

---

# EU TREATIES - WHY THEY NEED TARGETED CHANGES

AN APPROACH BASED ON EUROPEAN

➤ PUBLIC GOODS

➤ CITIZENSHIP

➤ DEMOCRACY

Policy Study published in October 2023 by

**FEPS**  
FOUNDATION FOR EUROPEAN  
PROGRESSIVE STUDIES



**THE FOUNDATION FOR EUROPEAN  
PROGRESSIVE STUDIES (FEPS)**

European Political Foundation - N° 4 BE 896.230.213  
Avenue des Arts 46 1000 Brussels (Belgium)  
[www.feps-europe.eu](http://www.feps-europe.eu)  
@FEPS\_Europe



This Policy Study was produced with the financial support of the European Parliament. It does not represent the view of the European Parliament.

Copyright © 2023 by the Foundation for European Progressive Studies.  
Copy editing: Alex James  
Typesetting: Matt Swann

legal deposit registration number: D/2023/15396./17

**ISBN: 978-2-931233-29-0 9782931233290**

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	2
<b>INTRODUCTION</b> .....	15
<b>PART 1 – MAKING THE CASE FOR EUROPEAN PUBLIC GOODS</b> .....	22
Chapter 1 – A new approach for foreign affairs and European sovereignty .....	23
Chapter 2 – Climate change, environmental policies and energy – an existential challenge.....	30
Chapter 3 – How to leverage digital transformation to build up new European public goods? .....	36
Chapter 4 – Education, a public good by excellence, which should become more European.....	40
Chapter 5 – Developing social rights of the European citizens .....	45
Chapter 6 – European public goods for gender equality.....	51
Chapter 7 – European public goods for health: learning from the pandemics.....	53
<b>PART 2 – DEVELOPING THE MEANS TO DELIVER EUROPEAN PUBLIC GOODS</b> .....	60
Chapter 8 – European public goods and European citizenship .....	61
Chapter 9 – The economic governance of European public goods.....	66
Chapter 10 – European public goods and democracy .....	74
<b>PART 3 – GENERAL IMPLICATIONS FOR THE EU TREATIES</b> .....	80
Chapter 11 – Updating the EU competences to deliver new European public goods .....	81
Chapter 12 – How can we go beyond the current EU treaties?.....	103
Chapter 13 – Implications for the EU treaties.....	109
<b>PROVISIONAL EPILOGUE</b> .....	118
<b>ANNEX THEORETICAL BACKGROUND: EUROPEAN PUBLIC GOODS AND EUROPEAN CITIZENSHIP</b> .....	120
Chapter 14 – The governance of European public goods.....	121
Chapter 15 – The evolution of European citizenship.....	132
<b>ABOUT THE AUTHORS &amp; ABOUT FEPS</b> .....	140

---

# **EXECUTIVE SUMMARY**

---

# EXECUTIVE SUMMARY

**The EU project is confronted with a radically new context:** war in our continent and neighborhoods, fragmented global governance and geopolitical rivalry, the climate emergency, a cost of living crisis, the pandemic experience, digital transformation, misinformation disturbing democracies. **The need for a stronger European capacity to act is evident on all these fronts and the current EU Treaties show their limits. The time has come to reassess them and identify some targeted changes.** Recent developments are building up momentum for this, notably war, the enlargement as geopolitical imperative, the need to prepare it with EU internal reform as well as the aspirations expressed by the Conference on the Future of Europe.

It is high time for us Europeans to re-invent our common political creation – the European Union – for new times ahead. We need stronger tools to assert our democratic choices, our sovereignty and our international cooperation.

This Report aims at contributing for the current debate on EU internal reform putting a particular focus on the public goods which can only be delivered at European level.

This Report was prepared with a unique blend of high-level expertise from constitutional law, to political science, political economy and other social sciences, diversified national belongings and political experience from all political institutions. After intensive discussion among us and follow-up of the CoFoE debates, this expert group is coming up with a contribution for new developments after this conference.

This Report on “EU treaties – why they need targeted changes” is organised in three major parts:

Part 1: focusing on the **key challenges** ahead and making the case for **new European public goods** and the way to deliver in security, external action, climate change, digital transformation, education, social cohesion, gender equality and health;

Part 2: developing the **means to deliver** these European public goods: citizenship, democracy but also economic governance;

Part 3: **how far are treaty changes needed?** Let us be precise and identify what can be done with the current EU treaties and what cannot be done. Detailed proposals are made all over the Report and a summary is presented in the final chapter. The possible methods to change the EU treaties are then identified.

A theoretical background is also provided. The focus on public goods is shedding a new powerful light on the way to organise the governance of the European Union. Different types of public goods require different instruments to be regulated, provided and financed. This new approach proves essential to assess and update the EU Treaty competences in several policies in order to deal with the challenges ahead. Developing new European public goods to bring tangible benefits to European citizens in accountable terms should be at the heart of European democracy. But European citizenship is still uncomplete construction, and this Report makes a precise identification about what is still missing.

A vision and relevant proposals about the EU's future emerge from this bold but precise assessment. We hope this Report will contribute to a democratic and ambitious debate on the reform of the EU, building on the outcome of the CoFoE and leading to solutions that match the scale of the challenges ahead, and citizens' expectations. We need the courage to take historical decisions.

**For a quicker first reading, we are presenting below some of the most important proposals of this report.**

**A. This report is proposing five major reforms of the European architecture for the next phase of the European project.**

**A1. The first reform of the European architecture concerns the need to strengthen the EU's capacity to act and sovereignty in areas where the core interests of the EU are at stake and working together delivers added value. Advancing European sovereignty means achieving the ability to shape Europe's future and deliver critical public goods – peace, security, welfare, rights – in response to citizens' needs and expectations.** EU member states can best implement their sovereignty through cooperation at the EU level. By working through the EU, members states and citizens can not only define shared goals, but also mobilise the means to achieve them, on a relevant scale.

Advancing strategic autonomy is a broad pre-requisite for European sovereignty. Far from implying that Europe should act alone, disconnected from its allies and partners, strategic autonomy entails that the goals and choices of the European Union are not defined by others, but jointly by EU Member States and citizens, and that the EU should have a stronger capacity to cope with challenges and threats, reducing one-sided dependencies while cooperating as much as possible with allies and partners. There is a clear need to foster Europe's capacity to act and sovereignty across the board, from foreign and security policies to economic security, the ecological transition, technological innovation, financial issues, energy policy, cyber issues and food security, among other areas. This is also one of the main reasons why the division of competences between the EU and member states needs to be revised, empowering the EU to act when it is best placed to deliver for its citizens.

**Foreign, security and defence policies**, which will require much closer cooperation among EU member states. **The veto power of individual countries in foreign affairs should be removed and super-qualified majority** should become the decision-making rule in this domain. The objectives of EU external action should be updated to fit a new and highly competitive international context. The implementation of the principles of solidarity and loyal cooperation by member states in CFSP should be more closely monitored. In the defence domain, much closer coordination of military spending should be achieved, and much stronger integrated operational capabilities established, alongside greater incentives for joint investment and joint action.

**A2. The second reform of the European architecture concerns the need to strengthen the EU's capacity to act regarding:**

- **the ecological transition**, which will require a general EU coordination of major changes in a large range of sectors (from agriculture and industry to transport, housing, and energy), all of which count on Trans-European Networks (TENs) and production chains. Furthermore, as the current war in Ukraine demonstrates, moving towards a **European Energy Union** is also a matter of urgency to ensure stronger security and autonomy;
- **the digital transition**, which will require not only swift regulation of the European markets according to European values, but also determined action to develop European capacities in

many new areas (from broadband and skills to semi-conductors, computing, cloud services, search engines and artificial intelligence). It is important to underline that the **current Lisbon Treaty does not reflect the digital age** and that there is not a single reference even to the word *digital*. The digital dimension must therefore urgently be mainstreamed and enshrined in a new chapter in the EU treaties;

- **the social dimension of the European integration, which has moved to another stage with the European Pillar of Social Rights (EPSR)**. This progress should be better reflected in the main body of EU treaties, including the introduction of a Social Protocol. In the previous stage, this social dimension was based on labour regulations of the common market plus a softer coordination of employment policies and an even softer coordination on education, social protection, and social exclusion; the main reference groups were workers and European citizens moving in the single market. **In this new stage, all European citizens and all these policies are included in the European Social Pillar.**

Stronger EU competences are needed in all these policies to ensure a fundamental internal social, economic, and territorial cohesion in the overall process of the twin ecological and digital transitions. The principles of a minimum wage, minimum income, access to lifelong learning, the eradication of child and youth poverty, access to care services to enable gender equality and the general connection between all kinds of job and social protection in terms of benefits and contributions **have become critical elements of a sustainable European social and economic model.**

**A3. The third reform of the European architecture concerns the budgetary means to underpin the EU's capacity to act and to co-finance European public goods.** The EU budget should be aligned with the EU electoral cycle and its capacity for long term investment should be strengthened by introducing the **possibility to issue joint debt, provided that this is fully backed by the EU's own resources** – as is the case for the existing Recovery and Resilience Facility (RRF). These resources should not increase the citizens' tax burden but rather include new sources of taxation, notably on pollution and digital or financial excess profits.

At the same time, most of the EU budgetary capacity remains at national level. For one, national budgets need to respect a common discipline and ensure the sustainability of their public debts. For another, they should also include the necessary fiscal space to **co-finance the European public goods that EU bodies and member states choose to prioritise in accordance with citizens' aspirations**. An obvious example is the large-scale and long-term investment required by the ecological and green transitions while maintaining social cohesion.

**A well-crafted combination of the EU's exclusive and shared competences is needed to finance** this long-term process of structural change and real convergence of the EU economies. The same is required to ensure European strategic security and autonomy with joint procurement operations for health, energy, defence, food, rare materials and high-tech devices.

**A European insurance fund for rare diseases and a European re-insurance function for unemployment risks** that stem from the European single market and euro area are also missing pieces from a consistent architecture.

**A4. The fourth reform of the European architecture concerns democracy** – first, by equipping the EU with stronger means to enforce democratic principles and the rule of law across all its territory. The multilevel system of democracy should also be improved with the possibility for regional and national levels to make constructive proposals for consideration at European level.

A deeper European public space also requires developing:

- a stronger infrastructure to ensure access **to quality and plural multimedia information;**
- a European electoral system that enables citizens to assert clear choices on European public goods, on policies and on the politicians to conduct these policies in accountable terms.

In addition, the role of active citizenship regarding the identification, design and monitoring of European public goods should be explicitly recognised by:

- **promoting new forms of participatory democracy at all levels;**
- **strengthening the role of the European Parliament as the EU institution directly elected by European citizens. The ordinary legislative procedure should therefore be extended to several missing domains dealing with European public goods;**
- developing the very content of **European citizenship rights and duties**. New rights should be created – for instance on EU diplomatic protection, EU digital protection, and EU multilingual debate. But there should also be new duties, such as EU civic education and fair taxation when transferred to the EU level.

#### **A5. The fifth reform of the EU architecture concerns a new way to combine deepening – as described here – with enlargement.**

The war in Ukraine has created new political realities in Europe. Ukrainians are defending with their lives the values they share with the EU and their aspiration to enter the Union. Georgia and Moldova have joined Ukraine in applying for EU membership. The Western Balkans have been too long in the waiting room. Opening credible perspectives for these countries to proceed EU membership has become a political imperative and a moral obligation for the EU.

Enlargement must also be underpinned by the deepening of the European integration. This is not about choosing between the one or the other. It is about doing both with a new approach:

- first, strengthening the EU capacity to act and deliver public goods as identified above;
- second, developing a new approach to enlargement with access to the EU common security instruments, the EU energy, digital, innovation, research and education networks, the common market, Community programmes, and support for reforms and investment in economic and social convergence – while awaiting full membership of the European political institutions.

**Treaty changes must come with lessons learned from the past.** The treaty changes proposed in this Report are focused on only those **reforms that are essential to prepare enlargement and deliver European public goods at a time of unprecedented challenges**. While closely targeted, they are important enough to justify convening a European Convention with a limited mandate, which should be followed by an intergovernmental (IGC) conference.

The first major conclusion of this reassessment of EU powers and capacity to act is that the rigid categorisation of policies by type of EU competence – as stated by the Lisbon Treaty (with a few exceptions) – is outdated. **Today, we need an EU architecture with more capacity to evolve according to the challenges.**

Some policies require both EU exclusive and shared competences, depending on the public goods at stake. The mode of governance for each European public good should be defined more precisely according to who should regulate, provide, finance and ensure EU external representation.

## B. This report is assessing the potential, limits and method to reform the Lisbon Treaty.

### Who does what according to the three categories of EU competences and the four dimensions of EU modes of governance

	Exclusive competence	Shared competence	Complementary competence
Regulation	European legislation	National legislation, to be framed and progressively replaced partially or totally by European legislation.	National legislation
Provision	European Union	European Union & member states Decentralised agencies	Member states
Financing	European Union	European Union & member states	European Union & member states
International representation	European Union	European Union or European Union & member states	European Union & member states

On this basis, it may be considered that in some policy areas the EU competences should be revised and often upgraded.

#### B1. Policy areas of shared competence that should be granted exclusive competence

The rationale for granting exclusive competence is that the competence in question is conferred on the Union for the defence of the overall interest of the Union, within which the particular interests of the member states must find a way of adjusting to each other, which requires the drawing up of strictly identical rules binding on all member states. The exclusion of national competence is therefore self-evident, since to admit it would allow member states to pursue the separate satisfaction of their own interests at the risk of compromising the effective defence of the overall interest of the Union.

These criteria have guided the selection of the five policy areas currently considered to fall within the exclusive competence of the Union. It should be examined whether there are other areas (or sub-areas), involving pure European public goods or European public goods of common resources, in which exclusive competence should also be attributed to the Union for the same reasons. These could include:

- the common border control policy;
- the adoption of climate legislation to implement the Union's international commitments;
- the adoption of measures to ensure the Union's strategic autonomy, in the context of the Common Agricultural Policy (CAP), the common energy policy, the digital policy and the Union's industrial policy;
- measures to combat cybercrime;

- the establishment of the macroeconomic framework law, defining the overall deficit of the euro zone and allocating deficit rights to the states (for the states of the euro zone);
- establishing the rules necessary for the regulation of the single market;
- the establishment of rules on the rights and duties of Union citizens.

It must be stressed that this recognition of exclusive competence implies, at the same time, that the treaties should, in these areas or sub-areas, give the Union the means to fully and definitively substitute common action, based on uniform principles for the whole of the Union, for unilateral action by the member states.

## **B2. Areas of shared competence where the Union should have exclusive external competence**

Climate change is a striking example of the problems caused by the Union's lack of exclusive external competence. The very broad spectrum of climate negotiations and in particular the 'adaptation' aspect, in which the Union's action is still fragmented, is the pretext found by the states to justify that the Union cannot claim exclusive competence to participate in these negotiations. Another example is the IMF, where states argue that the IMF's competences cover both economic and monetary policies. To remedy this situation, a specific provision should be made for exclusive external competence in these areas. This could also be the case for the proposed Digital Transformation Title.

## **B3. Complementary competences that should become shared competences**

The main feature of complementary competences is the means of action which the Union is explicitly deprived of, namely the use of a binding legal instrument to harmonise the laws and regulations of the member states.

Its significance is important. Indeed, it should be remembered that, in the context of shared competences, the harmonisation of legislation can lead to the pre-emption of competence by the Union and, consequently, to the important divestment of the states. It is precisely this effect that this prohibition is intended to prevent, thereby guaranteeing that the Union's exercise of its competence cannot call into question national competence.

This protection of national prerogatives can, however, lead to a major limitation, both technical and political, of the Union's means of action, as the Covid-19 crisis has shown.

The recognition of a shared competence for the European Union in the field of public health is the only way to enable the Union to respond to a very strong demand from citizens to see it become very involved in this area. The competence that would be provided for the European Health Union clearly indicates that it is not at all a question of the Union taking the place of its member states in all matters relating to public health. However, there are common challenges that cannot be met by individual member states alone and require joint action. The Union must have the means to do so.

A similar demonstration of the obstacle to the effectiveness of EU action represented by the categorisation of education and vocational training in the complementary competences has been made and should lead to a similar conclusion. One shortcoming that has been particularly highlighted is the impossibility of establishing rules ensuring mutual recognition of diplomas not for employment purposes, but for vocational training.

#### **B4. Modulation of the categories of competence according to the needs identified in each area**

In short, it is advisable to continue along a path already outlined by the Treaty of Lisbon and consider that an “area”, which corresponds to several European public goods, should not be treated as a monolithic block but that it is composed of several sub-areas, which can or must be subject to different modes of governance and therefore fall under different categories of competence. Thus, for example:

- the need to foster Europe's sovereignty justifies that those EU competences required to advance in this direction are upgraded, providing the Union with an adequate capacity to act;
- the need for a single representation of the Union in the major climate conferences (and perhaps other major conferences in the field of the environment) justifies a dissociation of the internal competence, which remains shared, and the external competence, which would become exclusive;
- in health protection, the realisation of a Health Union should replace in the areas of shared competence, the “common public health security issues”, without this policy becoming a shared competence in its entirety;
- in education and vocational training, the establishment of a European area of higher education, with mutual recognition of diplomas, justifies the attribution to the Union of a shared competence, without undermining the primary competence of the states for the organisation of the education system and vocational training.

#### **C. This report is proposing a short list of essential treaty changes.**

##### **Common Foreign and Security Policy**

- Introduction of an enhanced qualified majority voting (QMV) (75% of member states, representing 75% of the EU population) and strengthening of the role of the European Parliament (consultation).
- Greater role for the High Representative and the EEAS in the implementation of the CFSP.

##### **Energy security**

- Add to the objectives: advancing the Union's strategic autonomy.
- This aspect would be an exclusive competence of the Union.
- Generalisation of the ordinary legislative procedure.

##### **Single market regulation and competition policy**

- Exclusive competence to establish the rules necessary for the regulation of the single market, including competition rules.

##### **Financial stability**

- New area of competence exclusive or shared.
- Ordinary legislative procedure.

### **Public infrastructure and Trans-European Networks (in transport, telecommunications and energy)**

- Shared competence for Trans-European Networks.
- Extending the scope of the territory of a member state requires the approval of the member state concerned.

### **Common Agricultural Policy (food security dimension)**

- Add to the objectives: ensuring food security and the strategic autonomy of the Union.
- This aspect would be an exclusive competence of the Union.
- Ordinary legislative procedure.

