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Opening Statement for Joint Oireachtas Committee on European Affairs
15 November 2023

Across Europe, debate is quietly ongoing regarding whether, when and how the EU's basic Treaties can be revised. This debate has surfaced a few times – for example, in a September expert report advanced (although not endorsed) by France and Germany; in an October 25th report of the European Parliament's Constitutional Affairs Committee; and earlier (at least implicitly) in the 2022 proposals of the Conference on the Future of Europe.

The question arises of why this debate is happening now. First, change is overdue: the foundational Treaties have not been overhauled since the entry into force of the 2007 Lisbon Treaty (which itself largely reflected compromises arrived at in the failed 2004 Constitutional Treaty). Remarkably, the Treaty provisions on EMU have stayed largely unchanged since the Maastricht Treaty was agreed in 1992 (an omission which has necessitated their being supplemented by non-EU Treaties, secondary legislation and soft law).

Secondly, crises have abounded since Lisbon, revealing weaknesses. Most recently, the Ukraine war, which exposed the EU's inadequacies in foreign, defence and energy policy. The consequent shock has added a sense of urgency to the drive for EU reform.

Most importantly though (and also linked with the Ukraine situation) is the need for the EU to enlarge. By now, eight central and eastern countries on the Eastern borders have been granted candidate status – Türkiye, North Macedonia, Montenegro, Serbia, Albania, Ukraine, Moldova and Bosnia-Herzegovina (with Georgia and Kosovo still seeking candidate status). Admittedly, some candidatures lack reality. Türkiye's relapse into autocracy has meant its admission process has been frozen indefinitely. Serbia's approach to Kosovo and, latterly, its ambiguous stance towards Ukraine has caused problems, and until recently, political turmoil in Montenegro has led to its admission process stalling too. Nevertheless, enlargement is coming - and requires preparation. Otherwise, the EU could glide into the fatal trap of expanding without an adequate strategy to ensure its continued efficient functioning.

Preparations for will require far more than treaty reform. Hence, enlargement will require major financial preparations – and sacrifices. An internal paper by the Council secretariat leaked to the press in October noted that the accession of nine new states (excluding Türkiye) under current rules would add €256.8bn to the cost of the multiannual financial framework, increasing the EU's budget by 21 per cent to €1.47 trillion and concluded "all member states will have to pay more and receive less from the EU budget; many member states who are currently net receivers will become net contributors". The budgetary implications of enlargement will thus need to be agreed by 2027 which is when the next MFF cycle begins.

Yet Treaty change will also have to be part of the enlargement dynamic. We have been here before. The same phenomenon drove agreement on the 1997 Amsterdam Treaty and the 2001 Nice Treaty, allowing the enlargement of the EU by ten states in 2004 and two more in 2007.

In her September State of the Union speech to the European Parliament, Commission President Von der Leyen explicitly anticipated the possibility of a European Convention and Treaty change in the context of enlargement. Nonetheless, there still tends to be hesitancy about promising Treaty change. Von der Leyen carefully hedged her bets by saying the EU should not wait for Treaty change to move ahead with enlargement. The October Granada declaration by the European Council merely declared ambiguously of enlargement that "the Union needs to lay the necessary internal groundwork and reforms. We will set our long-term

ambitions and the ways to achieve them. We will address key questions related to our priorities and policies as well as our capacity to act.” Ultimately however German Europe Minister Lührmann – brandishing a paper advocating Treaty changes – is correct in asserting that enlargement and reform “go hand in hand. And we need to begin this now”.

What Treaty amendments await? So far, there have been three prominent generators of ideas. The May 2022 report of the Convention on the Future of Europe issued 49 recommendations and 200 individual proposals to improve the EU on areas as varied as education, digital transformation, European democracy, the rule of law, climate change, health and migration. Some would require Treaty change. Thirteen Member States (Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia and Sweden) attempted to strangle at birth any idea that the Convention’s ideas should lead to treaty reform, by immediately publishing a non-paper recalling that “Treaty change has never been a purpose of the Conference we do not support unconsidered and premature attempts to launch a process towards Treaty change” and asserting that “we already have a Europe that works. We do not need to rush into institutional reforms in order to deliver results”. The Conference’s proposals live on as ideas (burnished by their advocacy by ordinary citizens) however, and have influenced European Parliament calls for Treaty change.

