Amendment Procedure and the Future Importance of the Convention

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I. Introduction

The new "Treaty revision procedures" introduced by the Treaty of Lisbon (Article 48 TEU*) can be traced back to the work of the "Convention on the Future of Europe". Not only did the Convention propose these procedures, it also provided experiences on which the new rules are based. In deviation from the existing rules and the practice of Treaty amendments prior to the Laeken meeting of the European Council, the new rules make the Convention model at least in principle the ordinary procedure to prepare decisions. Moreover, by significantly strengthen the European Parliament and by including representatives from national parliaments, the Convention method seems to bring amendment processes closer towards a supranational procedure.

This change may be interpreted as a step towards a constitutionalisation of the European polity. In any case, it expresses the duality of the EU as a Union of States and citizens.[1] While the existing Treaties were negotiated by governments of the Member States, and while the intergovernmental procedure was used to revitalise the draft of the Convention after it failed in the ratification process, future amendments should be elaborated in an assembly with the direct participation of members of the European and national parliaments. Treaty negotiations should allow expressing the will of elected representatives of citizens in a forum which resembles a constitutional assembly. As a consequence, the intergovernmental procedure of Treaty making may lose ground, and with the empowerment of elected representatives, democratic legitimacy may increase.

From a normative perspective, both in view of legitimacy and effectiveness, good reasons speak in favour of the new procedure. However, a closer look reveals that it is all but certain that it will become relevant in practice. Still the ratification of Treaty amendments requires unanimity of the Member States, independent on whether this implies a sufficiently qualified majority of European citizens - a rule which is typical for an international treaty. Thus the Member States remain the mas-

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This article was written in honour of Dimitris Tsatsos to his 75th birthday.

1 *Tsatsos,* Die Europäische Unionsgrundordnung, 2002.

ters of the Treaties. In practice, prospective or real problems of national ratification can contribute to undermine, what parliaments have achieved if the new Treaty will be ratified. For this reason, we should not expect too much change from the new amendment rules. The politics of Treaty revision will be more characterized by intergovernmental bargaining than it seems to be stipulated by the new article 48 TEU*. This is at least the case as long as unanimity of Member States is required for ratification. In the last section I will discuss, whether unanimity is really necessary from a normative point of view and how the ratification process can be modified in a way that gives the convention method a real chance.

II. A new role for parliaments in Treaty amendments

The new amendment rules reveal the influence of the Convention on the Treaty of Lisbon which the governments of the Member State could not ignore. Article 48 TEU* includes significant changes of existing rules that were elaborated in the course of the work on the Constitutional Treaty[2]. In view of the success of the Convention process and its positive reception in public, the governments could not dismiss suggestions for revised amendment procedures although they implied that they will lose power by new provisions. As a consequence, the new Treaty now in principle confirms the "supranational" Convention method of negotiation on Treaty changes and downgrades the "intergovernmental" method to amendments of Part III of the Treaty on the Functioning of the EU (see appendix 1).

The Convention as a method to negotiate Treaty amendments has been discussed at length.[3] It was pointed out that the denomination is problematic. Indeed the term

2 *Martins,* Amendment of the Constitution. Procedural and Political Questions, in: *Pernice/Zemánek* (eds.): A Constitution for Europe: The IGC, the Ratification Process and Beyond, 2005.

3 *Closa,* The Convention method and the transformation of EU constitutional politics, in: *Eriksen/Fossum/Menéndez* (eds.), Developing a Constitution for Europe, 2004, 183-206; *Closa,* Deliberative Constitutional Politics and the Turn Towards a Norms-Based Legitimacy of the EU Constitution, European Law Journal, 2005, 377; *Lamassoure*, Histoire secrète de la Convention européenne, 2004; *Kleger* (ed.), Der Konvent als Labor; 2004; *Magnette/Nikolaidis,* The European Convention: Bargaining in the Shadow of Rhetoric, in: West European Politics, vol. 27, 2004, 381-404; *Magnette,* In the Name of Simplification: Coping with Constitutional Conflicts in the Convention on the Future of Europe, European Law Journal, vol. 11, 2005, pp. 432-451; *Maurer/Kietz,* Die Konstitutionalisierung Europas zwischen Konvent, Regierungskonferenz und Verfassungsvertrag, Politische Vierteljahresschrift, vol. 45, 2005, 568-582; *Mayer,* Macht und Gegenmacht in der Europäischen Verfassung. Zur Arbeit des Verfassungskonvents, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, vol. 63, 2003; *Norman*, The Accidental Constitution. The Making of Europe's Constitutional Treaty, 2003; *Puntscher-Riekmann/Wessels* (eds.), The Making of a European Constitution. Dynamics and Limits of the Convention Experience, 2006; *Slominski/Pollak,* The representative quality of EU treaty reform: a comparison between the IGC and the conven-