### **Fight against climate change**

- New area of shared competence, without reservation of competence for states.
- Exclusive competence for climate legislation to implement the EU's international commitments.
- Generalisation of the ordinary legislative procedure.

### **Social policy**

- Shared competence with retention of minimum requirements to avoid the risk of a race to the bottom and the reservation on the fundamental principles of social security systems.
- Removal of the reservation of national competence for basic remuneration principles.
- Generalisation of the ordinary legislative procedure.

### **Employment**

- Shared competence.
- Generalisation of the ordinary legislative procedure.

### **Fight against corruption**

- New area of shared competence to expand the means of control.
- Ordinary legislative procedure.

### **Internal market/the four freedoms**

- Exclusive competence to establish the rules necessary to regulate the single market.

### **Public health**

- Shared competence with a reservation of national competence for the definition of their health policy and the organisation and delivery of health services and medical care.
- Ordinary legislative procedure.

### **Fight against international organised crime (cooperation between judicial and police authorities)**

- Shared competence.
- Generalisation of the ordinary legislative procedure.

### **Digital policies and cybersecurity**

- New shared competence.
- Include among the objectives: advancing the Union's strategic autonomy.
- This aspect would be an exclusive competence of the Union.
- Ordinary legislative procedure.

### **Industrial policy**

- Shared competence.
- Ordinary legislative procedure.

### **Education**

- Shared competence.
- With a reservation of national competence regarding the responsibility of the member states for the content of teaching and the organisation of the education system and their cultural and linguistic diversity.
- Ordinary legislative procedure.

### **Research and technological development and space**

- Shared competence.
- Generalisation of the ordinary legislative procedure.

### **Public goods and economic governance**

#### **Fiscal policy and public deficit**

- Create a new exclusive competence to define an overall fiscal stance for the euro area member states.
- Then exclusive competence to define the deficit rights derived from the overall fiscal stance for each euro area state.

#### **Stability and Growth Pact – preventive arm**

- Excessive deficits remain limited by the SGP.

#### **Stability and Growth Pact – corrective arm**

- Adoption by the Council on the recommendation of the Commission.
- Excessive deficits remain limited by the SGP.

Deficit and debt limits are maintained but can be modified by a modified golden rule that takes into account investments in "priority European public goods".

#### **Coordination of the economic policies of the Union and the member states**

- Shared competence.
- Adoption of the broad economic policy guidelines of the Union and the member states under the ordinary legislative procedure.

## European Semester

- Strengthened coordination perimeter to ensure complementarity between national and European public goods.

## Priority European public goods

- New EU competence to define them.
- Will have an impact on both national and EU budgets.
- List established under the European legislative procedure.

## European budgetary capacity

- Maintain the “customs duties” resource.
- Recognise the Union’s fiscal competence so that it can levy taxes itself and provide a framework for this. Include the current VAT resource transformed into a European “*Chiffre D'affaires*” tax.
- Non-fiscal resources linked to EU policies (plastic packaging contribution, carbon adjustment mechanism at borders, carbon trading system and so on).
- Maintain the GNI contribution as a subsidiary measure by fixing the % of GNP allocated to the EU budget.
- Recognise and provide a framework for the Union's borrowing capacity.
- Set in an own resources decision, to be adopted under the ordinary legislative procedure.

## Tax harmonisation and coordination

### Indirect taxes

- Shared competence.
- Ordinary legislative procedure.

### Direct taxes

- Provide also for a coordination competence in addition to the harmonisation competence.
- Proposal of the commission In a first stage, transition to the ordinary legislative procedure for measures that do not directly affect member states' tax rates, bases or duties, such as measures to strengthen administrative cooperation and mutual assistance between member states in the fight against tax fraud and tax evasion, as well as for coordination measures.
- Specific *Passerelle* clause? Or simply propose an ordinary legislative procedure?

### Environmental taxation

- Possible contributions to EU own resources.
- Ordinary legislative procedure.

### Energy taxation

- Possible contributions to EU own resources.
- Ordinary legislative procedure.

**D. This report is also identifying several concrete new European public goods which should be delivered to meet citizens' aspirations**

**Table New possible European public goods by policy area**

Type of European public goods → Policies ↓	Community public goods	Common resources goods	Pure public goods
<b>Health</b>	European basic health standards European Health Insurance Card supported by national systems	Public procurement of pandemics vaccination EU health agencies	EU rare diseases and orphan medicines insurance
<b>Education</b>	Education TENs and Resource centres Learning accounts European equivalence of diplomas	European Open University	European brevet for digital skills or for European citizenship
<b>Employment</b>	EU network of job search services	Cohesion funds supporting job creation	Investment Important projects of common interest
<b>Labour</b>	Directive on minimum wage	Cohesion funds supporting care services	EU Labour Authority enforcing directive for platform work
<b>Social Protection</b>	Standards on minimum income and on minimum social protection against key risks	EU unemployment re-insurance Cohesion fund supporting social investment	EU Civil Protection Mechanism
<b>Environment</b>	EU laws on green transition European basic standards in housing	European budgetary capacity for green investments in energy, transport, industry, agriculture	TENs for low carbon energy
<b>Digital</b>	EU laws on digital platforms and media activity	Cohesion funds for broadband access	EU Cloud EU Data space EU Artificial Intelligence projects to modernise public services EU multilingual media agency

Democratic Participation	EU law on respect for rule of law	Rule of Law conditionality on the access to European resources	EU Court enforcing rule of law EU multilingual platform for democratic participation
Security	Coordination of defence and security capabilities	EU budgetary capacity to defence industries	EU Defence HQ Europol EU infrastructure for cybersecurity European border

### E. The general idea of this report:

In a nutshell, while preserving the distinctive EU multilevel governance system, with competences exercised at the different levels, **the EU's institutional architecture should be reformed to promote:**

- **European sovereignty and a greater capacity to act at the European level;**
- **stronger means to deliver European public goods and maintain internal cohesion;**
- **and more democratic ownership of the EU project based on a stronger European citizenship.**



---

# INTRODUCTION

---

In the space of two years, the Covid-19 pandemic and the war in Ukraine have disrupted the world, fast-forwarding existing trends and generating new threats and challenges. The European Union (EU) cannot face a new world with old tools. Unprecedented change calls for adequate reforms to protect and advance the security, prosperity and welfare of Europeans. The EU needs to scale up its level of ambition to match that expressed by its citizens through the Conference on the Future of Europe. Some of their aspirations can be pursued within the existing institutional framework. Nevertheless, some others require targeted treaty changes in order to remove the constraints that hinder the EU's capacity to act. A sovereign EU needs the competences and resources to deliver those public goods that the EU is uniquely placed to provide and that the citizens expect, to the benefit of all.

# INTRODUCTION

Many of us feel that we are entering a **new phase of history**. On the one hand, existential challenges of planetary scale are growing ever more pressing, directly affecting the security and well-being of people worldwide. Climate change and the Covid pandemic, the vulnerabilities produced by the digital revolution and the increasing contrast between available resources and social inequalities affect human security and development as well as democratic politics and geopolitical stability. On the other hand, our governance capacity is being tested at all levels. Competition among major powers weakens multilateral governance while Russia's recent attack on Ukraine undermines basic tenets of international law and threatens more fragmentation on the international stage.

The invasion of Ukraine marks a turning point. Can the European Union accept that a neighbouring country fighting for freedom, democracy and European values is invaded and destroyed? Can the EU accept to be exposed to and divided by threats from a foreign power, which range from energy to cybersecurity and even the potential use of nuclear weapons?

The time has come for the EU to assert itself as real political union – a union that provides security, ensures reliable and sustainable energy supplies, fosters economic growth and technological innovation, upholds the rule of law and fundamental rights and ensures the health and well-being of its citizens. In other words, a sovereign EU that can define its future and make its own choices, while working with its partners. Sovereignty requires legitimacy and strength. Legitimacy means that people trust that the EU can deliver on their needs and expectations. Delivering requires strength, meaning political cohesion, capacity to act and the resources to achieve shared goals.

The recent exercise of the Conference on the Future of Europe (CoFoE) has given a voice to the aspirations of European citizens. These aspirations should be translated into a **new phase of the European project**. While some of the **CoFoE recommendations can be implemented under the current treaties and should be seriously considered, others cannot**. The enlargement imperative is also pushing for a debate on EU institutional reform. We therefore need to carry out a serious and precise reassessment of the EU treaties to identify the need for targeted changes.

To define a long-term vision for the EU project, we need to chart a new path between the tenets of Monnet's classical functionalist method and maximalist blueprints for a federal Europe.

We need an approach based on a simple but powerful idea of democratic governance, *by the people and for the people*. This should be focused on the *Res Publica*, the **common interest to be translated into public goods**. Public goods can be created at all levels of governance, but some of them can only be delivered at the European level. This approach focuses on the tangible added value that the EU can bring to its citizens, building on their own aspirations. It supports a people's (not populist!) European project, beyond one driven by elites.

**The democratic governance of European public goods should be adapted to produce different types of public goods – those that only the EU can provide, and those that depend on the cooperation between the EU and member states. The EU treaties therefore need to be reviewed to establish whether the EU competences are adequate with a view to delivering the new kinds of European public goods that European citizens expect in the current challenging circumstances.**

In the case of pure European public goods, such as the EU currency or EU trade agreements, the EU competence should be exclusive. If the European goods are created by the cooperation of the member states to benefit from the same European community, such as in research, education or the four freedoms of the single market, the EU competence should be shared with member states. But, if the European public goods are based on common financial resources, such as the EU budget or the euro zone, shared EU competences should fall under a strong democratic EU authority.

Empowering the European Union to deliver public goods to its citizens requires a paradigm shift beyond a technocratic approach to regulating the single market or managing a currency union, towards a fully-fledged political union – a European sovereign entity with the necessary instruments to assert its democratic choices in foreign, security, economic, financial, environmental, digital, social and cultural matters. Treaty reforms should be directed to transform the EU institutional architecture into a more effective and democratically legitimate one, fit to fulfil this ambition.

**1. The first reform of the European architecture concerns the need to strengthen the EU's capacity to act regarding the EU's strategic autonomy** and external representation dealing with vital interests of the Union as whole. They are now obvious in climate, finance, cyber issues, food, energy and industrial security. It is for this reason that new exclusive EU competences should be created.

The foreign, security and defence policies will require much closer cooperation among EU member states. **The veto power of individual countries for critical decisions in foreign affairs should be removed and super-qualified majority** should become the decision-making rule in this domain. The objectives of EU external action should be updated to fit a new and highly competitive international context. The implementation of the principles of solidarity and loyal cooperation by member states in CFSP should be more closely monitored. In the defence domain, much closer coordination of military spending should be achieved, and much stronger integrated operational capabilities established, alongside greater incentives for joint investment and joint action.

**2. The second reform of the European architecture concerns the need to strengthen the EU's capacity to act regarding:**

- **the ecological transition**, which will require a general EU coordination of major changes in a large range of sectors (from agriculture and industry to transport, housing and energy), all of which count on Trans-European Networks and production chains. Furthermore, as the current war in Ukraine demonstrates, moving towards a **European Energy Union** is also a matter of urgency;
- **the digital transition**, which will require not only swift regulation of the European markets according to European values, but also determined action to develop European capacities in many new areas (from broadband and skills to semi-conductors, computing, cloud services, search engines and artificial intelligence). It is important to underline that the **current Lisbon Treaty does not reflect the digital age** and that there is not a single reference even to the word *digital*. The digital dimension must therefore urgently be mainstreamed and enshrined in a new chapter in the EU treaties;
- **the social dimension of the European integration, which has moved to another stage with the European Pillar of Social Rights**. Progress should be better reflected in the main body of EU treaties, including the introduction of a Social Protocol. In the previous stage, this social dimension was based on labour regulations of the common market plus a softer coordination of employment policies and an even softer coordination on education, social protection and social exclusion; the main reference groups were workers and European citizens moving in the single market. **In this new stage, all European citizens and all these policies are included in the European Social Pillar.**

Stronger EU competences are needed in all these policies to ensure a fundamental internal social, economic and territorial cohesion in the overall process of the twin ecological and digital transitions. The principles of a minimum wage, minimum income, access to lifelong learning, the eradication of child and youth poverty, access to care services to enable gender equality and the general connection between all kinds of job and social protection in terms of benefits and contributions **have become critical elements of a sustainable European social and economic model.**

**3. The third reform of the European architecture concerns the budgetary means to underpin the EU's capacity to act and to co-finance European public goods.** The EU budget should be aligned with the EU electoral cycle and its capacity for long term investment should be strengthened by introducing the **possibility to issue joint debt, provided that this is fully backed by the EU's own resources** – as is the case for the existing Recovery and Resilience Facility. These resources should not increase the citizens' tax burden but rather include new sources of taxation, notably on pollution and digital or financial excess profits.

At the same time, most of the EU budgetary capacity remains at national level. For one, national budgets need to respect a common discipline and ensure the sustainability of their public debts. For another, they should also include the necessary fiscal space to **co-finance the European public goods that EU bodies and member states choose to prioritise in accordance with citizens' aspirations.** An obvious example is the large-scale and long-term investment required by the ecological and green transitions while maintaining social cohesion.

**A well-crafted combination of the EU's exclusive and shared competences is needed to finance** this long-term process of structural change and real convergence of the EU economies. The same is required to ensure European strategic security and autonomy with joint procurement operations for health, energy, food, rare materials and high-tech devices.

**A European insurance fund for rare diseases and a European re-insurance function for unemployment risks** that stem from the European single market and euro area are also missing pieces from a consistent architecture.

**4. The fourth reform of the European architecture concerns democracy** – first, by equipping the EU with stronger means to enforce democratic principles and the rule of law across all its territory. The multilevel system of democracy should also be improved with the possibility for regional and national levels to make constructive proposals for consideration at European level.

A deeper European public space also requires developing:

- a stronger infrastructure to ensure access **to quality and plural multimedia information;**
- a European electoral system that enables citizens to assert clear choices on European public goods, on policies, and on the politicians to conduct these policies in accountable terms.

In addition, the role of active citizenship regarding the identification, design and monitoring of European public goods should be explicitly recognised by:

- **promoting new forms of participatory democracy at all levels;**
- **strengthening the role of the European Parliament as the EU institution directly elected by European citizens. The ordinary legislative procedure should therefore be extended to several missing domains dealing with European public goods;**

- developing the very content of **European citizenship rights and duties**. New rights should be created – for instance on EU diplomatic protection, EU digital protection, and EU multilingual debate. But there should also be new duties, such as EU civic education and fair taxation when transferred to the EU level.

## 5. The fifth reform of the European architecture concerns a new way to combine deepening – as described here – with enlargement.

The war in Ukraine has created new political realities in Europe. Ukrainians are defending with their lives the values they share with the EU and their aspiration to enter the Union. Georgia and Moldova have joined Ukraine in applying for EU membership. The Western Balkans have been too long in the waiting room. Opening credible perspectives for these countries to proceed EU membership has become a political imperative and a moral obligation for the EU.

Enlargement must also be underpinned by the deepening of the European integration. This is not about choosing between the one or the other. It is about doing both with a new approach:

- first, strengthening the EU capacity to act and deliver public goods as identified above;
- second, developing a new approach to enlargement with access to the EU common security instruments, the EU energy, digital, innovation, research and education networks, the common market, Community programmes, and support for reforms and investment in economic and social convergence – while awaiting full membership of the European political institutions.

\*\*\*

**Treaty changes must come with lessons learned from the past.** The treaty changes proposed in this Report are focused on only those **reforms that are essential to to prepare EU enlargement and deliver European public goods at a time of unprecedented challenges**. While closely targeted, they are important enough to justify convening a European Convention with a limited mandate, which should be followed by an intergovernmental conference.

**This Report is proposing a short list of essential treaty changes.** Nevertheless, if a more ambitious operation to revise the EU treaties is considered one day, it would be wise to work towards two different documents:

- a short and fundamental document, containing the basics of the European Union architecture: the EU objectives, principles, and general frameworks regarding EU citizenship, membership, institutions, and treaty revision. This would be the document with more longevity and the only one to be submitted to a referendum, should national constitutions require;
- a longer and more detailed document defining the modes of governance for all policies, as well as the organisation and working methods of all EU institutions. This document could be updated more regularly if needed.

The first major conclusion of this reassessment of EU powers and capacity to act is that the rigid categorisation of policies by type of EU competence – as stated by the Lisbon Treaty (with a few exceptions) – is outdated. **Today, we need an EU architecture with more capacity to evolve according to the challenges.**

Some policies require both EU exclusive and shared competences, depending on the public goods at stake. The mode of governance for each European public good should be defined more precisely according to who should regulate, provide, finance and ensure EU external representation.

Furthermore, the comparison of the EU architecture with different types of federal system, such as that of America or of Germany, shows that **the EU architecture is and will remain *Sui Generis***. It is closer to the German system when it involves multilevel governance, but closer to the American system when it involves the responsibilities and differences of member states. Nevertheless, this *Sui Generis* EU architecture **needs to undergo certain transformations for the European project to be able to meet its historical responsibilities. And these transformations will require treaty changes.**

In a nutshell, while preserving the distinctive EU multilevel governance system, with competences exercised at the different levels, **the EU's institutional architecture should be reformed to promote:**

- **European sovereignty and a greater capacity to act at the European level;**
- **stronger means to deliver European public goods and maintain internal cohesion;**
- **and more democratic ownership of the EU project based on a stronger European citizenship.**

This Report on “EU treaties – why they need targeted changes” is organised in three major parts:

**Part 1:** focusing on the key challenges ahead and making the case for new European public goods and the way to deliver security, more strategic autonomy, climate change, digital transformation, education, social cohesion, gender equality and health;

**Part 2:** developing the means to deliver these European public goods: European citizenship, European democracy but also European economic governance;

**Part 3:** how far are treaty changes needed? Let us be precise and identify what can be done with the current EU treaties and what cannot be done. Detailed proposals are made all over the Report and a summary is presented in the final chapter. The possible methods to change the EU treaties are then identified. The implications for the next phase of enlargement are also discussed.

**A theoretical background is also provided.** The focus on public goods is shedding a new powerful light on the way to organise the governance of the European Union. Different types of public goods require different instruments to be regulated, provided and financed. This new approach proves essential to assess and update the EU Treaty competences in several policies in order to deal with the challenges ahead. Developing new European public goods to bring tangible benefits to European citizens in accountable terms should be at the heart of European democracy. But European citizenship is still uncomplete construction, and this Report makes a precise identification about what is still missing

A vision and relevant proposals about the EU's future emerge from this bold but precise assessment. We hope this Report will make a qualified contribution for the follow-up of the Conference on the Future of Europe and the current debate on EU institutional reform at a time when we will need the wisdom of historical decisions.

