible sanctions against Russia are frustrated by the need for unanimity. But there can be cases where they could be outvoted on what they consider vital interests in [their] relations with Russia. We have had situations in the past where Greece and Cyprus have blocked decisions on Turkey. Are we sure that we would solve the problem by simply outvoting them?" (Cloos 2022).

The June 2022 European Council provided the first opportunity for national leaders to discuss the outcome of the Conference, explore the possibility of treaty change, and respond to the EP's call for a Convention. They chose not to do so. Instead, the European Council merely praised the Conference as "a unique opportunity to engage with European citizens," and took note of the proposals in the Final Report (European Council 2022). Clearly, the possibility of initiating treaty change was not a priority for most national leaders. Without their agreement, launching the process of treaty change was simply not possible.

Conclusion

Like any polity, the EU has evolved over the years in response to everyday events, longer-term changes, challenges, and crises – however broadly defined. But the EU is unlike other polities because of several unique characteristics, including its supranational nature and its ever-increasing membership, despite the departure of the UK in 2020. Over the years, the EU has adapted to frequent rounds of enlargement and to other significant developments in formal and informal ways that have strengthened its institutional capacity and defined its political character.

Perhaps the most striking method of formal adaptation has been through treaty change, although this has almost never originated because of an immediate crisis. Having been brought into existence by far-reaching changes to the founding treaties of the European Communities, the EU has gone through a number of treaty

changes in its relatively short life, culminating in the Lisbon Treaty of 2007. Getting to Lisbon, however, was extremely arduous for all concerned. The cost of treaty change has been high, not least because of ratification difficulties that have exposed deep-rooted public dissatisfaction with the EU.

As a result, national leaders have become extremely reluctant to engage in further treaty change. Nor have they had to, even during the poly-crisis. With the exception of a technical amendment to EMU, engineered through the use of a simplified procedure for treaty change, leaders have been unwilling – and have not found it necessary – to incur the high political cost of treaty reform by means of the ordinary revision procedure, which would necessitate convening a Convention, conducting an IGC, and undertaking national ratification proceedings. Even after the initial excitement generated by the conclusion of the Conference on the Future of Europe, including the EP's call for a Convention in order to initiate the process of treaty change, and after Russia's invasion of Ukraine, which highlighted procedural deficiencies in the formulation of the EU's response, the European Council has shown scant interest in pursuing further treaty change.

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