refers to a particular tradition of constitution-making through an open, deliberative process, and it might not be appropriate to use it for an assembly of executives and members of parliament working on minor changes of a treaty.[4] Yet, aside of this nominalistic argument, the method has found wide acceptance after the experiences with the first two Conventions. In particular compared to the intergovernmental procedure, a number of advantages have to be underscored:

Studies of the Convention process have shown that the inclusion of members of parliaments changes the mode of negotiation. Of course it would be misleading to portray the process as deliberation in the sense of a communication on opinions and reasons undistorted by interests and tactics, as it would be false to assume, that intergovernmental conferences express only interests of states to maintain their power[5]. One should not ignore that representatives of national governments and Commission are in a strong position due to their resources, expertise and coalition strategies. Furthermore, each representative pursues interests of his or her constituency or is influenced by party political considerations or particular institutional interests. However, in contrasts to representatives of governments, parliamentarians are less tied to nationalist positions and they are hardly connected to the well-established coalitions between Member States.[6] Depending on their party affiliation and their role in their home institution, they can enter into quite different coalitions varying from issue to issue. Moreover, their engagement is less directed towards gaining power for their Member State and more towards contributing to the project of the Convention. For these reasons, constitutional negotiations in a Convention promise to generate more effective and innovative solutions. Compared to intergovernmental negotiations, the participation of members of parliaments contributes to shift the balance between bargaining and arguing[7] in favour of the latter mode of interaction. As Carlos Closa observed in his study on the Convention process: "To some extent, actors felt compelled to present normative justifications for their strategic goals. In this sense, the Convention ethos (what Giscard called the Convention spirit) conditioned the rationality of national government representatives".[8]

tion, Journal of European Integration, vol. 26, 2004, 201-226; *Wessels,* Der Konvent: Modelle für eine innovative Integrationsmethode, Integration, 2002, 83-98.

4 *Cervati,* On the Consolidation and simplification of the European treaties and the Convention Procedure, in: *Pernice/Miccù* (eds.): The European Constitution in the Making, 2003, 122.

5 *Falkner/Richardsen* (eds.), EU Treaty Reform as a Three-Level Process: Historical Institutionalist Perspectives, Journal of European Public Policy, 2002; *Moravcsik,* The Choice for Europe: Social Purpose and the State Power from Messina to Maastricht, 1998.

6 *Slominski/Pollak,* note 3 supra.

7 *Elster,* Deliberation and Constitution Making, in: *Elster* (ed.), Deliberative Democracy, 1998, 97.

8 *Closa,* note 3 supra, p. 201; see also *Magnette,* Deliberation or Bargaining? Coping with Constitutional Conflicts in the Convention on the Future of Europe, in:*Eriksen/Fossum/Menéndez* (eds.), Developing a Constitution for Europe, 2004, 207-225; *Magnette/Nikolaidis,* note 3 supra.

This is not to argue that the Convention defined in Art 48 TEU* constitutes an institution which is optimal for Treaty negotiations, if these concern basic norms and regulations. The European Conventions have very much profited from the strong leadership of their presidents and their steering committees. Moreover they also worked under the condition of informality, which is no longer possible under the new amendment rule. As comparative studies on constitutional negotiations in federal systems tell us[9], bargaining between executives may prevail despite the participation of members of parliaments. Committees including governments and parliaments, which, for example, negotiate constitutional amendments in Germany, are less innovative and more dominated by intergovernmental bargaining.[10] On the other hand, if representatives from civil society are included, the arguing mode of negotiations is more likely to emerge, as experiences in Switzerland[11] and the so called Charlottetown process in Canada[12] prove.