**For a quicker first reading, we have highlighted in bold some of the most important proposals**

## A QUOTE FOR FINAL INSPIRATION

Speech by Laura Maria Cinquini, a young citizen participating in the Conference on the Future of Europe, held in the European Parliament Plenary Room, Strasbourg, on 29 April 2022.



*Good afternoon, I am Laura and I am clearly a relatively young Italian. Now joking apart, it should have been a young-ish Italian man here. He was my father and it was him who received the phone call about the conference. It wasn't me but when he saw how enthusiastic I was about the conference, and he saw how my eyes were shining with the dream of the conference, he gave up his place for me. But I am not going to talk about my dreams and hopes here today. I am going to talk about the Europe that European citizens dream of. Over recent months, citizens have been dreaming and making proposals to move Europe forward. Now, this Europe is a more cohesive Europe and a stronger Europe on the international level. It is also more efficient in its decision-making process but also more democratic and more inclusive. The Europe that we dream of has solidarity mechanisms and a network of cooperation between member states in all fields. This Europe is more independent digitally, and in terms of energy – both economically and in terms of production. It is also a safer Europe because it monitors the quality of its product. It invests in health systems and in cybersecurity and has a common army. This Europe is closer to its citizens. It involves them in an active manner, in its daily political agenda. In this Europe, citizens share a genuine common identity and have incentives to get to know each other via common experiences and exchange programmes that are both online and off. There is investment in intra-European cultural events, just as there is investment in young people, innovation, jobs, etc. But first and foremost, this Europe is based on common values and a common agenda – which is also an ethical agenda in terms of the treatment of animals, the environment, and all human beings. It's an open green Europe that is focused on social justice. This future Europe seems like a wonderful place to live but the difficult question is whether this Europe that we dream of can become a reality. Even a thousand words could not provide an exhaustive and sufficient response. It's only action that can provide the answer and we expect a response. Four hundred and fifty million Europeans expect a response, and we are counting on you to make this imagined Europe a reality! Thank you!*



---

**PART 1  
MAKING THE CASE  
FOR EUROPEAN  
PUBLIC GOODS**

---

# Chapter 1

## A new approach for foreign affairs and European sovereignty

### 1. The EU in the world: new context, new threats, new demands

A brutal war is being fought on the EU's doorstep, the implications of which reach far beyond Ukraine and require a profound re-think of the EU's role, goals and tools as a strategic actor. Not only does Russia seek to subjugate Ukraine; it also poses a security threat to other neighbouring countries and to the EU, and has defined itself by opposition to the values that the EU stands for. War crimes are being committed just across the borders of the EU.

Highly disruptive events like the current war in Ukraine and the Covid-19 pandemic both reflect and accelerate underlying trends, such as the return of great power rivalry, the rise of nationalism, the manipulation of interdependence for strategic purposes, and the progressive fragmentation of the global economic and multilateral system. The combination of these and other trends point to an increasingly unstable and competitive world. Competition takes place simultaneously at multiple levels including the economy, technology, information and narratives, norms as well as the security and military field, including through war.

This context carries six major implications. None of these is entirely new, but all of them have simultaneously acquired much greater urgency given the deterioration of the EU's strategic environment:

- first, security needs to be defined in a very broad sense, ranging from traditional military conflict to cyber war, economic coercion, the provision of medical infrastructure and goods, the protection against the consequences of climate change and other dimensions of human security;
- second, a clear-cut distinction between classic foreign and defence policies and other aspects of external relations is no longer viable in an age of geoeconomic conflict and the weaponisation of economic, financial or data flows;
- third, the distinction between external and internal security, and between the external and domestic policies aiming to protect the security of Europeans, no longer holds given the new nature of conflict;
- fourth, relying on one-sided dependencies to provide for the EU's access to critical goods, such as energy or specific materials, is no longer a viable option. Excessive reliance on external provisions of basic goods can turn into a daunting challenge to security or economic growth as partnerships can rapidly shift (consider for instance the need to decouple from energy imports from Russia);
- fifth, while the EU's collective defence clearly relies on close cooperation between the US and European allies via NATO, growing threats in Europe and political uncertainty in the US entail that Europeans cannot indefinitely rely on America for the bulk of these efforts, and for dealing with security issues in the EU's neighbourhood;

- sixth, risks emanating from transnational challenges such as climate change and its consequences, pandemics, new security threats, terrorism, organised crime and other developments require governments and societies to cooperate both at EU level and globally, to provide global public goods.

## 2. A sovereign EU for democratic choices

The cascading crises that have hit the EU in the last 15 years underscore that the future of European integration will largely depend on the EU's ability to deal with external shocks, challenges and trends that test its internal cohesion. Responding to these crises requires taking responsibility at the level that ensures effective action to protect common values and interests, advance shared goals and deliver public goods. For Europeans, this means equipping the EU to protect their security and welfare and empower their collective choices.

**Pursuing European sovereignty ultimately means achieving the ability to shape the EU's future and deliver critical public goods – peace, security, welfare, rights – in response to citizens' needs and expectations. EU member states can best implement their sovereignty through cooperation at the EU level. By working through the EU, member states and citizens can not only define shared goals but also mobilise the means to achieve them, on a relevant scale. Sovereign decision-making capacity at EU level is crucial to democratic leadership. The question is not about transferring sovereignty away from the nation state, but rather regaining sovereignty by acting together.**

Advancing strategic autonomy can be seen as a pre-requisite for European sovereignty, at two levels. First, sovereignty implies that goals and choices are not defined by others, but jointly established by member states and citizens. Second, sovereignty entails that the Union is not entirely dependent on others for the resources it requires to achieve its goals – whether technology, commodities or military capabilities. Strategic autonomy is therefore not about acting alone but dealing with cooperation, competition and conflicts with a clear sense of purpose and stronger power assets. **The challenge for the EU is to maintain and deepen partnerships and alliances, while reducing one-sided dependencies and stepping up its own capacity to act in order to ensure its sovereignty.**

## 3. Policy implications

The zero-sum outlook that too often framed the relationship between the EU and its member states in the past, concerning the distinction of respective competences, is overtaken by events and outdated. Taken individually, all member states in the EU struggle to provide their citizens with basic deliverables such as peace, security and welfare. The EU is therefore not a challenge to national governments – it is, and should be used as, their tool to better protect and defend European interests, better connecting democratic decision-making with the level at which it can be effectively exercised to deliver public goods.

The war in Ukraine has dramatically exposed both the reach and the limits of the EU's power. EU member states have rallied together and deployed a strong set of joint sanctions against Russia as well as a significant amount of (economic, military and humanitarian) support to Ukraine, including by dealing with millions of refugees. However, the war has underscored the EU's inability to anticipate this crisis, its reliance on the US for its own defence and its disproportionate dependence on Russian fossil fuels' imports. Furthermore, as it is unclear when the war will end,

its impact in terms of both security concerns and rising economic costs will continue to test solidarity among member states.

**As the Covid-19 experience showed back in 2020, when Europeans decided to issue joint debt to finance the recovery programme, the war in Ukraine proves that, when member states act together, they deliver results. When they operate separately, as they have done in the defence and energy fields, they are vulnerable and dependent on others.** Transnational challenges and a transformed security environment fundamentally re-shape the way national governments need to think about their capacity to provide public goods to their citizens. They need to think holistically, across the policy spectrum, and to strengthen the EU's resilience, or ability to withstand and respond to external shocks.

**Global power shifts, systemic competition and the aggravation of transnational challenges make one thing very clear: the EU's weight is shrinking, and clout depends on unity.** This applies to many issues at the top of the EU's foreign policy agenda. The current war will transform the European and transatlantic security order. With a view to new arrangements and responsibilities, the EU will only carry real weight if it develops its own capabilities as a foreign policy and defence actor, while deepening strategic cooperation with the US, including through NATO. As they confront common threats and challenges, cooperation between the EU and the US is currently very close. However, the four years of Trump's Presidency have proven that the EU needs to increase its capacity to act in those circumstances when EU and US interests are not aligned. When it comes to the EU partnership with China, systemic competition has reached a scope and level that leaves no doubt that the EU needs to increase measures to defend its democracy and social market economy as long as the tech-based autocracy seeks to adapt the international system to its own norms and does not provide for a level playing field for European and Chinese economic actors.

**It needs stressing that not providing the Union with the powers and competences required to meet the needs of its citizens means effectively undermining its legitimacy.** In a world of multidimensional competition, diffuse instability, and trans-national challenges, citizens expect the EU to be up to the task of both protecting them and advancing its values. However, the EU can do so only if it is fit for purpose. Alternatively, it will lose the trust of the people and, with that, their support.

#### **4. Citizens' expectations and proposals**

Polls have consistently highlighted that European citizens wished that the EU played a stronger role on the global stage. Of course, at a closer look, public opinion in different countries carries different perceptions of individual threats and priorities, and their ranking varies across member states. **Citizens across Europe, however, understand that the EU, given the values it upholds and its critical mass, can and should play a bigger role to meet their concerns and aspirations.** Following an exercise in participatory democracy on an unprecedented scale, the results of the Conference on the Future of Europe have confirmed this finding and sent a strong message about the citizens' aspirations for the EU's role in the world.

In a nutshell, citizens recommended "to grant the EU more competence in foreign affairs" and called for Europeans "to be more unified than ever" in the face of the current war. Citizens also emphasised that the EU should reduce dependencies and strengthen its autonomy in strategic sectors such as agriculture, digital and environmental technologies, energy and medical. Citizens called upon the EU to strengthen multilateralism and use armed forces for self-defence purposes

(reinforcing the operational capacities to implement the mutual assistance clause of Article 42.7 TEU) and for deployment abroad, in compliance with international law.

Concerning decision-making in the area of CFSP, citizens proposed that qualified majority voting replaces unanimity and that the EU speaks with one voice, which also requires strengthening the role of the High Representative. Making "greater use of its collective political and economic weight" was another proposal for the EU, which also entailed that member states should avoid dividing the Union.

## 5. The case for institutional reform

**Institutional reforms cannot fix political problems but can provide solutions that help overcome them. Faced with crises, there is no substitute for a common threat assessment among member states, the convergence of national positions, and a sense of shared responsibility, as parts of one community. However, political will needs adequate procedures, competences, and resources to be converted into effective action at EU level, and deliver public goods.**

This set of considerations is particularly relevant to the distinct domain of the CFSP. For one, effective policy-making through a further pooling of sovereignty and resources can deliver large gains in the form of European public goods such as peace, security and a stable environment for all sorts of partnerships and flows, with clear positive externalities. For another, this is obviously an area where member states continue to be jealous of their sovereignty, and where the conduct of disjointed national foreign policies can create negative externalities for member states.

In terms of competences, CFSP escapes the breakdown between exclusive and shared competences and areas of supporting action, standing in its own league. Article 2.4 of the TFEU says that the exercise by the Union of its competence to "define and implement" the CFSP is subject to the relevant provisions of the TEU – Title V, Chapter 2.

Intergovernmental cooperation defines the mode of governance that applies to CFSP. The latter is carried out through executive acts such as guidelines and decisions and not through legislation. These acts are adopted by unanimity, except for very limited and largely procedural exceptions, and implemented jointly by the High Representative and member states, through EU and (above all) national resources. The EU's common security and defence policy, which according to Article 42 provides the Union with an operational capacity, relies entirely on military and civilian capabilities provided by the member states.

A lot can and should be achieved in the domain of CFSP through intergovernmental cooperation within the current treaty framework. Clearly, the war in Ukraine has focused minds, triggering consensus on several far-reaching measures in the days and weeks following the start of the conflict. EU countries have operated quite effectively on other issues too, including through informal modes of differentiated cooperation. The so-called E3 format of France, Germany and the UK has led efforts to achieve a nuclear deal with Iran, in close cooperation with the High Representative and the other member states. In defence matters, the outbreak of the war in Ukraine appears to have created a new opportunity to advance cooperation at EU level, as advocated by EU leaders with the Versailles Declaration in March 2022. The focus is on implementing the Strategic Compass and designing new frameworks to spur much more joint research and investment in the military domain, as proposed by the European Commission.

In a much more challenging strategic environment, however, this is no longer enough. Too often, in the recent experience of CFSP, unanimity has meant paralysis, late action or diluted positions. Too often foreign powers have managed to accentuate divisions among member states. Too often the EU has failed to provide security to others, in neighbouring regions to start with, thereby generating insecurity for itself as well. Too often unilateral initiatives of member states, large and small ones, have prevented or affected common positions, damaging the credibility of the EU as an international actor. As noted above, institutional reforms on their own may not fix political problems. **But the EU can no longer afford to rely on procedures that, instead of helping solve political problems, lock them in by preventing more effective decision-making and allowing tiny minorities, sometimes of one, to block the entire Union.**

## 6. Priorities for institutional reform

The institutional reforms introduced in the domain of CFSP in the last 30 years have aimed to strengthen the institutional capacity at EU level to enhance and incentivise convergence and cooperation among member states. The goal has never been to sideline their role in foreign policy, which would be neither achievable, nor desirable, but to create positive conditions for member states to work together and to refrain from preventing others from doing so. Conversely, the principle of unanimous decision-making has quite narrowly delimited the scope for institutional reform in the area of CFSP, acting as a sort of glass ceiling for progress.

**Today, the purpose of institutional reform in this domain should be to enable member states to jointly exercise their sovereignty to deliver results, for one, and to prevent joint action from being taken hostage by the veto power of one or two countries, for another.**

The primary focus of institutional reform should not be, therefore, a formal shift of competences from member states to EU institutions. The *Sui Generis* features of CFSP – a domain where the adoption of legislative acts is explicitly excluded, almost all resources are national ones and member states would hardly accept giving up their power to act in domains where the EU has a role – make it an unlikely candidate to fit the category of shared competences as defined in the treaties. **If the formal classification of CFSP as a *De jure* shared competence may be difficult to envisage, however, the point is to ensure that CFSP is implemented as a *de facto* shared competence, and not just as a domain where the EU largely intervenes to complement or support actions by member states, if they first agree a joint position among themselves.**

**A *de facto* shared competence is one where both member states and the EU can act, but the Union is much better empowered to do so (and EU action does not pre-empt national action).** This approach would also better match the wording and the spirit of current Article 24.2 TEU, whereby “the Union shall conduct, define and implement a Common Foreign and Security Policy, based on the development of mutual political solidarity among member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence among member states’ action.” This requires both allocating and pooling adequate resources for cooperation and joint action at EU level (whether in diplomatic, security or defence matters) and establishing rules and procedures that promote cooperation instead of stifling it. The former aspect is not primarily a matter of treaty change; the latter is.

This means that institutional reform should be articulated around three clusters:

- first, updating the objectives of the EU's external action and foreign policy, to make them better fit current realities and priorities;

- second, replacing unanimity with a form of ad hoc super-qualified majority as the standard decision-making rule in CFSP; and
- third, devising mechanisms to improve the implementation of the principles of solidarity and loyal cooperation among member states in CFSP.

**In particular, the following treaty changes concerning external action and foreign policy should be considered.**

- **Article 3 outlines the broad objectives of the EU, across all policy areas.**
  - Paragraph 1 could include promoting the “security” of the Union’s people.
  - A new paragraph could be introduced, stating that the Union shall empower the member states and the peoples of the EU to advance their shared goals and interests, within the Union and on the international stage, in conformity with the provisions of the treaties. This provision should refer to the core of sovereignty, namely the capacity of Europeans to define and advance their interests. This should be reflected in various internal and external policies, notably foreign and security affairs, defence, energy, research, industrial, digital, food, health, social, education, media and culture.
  - New wording could be introduced under current paragraph 3 with reference to the objectives concerning digital and climate/energy policies, which encompass internal and external dimensions, or new paragraphs could be added.
- **Article 4.2 mentions that national security shall remain the sole responsibility of each member state. Given the current strategic context, and the ever-expanding notion of national security, this line could be deleted. This would not detract from national sovereignty, but recognise an additional level of shared responsibility for the security of all EU Member States.**
- **Article 4.3. Pursuant to the principle of sincere cooperation, this paragraph could include a reference to the obligation or commitment of member states to ensure the autonomy of the Union’s decision-making process from external interference aimed to undermine the achievement of the Union’s objectives or the implementation of common decisions.**
- **Article 21 outlines the general principles and objectives of EU external action (including but not limited to CFSP). The list of these objectives could be integrated with some additional ones, which would reflect the different international context the EU is facing and related broad challenges, along these lines:**
  - counter any form of coercion directed by third parties against the Union, the member states or European citizens;
  - establish a level playing field ensuring equitable and fair economic exchanges with partners;
  - ensure the adequate and reliable access by the Union, the member states and European citizens to the products, commodities and services that they require for their welfare and security.
- **Article 22 states that the European Council shall identify the strategic interest and objectives of the Union across all areas of external action. This provision could be amended to overcome unanimity, for one, and to introduce a new requirement, for another, namely that the European Council adopts a broad strategic document to guide external action at the beginning of each**

institutional cycle. On top of that, it should be foreseen that the European Parliament and national parliaments hold an annual debate on the strategic interests and objectives of the EU on the international stage.

- Article 24.3 states the principles of solidarity and loyal cooperation among member states (MS) within the CFSP, including the obligation to refrain from any action which is contrary to the interests of the Union, and provides that the Council and the High Representative shall ensure compliance with these principles. A provision could be added to introduce a mechanism whereby the Council or the European Council could be called upon to determine whether one or more Member states are in breach of their obligations under the CFSP (see also the obligation under Article 29, for example). The procedure could draw on that foreseen in Article 7 for the breach of EU values and could be triggered by a proposal of either the High Representative or a certain number of member states. The Council or the European Council could decide by a four-fifth majority and their decision could lead to suspend the vote of the country in the areas of CFSP affected by the breach of the principles of solidarity and loyal cooperation or in the domain of CFSP at large.
- Article 31. Majority voting could be introduced as a rule for CFSP, replacing unanimity, in this article and in other provisions where unanimous decision-making is foreseen in this policy area, such as Article 24.1. A super qualified majority of 75% of member states, representing 75% of the EU population, could be envisaged. Likewise, the so-called “emergency break” procedure, laid out in Article 31.2, could still apply, while replacing unanimity with super qualified majority for the final decision by the European Council. Decisions on defence matters/ CSDP need separate consideration and some may require the application of unanimity. The decision on the participation of a member state in a CSDP military operation would of course remain a national prerogative.