Secondly, the September 2023 *Report of the Franco-German Working Group on EU Institutional Reform* advanced jointly by France and Germany advocated several ideas for change. These include a widespread end to unanimity voting (with smaller Member States compensated by increased voting power), strengthening rule of law requirements; facilitating the issuance of common debt and shortening of the budget cycle; and a budget more commensurate with the size of the EU’s tasks. Most eye-catchingly, the Report also revived the idea of concentric circles of integration - an inner circle of Members who would freely integrate further; then EU members; then associate members; then (outermost) the European Political Community. The attractiveness of the model to candidate or existing Member States remains unclear.

Thirdly, an October report of the European Parliament’s Constitutional Affairs Committee advocated extensive Treaty change. Alongside proposals on foreign, security and defence policy (including more QMV), the single market, education, trade and investment, non-discrimination (including using the language of gender equality in the Treaties), climate and environment, energy policy, security and justice (including enhanced Europol powers) and migration (including common minimum citizenship requirements), it advocates shared competences e.g., in health and education and makes (unlikely-sounding) calls for exclusive EU competence for the environment and biodiversity, for EU-wide referendums (both in the EU legislative process and the treaty amendment process). It advocates more decision-making by QMV and the ordinary legislative procedure and a more politically-flavoured Commission. More self-interestedly, it also demands a right of legislative initiative for Parliament, co-legislative budgetary power and the reversal of the current roles of Council and Parliament in electing the Commission President.

Such ideas represent only the first shots fired in a Treaty reform debate. Various Member States have been working on their own proposals on Treaty reform. Moreover, issues such as enhancing EU level democracy, adjusting the EU’s crisis response framework and updating provisions in areas such as EMU will doubtless appear on the agenda. A CFSP dominated by unanimity voting has proved problematic, as the Ukraine crisis has shown, although changing voting rules is no cure-all, since the problem is sometimes widespread disunity, witnessed over Iraq and, more recently, Gaza.

No discussion of Treaty reform can avoid discussion of the stone in the midst of all: the Article 48 TEU Treaty amendment process, arguably utterly unfit for purpose. Its giving each State a

veto over Treaty change for all Member States seems an overhang from when European integration involved fewer States, and democratically unnecessary. The US Constitution needed only nine of thirteen states to ratify it (a wise precaution since Rhode Island initially rejected it). Amendment of the UN Charter requires *inter alia* ratification by just two thirds of UN Members. NATO's Constitution entered into force between the States which had ratified it as soon as the ratifications of the majority of the signatories had been deposited. In 2013, the Fiscal Stability Treaty could enter into force when a mere twelve Contracting Parties whose currency was the euro had deposited their instrument of ratification. The ESM Treaty could enter into force when instruments of ratification had been deposited by signatories whose initial subscriptions represent only 90% of the total. A similar approach of allowing arrangements to enter into force only for those States which have ratified them once this reaches a certain minimum number seems vital for the success of future constitutional change. This seems to be anticipated in the Franco-German paper, which advocates, in case of negotiation deadlock, the fallback option of "a supplementary reform treaty (such as the ESM Treaty) between the Member States willing to move forward". The ESM reference may (and should) be taken to imply the approach of permitting entry into force for ratifying states of such supplementary reform treaties once a certain minimum number of ratifications is reached. Without such an approach, a new Treaty may not be agreed in the first place, or once agreed may not be ratified – especially given the unpredictability of national referendums in an age of internet disinformation. That would risk Treaty reform negotiations becoming a tale full of sound and fury, signifying nothing - a fate Europe can do without.