Nevertheless, the Convention method to negotiate Treaty amendments has to be considered as a substantial progress compared to the old procedure. It will raise more public attention for debates on the EU Treaties; it will improve the quality of negotiations by reducing the logics of package dealing and compromising between governments, which in the past often has led to problematic results; it will reduce the probability of blockades; and it will increase the legitimacy of proposals for amendments.

Article 48 TEU* designates the Convention method as one of the ordinary revision procedures, while the other and the two simplified revision procedures still follow the intergovernmental mode. When amendments concern part III of the Treaty on the Functioning of the EU relating to internal policies and action of the Union or relating to the application of majority instead of unanimity decisions (the so called "Passerelle Clause"), the European Parliament shall be consulted, but has no veto right. Majority decisions can be impeded by a veto of each national parliament, which, however, have no voice in reasoning on such a change.

According to the ordinary procedure, a Convention shall be called, if justified by the extent of the proposed amendments. Otherwise, amendments shall be elaborated by the European Council. Hence, the real impact of the new amendment procedure

9 *Banting/Simeon* (eds.), Redesigning the State, 1985; *Elster,* Forces and Mechanisms in the Constitution-Making Process, in: Duke Law Journal, 1995, 364-396.

10 *Benz,* Föderalismusreform in der „Entflechtungsfalle, in: Europäisches Zentrum für Föderalismus-Forschung (ed.), Jahrbuch des Föderalismus, vol 8, 2008, 180-190. *Scharpf*, Recht und Politik in der Reform des deutschen Föderalismus, in: *Becker/Zimmerling* (eds.), Politik und Recht, 2006, 306.

11 *Braun,* Verfassungsänderung trotz vieler Veto-Spieler: Föderalismusreform in der Schweiz, in: Shikano/Behnke/Bräuninger, Jahrbuch für Handlungs- und Entscheidungstheorie, Vol. 5, 2008.

12 *Stein*, Improving the Process of Constitutional Reform in Canada: Lessons from the Meech Lake and Charlottetown Constitutional Rounds, in: Canadian Journal of Political Science, vol. 30, 1997, 307-338.

depends first and foremost on the selection between the use of a "supranational" Convention and the intergovernmental Council procedure. While the choice between the ordinary and the simplified procedures is determined by the issues concerned, the extent of amendments which is decisive for the variation of the ordinary procedure can be interpreted in different ways. The decision whether to call a Convention or not is made by the European Council. At a glance, the criterion "extend of the proposed amendments" opens sufficient discretion for the heads of national governments to avoid the Convention procedure.

However, when deciding on this issue, the European Council cannot ignore the vote of the European Parliament. In contrast to the existing rules, the Parliament, besides governments of any Member State and the Commission, has the right to initiate an amendment. By setting the agenda of Treaty policy, it will be able to influence whether the substantial condition for a Convention procedure applies or not. It can define the extent of the proposed amendments in a way that the Council has no reasons to opt for the intergovernmental procedure. Moreover, when the European Council decides whether or not to convene a Convention, it requires the approval of the EP. In case of dispute, the Parliament will presumably favour the Convention procedure, in which its members have a say. Against the vote of the Parliament, Treaties cannot be amended by an intergovernmental procedure.

After successful negotiations in the Convention or in the European Council, the final amendments will be determined by a Conference of representatives of the governments of the Member States, i.e. in an intergovernmental negotiation process. The conference has to come to a "common accord" (Article 48 section 4 TEU*). Hence, in order to deviate from the proposal of the Convention, the governments of the Member States will have to decide by unanimity. Under these terms, at best minor changes should be expected. In principle, each Member State government can block the amendment process. However, in view of the legitimacy of a Convention, a deadlock should be unlikely. The veto power of national governments in the final stage should not diminish the influence parliaments can exert via the Convention.