# Chapter 2

## Climate change, environmental policies and energy – an existential challenge

### 1. The recommendations of the Conference on the Future of Europe on climate change and environment

The main proposals of the conference, on “Climate change and the environment” are:

- The fight against climate change with a strong emphasis on the development of renewable energies, the sustainability of our economy, the protection of natural environment, biodiversity and landscape, the path towards green agricultural policies protecting also local products and farmers, the development of a circular economy, the investment on a more sustainable transport system and finally a guiding role for the EU in global climate action. We should answer by enhancing the competences and creating a new exclusive one allowing the EU to represent all our citizens in the world conferences and negotiations;
- The necessity to improve the environmental standards and policies;
- The importance given to environmental problems in working places, that recently has been forgotten. It is a very important point to be added to environmental policies but being also related to health questions it needs an upgrading of EU competencies on health to allow the EU to legislate on this subject. We could call this competence: environmental quality of the working places.

Attention is also given to territorial cohesion in the fight against climate change, to ensure a just transition to stronger environmental conditions.

It is also underlined that the Green Deal isn't gender neutral, so it is necessary to pay more attention to the gender dimension.

### 2. What kind of European public good should be developed?

#### 2.1 Pure public goods

The fight against climate change at the global level is a pure public good: what we do will profit all Europeans and all the world. But the efficiency of the provision is limited by the free riders (China, Russia, the less developed countries and some countries inside the EU also). So we need a Common European policy to try to convince the rest of the world (using for that also our commercial weight) and to strengthen our position in the global conferences (as the Conference of the Parties, COP).

The coordination of the EU MS at international level is quite good but our weight could be stronger if we could speak with one voice.

**We propose to upgrade the competence on environment creating a new exclusive competence:**

- **Climate change policy at international level**

**It could allow the EU to have a common representation in the world negotiations. At EU level the actual shared competence is right but we need modifications to give a strong answer to the demands of our citizens.**

- **EU energy security**

**It could be an exclusive competence, only for the aspects related to pave the way towards our energy strategic autonomy. It is a pure public good.**

## **2.2 Community goods**

### *Energy Union*

Energy prices are rising due to the Ukraine war and are endangering our families: we need to protect them, accelerate the energy transition, put the emphasis on the investments necessary for the development of renewable resources and energy efficiency and reduce the cost of energy for families and companies. All these changes need investments that mean financial resources for the EU but also a stronger coordination of policies and a common legislation. What we call "An Energy Union". For this, we need to complete the EU competence on energy, particularly for the financial resources and with ordinary legislative procedure.

### *Fighting and protecting against climate change and environmental protection*

(Transversal competencies.) Circular economy, environmental policies and natural resources protection: in these fields the European legislation is the best in the world, but we need concrete instruments to transform it into the best policies and the best results. For that and all the other policies to protect and preserve our environment and our citizens against climate change, a transversal competence could be better: fighting and protecting against climate change and environmental protection, a shared competence, with ordinary legislative procedure also on financing.

On the EU internal action this new transversal competence could allow EU institutions to legislate and operate on all the matters related to climate change also when they don't have a specific competence (for example, industrial policy). In general terms we should change the way we use nature and natural resources and that require a larger and general competence on almost all sectors, from agriculture, to energy, transport, industry, services....

We don't have this type of competence but it could be built also without treaty change using different legal bases for the legislation.

Obviously, the best should be a new shared competence.

Fight against climate change and environmental protection policies at European level should be considered common resource goods, because possible conflicts could impede voluntary cooperation. And there is no doubt that we need to enhance all these policies, developing a Green Deal. Actually, energy, environment and agricultural policies are shared competencies except in certain cases. We should remove these exclusions and upgrade the industrial policies (which are strongly related to environmental questions) to shared competence. In this way, we could create a climate change transversal competence, grouping all the policies concerned.

On all these subjects the ordinary legislative procedure, also on financial questions, should be necessary.

For that we should change (complete) the treaties, to introduce these competencies:

- International climate change policy: exclusive competence;
- Fight against climate change and environmental protection: transversal shared competence;
- Environmental quality of the working places: shared competence;
- Energy security: exclusive competence;
- Energy Union: shared competence;
- Upgrade the functions of the EEA (European Environmental Agency) which actually has essentially functions of research and data collecting. It could become an instrument of programming and controlling;
- Upgrade the functions of the ACER, the European Agency for the Cooperation of the Energy Regulators, to the functions of ensuring energy security, prices regulations, energy transition, sustainable energy research and development.

It is important to underline that the control of the European agencies, at least the ones with relevant functions, should be granted to the European Parliament and to the Council, both of them modelled on the European Commission's control.

### **3. Concrete implications for European citizens**

European citizens should be at the same time actors and beneficiaries of the ecological transition. Consumer habits and choices play a significant role in tackling climate change. To this end the EU has instruments and initiatives, such as the Just Transition Fund, the Social Climate Fund, The European Structural and Investment Funds, the Recovery and Resilience Facility, the NextGenerationEU, but the use of multiple instruments should work in a coherent manner and not increase the complexity on the ground for managing authorities. The role of regions, cities, small villages and rural areas, is essential: territorial justice is a priority if we want to achieve a just ecological and social transition.

The EU shall support local authorities in exploring new instruments to realise policies helping the weaker groups such as young, elderly and low-income families, to change their consumer attitude, to renovate building and reduce energy costs and consumption and obtain energy autonomy as should do all families and companies. We need a strong Energy Union and the energy autonomy of the EU. All the European Green Deal policies should remember that the good quality of air, water, ground and oceans is a human right. Ecological priorities should work together with economic and social ones.

Climate change and environmental protection are the most sensitive subjects for European Citizens, especially for young people. This is also evident in the results of the conference. Larger implications are at stake for energy costs, housing, transport, environmental quality and jobs. A specific reference to the environmental quality of the working places could be added.

Upgrading the EU competencies on these themes could give the certitude that the EU has listened to its citizens and that it's doing what they asked, to protect the nature and their future.

A transversal competence on environmental questions and the upgrading of the financial competences in this field could allow for better legislation and better European projects and actions.

Energy security, its provision at European level and its environmental quality, are two major interests of European citizens. The upgrading of this competence could be a very important result of the future Convention.

#### **4. What are the modes of governance of the European environmental public goods?**

For the climate change policy at the international level: it should be an exclusive competence with own financing.

The energy strategic autonomy, policy and provision should be an exclusive competence with own financing, also in this case only for international strategy, negotiations and coordination.

All the other environmental legislation (possibly grouped in a transversal competence) should be shared competence. The legislation, coordination and co-financing should be EU competences, but all the implementations should be done at national, regional and local level.

This is a typical case of multilevel governance.

The environmental policies require common projects, strategic investments and a strong coordination of the activities of the MS. These projects should be financed by the EU. The EU could co-finance or create compensations for the national, regional and local provisions of the environmental common public goods.

The good governance of climate and energy policies could be improved by upgrading and changing the functions of the two agencies: ACER and EEA.

#### **5. Climate change and environmental policies in the EU treaties**

Currently the articles of the treaties related to climate change policies are:

- A general reference to the "protection of the environment" in the Preamble of the TEU;
  - TITLE I Article 3(3) – "a high level of protection and improvement of the quality of the environment";
  - TITLE I Article 3(5) – "contribute to (...) the sustainable development of the Earth".
- TFEU TITLE II Article 11 « Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development »;
  - TITLE V Article 21(2) (d) – "foster the sustainable economic, social and environmental development of developing countries";
  - TITLE V Article 21(2) (f) – "help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development";

- TITLE V Article 21(2) (g) – “assist populations, countries and regions confronting natural or man-made disasters”;
- The point (g) could be the base for a treaty change in the sense of an exclusive competence on international climate change policy or for a stronger interpretation of its significance.

The specific competence of the EU on environment and energy is the TFEU:

- TFEU TITLE XX, environment: articles 191, 192, 193;
- TFEU TITLE XXI energy Article 194;
- TFEU TITLE III agriculture and fishery Article 38 /43;
- TFEU TITLE XIV public health Article 168 (nothing is said about environmental conditions in the working places);
- TFEU TITLE XVI Trans-European Networks Article 170, 171, 172;
- TFEU TITLE XVII industry Article 173.

Only the conservation of marine biological resources under the “common fisheries policy” is an exclusive competence. All the other competencies on environment and energy are shared competencies, with various limitations.

## 6. What can be done under the current treaty framework

Changes and improvements in environmental legislation can be approved without any treaties change and also in energy and agriculture legislation. But in this case, we can’t remove the actual limits mainly the financial ones.

The transition to the ordinary legislative procedure in financial decisions could be done using the *Passerelle* clause.

More effective industrial policies related to environment can be approved using as legal base the environmental competence.

More attention to environmental conditions of working places could be done without treaty change with environment and single market as legal base.

## 7. What should be done with targeted treaty change?

- **Introduce a new exclusive competence: international climate change policy, allowing the Union to negotiate environmental rules and to engage all the EU at international level in a united and stronger way;**
- Article 4(2) add b) participation in international climate change conferences and the conclusion of agreements in the field of climate change;
- **Introduce a new shared transversal competence: fight against climate change and environmental protection;**
  - TFEU TITLE I Article 4 – Add “(e bis) fight against climate change and environmental protection”.

- Introduce a new shared competence: environmental quality in the working places (or consider that it is comprised in the transversal competences);
- Modify the Article 192 par. 2 TFEU: derogation to ordinary legislative procedure for fiscal measures in environmental policies; eliminate the derogation;
- Introduce a new exclusive competence:
  - TFEU TITLE I Article 3 – Add “(g) energy security (at European level)”
- Modify the energy competence as a new shared competence:
  - TFEU TITLE I Article 4 – “(i) Energy Union”
- Modify the Article 194 TFEU to introduce the ordinary legislative procedure on fiscal measures for energy policies;
- Modify the Article 173 TFEU (industry) to introduce the shared competence for industrial policy (in order to give the EU an autonomy strategic capacity) with ordinary legislative procedure. This is very important for environmental measures concerning industry (the article should be re-written introducing strategic industrial security);
  - For this it should be introduced as a new shared competence in TFEU TITLE I.

## 8. Implications for a new competence typology and for political governance

The EU finance environmental policies and projects at national and regional level are backed with the structural funds, but the ecological transition will need more resources. If we want to give the EU the power of establishing environmental taxes and debt to co-finance the enormous investments that will be necessary for the ecological transition, we have to change the economic governance of all the policies related to climate change and environmental policies. The example is being given by the current Recovery Facility. The financing of climate policies with a just transition requires a long-term EU investment capacity: the EU could co-finance with the MS projects on renewable energies and resources, the ecological transition of agriculture, industry, services, using a mix of environmental taxes, debt and own resources. This could also allow a redistribution between poorer and richer countries, with the assurance that the money is used in the correct way.

This can be done partially inside the Lisbon Treaty (for example, increasing the Multiannual Financial Framework) or with a treaty change better allowing the own financing by the EU (actually the treaty speaks about own resources, but in fact only the MS voting at unanimity can approve the MFF).

The financial measures of the EU should be approved by ordinary legislative procedure, with the same procedure for the annual budget.

From a political point of view, to upgrade the EU policies on climate change and energy security, creating two new exclusive competences, and completing the competences on energy and environment, will be probably considered by our citizens the most important results of the conference.

# Chapter 3

## How to leverage digital transformation to build up new European public goods?

### 1. Regulation of the digital sphere as a first but insufficient approach to provide public goods

As sustainable and social issues are henceforth at the centre of all European policies, digital transformation is both a transversal challenge concerning nearly all European policies. But contrary to the two previous topics, there is no legal basis in the Lisbon Treaty and the previous treaties concerning the digital transformation. Digital was consequently ignored. There is consequently a need to update the treaty.

Up to now, the European institutions have mainly focused their efforts in regulating the digital sphere rather than reflecting on how to leverage the potentialities offered by the digital technologies to provide public goods. The legal basis was limited: it was mainly the part of the treaty related to the internal market.

In the past two years, the main priority has been on how to regulate the digital systemic platforms in order to limit their negative impact on the European society and economy and their capacity to prevent competitors to emerge. This gave way to a major act, the Digital Markets Act for which a political agreement was reached during the French presidency of the Council of the EU. This act is yet considered as a pioneering text at global level to regulate the so-called GAFA (Google, Amazon, Facebook and Apple). These global corporations are indeed behaving as the European colonial companies used to do in the 16th and 17th centuries as some public reports noticed. These systemic platforms contribute to de-structure entire industrial fields in the countries they operate with sometimes limited market shares, to increase the price of rare human resources, capture economic value while avoiding paying tax. Some of these platforms have also negative democratic externalities to the extent they might contribute to the massive circulation of fake news and to impact the results of national elections or referenda.

This text is consequently fundamental for the economic and democratic future of Europe. It will allow to a certain extent more competition in the European digital market and is supposed to make the emergence of European digital companies easier. As far as competition is considered as a public good, this text constitutes a public good. But such as public good does not speak to citizens because on the one hand, it is too conceptual, on the other hand, it is more considered as a contribution to the economy as to the society. It is about to be complemented by a series of acts and initiatives such as the Digital Services Act, the Data Governance Act or the White book for AI.

Previously, there was one remarkable European regulation that was considered as a major public good creating concrete rights for European citizens: The General Data Protection Regulation is an innovation of the European Union to protect European citizen personal data and the fact that it is inspiring a lot of regulations starting by the Californian law proves its relevance and its impact.

## 2. The specificities of digital pleads for developing a specific chapter on it in a potential new treaty

The specificity with digital transformation is that in most cases the traditional geographic frontiers don't make sense.

In addition, three remarkable considerations need to be pointed out.

- First, digital transformation concerns all the activities of our societies which can be transformed in depth by the digital evolution.
- Second, there is a need of a critical mass of data and size to fully leverage the potential of digital technologies and artificial intelligence more specifically.
- Third, their implementation can be significantly different according to the *civilisational* priorities: for instance, China prioritises the digital transformation to develop a society of surveillance, the United States favours the maximisation of economic value and extra-territorial influence. The EU and its member states tend to prioritise the human centric dimension. In other words, to which extent the potential of digital can serve European societies, European values and more generally the dignity of the body, its freedom and the idea of equality?

**These different considerations plead to develop a new chapter in an updated European Treaty.**

**Digital should be recognised as a shared competency between the EU and the member states. Due to the fact that it concerns potentially all the dimensions of the social, political and economic life, the possibility of *Passerelle clauses* need to be considered for Digital. Besides, the external dimension of digital policies poses also the question of qualified majority for the external policy of the European Union as far as the digital dimension is concerned.**

## 3. Concrete examples of common goods attached to the digital dimension

The European research on digital transformation has identified a non-limited series of rights giving way to concrete common goods while affirming also the necessity to place digital transformation at the heart of European competitiveness and strategic autonomy:

- access to the Internet should be a fundamental right for every European citizen;
- the right to live without need of digital technologies and the right not to “be connected” should be asserted;
- continuous digital Education allowing citizens to have and develop essential digital skills to allow every citizen to cope on her/his own in the digital space and empower their liberty;
- right to a safe and cyber-secured environment in the same way security is a fundamental right in the physical world;
- data sovereignty of individuals should be recognised and constantly upgraded.

Specific European civic rights can also be considered:

- possibility to debate with other European citizens in their own language thanks to the progress of automated translation;

- access to pluralistic sources of quality news from national and non-national media thanks also to automated translation and the progress of digitalisation;
- digital continuous civic education;
- possibility to continuously participate in the democratic process through a multinational multilingual digital continuous democracy platform complementing parliamentary democracy.

More generally, a wider reflection should be conducted to assess how the combined progress of digital technologies and science can be at the service of society and contribute to reinforce present rights and liberties, develop new ones and revitalize our democratic, social, health and economic model. As an example, a right to a high-quality biological diagnosis for every citizen, made possible by the latest developments of artificial intelligence and bio-photonics would improve the life of dozens of millions of citizens in Europe, radically improve the economics of our health system while facilitating the work of clinicians. It will allow us to boost the medical and clinical research and help to limit the negative impact of future pandemics. It could be one right in an updated Charter of Fundamental Rights, it should be also a priority political objective and at the core of a new European roadmap for health to be implemented by 2030 at the latest.

All must also be done to smooth digital, green, social and democratic transitions.

#### **4. A yet rich toolbox to be implemented**

As far as the digital transformation is concerned, the toolbox to implement it is very rich. It includes:

- General principles such as AI ethics principles;
- Regulatory instruments: regulation, directive, recommendation;
- Funding instruments: DIGITALEUROPE, structural funds, R&D funds;
- Provision of services of public interest concerning different topics such as the digital passport in the health field, support to develop skills in the education field, support to digital production in the cultural and media field;
- Industrial strategies.

This toolbox could be reinforced with the possibility to develop joint public procurement for digital services at least for EU and member state administrations but also for organisations, be it public or private, with public service missions such as public service media, health organisations. This is particularly important for high quality content distribution infrastructure, cyber security infrastructure and services, digital health services in the field of diagnostics or human virtual twin, digital multilingual democratic infrastructures.

## 5. Treaty changes to include a digital dimension

To this end, the following treaty amendments would be necessary.

- An amendment to Article 3 TEU to include consideration of the digital transformation in the objectives of the Union. This could be, for example, “implementing digital policies that empower people and businesses for a people-centred, sustainable and more prosperous digital future”;
- The inclusion of a new area of shared EU competence in Article 4(2) TFEU: digital transformation;
- A new Title XXV entitled Digital Transformation in Part Three TFEU. A single article would suffice;
  - Article 195
  - The Union's policy in the digital area shall contribute to the pursuit of the following objectives:
    - full respect for fundamental rights in the digital space, including social rights
    - the development of digital skills
    - the establishment of a digital single market
    - the development of digital infrastructures
    - the fight against cybercrime
    - the quality of public services
    - digital taxation
    - the quality of public information and the exercise of democracy
- The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union to achieve the objectives set out in paragraph 1;
- The Union may conclude with third countries and competent international organisations any agreement helping to achieve these objectives;
- The European Union shall take account of the digital transformation in all its policies, in particular industrial policy, research and technological development policy, and Structural Funds interventions. The Union's digital policy supports all its policies.



