



BULLETIN

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A Game-Changer for the EU: Why Major Treaty Reform Is a Real Prospect

Roderick Parkes

The UK's battle with the European Parliament over the choice of the next Commission President seems to bode ill for London and its ambition to reform relations with the EU: the UK has antagonised Parliament over a relatively symbolic issue. And yet, Parliament also desires treaty change and may turn out to be an accidental ally to London. This would shift all governments' political calculus, as well as pose a challenge to Warsaw.

Pressure for EU treaty change has been building since the beginning of the eurozone debt crisis. London has been leading the charge, demanding a new settlement based on a “multi-directional” notion of the EU's competences. Its demands for powers to be returned to Member States have been matched by debate about the transfer of powers to Brussels. Berlin in particular has been arguing for stronger EU competences, notably in the field of economic reform and discipline, and its proposal for a “convergence and competitiveness instrument” will probably be back on the agenda this autumn.

Nevertheless, most governments are keen to limit the scale of treaty reform since big revisions require a complex EU procedure. Whenever powers are transferred to the EU, a Convention of governments, MEPs, MPs, Commission officials and (if relevant) representatives of the European Central Bank must be called, followed by a classic Intergovernmental Conference (IGC). Governments fear this exhaustive exercise will antagonise their citizens. Already 10 years ago, voters in France and the Netherlands rejected the EU's draft constitutional treaty drawn up under just such a method.

These days, therefore, governments routinely downscale their reform agendas so as to make use of simpler revision procedures. One option is to resort to an intergovernmental agreement outside the EU framework. This was the case with the so-called fiscal compact; however, the compact is due to be incorporated into EU law by 2018, potentially triggering a delayed round of treaty change. The more straightforward option is the “simplified revision procedure,” which permits treaty reform within the EU framework without either a Convention or IGC and can be used so long as there is no transfer of competences.

The Convention as a Bargaining Chip and Technocratic Solution. Still, the choice of procedure for treaty change is not solely a matter for governments. The European Parliament (EP) can, for example, demand major amendments to the treaties of the kind that require a Convention and IGC. But it can also sanction major treaty change through a pared-down method. In other words, MEPs can allow Member States to overhaul the EU merely by resorting to an IGC, doing away with the obligation to hold a Convention.

Governments keen for treaty change appear to think a deal can be done. They suspect the EP can be persuaded to drop the Convention requirement in return for further powers of its own in the realm of economic policy or a more robust right of legislative initiative. No capital is really keen to give these powers to the EP, but needs must. MEPs may also prove pragmatic. After all, they will not gain the powers they desire if governments keep avoiding treaty change.

There are signs, moreover, that this rather cynical horse-trading is already underway. MEPs in the 7th Parliament reportedly held talks about who among them would chair a Convention, reportedly plumping for Guy Verhofstadt. Some governments understood this as nothing more than a shadow debate: Verhofstadt can expect favours from the

capitals if he helps “persuade” the incoming Parliament to ditch the idea of a Convention and “gives up” his own promised role of Chair.

And yet, there are also signs that this is not just a Potemkin debate. Many MEPs in the last Parliament were genuinely committed to the idea of a Convention and even discussed means to bring this into line with concerns in the capitals. They argue that the Convention method can be turned into an efficient—and thus voter-friendly—mode of treaty revision. A Convention of “Wise Women and Men”, they say, would tackle thorny problems that the more political IGCs and backroom “simplified” dealings have tended to shun.

Publics would see this “Convention of Technocrats” as a low-intensity technical exercise, a process that might be repeated again and again (“convention” in the sense of a habitual way of doing things). Governments would see it as a mode of treaty change so thorough and efficient that it will not actually be repeated any time soon. These MEPs even began to suggest that the “no votes” in France and the Netherlands in 2004 were a delayed reaction to the fudged Nice Treaty, rather than a response to the more thorough Constitutional Treaty.

The New EP and the Prospect of a “Convention-plus” Option. Yet, such appeals, with their promise of result-based “output” legitimacy, only serve as a reminder that a Convention is supposed to be primarily about democratic “input” legitimacy. Some 140 new MEPs have already signed a manifesto for a so-called Convention-plus option, which would not only make an MEP-dominated Convention the main locus of the treaty revision process but would also incorporate elements of direct democracy—possibly an EU-wide referendum.

The supporters of this idea are not just pro-European Greens or mainstream Liberals. The growing numbers of MEPs of a more Eurosceptic persuasion also denounce the “anti-democratic” nature of grey methods of treaty change and seek a more open process that is subject to proper democratic scrutiny. In a context of growing popular mistrust towards the EU, therefore, the mode of treaty reform is fast becoming more significant for the EP than the actual substance of the change.

Of course, governments and analysts may see such ambitions as so at odds with political realities in the capitals that they simply cannot be achieved. However, much the same could be said about the decision to resort to a Convention back in 2003, and MEPs have been carefully examining that experience. They know that merely by proposing a Convention they will shift the political calculus in the capitals—indeed the more ambitious the option they propose, the more bargaining chips are likely to be at their disposal.

As in 2001, therefore, MEPs will propose an ambitious method of treaty change to appeal to players who would otherwise be excluded—the national opposition parties, EU-wide party families, candidate states, policy experts and the media, and of course citizens. They will practice a policy of divide-and-rule over governments, bargaining over the choice of a future Chair, the precise composition of a still imaginary Presidium and Corpus, the possible content of a “procedures act” detailing the timeframe and mandate, as well as the relationship between the Convention and subsequent IGC.

They are also prepared to “ratchet” governments towards an ambitious option, pushing them to make seemingly minor commitments. And they will exploit governments’ flat-footedness as they did back in 2001 when Paris demanded it supply the Convention Chair in the hope of controlling proceedings, only to find their man was more interested in legacy-building, or when London disengaged from the early discussions in a bid to downplay their significance, only to see these get wildly out of hand.

Adapting to a New Reality. Dismayed by the prospect of a Convention, governments are already asking how best to limit the fallout from any subsequent referendums. One idea is to hold these referendums at several different levels at once (local, national and European), in the hope that there would be no clear majority answer to take into account. Another is for the Convention to formulate various treaty options instead of presenting voters with a single “choice” which they have no alternative but to accept. Another is for Swiss-style “preferendums” which frontload the referendum question: voters would express their preferences ahead of the treaty negotiations, and the Convention and IGC would seek to implement them.

And yet, governments might do better to simply embrace the Convention option. Member States have long treated a Convention as something to avoid. This has raised suspicions amongst voters about underhand revision methods. If governments alter their thinking, facing up to the Convention process, constructive reformist options will reopen. This will undermine eurosceptic parties that feed on the weakness and uncertainty of governing parties. It could also settle inter-institutional tensions. After all, if London is so clumsily pursuing the symbolic issue of the choice of Commission President, it is only because it believes substantial treaty change is no option and it needs some kind of victory to present to voters.

For Warsaw, all this will be a bitter pill to swallow. Unlike other governments it need not worry about domestic Eurosceptics taking advantage of a referendum to turn down a new treaty, nor about the prospect of the Convention process antagonising voters. What it must worry about is the likelihood of the large Members using major treaty change to repatriate powers from Europe. Warsaw should therefore start hedging against a course of events that would leave it exposed. It should use the current negotiations about top posts in the Commission and European Council to secure guarantees and safeguards. And it should think about deepening relations to London and the EP, ahead of a possible unholy alliance between this pair and its key partner, Germany.