Thus, if the Treaty of Lisbon will be ratified, the new ordinary amendment procedure will strengthen the role of parliaments in the negotiations on the Treaties. Whether or not this will change the predominance of the intergovernmental mode of European integration is another question. So far we have only considered one part of the amendment rules. The Treaty of Lisbon still assumes that all amendments have to be ratified by Member States according to their constitutional provisions. And this has consequences for the probability of negotiations according to the Convention method.

III. The impact of ratification – back to intergovernmental bargaining

As long as Member States remain the masters of the Treaties, there will be a strong element of intergovernmentalism in the amendment process. While in formal terms the governments conceded power in the negotiations on amendments, their role will be reinforced through impacts of the ratification on the amendments process. Bruno de Witte rightly pointed out that the veto power of national actors influences negotiations on the substance of treaty amendments,[13] as is extensively discussed in the literature on multilevel negotiations.[14] In line with this reasoning, we have to expect that the potential problems of ratification shape the preferences of European institutions when they decide between the different procedures for negotiation on amendments. Therefore, in practice the supranational Convention mode of Treaty negotiations will presumably be rather the exception that the rule. The labelling of "ordinary" procedure of what will in fact be an extraordinary procedure is misleading.

The Member States decide according to their constitutional provisions on the ratification procedures (see Appendix 2). With the exception of Ireland, majorities in parliaments are sufficient, although with different qualifications. However, in a number of Member States governments may also call a referendum.[15] No constitution forbids consultative referenda, which can strongly influence formal decisions by parliaments. As experience shows, governments of at least some of the critical Member States tend to directly ask their citizens. For the ratification of the Constitutional Treaty, no less than seven Member States carried through or planned referenda, and as we know, two of them sealed the fate of the Treaty. The reasons for governments to resort to a referendum vary and they not always have to do with the substance of the decision at stake. More often than not, domestic political considerations are relevant. However, other conditions being equal, a referendum is more likely in case of substantial amendments of the Treaties. Only significant changes raise demands of citizen to participate in the decision and only they yield convincing arguments for governments to resort to this procedure, even if in fact for tactical reasons.[16] Whether changes are considered as significant or not, does not only de-

13 *de Witte,* European Treaty Revision: A Case of Multilevel Constitutionalism, in: *Pernice/Zemánek* (eds.), A Constitution for Europe: The IGC, the Ratification Process and Beyond, 2005.

14 *Benz,* Konstruktive Vetospieler in Mehrebenensystemen, in: *Mayntz/Streeck* (eds.), Die Reformierbarkeit der Demokratie, 2003, 205-236; *König/Hug* (eds.), Policy-making Processes and the European Constitution: A Comparative Study of Member States and Accession Countries, 2006; *Evans/Jacobson/Putnam* (eds.), Double-Edged Diplomacy. International Bargaining and Domestic Politics. 1993; *Putnam,* Diplomacy and Domestic Politics. The Logic of Two-level Games, in: International Organization, vol. 42, 1988, 427-460.

15 *Closa,* The Europeanization of Ratification Procedures: Towards a EU-Wide Constitutional Convention, Instituto Português de Relações Internacionais, Working Paper no. 8, 2005.

16 In view of the ratification of the Constitutional treaty, „decisions to convening ratification referendums have been shaped by arguments that portray the constitution as a fundamental

pend on the substance of the amendment but also on the procedure applied. A Convention will always give a Treaty revision particular political weight.

With a referendum, citizens hold veto power and they are more likely to reject extensive amendments than minor ones. The failure of the Constitutional Treaty supports this assumption. Since European integration can no longer be based on a "permissive consensus", the negative referenda in France and the Netherlands should not be misinterpreted as single events caused by unfavourable circumstances. Rather they expressed the increasing scepticism of citizens with a political project which, like most policies, has benefits but also costs. Moreover, for the foreseeable future, the failure of the Constitutional Treaty will be remembered as an event that has to be avoided at any rate. Failures of important reform projects have lasting effects for policy-making as it can be observed in the constitutional history of nation states. In Canada, after the defeat of the Charlottetown Accord in a consultative referendum, political elites and the public abandoned further attempts to come to major constitutional reforms.[17] In a similar vein, political elites in the EU will hardly tend to restart a reform project with may be compared to a constitutional revision. All institutions with the right to initiate an amendment will consider the risks of such a step. But this can cause a stagnation of the EU even if changes in the TEU are necessary.