# Chapter 4

## Education, a public good by excellence, which should become more European

### 1. What are the current citizens' expectations, the recommendations from the Conference on the Future of Europe

Education policies play an essential role in the functioning and governing of societies. They fulfil a host of functions: they promote societal values, provide a skilled workforce, socially integrate societies, generate economic development, make societies more peaceful and politically stable and increase the understanding of other people, be they within or outside of the same country. But the one, single most important reason for their existence is to educate every individual, to equip them with everything they need to thrive in life. The might of education policies is such that even inside the European Union national governments are always reluctant to give away their powers for the fear of losing national identities, or a particular way of life, to a transnational policy homogenisation. Education policy formulations remain, even in this advanced stage of the development of the EU, in the hands of national governments. Articles 165 in 166 of the Treaty on Functioning of the EU state that education is a national competence, where EU has only competence to support, coordinate and supplement the actions of the member states (Article 6 TFEU).

In the post-Covid-19 era, the EU is faced with economic downturn. Its recovery will require innovative collective societal resilience structures. Even before the pandemic, parts of the EU were confronted with a political populism that rejected the fundamental values and norms of the European system. Political values and fundamental rights, long associated with liberal democratic political systems, were threatened. In consequence, this meant less support for the European project and a further loosening of European ties. The crisis also revealed social inequalities and exacerbated differences that exist in education systems due to unequal access to and opportunities for digital and hybrid learning. All this, including worldwide tendencies of deglobalisation and war in Ukraine, add to the need to rethink EU education policies.

The European Commission has responded by creating the European Education Area (EEA). It was first endorsed in 2017 at the Gothenburg Social Summit, the first packages of measures were adopted in 2018 and 2019. In September 2020 the Commission outlined a new vision for EEA, in February 2021 the Council of the EU created a strategic framework for European cooperation in education and training for the years 2021-2030. This includes setting up of working groups, including education into the European Semester. The aim is to provide the essential structure for collaboration between stakeholders and member states. In April 2022 the Council of the EU adopted conclusions which call for support for European cooperation around four major points: enhancing the European dimension of higher education and research, promoting the EU's role and leadership at global level, strengthening the EU's recovery and response to the green and digital transitions and deepening the sense of belonging to Europe. In practical terms the Council recommendations aim at making a European label for joint degrees in higher education, testing

new instruments for regularising and enhancing cooperation among institutions and setting new forms of European funding for all missions of European universities.

Recommendations from the Conference on the Future of Europe show that education is high on the citizens' agenda. The objective is that all citizens **have equal access to a standard quality of education and life-long learning, ensuring fairness and equality especially for those in remote areas**. The recommendations include:

- Harmonising the level of all different education programmes in the EU with acceptance of the national content, and create closer links between the education systems, including via organising equivalence of diploma. A certified minimum standard of education in core subjects should be adopted commencing in primary school. Professional degrees and training should be validated and mutually recognised in all EU member states. Efforts should also be made to better recognise non-formal and informal learning.
- Develop future-proof education and life-learning in Europe, including by focusing on the following aspects:
  - Civic education about democratic processes and the EU;
  - Digital skills;
  - STEM and entrepreneurship;
  - Improving critical thinking, scepticism and fact-checking in order to teach citizens in every member state how to independently evaluate whether a piece of information is trustworthy or not. This should be implemented in basic education as a specific class and also be offered in other public spaces for citizens of all ages. The EU should ensure that the dedicated funding is used by the member states for the intended purposes;
  - Promoting education on fake news, disinformation and online safety in schools, guided by an EU-established dedicated organisation and drawing on best practices across the member states;
  - Raising more awareness about the dangers of the internet and digitalisation for young people through the creation of a mandatory subject in elementary school, with tools and common training spaces for young people to learn together;
  - Integrating soft skills in all the courses in the curricula in schools. By soft skills one means: listening to each other, encouraging dialogue, resilience, understanding, respect and appreciation for others, critical thinking, self-study, remaining curious, result-oriented;
  - Enabling everyone to learn about our environment and its connection to health through education. This education should start at school with specific subjects addressing all ecological issues and should continue beyond (at work for instance). Biodiversity should be made as a mandatory subject in schools. A platform could also be created with teaching material about climate change, sustainability and environmental issues together with a funding programme supporting its use, including field trips to show relevant real life examples;
  - [Promoting sports and physical activity and raising awareness about its health benefits through education.]

- Support the training of teachers, to learn from best practices and use innovative and creative teaching techniques, such as participative video games or practical activities, building also on the lessons to be drawn from the Covid-19 pandemic.
- Ensure that children and families are a priority when it comes to accessing the internet and hardware, particularly in terms of education, and especially in times of a pandemic.
- Set up an information platform for an EU-wide exchange of knowledge and experiences, pooling information on transnational education and training courses in the EU, showcasing best practice examples and offering citizens the opportunity to present new ideas for cross-border exchange. The platform should also provide information on existing specialised forums on key topics (for example energy, environment, digitalisation).

## 2. What kind of European public goods should be developed?

Cases of possible new European public goods include:

- Infrastructures developed to facilitate access to knowledge for all citizens. TFEU retains the Trans-European Networks (TENs) in the areas of transport, energy and telecommunications. The legal basis for TENs are Articles 170-172 and 194(1)(d) of the TFEU. Educational infrastructures should be added to the existing TENs to facilitate the provision of equal access to educational European public goods. This can be done in the forms of: a) EU knowledge resource centres (as centres of excellence) as a basis for Creative Europe that would ensure universal access to quality education as the main source of wealth of nations; b) European Open University as the online university for European citizens that takes into account the digital shift that is opening new opportunities and is environmentally responsible; c) European programme of high-speed broadband connections to all educational institutions, thus enabling them faster development and online opportunities.
- European Qualifications Framework. Currently existing European Qualifications Framework (EQF), with synchronised national frameworks of qualifications, are only partially enabled. There is a paradox on the single market that for the purposes of labour market recognition of degrees is done according to the EQF, but this is not so for the purposes of further education. If the EU wants to compete internally and externally, it needs to have EQF functioning in full, thus enabling movement of people and educational services across the borders. Furthermore, minimum standards of educational levels are essential for productivity developments. They can ensure high levels of total factor productivity.
- EU citizenship education. There is a longstanding political consensus among EU institutions to strengthen European citizenship education. In the recent report in the EP by the Domènec Ruiz Devesa the need for European citizenship education is elaborated in detail. European citizenship education, if introduced in all member states at the secondary level, would importantly add not only to the common European identity, sense of belonging, shared ideas about common history, cultural and moral values, but would also be an enabler of stronger political participation by the European citizens, thus making EU institutions and their functioning less democratically deficient.
- Lifelong Learning Accounts. Re-skilling and up-skilling of workers are crucial for success in digital and green transitions. There are far too many workers without the right sets of skills and without a need or desire to learn. Lifelong Learning Accounts are a way of providing training entitlements for all adults of working age, thus giving them a chance and financial means to

re-skill and up-skill. Crucial for the success of lifelong learning is cooperation among businesses (in-job training), institutions of vocational training, ministries of labour and education and other education providers.

### 3. What would be concrete implications for citizens

- Citizens would benefit from quality standardisation of education. Through EU standardisation of education quality, the citizens would be sure they were getting the highest quality of all levels of education in the world.
- There would be fewer educational inequalities between EU citizens. Disparities between elites and the general population would be minimised and education would function as an essential tool of social protection. Standardisation of quality would equally equip all European citizens and would thus give them equal opportunities in their life chances as much as possible.
- Stronger sense of community. Higher social integration through education with fewer inequalities that are the breeding ground for populism as well as for the spread of disinformation and negative attitudes towards the European project.
- Chances of lifelong re-skilling and up-skilling with training entitlements for all adults of working age throughout European Union.

### 4. Possible treaty changes

Therefore, moving to shared competences is necessary to ensure cross-national interoperability and infrastructures, to set basic standards for equality, to ensure stronger coordination of member states or to add European financial support. This can be done with the following changes to the Treaty of the Functioning of the EU (TFEU):

- In Article 6 TFEU "education" and "vocational training" should be deleted from the line (e).
- In Article 4 TFEU there should be point 5 with the following wording:
  - In the areas of education and vocational training, the Union shall have competence to carry out activities, in particular to define and implement programmes and to organise the recognition of diplomas; however, the exercise of that competence shall not result in member states being prevented from exercising theirs, especially regarding the content of teaching and the organisation of the education system as well as their cultural and linguistic diversity.
- Article 165 of the TFEU should include the following principles:
  - The Union shall contribute to the development of quality education by defining and implementing programmes and encouraging cooperation between member states by supporting and supplementing their action, while respecting the responsibility of the member states for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.
  - Union action shall be aimed at:
    - developing the European dimension in education, particularly through the teaching and dissemination of the languages of the member states and through common contents of the European citizenship education.

- **Article 166 of the TFEU should include the following principles:**
  - **The Union shall implement a vocational training policy by defining and implementing programmes which shall support the actions of the member states, while fully respecting the responsibility of the member states for the content and organisation of vocational training.**
- **Article 166 of the TFEU should include the principle that the recognition of diplomas is not only for employment purposes, but also for the purposes of further education.**
  - **In order to make it easier for persons to take up and pursue activities of employment and further education, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in member states concerning the taking-up and pursuit of activities of employment and further education.**
- **Article 170 could be supplemented to include Trans-European Networks also in the area of education and research:**
  - **To help achieve the objectives referred to in Articles 26 and 174 and to enable citizens of the Union, economic operators, and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of Trans-European Networks in the areas of transport, telecommunications, energy, education, and research infrastructures.**

Legislation procedure for all of the above-mentioned topics should be changed to ordinary legislative procedure.



# Chapter 5

## Developing social rights of the European citizens

### 1. Introduction

The social dimension of the European Union is enshrined in Article 3 of the Treaty on European Union (TEU). It highlights the Union's objective to promote the well-being of individuals, work for sustainable development and a highly competitive social market economy, aim at full employment and social progress, combat social exclusion and discrimination and promote equality between women and men. By proclaiming that the Union shall observe the principle of the equality of its citizens, in all its activities, the Article 9 TEU also provides a horizontal social clause allowing EU citizens to claim their rights by direct reference to the principles contained in the treaties and the Charter of Fundamental Rights, although possibilities to make a concrete use of the latter are constrained (see note on citizenship).

The most concrete example of a public good stemming from the European level is the European Pillar of Social Rights (EPSR), an important corpus of 20 principles adopted by all EU institutions in 2017. From these principles the EPSR crucially derives a series of social rights in the fields of equal opportunities, access to the labour market, fair working conditions, social protection, adequate housing and inclusion rights. Building on these principles, the Social Pillar Action Plan, released by the European Commission in March 2021, outlines concrete objectives for EU member states, setting, for example, ambitious targets to reduce the gender employment gap and the share of young people not in employment, education or training (NEETs). If social standards have benefited from a growing visibility in EU policymakers' discourse in the last decade, EU action in the social field has, however, not received the necessary "teeth" to ensure their effective implementation.

The governance of social policy in the EU is defined by means of the Title X (Article 151 to 161) of the Treaty on the Functioning of the European Union (TFEU). Over the years, over 125 legal acts on social policy issues have been enacted by the EU institutions on, for example, the portability of social rights associated with labour mobility, working conditions, or equality between women and men. Yet although many initiatives have been tabled to advance Social Europe recently, the restricted scope granted for EU action has largely constrained their adoption, notably in the areas where social policy remains subject to voting by unanimity in the Council and the European Parliament does not have a role as a co-legislator.

To assess how EU action can most effectively enforce new social commitments in the EU, we need to consider reviewing the scope for EU intervention in advancing the EU's social acquis. To do this, we consider three areas of social policy, namely social security, social assistance and employment policy. Looking at examples of specific policies in each area, we identify current hurdles to effective implementation of the principles agreed upon in the Charter and the Social Pillar, before considering what changes in terms of EU policies, instruments, decision-making procedures and competences are needed to increase the EU's effectiveness in delivering on social principles and social rights.

## 2. Modernising social security systems

A typical example of EU *community goods* concerns social security rights portable across the EU. Since the 1980s EU law has developed to provide workers contributing or having contributed to the social security system of a country with the right to transfer “social security” rights acquired in one national jurisdiction into another. Over the years, initiatives such as the transfer of social security rights as diverse as pension rights, health benefits and – to a limited extent – unemployment benefits have considerably facilitated the mobility of EU workers. An interesting case is that of an EU initiative aimed at protecting the supplementary pension rights of mobile workers. A directive proposed in 2005 by the European Commission had been blocked in the Council for six years by member states using their veto rights. With the adoption of the Lisbon Treaty in 2009, the coordination of member states’ social security systems *in the context of the free movement of workers* (Article 48 TFEU) moved from unanimity voting to become subject to qualified majority voting with equal involvement of the European Parliament. Following the entry into force of the Lisbon Treaty, new governing rules allowed this to be subsequently adopted in 2014, making it possible for workers moving within the EU to finally be able to access their social rights. If this constituted a considerable step forward, further changes to EU rules would yet be needed to help the EU not only support equal access to complementary occupational schemes but also encourage the transition towards universal, public financed schemes.

In the context of purely domestic situations, the scope for EU intervention in social policy remains, by contrast, more restricted. In its Article 153 of the TFEU, EU action is expected to support and complement member states’ activities with regards to a number of social policy objectives, including the social security and social protection of workers and the modernisation of social protection systems. These provisions are of particular importance today. Indeed, in a world of rapidly evolving work structure and individual preferences, new social risks have emerged. These require, in turn, reforms of social protection systems which not only help cast the net wide to effectively cover new forms of labour (such as platform workers), but also help facilitate the (re-) integration of traditional “labour market outsiders”, such as young people, women, or elderly workers, through “capacitating measures”.

The fact is, however, that EU institutions currently have (limited) scope to issue recommendations on the modernisation of social security systems, encouraging the adoption of welfare provisions of such a social investment type – that is: provisions related to the capacitation of workers. EU-level action on social security and the social protection of workers currently requires unanimity voting, even for mere recommendations – which has considerably delayed the exchange of information among members of the club on how social security systems could be modernised.

Recent developments show that existing provisions have led envisaged directives to be scaled down to the level of recommendations, as in the case of the Recommendation on access to social protection for workers and the self-employed adopted in November 2019 by the Council. As unanimity is also required for the adoption of these recommendations, risks are high that veto threats continue to reduce agreements to the lowest common denominator unless the possibility to vote by qualified majority is introduced.

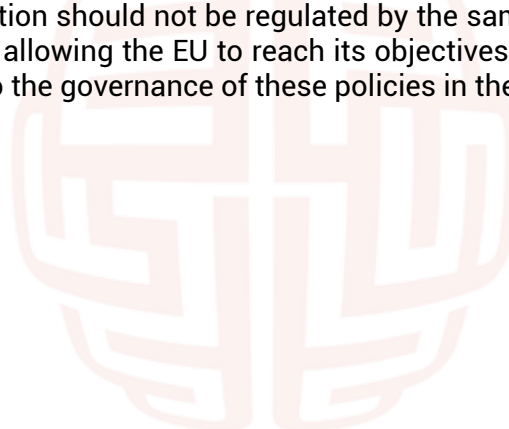
### 3. Improving social assistance

Social assistance constitutes another important area of social policy. Whereas Article 3 of the Treaty on European Union sets the objective to “combat social exclusion” (Article 3 TEU), the Charter of Fundamental Rights contains a set of provisions pursuing this objective, such as the right to social security benefits and social services providing protection in cases of maternity, illness, injury at work, dependency or old age, as well as in the event of loss of employment. In the Social Pillar, references are, furthermore, made to quality housing assistance for people in need, the right to affordable and quality healthcare, as well as the right for people in need to *be supported* in their access to quality essential services, including water, sanitation, energy, transport, financial services and digital communications.

Building on the political commitments of the Charter and the Social Pillar, the Commission set as one of the “headline targets” of the Social Pillar Action Plan that the number of people at risk of poverty or social exclusion should be reduced by at least 15 million by 2030, of which 5 million should be children.

By proposing a revised Social Scoreboard, used as a key monitoring tool in the European Semester, clear efforts were also made to rebalance coordination in favour of social indicators when these conflict, for example, with economic freedoms. In this area, important progress could be achieved while keeping EU treaties constant. To move beyond the conception of poverty as a material issue, the Social Scoreboard should notably integrate more multidimensional indicators of child poverty, including access to education, health, nutrition, housing, or primary care – in a similar approach as the one retained in defining the principles of the Social Pillar.

More generally, however, and in spite of these important principles, the EU's means to combat social exclusion foreseen in the Article 153 only provide a complementary competence to EU institutions, leaving them to rely exclusively on soft-law and monitoring provisions. An area of social assistance where social policy governance most clearly shows its shortcomings is that of youth policy. Social policy scholars concur on the need to put an end to discriminatory labour law provisions specific to young people, such as youth minimum wages or youth discrimination in access to benefits, as is currently the case in France or the Netherlands. Under current EU legal provisions, EU action to combat age discrimination yet remains an area subject to unanimity where rules have not developed evenly. This shortcoming is the more intriguing that it contrasts with more comprehensive EU legal provisions on equal opportunities and equal treatment between men and women, or treatment based on racial and ethnic origin. There is, today, no reason why age discrimination should not be regulated by the same EU legal provisions. As per the case of social security, allowing the EU to reach its objectives in terms of social assistance will require wider change to the governance of these policies in the treaties.



## 4. Supporting job creation and preservation

EU Cohesion Policy, whose objective is to foster economic, social and territorial cohesion in the EU, has long been the EU's main job creation tool. Cohesion Policy primarily contributes to longer-term employment and social cohesion objectives set by the Union by means of the European Social Funds (ESF, defined by means of Article 162). Both the ESF and the recently adopted Resilience and Recovery Fund (RRF) complement national funding with targeted loans or grants. Besides, these programmes also “frame” the content of employment policies considered at the national level, either by linking it to specific reforms or by establishing pre-conditions (for example, administrative capacity, good financial governance) for EU funds to be disbursed. In addition to the RRF, a major innovation in the EU's current socioeconomic framework relates to EU action aimed at *safeguarding* the jobs and incomes of workers.

In the past, mitigating risks of macroeconomic shocks from spreading across the EU often took the path of internal devaluation programmes (imposing lower wages) or social spending cuts. This was partly due to political and institutional constraints standing in the way of using the EU budget as a stabilisation instrument in the midst of a crisis.

The Covid-19 pandemic has revealed that some scope existed under the current treaties (Article 122) to provide a swift EU response in cases of emergency. The adoption in March 2020 of the temporary Support to mitigate Unemployment Risks in an Emergency (SURE) is a case example. The SURE programme provides governments affected by the pandemic with the possibility to use up to EUR 100 billion in EU loans to safeguard jobs and incomes. Concretely, an EU government can benefit from cheaper borrowing conditions and a longer maturity on financial markets under the condition that it uses EU funds to adopt job retention schemes.

In the wake of the Great Recession, EU institutions had launched the highly successful Youth Guarantee, which was recently updated to address some of its shortcomings. Looking ahead, EU citizens involved in the Convention of the Future of Europe asked that well-prepared plans with detailed scenarios be ready to deploy fast to minimise the impact on these populations, in case of a serious crisis – such as during a new pandemic, other natural catastrophes or a war. Two years after its adoption, SURE can legitimately be considered as an important ingredient of the wished-for recipe. SURE indeed conveyed an image of the EU acting as a “second line of defence” and was unequivocally saluted as a success story.

With all its merits, SURE yet remains a temporary mechanism. Besides, SURE is a *re-insurance* function, preserving jobs but not the unemployed. These two shortcomings are largely due to the fact that little more could have been achieved under the current EU legal framework. If we do believe that there is no good reason why EU action should be prevented from achieving the kind of social, economic and political successes EU citizens are calling for, the treaties should be amended.



## 5. For a new governance of social policy in the EU

Promoting a “European Social Market Economy” should be understood as progressing towards more universal social protection systems, able to address new social risks. Substantially, this means allowing the EU to serve as a holding environment for member states to help smoothen transitions across the life course (such as those linked to child rearing, shifting jobs or ageing at work) or when they move from social insurance to social assistance schemes. This also means taking a more encompassing view of *what* is understood under “adequate” social protection, *who* we mean when we talk about the social protection of “workers”, and *how* information exchange across social security systems could help tackle the critical issue of non-take up of benefits – which can reach as much as 50% in some countries. How could changes in EU governance help improve the situation?

First of all, principles and rights proclaimed in the Social Pillar should be reflected in the treaties. This would not only help enforce shared social principles, but also reduce perceived risks of “welfare shopping”, an issue of deep political concern.

Building on the Social Pillar, its Action Plan, and the existing Social Scoreboard, the European Semester should help regularly identify which essential social standards should be in focus in the regularly updated list of “priority European public goods”. Action to advance social standards in areas agreed upon at the EU level should benefit from a favourable treatment, be it through an exemption to deficit rules, as per the “modified golden rule” or by means of support of EU programmes making EU funding conditional on governments’ efforts to achieve these common aspirations, as in the case of the European Child Guarantee or the updated Youth Guarantee. Overall, such kind of changes should contribute to these social rights being granted at equivalent status to fiscal sustainability concerns in the EU’s economic governance framework.

EU member states should also see their own self-interest in developing the EU into a re-insurance Union. The first step would be to transform SURE into a *permanent* instrument for *temporary* support. Scholars have advanced that a realistic option in today’s legal framework would be to frame it as a special instrument outside the Multiannual Financial Framework (MFF) ceiling under Article 175(3) TFEU. Yet to facilitate agreement and add coherence to effectiveness, EU treaties should be amended to enable such instruments to enter the EU legal order. But urgent needs also lie elsewhere. As argued in Chapter 3 on economic governance, the EU should be allowed to benefit from the necessary resources to act as a *re-insurance Union*.

Amended EU treaties should accordingly make the scope for the kind of temporary support mechanisms, such as SURE, to be activated in case of emergencies by means of direct EU borrowing. Looking ahead, EU treaties should use the same modified legal base to allow for the adoption of a **reinsurance European Unemployment Benefit Scheme (EUBS)**. A reinsurance EUBS would provide fiscal breathing space for countries asymmetrically affected by a downturn by allowing unemployment expenditures to be insured through a fund provisioned by all EU member states. Such a EUBS would be based on a common indicator of short-term unemployment, be fiscally balanced over the economic cycle and prevent permanent transfers through a claw-back mechanism. Financed on a regular basis by member states, the EUBS should be accompanied by active measures to help bring people back to work, for example by linking it to the existing European Transition Support Fund.

EU *recommendations* in the social policy area, be they linked to social insurance or social assistance, should be able to be enacted by qualified majority voting. Most social policies in the EU have to be enacted through the “special legislative procedure” which requires voting by unanimity in the Council and a mere consultation of the European Parliament. Under the current treaties, the European Council could use the *Passerelle* clause in Article 48(7) to make qualified majority voting applicable in the area of social security concerned (beyond those currently foreseen in Article 153(2) TFEU), thereby allowing the Council to act by qualified majority voting when it adopts recommendations. But qualified majority voting and equal say for the European Parliament in social policy should be the norm, not a hard-to-reach state of exception. Especially in the formulation of social policies, EU citizens should be able to have a greater say through their elected representatives. **A move to the ordinary legislative procedure, where the Parliament becomes a co-legislator on an equal footing with the Council, would allow the citizens' representatives to make a full contribution to shaping EU social policy.** This is particularly valid in the case of the modernisation of social protection systems. Moving to qualified majority would stimulate agreement on such recommendations to guide and help support the modernisation of social protection systems.

For the same reason of higher effectiveness and representation, **provisions related to social assistance should become a shared competence**, allowing EU institutions to set minimal requirements for gradual implementation as foreseen in Article 153(2b), thereby permitting EU citizens to be protected against the evil of pauperism independently from the country where they reside.

Finally, in light of the new social risks facing European citizens in the 21st century, new attention should be drawn to the process by which fundamental principles of social security systems are being defined. EU treaties currently reserve the definition of fundamental principles to national governments. Given the institutionalising consensus in the EU on what constitutes pure public goods in the social policy, the treaty changes should also consider the case for the **definition of fundamental principles – and other provisions related to social security – to become a shared competence in its own right.**

**Ensuring the implementation of all principles of the European of Social Rights among the goals indicated in Article 151 TFEU, and reference to this Pillar in the guidelines on employment policies in Article 148 TFEU will also provide a more consistent treaty base to developments already happening in the European social policy.**



# Chapter 6

## European public goods for gender equality

Article 2 of the Treaty on European Union states that the EU is founded on the values of respect for freedom, democracy, the rights of minorities and gender equality. Equality between women and men is not only recognised by the EU as a fundamental right, a common value of the EU, but also a necessary condition for the achievement of the EU objectives of growth, employment and social cohesion.

Moreover, the Charter of Fundamental Rights states in Article 23 that “The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.” Add to this a wide range of directives and landmark court rulings. To cite just a few, there is the 2006/54/EC record directive on the implementation of the principle of equal opportunities and equal treatment and the directive on work-life balance from 2019. In spite of all the legislation and possibilities for promoting gender equality within legal framework of the European Union, no member states have achieved full gender equality. The EU has made significant progress in gender equality over the last decades but progress has been too slow and inequalities persist. **So now it is time to put women's rights on top of the Agenda for the Future of Europe and it is necessary to have a stronger reference to gender equality in Article 2 and 3 TEU concerning the values and goals of the European Union.**

**Gender-based violence should be added in the judicial cooperation in criminal matters in Article 83.1 TFEU, and moving to qualified majority voting in civil matters in Article 81.3 TFEU as fighting gender-based violence should be a high priority of the EU.**

The tool to ensure the gender perspective in future European legislation should be gender mainstreaming which is a cross-cutting approach with a particular attention to intersecting forms of discrimination. For instance, women belonging to minority groups often are confronted with specific forms of disadvantages (for example women with disabilities are the most vulnerable to gender-based violence). **In Article 10 TFEU “with a particular attention to the intersecting forms of discrimination” can be added.**

**Concerning the gender balance in the composition of the EU institutions Article 13 TEU should be amended.**

At the national level, the individual member states have introduced different policies in the interest of women and at the same time national cultures and traditions also have an impact on women's conditions. For example the Nordic countries offer affordable and accessible childcare as a public good to all citizens including refugees and immigrants. Countries like Portugal and Romania are above the EU average when it comes to women in research also within the STEM areas. Greece has the highest number of women in ICT. Spain has introduced the most far-reaching legislation on gender-based violence. Many member states have made legislation on gender parity in the administrative management bodies in public enterprises and in listed companies and also in the leading position in public administration. Some countries have even introduced gender quotas in politics.

The EU should make sure that all the legislation (and not just on women's rights) in the European Union should be a public good for all female citizens and the Commission should support the transfer of knowledge between the member states.

The EU budget should be subject to gender budgeting to ensure that women also benefit from the European economic development.

This is particularly important in relation to the implementation of the Next Generation EU fund. Likewise, the European Green Deal will result in the creation of many new jobs in the energy sector, but in most member states this sector is mostly male-dominated. Therefore, the EU must propose measures to ensure that women also have a say and a role in this crucial and growing sector bringing numerous opportunities. Even while there are more women university graduates in the EU than men graduates, women remain underrepresented in higher paid professions due to structural barriers. More women than men work in low-paid jobs and sectors, and in lower positions. Discriminatory social norms and gendered stereotypes about skills and the undervaluation of women's work are some of the contributing factors.

In this context the digital transition is also of utmost importance. The digital sector is among the most male dominated. While the number of women has gone up in the STEM sector it has gone down from 1983 in the ICT-sector. Today women only represent 17% of people in ICT studies and careers in the EU. We must ensure that women are not left behind in digital development. Gender stereotypes and socio-cultural norms prevent women from participating in that sector. The public authorities should demand in their public procurement that women should participate like it was done with affirmative action in the US. Gender mainstreaming of digital education policies and programmes that educate parents and teachers about gender stereotypes would set up positive women role models. Is the first step towards closing the digital gender gap and tackling the leaky pipe phenomenon in the area of digital education?

If women are to act on an equal footing with men in the labour market, two fundamental conditions must be met. First and foremost, childcare and long-term care are crucial so that care responsibilities and needs are never penalising people – mostly women and migrants – but, instead, acknowledged as a central part of any well-functioning society. For this purpose, the EU needs to expand the Child Guarantee, revise the Barcelona targets and propose a strong EU Care Strategy rooted in feminist values to harmonise care policy across Europe. Moreover, unpaid care must be better valued and distributed in a balanced manner to enable women to have equal opportunities and to be treated equally in the labour force and in terms of career advancement. The reality remains that women are overrepresented in part-time and in low-paid work. This trend is being exacerbated in some of the member states by taxation schemes that create disincentives for women to leave housekeeping to enter and remain on the labour market, and reproduces traditional gender roles. The Commission should come up with a proposal on eliminating taxation schemes striving for the equal-earner-equal-career model.



# Chapter 7

## European public goods for health: learning from the pandemics

### 1. What are the current citizens' expectations, the recommendations from the Conference on the Future of Europe

The current citizens' expectations to have more European public goods in health are very high. According to Eurobarometer, European health policies in 2020-2022 were constantly among the five top priorities for Europeans (voted most important issue in six EU countries, Eurobarometer Winter 2021-22). When asked about priorities for the EU's coronavirus response: one in three welcome an EU-level strategy to tackle a crisis like Covid-19 in the future (33%). The development of a common European health policy was deemed a priority by 28% (+3% points from spring 2021). 27% voted for rapid access to safe and effective vaccines for all EU citizens and 26% for more investment in development of treatments/vaccines.

Numerous recommendations from the Conference on the Future of Europe on health are proof that health is high on the political agenda. These include:

- Amending Article 4 TFEU to include Health and Healthcare among shared competencies (EU and MS);
- Promoting better health by acting at the intersections between health and environment (for example, tackling AMR, sustainable farming, better air quality, access to healthy foods – food labelling, taxation of unhealthy foods, organic and local food production);
- Reinforcing health care systems and access to affordable healthcare for all (for example, reduce inequalities in access to medicines and dental care, enhance R&I cooperation, establish a European healthcare database for medical records);
- Promote health literacy and destigmatise mental health/sexual education;
- Increase funding for health policies and measures to mitigate pandemic impact in the MFF 2021-2027;
- Adapt financial mechanisms in the new MFF to support pandemic response and ensure sufficient economic recovery;
- Involve citizens through Conference on the Future of Europe and potentially reform treaties to better prepare EU for future health threats.

## 2. What kind of European public good should be developed?

Public goods in health have characteristics of different public goods. The typology of public goods in health, including how they could be developed if EU competences were to be expanded, are as follows:

### 2.1 Community goods

- European health data space, uptake of electronic cross-border health services for exchange across member states (for example, patient summaries, ePrescriptions, eDispensation).
- Early Warning and Response System (for exchange between member states supporting response against cross-border health threats – potentially useful to monitor and respond to other challenges if used actively by all).
- Breakthrough technologies (Leverage EU support for uptake of (digital) technologies in member states and modernise health systems – for example, Recovery and Resilience Facility, Technical Support Instrument, Cohesion Funds).
- Best practice exchanges between member states (Natural Laboratory of Europe).
- Development of orphan drugs.
- Management of rare diseases (for example, European Reference Networks).
- Equitable access to health care both within and across member states.
- Reserves needed to mitigate health emergencies (for example rescEU reserve of medical countermeasures).
- Joint procurement of PPE, medicines and vaccines between member states (Joint Procurement Agreement).

### 2.2 Common resources goods

- Clinical pathways (for example, development of clinical guidelines, care models and frameworks for example funded by EU4Health – increase uptake at national levels to promote high levels of care in all member states).
- Training curriculum (for example, EU-funded training under ESF, Erasmus +) – ensure full interoperability of training and educational programmes.
- Irrigation of medical deserts (for example, effective cross-border mobility; use of EU tools such as Cohesion Funds and Technical Support Instrument to attract healthcare workforce).

### 2.3 Pure public goods

- Administration of European public goods (strengthen EU institutions responsible for health, including EMA, ECDC, DG SANTE, HERA and establish a common Global health strategy).
- Regulatory European public goods in health (for example, expansion of EU agency mandates: ECDC, EMA; revise EU pharmacological strategy; strengthen potential of Beating Cancer Plan for national cancer programmes, develop common European standards of care at national, regional and local levels).

- **Open data (open research).**
- **European health security framework (for example new Regulation on serious cross-border threats to health).**
- **More cooperation and coordination in Research and Innovation (Horizon Europe, network of reference laboratories and multi-country clinical trials).**

### **3. What would be the concrete implications for citizens**

- Saving lives of thousands of Hepatitis C patients by transforming of DAAs from private to European public good – better access to and more affordable medicines also for other conditions through joint procurement, horizon scanning, price negotiations.
- Providing cure for millions suffering from rare diseases, providing expert support through EU networks such as the European Reference Networks.
- Stronger commitment to European project because medical deserts are irrigated, more effective allocation of health workforce (also resulting in stronger skill mix and effective task shifting).
- Better employment and earning opportunities for employees in health-related sectors including pharma and digital within and across different EU member states.
- Stronger soft power of the EU – enabling strengthening of national health systems and resilience to upcoming challenges at EU level (including non-communicable diseases, climate change, AMR).

### **4. How is the policy field currently covered in the EU treaties (titles, chapters, articles)?**

Article 6, TFEU (EU has supportive competency for “protection and improvement of human health”), Article 168 of the TFEU on Public Health.

### **5. What are the implications for economic governance?**

Since the current legal provisions in Article 168 limit competences to supportive actions in Public Health, EU health policy has also indirectly been delivered through other policy fields, such as the EU's single market, fiscal and economic policies.

The EU's fiscal and economic governance structure was hardened in response to the global economic crisis. Health policy has inevitably become an integral part of this fiscal governance system, since member states spend a large proportion of their domestic budgets on health care systems (for example, country-specific recommendations for health systems in the European Semester).

- Restructuring of European budget would be needed to ensure the stronger emphasis on health.
- Stronger European health agencies.
- Establishment of European Insurance Fund for Rare Diseases and Orphan Drugs.
- More formal meetings of ministers of health.

## 6. What are the implications for a new competencies' typology and for political governance?

The lack of EU competencies (Article 168) has resulted in a spillover of health into other policy fields. Consequently, the range of EU instruments for health is currently broad and somewhat fragmented across different policy areas. This can create inefficiencies and frequently requires member states to combine more than one type of EU support instrument if they want to implement change in their health systems. If the EU's competencies in health were to be expanded by legal provisions in the treaties, fragmentation and duplication could potentially be reduced by optimising resources within member states and at EU level. However, organisation and functioning of health systems in the EU is extremely diverse and has always been a member state competence. Any legal adaptation in competencies is likely to be met with some political resistance and pose operational challenges.

Any legal changes should be aligned and create synergies with other policy areas currently contributing to shaping EU health policy (those mentioned above, social policy, the European Green Deal, and so on).

## 7. What can be done under the current treaty framework?

- Primarily supportive and coordinative function limited to Public Health (not health care organisation and/or planning), which encompasses the provision of funding, research and some degree of technical support, as well as soft policy guidance (for example, recommendations, communications) and promotion of cooperation between member states.
- In deep analysis of most promising pan-European policies.
- Following legal requirements of Article 35 *Charter of Fundamental Rights of the European Union (2009)* "A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities".
- Progress on policies of a European Health Union that are already declared by the EU (such as strengthening the EU health security framework and strengthening cooperation on cross-border health care – Commission Communication on Building a European Health Union).

## 8. What kind of targeted treaty changes should be operated?

Explicit indication of health in Preamble of TFEU and Article 3 of TFEU. Shared competences in public and human health should be stated in Article 4 of TFEU. Article 168 of TFEU should be redesigned to promote health by supporting member states in reducing inequalities in access and unmet health needs, by strengthening the interoperability of their health systems, as well as build capacity for future threats and tackle cross-border health challenges.

### 8.1 Legal text with proposed amendments

- Preamble Treaty on European Union (TEU)
  - DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the single market and of reinforced cohesion and environmental *and health* protection, and to implement policies ensuring that advances in economic *and social* integration are accompanied by parallel progress in other fields.

- **Article 3 TEU**

- The Union's aim is to promote peace, its values and the well-being of its peoples.
- The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
- The Union shall establish a single market. It shall work for the sustainable development of the EU based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment *and human health*. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among member states.

It shall respect its rich cultural and linguistic diversity and shall ensure that the EU's cultural heritage is safeguarded and enhanced.

- The Union shall establish an economic and monetary union whose currency is the euro.
- In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
- The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the treaties.