Even if national parliaments ratify Treaty amendments, a unanimous support for changes of a significant extent is all but likely. National political parties increasingly comment the legitimacy deficit of the EU with critical statements. Moreover, empirical studies on political cleavages show that at least in some countries, anti-European parties have gained influence, and that the conflict about the extent of European integration increasingly shapes political cleavages.[18] In any case, leaders of governments or opposition parties can exploit ratification processes for populist strategies thus threatening a positive vote. And again such strategies and developments are more likely if extended amendments of the Treaties are under consideration.

So, on the one hand even Members of the European Parliament will carefully weigh the chances and risks of the Convention method which per se signifies extended amendments and which will presumably produce more change than intergovernmental negotiations. On the other hand, even when this amendment procedure is applied, it is rather likely that amendments proposed by a Convention are voted down in ratification. While in the first case the power to negotiate amendments re-

change in the nature of the EU that requires citizens' involvement to guarantee its legitimacy. The outcome of the negotiation (i.e. a Constitution) as well as the process of negotiation itself created an interpretative framework that induced (either directly or indirectly) a logic justifying a revision of the domestic arrangements for ratification"; *Closa,* note 15 supra, p.24.

17 *Russells,* The Constitutional Odyssee. Can Canada Become a Sovereign People? 2004.

18 *Kriesi et al.,* Globalization and the transformation of the national political space: Six European countries compared, European Journal of Political Research, 2006, 921.

mains to the European Council, in this second case, it shifts to the intergovernmental arena as soon as ratification problems occur.

Future will tell us, which of these scenarios will become reality. But whatever happens, it is the interplay between negotiations and ratification of Treaty amendments in particular situations, which determines how the new rules will be applied and what will be the outcome. As long as ratification follows national rules and requires unanimity, the transparent Convention method implies high risk of failure. The irony would be that an attempt to democratize European politics ends in intergovernmental bargaining, because national democracy increases decision costs.

In view of this result one could argue that after the ratification of the Treaty of Lisbon, no major Treaty amendment justifying the Convention method will be necessary for the foreseeable future. But this would mean that the principal constitutional issues of European integration are settled and that only more specific problems remain to be dealt with. I doubt that this is the case. In particular the allocation of competences the new amendment rule explicitly refers to will be a matter of ongoing dispute. The competence rules of the TEU* are sufficiently flexible to allow adjustments, but the dynamics of the ongoing integration process may require amendments of these rules. Moreover, it is still open how the existing institutional framework and the decision procedures work in the enlarged Europe of 27 or more Member States. So the functioning of the new amendment procedures should not be regarded as a moot question.

IV. Ratification without unanimity?

The risks that Treaty amendments are voted down in the ratification process are rather high because unanimity of all Member States is required. They are discussed since long. After the problems to ratify the Constitutional Treaty became visible, a number of possible ways out a deadlock situation have been discussed.[19] There is no need to review all the proposals put forward in this context. The new amendment rule requires the European Council to consult when unanimous ratification is not achieved but it does not say anything about how the Council should decide if confronted with this problem. If rules written down on paper are not clear or do not exist at all, they emerge in iterated practices. Therefore it is likely that intergovernmental negotiations with an accelerated ratification process, which made the Treaty of Lisbon possible and saved the Convention project (after some symbolical and substantive modifications), will become the regular practice in future. However, such a strategy, which shifts between two quite different procedures for a decision

19 For an excellent summary and discussion see *Biernat,* Ratification of the Constitutional Treaty and Procedures for the Case of Veto, in: *Pernice/Zemánek* (eds.), A Constitution for Europe: The IGC, the Ratification Process and Beyond, 2005.

on the same issue, will hardly contribute to legitimacy of the amendment. In a democratic polity, any attempts to circumvent explicit votes of citizens or parliaments should be avoided, if not for normative reasons, then for reasons of political prudence.

The relevant question then is whether it is acceptable to ratify Treaty amendments without unanimity. If the reasoning presented so far is correct, only this way the Convention method will have a real chance to become the ordinary amendment procedure. However, this question seems to require the squaring of the circle.