- **Article 4 TFEU**

- The Union shall share competence with the member states where the treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.
- Shared competence between the Union and the member states applies in the following principal areas:
  - single market;
  - social policy, for the aspects defined in this treaty;
  - economic, social and territorial cohesion;
  - agriculture and fisheries, excluding the conservation of marine biological resources;
  - environment;
  - consumer protection;

- transport;
  - Trans-European Networks;
  - energy;
  - area of freedom, security and justice;
  - *European Health Union*.
  - In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in member states being prevented from exercising theirs.
  - In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in member states being prevented from exercising theirs.
- Article 6 TFEU
    - The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the member states. The areas of such action shall, at European level, be:
      - industry;
      - culture;
      - tourism;
      - education, vocational training, youth and sport;
      - civil protection;
      - administrative cooperation.
  - Article 9 TFEU
    - In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion and achievement of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.
  - Article 168 TFEU
    1. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.
    2. *The Union shall define and implement a European Health Union.*

The *European Health Union*, which shall complement national policies, shall be directed towards *protecting, improving and promoting human health*, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. *The European Health Union shall be based on principles of equality, efficiency, and respect for human rights.*

3. ***The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives of the European Health Union through adopting measures for the approximation of law, regulation or administrative action in member states, and incentive measures, designed to protect and improve human health.***

The Council, on a proposal from the Commission *and after consulting the European Parliament*, may also adopt recommendations for the purposes set out in this Article.

4. The Union shall encourage cooperation between the member states in the areas referred to in this Article and, if necessary, lend support to their action. It shall in particular encourage cooperation between the member states to ***build capacity to withstand health threats, improve the complementarity of their health services in cross-border areas, and face up to cross-border health problems.***

The Commission may, in close contact with the member states, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

5. The Union and the member states shall foster cooperation with third countries and the competent international organisations in the sphere of public health.
6. Union action shall respect the responsibilities of the member states for the organisation and delivery of health services and medical care. ***The Union shall support the capabilities of member states to promote health equality, reduce unmet medical needs, and strengthen the interoperability of their health systems.***



---

# **PART 2 DEVELOPING THE MEANS TO DELIVER EUROPEAN PUBLIC GOODS**

---

# Chapter 8

## European public goods and European citizenship

### 1. The need for strengthening the rights linked with the Union citizenship

A paradigm shift is needed, from an EU that is essentially an economic project, to an EU built on the values of solidarity and equality between states and between citizens.

It is striking that respect for and promotion of the rights of Union citizens are not among the Union's objectives. This gap should be filled. The Court of Justice's assertion that the status of citizen of the Union is the fundamental status of nationals of the member states should also be included in the text of the treaty itself.

With a view to the development of a "basic law", a provision setting out the rights of Union citizens should be included. For the sake of clarity, this provision should include only those rights that are really attached to the status of citizen of the Union, in the sense that they are reserved for them in this capacity, and refer for the rest to the Charter of Fundamental Rights, which should focus on rights of a more universal nature.

A reflection must also be carried out on the actual content of these rights, and this at a double level.

First of all, citizenship of the Union should be translated into more "vertical" rights opposable to the Union and creating direct links between it and "its" citizens.

Thus, it would be appropriate to grant a more important role to the Union in the protection of citizens moving or residing in third countries. This would give an external dimension to the concept of Union citizenship, strengthen the Union's identity in third countries and make it a concrete expression of the principle of solidarity. In practice, the Union already plays an important role in this respect, as demonstrated by the organisation of the repatriation of Union citizens residing outside the Union at the beginning of the Covid-19 pandemic. This role should be recognised and promoted.

Above all, the citizens' dimension should be strengthened, in order to allow real participation of citizens in a continuous democratic life at the Union level. The experience of the Conference on the Future of Europe could serve as a model, which would be perpetuated. Digital transformation is an opportunity to be seized in this context, for example to enable citizens to communicate with each other in all the languages of the Union, as is currently possible when communicating with the Union's institutions. Thought should also be given to whether the duties that citizens of the Union might have towards the Union should not be defined. Civic education could thus be addressed as a right as well as a duty.

As far as the horizontal dimension is concerned, the question that arises is how to overcome the logic that continues to make citizenship a market citizenship from which the poor citizens, considered as profiteers, cannot benefit. The answer is not simple because there is a tension between the recognition of a generalised right of free movement and residence, independently

of the exercise of an economic activity, and the nationalised and territorialised character of the national systems of social protection, of which it postulates, in the absence of European mechanisms of social solidarity, the opening to the citizens of other member states. In the long run, full equality of citizenship in social matters would require the convergence of redistribution policies towards the definition of common standards, or even the decision to transfer substantial budgetary resources to the European level so that a common redistribution policy can be adopted at this level. This would also require a higher convergence of productivity levels.

**Finally, Article 25 TFEU should be revised so that the ordinary legislative procedure can be used to strengthen European citizenship.**

**With regard to fundamental rights, as long as the Union's competences in these areas are not re-evaluated, the potential of the Charter to promote social rights will remain limited.**

The same holds for the principles established by the Social Pillar, which proclaimed new social principles related to equal opportunities, access to the labour market, fair working conditions, social protection, adequate housing, and inclusion. The Social Pillar notably adds to the Charter provisions new rights linked to social assistance, such as the social protection of the self-employed, the right to a minimum income, the timely access to affordable and quality preventive and curative health care, and the right to quality housing assistance for people in need. Now, in order to bridge the gap between these principles and rights and their effective implementation, changes in EU policies, instruments, decision-making procedures and competences are needed. How EU Treaty changes could help bridge that gap is an issue to which we turn in the concrete case of social policy in Chapter 9.

## **2. A citizen momentum for European public goods**

### **2.1 In the last years, the European Union has unexpectedly produced major common goods with the support of European citizens**

**Nevertheless, in fewer than five years, the EU has produced massive unexpected benefits for European citizens which were nearly unimaginable fewer than ten years ago: the GDPR implemented gradually as early as 2018, an EU regulation which protects the private data of citizens, the European recovery plan decided in July 2020 and which protected the entire EU against a new economic and social crisis, the European Commission SURE program which prevented the return of mass unemployment in 2020 and 2021 or the European vaccinal strategy which created for each European citizen a form of right to access to a quality and sure Anti-Covid vaccine in 2021. The last striking output is the future Digital Markets Act, which aims at regulating major systemic digital platforms such as the so-called GAFA and on which a political agreement was reached in April 2022 during the French presidency of the Council of the European Union.**

These different outputs can be in many ways considered as European common goods as it is demonstrated in this Report. In most of the cases, the member states or a large part of them were initially reluctant and sometimes highly opposed to these outputs. There were in each case four considerations that changed their positions: a major unexpected crisis be it ethical, democratic, economic and social, or in the health field (Snowden's revelations, the Cambridge Analytica affair, the Covid pandemics...), the understanding that the solution to it cannot come only from the member states because national frontiers are not relevant, the necessity of a rapid and strong solution and, in addition, a public opinion in the member states clearly in favour of an European answer and very often less reluctant and in advance of its national decision makers. In other

words, the citizen will at the level of the European Union has been decisive and most proactive than the one of its political elites.

In fact, it is interesting to state that we can gradually observe at EU level the development of a great society of citizens sharing everywhere in the Union the same concerns with regards to the future.

## **2.2 The citizens tend to converge on the kind of common goods they wished at European level when they are consulted in an open way**

A good example of it, confirmed later in most Eurobarometers, is the result of the WeEuropeans citizen consultation (weEuropeans.eu) which took place between December 2018 and February 2019, shortly before the European elections of May 2019. Initiated by Civico Europa, a transnational citizen movement born in the follow-up of the British referendum of June 2016. Implemented with the support of the civic tech Make.org, this consultation was conducted in cooperation with four major political groups of the European Parliament (EPP, S&D, Liberals and Greens), that committed publicly on the 22 March 2019 to make the main results of this consultation the priorities of the future EU legislative agenda. This consultation reached 38 million citizens, obtained more than 1.7 million participants in the 27 countries in the Union and in 24 national languages. It happened to be the widest citizen consultation ever organised at the level of the Union. This consultation was a bottom-up consultation, with a non-directed open question "what would you do to reinvent Europe?" The specificity of this question is that it invited the citizens to answer with a European perspective as European citizens and not with a national perspective for Europe.

The results of the consultation were remarkable in many ways. First, the level of participation was twice as high as for an equivalent consultation at national level. In other words, when citizens of the member states are consulted on EU issues in national silo, they seem to answer much less than when they are consulted collectively, which pleads for transnational consultations.

Second, five major shared concerns emerged during this consultation in this order: sustainable development, European democracy, the social question, fair taxation of the global systemic platforms and international companies, education and research. The detailed results of the consultation illustrate the types of common goods wished by European citizens. It is interesting to note that President Ursula Von der Leyen placed at the heart of her European Commission program four of the five concerns which went out of the consultation.

Third, one of the most interesting results of the consultation is that the concerns expressed by citizens were shared largely in the same manner everywhere in the member states with few and limited exceptions.

Of course, these results were obtained before the Covid pandemics and the war in Ukraine, but they are a good index of the kind of common goods citizens can expect out of periods of exceptional crisis.

The WeEuropeans consultation was an invitation to conduct a more institutional conference on the future of Europe at transnational level that really engaged European citizens.

A major European common good would be for each European citizen to have the possibility of having a real European citizen experience and taking advantage of a European civic education.

If there is one major takeaway of the Conference on the Future of Europe, launched in May 2021, it is that this conference was a game changer for the citizens who participated in it. For the first

time, European citizens got the feeling to really be European citizens in a situation to contribute to the general interest of the European Union and of its citizens, and they really appreciated it.

They pointed out the full lack of a European civic education which could help citizens to understand the challenges of the European Union and how it functions. They considered that the unique experience they had should not be limited to the happy few sorted citizens but should be extended to all the citizens of the Union. They finally recommended that the philosophy of the conference to consult EU citizens to co-build the future of the EU with the member states and the representatives of the national and European Parliaments should be a continuous exercise.

If the visibility of the conference was low, the value of the experience of the conference is high and it must lead to renew the concept of European citizenship and consider it as a fundamental common good.

All in all, if there is a takeaway of these last years, it is clearly that citizens are very often readier than leaders for the next chapter of European democracy on condition there will be a real public European pedagogy.

**We conclude this chapter with the Table: New European public goods and citizens' rights illustrating the kind of new European public goods which should be delivered to meet European citizens' expectations regarding health, education, employment, labour, social protection, environment, digital, democratic participation, and security.**

**Who does what according to the three categories of EU competences and the four dimensions of EU modes of governance**

Type of European public goods → Policies ↓	Community public goods	Common resources goods	Pure public goods
<b>Health</b>	European basic health standards European Health Insurance Card supported by national systems	Public procurement of pandemics vaccination EU health agencies	EU rare diseases and orphan medicines insurance
<b>Education</b>	Education TENs and resource centres Learning accounts European equivalence of diplomas	European Open University	European brevet for digital skills or for European citizenship
<b>Employment</b>	EU network of job search services	Cohesion funds supporting job creation	Investment Important projects of common interest

Type of European public goods → Policies ↓	Community public goods	Common resources goods	Pure public goods
Labour	Directive on minimum wage	Cohesion funds supporting care services	EU Labour Authority enforcing Directive for platform work
Social Protection	Standards on minimum income and on minimum social protection against key risks	EU unemployment re-insurance Cohesion fund supporting social investment	EU Civil Protection Mechanism
Environment	EU laws on green transition European basic standards in housing	European budgetary capacity for green investments in energy, transports, industry, agriculture	TENs for low carbon energy
Digital	EU laws on digital platforms and media activity	Cohesion funds for broadband access	EU Cloud EU data space EU artificial intelligence projects to modernise public services EU multilingual media agency
Democratic Participation	EU law on respect for rule of law	Rule of law conditionality on the access to European resources	EU Court enforcing rule of law EU multilingual platform for democratic participation
Security	Coordination of defence and security capabilities	EU budgetary capacity to defence industries	EU Defence Agency Europol EU infrastructure for cybersecurity European border

# Chapter 9

## The economic governance of European public goods

1. The **economic governance** is complicated by overlapping administrative **competencies** for national and European public goods. With the **creation of the euro**, money has become the hard budget constraint for all members of the Euro Area. This has shifted the integration process from being predominantly focused on community goods into the field of common resource and pure public goods and has rendered the process of conducting economic policies between member states (where most economic activity is happening) and the Union (where most economic externalities appear) particularly complex. It requires a larger degree of cooperation between national and European policies, but when rivalry prevents cooperation, a central authority must take the decision. The economic governance of European public goods must be **more consistent** for members of the Euro Area because monetary externalities will directly spill over to other member states.
2. The economic governance of European public goods consists of four **building blocks**:
  - a. the single market and competition policies;
  - b. monetary policy and financial stability;
  - c. macroeconomic coordination and surveillance;
  - d. coordination of national economic policies during the European Semester including budgetary capacities and taxation.
3. These building blocks contain the following **economic European public goods**:
  - a. the fair functioning of the single market;
  - b. the stability of the currency;
  - c. the stability of financial markets;
  - d. the sustainability of public debt;
  - e. instruments for supporting balanced economic growth;
  - f. the budgetary capacity for allocating specific European public goods (the amount of public spending) and their funding (taxation and own funds);
  - g. the funding of the institutional capacity to regulate European public goods.

4. In today's changing world, **new European public goods** must be created and jointly administered in the following policy areas:
  - a. security, and defence, including border control;
  - b. Green Deal, environment and issues of climate change;
  - c. digital transformation;
  - d. the integration of climate-conform transport systems;
  - e. the integration of employment and social protection policies, including gender equality;
  - f. an integrated single market for health services, including pandemic prevention.
5. The rules for **competition policy** in the TEU (Article 3) assign exclusive competences to the European Union. This is the correct assignment and does not require change.
  - a. However, competition policies need to be reassessed in a global environment of systemic competition. They should support the twin transition to a green and digital economy, support the SMEs and start-ups, and increase the EU's strategic autonomy.
  - b. Criteria need to be developed whereby specific aids by member states for private companies can generate positive externalities for the European Union.
  - c. A fair distribution of growth opportunities across regions must prevent competitive distortions but allow support for the efficient functioning of the single market and innovation.
6. The treaty assigns exclusive competences for **monetary policy** to the independent European Central Bank with the primary objective of maintaining price stability. In the long run, the position of the euro as an international key currency will depend on its stability and credibility. This is a positive externality that increases welfare for European citizens and helps to defend European values in the world.
7. The ECB is the guardian of the hard budget constraint in the euro area. It establishes the euro as a common resource good to which anyone has free access through the European banking system.
  - a. Weakening this constraint would undermine the functioning of the monetary union by inflation and **exchange rate** depreciation. Both are costs that reduce the overall benefit of this economic public good. A stable currency is the foundation of all other desirable economic and social policies.
  - b. **Fiscal policy** must therefore support the stability of the euro. High **public debt** levels render it difficult to increase interest rates when inflation is rising. This is a negative externality that needs to be controlled by a European fiscal authority with exclusive competencies.
  - c. The exchange rate determines the monetary relation between the euro area and the rest of the world. It contributes therefore to the international **competitiveness** of European businesses, the aggregate current account of the euro area and long-term employment levels.

8. The **stability of the financial system** requires minimising moral hazard whereby partial interests generate negative externalities for the system.
- a. This justifies centralised **banking supervision** by the ECB. Safety regulations must *prevent excessive borrowing* ("too big to fail") by private borrowers. However, given the importance of public borrowing and of the size of sovereign debt for the functioning of financial markets, rules of strict fiscal discipline must also be part of the efficient economic governance of the euro area.
  - b. Because removing obstacles to cross-border investments creates benefits, completing the single market for financial services and creating a **Capital Markets Union (CMU)** will turn negative into positive externalities. It requires a fully integrated equity stock market and a bond market for the European monetary union that would provide additional mechanisms for improving private risk sharing and insurance and protecting against asymmetric shocks.
9. The treaties have enshrined **targets for public borrowing** of 3% of GDP for deficits (annual new debt) and 60% of outstanding public debt in the **Stability and Growth Pact**. The reality looks different. While the targets seem reasonable during "normal" economic development, they were dramatically overshot during the succession of recent crises (Euro crisis, Covid, Ukraine, energy costs). The usual sanctioning mechanisms were suspended by an escape clause. Presently over half of all EU member states exceed 60% and six member states even 100% of debt-GDP ratios. Such situations require instruments to guide member states to pursue a sustainable path of debt reduction.
- a. The recent Commission proposal for using "medium-term fiscal-structural plans" with a "primary net expenditure trajectory" and a "debt-based excessive deficit procedure" would support financial stability.
  - b. Rules for sanctioning violations of fiscal policy need to be tidied up:
    - definition of exceptional situations *warranting* the escape clause;
    - definition of criteria for *revoking* the escape clause;
    - because fiscal policy is subject to the hard monetary budget constraint, the *excessive deficit procedure (EDP) must become a matter for the ordinary legislative procedure*.
  - c. Because the debt-GDP ratio depends on fiscal policy as well as on economic growth, policy rules for supporting economic growth must be made an integral part of the economic governance. Defining targets for public investment should become part of the economic policy package that is defined during the European Semester.
10. Fiscal policy needs to be reviewed with a **quantitative** and **qualitative** perspective. The quantitative aspects relate to how much money is spent and how it is raised; the qualitative aspects determine the consequences of public spending on the real economy.
- a. The two dimensions should be combined into a Macroeconomic Framework Law (MFL) – passed by the ordinary legislative process – that reflects the outcome of policy deliberation during the European Semester in the context of the Multiannual Financial Framework. It translates the long run policy orientations into short run policy actions.

- b. The European Semester is a tool to make national fiscal policies coherent with the aggregate European fiscal position including the European budget – and especially in the euro area as it interacts with monetary policy.
11. On the **quantitative** side, aggregate spending determines aggregate demand. Because money supply is limited, and any borrower in the euro area has free access to central bank money, excessive borrowing by one member state generates rivalries and negative externalities for all others. This follows from the definition of money as a common resource good. The lack of a single decision on the aggregate new borrowing (the aggregate deficit of the euro area) overburdens the central bank.
- a. Setting the quantitative limits for the aggregate fiscal stance, which interact with monetary policy, is an instrument for stabilising the business cycle. Counter-cyclical policies require defining an aggregate fiscal stance for the euro area and not uncoordinated national deficits. The aggregate fiscal stance is the sum of all national budget positions.
  - b. A new Macroeconomic Framework Law would define the aggregate deficit for the euro area and then allocate deficit rights proportionally to member state budgets. Deficit rights are transferable to other member states who can use them for their national spending plans.
  - c. Fiscal rules will help sustain confidence in the euro. But these rules should provide for more flexibility to allow both national and EU-level action supporting it to more effectively advance priorities shared by EU governments. While the debate on new rules is currently ongoing, we propose that rules as they stand should at least be amended by a Modified Golden Rule that would take into account investment in “priority European public goods”.
  - d. National budget deficits are limited by the above-mentioned fiscal rules but these constraints can be suspended in case of a severe crisis or by obtaining deficit permit transfers from other member states. National deviations are subject to the deliberations during the European Semester and must be authorised as part of the MFL.
12. The **qualitative** orientation of the aggregate fiscal stance is determined during the **European Semester**, which coordinates economic, fiscal, labour, and social policies within the EU and enshrines them in a new macroeconomic framework law (MFL).
- a. The European Semester defines **priority public goods** that promote sustainable development in line with the UN Sustainable Development Goals, the principles of the European Pillar of Social Rights and the European Green Deal. Candidates for priority goods are investment into energy security, reduction in CO2 emissions, digital capacities and education, European defence, certain elements of R&D, and welfare policies of a social investment type. The list of priority European public goods is established via the ordinary legislative procedure.
  - b. The European Semester articulates the **complementarities between national and European** public goods. It gives direction to the orientation of structural economic reforms by defining the quality and priorities of economic policies that generate European-wide externalities.