Given the character of the EU as a union of states, there seems to be no way to introduce a ratification procedure which allows to ignore the veto of each Member State, be it a decision by the EP and the European Council, a European-wide referendum or a deviation from the requirement of unanimous ratification by Member States. Proposals for a qualified majority rule had been formulated in the discussions on the Constitutional Treaty[20]. But all these procedures would imply to constrain the power of the Member States on their constitution by a European Treaty, which then would come close to a real constitution. The consequence would be that powers could be transferred from the Member States to the EU by an act of the government against the will of the national parliaments or citizens. Is it debatable whether the necessary societal basis exists for such a constitutional transformation in the EU, where citizens still identify more with their nation than with a European community.[21] A deviation from the unanimity requirement would also make necessary to change the amendment rule of the existing and the not yet ratified Treaty with the agreement of all Member States. To expect this to occur is far from realistic.

At a glance this reasoning seems to lead us into a dead end. Ratification by Member States is inevitable, as long as the Treaties are not abolished in a kind of constitutional moment. But as we all know, it was the discussion on the constitutionalisation of the EU that has blocked the development of the EU some years ago. Treaties in general and the Treaty rules in force in particular require the consent of all partners. So there seems to be no alternative to unanimity among Member States.

However, at least a moderate deviation from the unanimity rule is possible, under the condition that Member States voluntarily and by an explicit decision accept to be outvoted in the ratification process. A procedure which may allow this was proposed by the so-called Penelope group. The idea was to introduce a qualified majority rule by an additional treaty ratified with the substantial treaty[22]. This procedure can be justified by the argument that actors may accept rules that reallocate decision power

20 *de Witte,* note 13 supra.

21 *Grimm,* Does Europe Need a Constitution, in: European Law Journal, vol. 1, 1995, 282; *Graf Kielmansegg,* Integration und Demokratie, in: *Jachtenfuchs/Kohler-Koch* (eds.), Europäische Integration, 2003, 49-83; *Offe,* Demokratie und Wohlfahrtsstaat. Eine europäische Regimeform unter dem Streß der europäischen Integration, in: *Streeck* (ed.), Internationale Wirtschaft, nationale Demokratie. Herausforderungen für die Demokratietheorie, 1998, 99-136.

22 *Mattera* (ed.), Peneople – Projet de Constitution de L'Union européenne, 2003.

if they act in a "veil of ignorance", i.e. have no information about how they are affected, or if they are exclusively guided by general norms. But in reality, these conditions rarely apply among individual actors, not to speak of relations between governments or Member States. Therefore, it is not likely that Member States will agree ex-ante on a majority rule, in particular if those who reject an amendment are finally confronted by the alternative to leave the Union.

However, there is another way to come to majority decisions without depriving the Member States of their right to decide in the Treaties. In contrast to the Peneople proposal, which requires all Member States to conditionally surrender their veto under ignorance about the result of the ratification process, it is possible to give those Member States in which ratification failed the opportunity to declare their position under the condition that they know the result of other states. This would lead to the following procedure: If four fifths of the Member States (which should represent a qualified majority of the EU population) have ratified a Treaty amendment, those Member States that have voted negatively should organise a second decision according to their national constitutional provisions. In consideration of the majority achieved in the EU, they should decide on whether they will accept the amendment or not. In this second decision, it is probable that the weak solidarity among European citizens can turn a negative into a positive decision. If the parliament or citizens in a referendum vote negatively in this second process, the European Council should decide on the consequences in consideration of the substance of the amendment and the outcome of the ratification process. It can come to the conclusion that the amendment process should be finished without a change, it can negotiate with the Member State concerned on a solution of the conflict by allowing it to opt-out from a particular amendments, or it can require the state to consider secession.

This way of dealing with ratification problems in constituent states of a federation is not a pure theoretical idea, but has been applied in at least one significant case, although in different proceeding.[23] The American constitution should be based on a consensus of all the then existing thirteen states. For practical reasons, the founding fathers decided to set the constitution in force after nine states had ratified, but only for these states (Article VII U.S. constitution). The remaining states then had to decide whether they join the new federal state with its constitution or not.[24]

Thus, there is a way out of the quandary inherent in the new Article 48 TEU* concerning the future role of the Convention. A solution is possible without changing or bending the Treaty law and without playing political games with parliaments or citizens of Member States. What is necessary is an implicit, but legal change of

23 Similar procedures are regularly applied, either implicitly or explicitly, in committees requiring unanimity.

24 *Ostrom,* The Political Theory of a Compound Republic, 1987, 84-85.

the ratification rules so that a majority decision on a particular amendment is accepted by all Member State. In order to have an effect on the selection of amendment procedure by the European Council and the Parliament, an inter-institutional resolution should give notice of such an implicit change.

Appendix 1: Old and New Amendment Procedures

	Old procedure	*New procedure*
Initiative (agenda-setting)	government of any Member State or the Commission	government of any Member State, the Commission or the European Parliament European Council, after consulting the European Parliament decides whether the proposals shall be examined
Negotiation (elaboration of proposals)	Conference of representatives of the governments of the Member States, if the Council, after consulting the EP, decides to call it	Ordinary procedure: a) Convention (representatives of the national parliaments, the Heads of State or Government of the Member States, the European Parliament and the Commission). b) European Council, if justified by the extent of the proposed amendments (majority decision by the European Council with veto right of the European Parliament) Decision: Conference of representatives of the governments of the Member States Simplified procedures: (amendment of Part III of the Treaty on the Functioning of the EU relating to the internal policies and action of the Union; majority instead of unanimity rule) European Council after consulting the European Parliament and the Commission
Ratification	Member States according to their constitutional requirements	Member States accord to their constitutional requirements (application of majority rule: no ratification, but veto right of national parliaments)
Renegotiation		Ordinary procedure: European Council, if, two years after the signature of an amendment, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification

Appendix 2: Ratification Procedures in Member States[25]

Member State	*Procedure to ratify the TEU**	*Prev. Referenda*
Austria	Parliamentary: 2/3 majority in both chambers	
Belgium	Parliamentary: Simple majority in both federal chambers and in 6 regional and community assemblies	
Bulgaria	Parliamentary: Simple majority	
Cyprus	Parliamentary: Absolute majority. President and Council of Ministers can veto parliament's decision.	
Czech Rep.	Parliamentary: Simple majority, if no transfers of powers, or 3/5 majority in both chambers otherwise	
Denmark	Parliamentary: Simple majority with at least 50% of the members present	X
Estonia	Parliamentary: Simple majority in the parliament	
Finland	Parliamentary: 2/3 majority in parliament (transfer of powers)	
France	Parliamentary: 1) Constitutional amendment voted by simple majority in each chamber and then a 3/5 majority in Congress (National Assembly and Senate together); 2) Ordinary ratification bill voted by simple majority in each chamber.	X
Germany	Parliamentary: 2/3 majority in both federal chambers	
Greece	Parliamentary: Simple majority (no transfer of powers)	
Hungary	Parliamentary: 2/3 majority in the presence of at least 50% of the members.	
Ireland	Parliamentary: Simple majority in both chambers; Referendum 50% of votes in referendum	required
Italy	Parliamentary: Simple majority in both chambers	
Latvia	Parliamentary: Simple majority, two readings	
Lithuania	Parliamentary: Simple majority	
Luxembourg	Parliamentary: Simple majority	X
Malta	Parliamentary: Simple majority	
Netherlands	Parliamentary: Simple majority in both chambers	X
Poland	Parliamentary: 2/3 majority in the presence of at least 50% of the members of both chambers if transfer of powers, otherwise simple majority	
Portugal	Parliamentary: Simple majority	
Romania	Parliamentary: 2/3 majority of joint sitting of the Chamber of deputies and the Senate	

25 COSAC; http://www.cosac.eu/en/info/ratification/ratification, http://www.cosac.eu/en/info/Treaty.

Slovakia	Parliamentary: 3/5 of members of parliament	
Slovenia	Parliamentary: 2/3 majority	
Spain	Parliamentary: Simple majority in both chambers	
Sweden	Parliamentary: Simple majority	
UK	Parliamentary: Simple majority in both houses. If rejected by the House of Lords, additional reading in the House of Commons	X