13. Rules for supporting **economic growth** must distinguish between macroeconomic *stabilisation* policies (the management of business cycles and crisis shocks) versus *long-term welfare* improvement for all citizens.
- a. **Stabilisation policy** requires that temporary reductions in the growth of private consumption and investment due to economic uncertainties can be compensated by expansionary fiscal borrowing, but during periods of excess demand fiscal policy should be restrictive and pay back outstanding debt. Fiscal policy over the cycle must be balanced.
  - b. Stabilisation over the business cycle requires *fiscal policy to be asymmetric*. Public debt grows at the rate of compound interest independently of primary budget positions. Hence, the debt service becomes larger when the debt/GDP ratio is higher. Budget policy must take the growing debt service into consideration when making the "medium-term fiscal-structural plans". The *debt repayment targets (see point 16a) must be higher during booms than during recessions*.
14. To support long run economic growth, **public investment** must achieve clearly defined and measurable returns of capital for social welfare. Given the underinvestment in public infrastructures and the need for new European public goods, a *Golden Rule* for financing public investment in tangible capital would generate positive externalities.
15. In the euro area with the integrated single market, national public spending will to a large degree spill over into other member states, which makes **national fiscal policy inefficient** unless it is supported by additional European measures.
- a. National actions to support priority European public goods benefit from a favourable treatment, be it through an exemption to deficit rules in the "modified golden rule" or by means of support of EU programmes, making EU financial and technical support conditional on governments' efforts to achieve these common aspirations, as in the case of the Recovery and Resilience Facility.
  - b. At the national level, governments are mandated to discuss country reports and country-specific recommendations in the parliament and to systematically involve regional partners in the design of development plans involving EU funds.
  - c. Creating a *European policy tool* to supplement national stabilisation efforts would generate positive externalities for balanced European economic growth. A model could be the *Recovery and Resilience Facility*.
    - The Next Generation EU and SURE programs are first initiatives that show how *stimulating economic demand from the EU-level* can prevent unemployment and negative externalities and generate positive externalities for others.
    - However, our experience is still too limited to judge the medium- or long-term effects of these policies. Improved rules for the economic governance should authorise the Union to create *permanent fiscal capacities* if this supports the economic performance of the European economy.
    - The *European Semester* is the institutional framework for monitoring and recommending policies that support making national and European policies coherent in the short and long run.

16. **Long-term economic growth** is driven by **technological progress and productivity** gains. This requires a substantial budget for fundamental research and development and the digitalisation of the EU's economy. The creation of new European public goods, such as building defence and security capacities, achieving energy transition and independence through the Green Deal, digital transformation, improving health care and education, will also generate new growth opportunities. However, fairness and efficiency require that these growth opportunities are balanced between regions and sectors.

a. **Structural funds** are a tool for incentivising local investment in low-income regions. The extent of regional redistribution is a matter for the democratic process. If funds originate in member states (rather than own resources), member states must have the final decision power. Redistribution by European own funds is to be decided by *the ordinary legislative procedure*.

b. The **Macroeconomic Imbalance Procedure** (MIP) is problematic as a tool for ensuring balanced growth. It should be replaced by a macroeconomic *Flow-of Funds Analysis* and a *Competitiveness Monitoring Procedure*. It is desirable to monitor the specific factors that contribute to regional divergences in aggregate (saving, investment, government spending, expenditure) and the underlying causes of competitiveness. Only proper analysis can ensure proper remedies. The MIP in its present form pays too much attention to current account imbalances and "foreign" debt of member states. This is a mistake because:

- Current account balances within the euro area have no economic function as they simply reflect euro-payments between regions and not "foreign" debt. Imbalances in such flows of funds are better analysed by distortions in competitiveness;
- Current accounts are the sum of the saving-investment balance and the public deficit, the objective of balanced current accounts for member states requires austerity policies: if the balance is negative, the deficit needs to be reduced by spending cuts and higher taxes or by reduced private investment. If the balance is positive, the government must borrow more, and firms invest more. This is in contradiction with the single market, where investment ought to flow where it finds the most productive opportunities and public debt is subject to the Stability and Growth Pact.
- Internal current account surpluses within the euro area simply mean that such countries lend money to other regions who borrow to finance local investment.
- The *external current account position of the euro area* with respect to the rest of the world affects the external value of the euro. An assessment of its evolution must therefore become subject of the macroeconomic dialogue between the European Central Bank and the European Parliament

i. **Regional competitiveness** is largely depending on unit labour costs, which depend on nominal *wage bargaining and productivity*. Increasing wages and balancing long-run economic growth requires supporting productivity in stagnating regions. How to do this is little understood, and the European Commission should set up a *productivity-enhancing policy centre*.

17. Today the **budgetary capacity** for allocating European public goods is dominated by **transfers** from member states. This creates an *inefficient contradiction in the distribution of costs and benefits* of European public goods because member states which are accountable to a partial constituency ("I want my money back") while the public goods provide benefits for all European citizens. However, the **creation of new European public goods** (securing common defence, external borders and managing immigration, Green Europe energy transition and security, digital transformation, public health in pandemics) requires clearly defined **fiscal capacities**.
18. Because of the incentive structures for providing public goods the following rules should apply.
- a. **Community goods** generate the incentive for member states to cooperate and can therefore be subject to intergovernmental agreements that rely on national budgets. As a *general principle*, community goods can be financed in a **decentralised** fashion by member state contributions bottom up. Examples are: the single market, R&D policies including digital transition, European transport and communication systems, structural development funds.
  - b. The provision of **common resource goods** follows the logic of zero-sum benefits and therefore requires centralised decision making which is only possible if the budgetary capacity is **centralised** at the level of the European Union through the *ordinary legislative process*. Examples are: monetary policy, the aggregate fiscal policy stance, fishing, energy autonomy.
  - c. **Pure European public goods** can be a mixture of the two. **Pure European public goods** should be *constituted* by a broad constitutional agreement among European institutions and member states. However, their *funding* on a year-to-year basis ought to be the result of the *ordinary legislative process*. Examples are: foreign policy, defence, security and immigration, protection against climate change.
19. The funding of European public goods requires **taxation**. Public goods and common resource goods should be financed by European taxes that are controlled by the *ordinary legislative process*. The **tax base** must be related to the benefits of the single market and the existence of the single currency. Several options are compatible with these principles:
- a. A fixed share of *value added tax* is collected by member states and automatically transferred to the budget of the European Union. The share is determined by the ordinary legislative process for a period of five years.
  - b. A common *corporate tax* would treat all businesses operating in the European market on equal footing.
  - c. The energy transformation and the greening of the European economy can be supported by *specific taxes* on CO<sub>2</sub>, energy providers, waste generation, and so on.
  - d. A digital tax cannot be imposed on corporate profits, but can be subject to a European component of VAT.

20. The euro area needs a **safe asset** to support monetary policy and financial stability. This can be accomplished by **public debt issued by the European Union**, rather than by member states, but this debt must depend on the capacity of the Union to provide sufficient independent tax returns as backup. Member states cannot be made liable for the debt of other member states. The issuance of such debt would allow the European Central Bank to conduct its open market operations more equitably than the recent Asset Purchase Programmes (APPs), which have been dominated by bonds issued by highly indebted member states. This weakens the position and independence of the ECB.
- a. The method used by the *Recovery and Resilience Facility* whereby member states *guaranteed the European debt* is appropriate as a *transitory vehicle* for long-term European public debt secured by own resources.
  - b. In the long-term *Eurobonds* – an equivalent to fed funds in the USA – are required to help reduce the fragility of the ECB's open market policy.



# Chapter 10

## European public goods and democracy

### 1. The European representative democracy

The essential reforms in the actual EU political system of representative democracy to better deliver European public goods are related to:

- The reorganisation of competences between the different institutions;
- The reform of the decision process which is too slow and can be blocked any time;
- The financing of the activities at European and national/ regional level.

#### 1.1 The competences

The pandemic before and now the war between Ukraine and Russia, let the institutions and also the citizens understand the profound modifications of the political and economic scenario.

The European Union is an economic giant but a very weak political actor.

We think that it is an absolute necessity to strengthen the EU competences in foreign policy and defence, to allow the Union to react with speed and power (see Chapter 5).

But also, our economy is becoming weaker because it is based essentially on the mode of global and free exchanges and which is not adapted to the new situation where some global actors use or could use their products and resources with political objectives. In a world of state capitalism, as in the case of China, Russia, and other countries, but also where some private companies are bigger than some states, we should be able to use our monopsony power as we did for the vaccines. For the same reason we should review the competences of the EU adding a "strategic autonomy" in the essential fields, to ensure our security not only for foreign affairs policy and common defence (whose necessity is clear for our citizens, and we hope for our states) but also: agriculture and fishery, natural resources, energy provision, industrial production, digital rights and services.

These exclusive competences could allow the EU to discuss, negotiate, sign agreement, with a unique voice at international level.

This EU exclusive competence should be limited to the aspects of definition of our strategic autonomy in the different fields, for all the other questions these competences should remain or become shared.

A new exclusive competence should also be the one related to climate change, which is a pure public good, for which it is necessary to join international common policies. An exclusive competence could allow the EU to negotiate agreements, standards, policies, with stronger authority in the international meetings.

## 1.2 The decision process

The decision process is too complex, produces very frequently blocked decisions and needs to be simplified, re-balanced in favour of the European Parliament which is the representative of the European citizens.

The Council (representative of the states) and the Parliament should have the same legislative power and vote with simple or qualified majority. The eventual exceptions should be strictly limited and duly justified.

The European Parliament should have the power of legislative initiative and be allowed to effectively exercise its power of inquiry.

In a longer term, the Council should vote always with QMV. The Ministers of European Affairs or the equivalent (but always the same for each MS) should have the final vote on all legislative process; the others, Council of Ministers, should act as Committees in the different fields. This could progressively transform the Council in a kind of second chamber of the EU (on the Bundesrat model, preserving the role of the national executives).

The time for the legislative procedures (first and second readings) should be revised and limited. Actually, the EP tries to negotiate an agreement on the first reading of a text, because there is no time limit for the vote of the Council, so a directive approved by the Parliament in the second reading can be blocked by the Council which refuse to vote at QMV. We could introduce the reverse QMV where only a stronger group of member states can block the vote.

The European Commission should become closer to a real European government and be reorganised in order to be more effective. To preserve the actual number of Commissioners (one per state) and improve the efficiency of the College, different solutions can be found, creating some Clusters of Commissioners chaired by a Vice President to coordinate the multifaceted arguments.

The President of the Commission should be the head of the party, or coalition of parties, with the majority in the European Parliament.

We should unify the electoral law and introduce Transnational lists (see section 4 below).

The European Council should respect the role designed for it in the treaties: a collective presidency, discussing and orienting the strategic decisions of the Union, reinforcing its legitimacy at world level. It should avoid using a "de facto" legislative power and preserve its role of strong coordination of the national policies which can create a solid European spirit at the maximum level of our states and overcome and solve problems, misunderstandings and differences.

Some of these changes can be done inside the actual treaties, or using the *Passerelle* clause, or with some inter institutional agreements, but others require treaty changes, particularly for the introduction of the QMV as the normal, ordinary legislative procedure, with only few and motivated exceptions.

## 1.3 Economic governance

On the economic governance the key institutional question is to ensure the own resources financing of all the EU exclusive competences as well as the European participation to the financing of the shared competences to support the lagging behind regions. This means to allow the EU to decide on its own Multiannual Financial Framework to define its own taxes and to issue debt inside the limits established by the treaties (always at QMV).

**In all the budget and financial questions, the European Parliament should have co-decision role and the decisions should be taken at QMV.**

**Moreover, it is important to amend Article 223(2) to remove the requirement for unanimity in the Council with regard to the tax regime for Members or former Members of the European Union.**

See more developed approach on EU economic governance in the next chapter.

## **2. The interplay between national and regional institutions**

The Conference on the Future of Europe has demonstrated a great interest in national and regional parliaments and assemblies to participate in the discussions and decisions about our common European future.

The representatives of these democratic assemblies are becoming aware of the importance of the decisions taken at EU level for their legislation and activities.

It is very important to ensure good relationships with these assemblies to which is conferred the role of applying EU laws and plans.

According to the discussion at the conference, we could imagine a strengthening of the role of national parliaments which actually have the power to temporarily block an EU directive or regulation with the yellow or orange card. Until now, it has been rarely used.

It could be better to give to a certain number of national parliaments (1/3?) the power to make a legislative proposal in the form of a statement containing the essential elements of the proposal. The principle is to realise concrete cases of multilevel governance.

The European Commission or the European Parliament (if it has been upgraded to the power of legislative initiative) could have a hearing with the proponents and eventually present a legislative draft.

In the period of the conference a very interesting mobilisation was realised by the regional and local authorities with assemblies and approval of motions on the future of Europe.

It is very important to keep on board also these local authorities. Actually, the Committee of the Regions has the power to go to the European Court in defence of the subsidiarity principle. We could propose to also enhance the power of the CoR allowing it to present legislative proposals with a vote of its plenary session and only on questions related to its competences.

When it comes to the European Economic and Social Committee, which represents the economic and social actors, it is difficult to imagine for them a formal right of initiative. We could reinforce its consultative power enlarging the subjects on which it has the formal right of consultation.

During the conference a great mobilisation was made by a number of civil society organisations. We shouldn't lose these precious experiences: in the key moments for EU strategic decisions and projects, a civil society conference could be organised to let these organisations discuss and present their proposals.

These modifications require a treaty change, but could also be introduced with an inter-institutional agreement in a more informal way.

## 3. The interplay between European citizens and participatory democracy

### 3.1 State of play

The Conference on the Future of Europe, long-awaited and largely commented on in policy circles, has been nonetheless an important experiment and step forward when it comes to the role of participatory and deliberative democracy in the functioning of the European Union.

Thought as a response to many challenges (decades of limited turnout in European elections, limited visibility of the European political debate, growing distrust in public authorities at all levels of government, developments of new tools for communications and deliberation, national experiments of citizens' assemblies, and so on.), the most important mission of the Conference on the Future of Europe is to show its capacity to deliver and prove it was not in vain that European institutions gathered hundreds of citizens and policy-makers over dozens of meetings throughout a year.

The Conference on the Future of Europe aimed at testing various techniques of citizens' consultations and involvements (many being called by the European civil society for years): a digital platform, citizens' panels and various national events – all being ultimately debated with elected representatives from all levels (regional, national, and European), as the functioning of the Union is still founded – so far – on representative democracy (TEU Article 10.1).

Various themes were tackled by the debate at the Conference on the Future of Europe. One of which is “European democracy”, and a series of recommendations were issued from the working group dealing with it. On the issue of citizens' participation, they agreed on the objective of increasing *“participation and youth involvement in the democracy at the European Union level to develop a ‘full civic experience’ for Europeans”, ensuring “that their voice is heard also in between elections, and that the participation is effective”.*

While the current treaty framework ensures that *“every citizen shall have the right to participate in the democratic life of the Union”* (TEU Article 10.3), it is key to look at ways to further enhance that, taking into account the above-mentioned challenges and to make the European Union a citizens-centred democratic endeavour and fit for its purpose of promoting *“peace, its values and the well-being of its peoples”* (TEU Article 3.1).

### 3.2 Vision and recommendations

In *Our European Future*, we argued for the need for a democratic transformation in Europe, looking, in particular, at new participatory mechanisms, the impact of digitalisation and the need to further involve young people. This was clearly anticipation of the outcomes of the Conference on the Future of Europe, which calls for an enhancement of *“participatory and deliberative practices for citizens across the EU”.*

As we develop a new vision for the Future of the European Union around public goods and citizens' rights, we should look at the current treaties to ensure that citizens, as legitimate owners of the public goods delivered by the European Union, are central and the main engine of the treaties, instead of a more economic approach.

Looking at the interplay between European citizens and participatory democracy, we could suggest the following amendments to the treaty in order to reflect this new vision:

### Article 3

The Union's aim is to promote peace, its values, and the well-being of its peoples, **fulfilling the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December, which shall have the same legal value as the treaties.**

*Rationale:* by elevating the current content of TEU Article 6 to Article 3, which states the aim of the European Union, it reinforces the centrality of citizens' rights. Ideally, the Charter should be fully integrated into the Treaty on European Union as a new Title III between the provisions on democratic principles and the ones on the institutions, as "Provisions on citizens' rights".

### Article 10

The functioning of the Union shall be founded on representative **and participatory** democracy.

*Rationale:* while representative remains the central spine of the EU's democratic system, its functioning needs to be balanced with a commitment to a practice of participatory democracy.

These two proposals are aiming at shifting the philosophy of the European constitutional framework and should be done alongside the other changes related to our approach on public goods (that is, changing the typology competences, looking at decision-making process, and so on.). Meanwhile, the provisions foreseen in TEU Article 11 should remain but accompanied by changes of practice, which do not require treaty modification.

While improving and enhancing practices such as the European Citizens Initiatives, the consultations processes or the right to petition and other means in place, one concrete proposal could be to create a citizens' assembly that would deliberate each year on one topic (for example, when the EU proclaims the "European Year of Youth", the assembly would look at particular recommendations in this field) or on major policy proposal (such as a Strategy for External Action or the Green Deal). Such a practice should build on the learnings of the Conference on the Future of Europe (addressing its shortcomings, mainly when it comes to the diversity of participation).

## 4. The European electoral system

The Future of the European Union must be inspired by a Republican approach.

In a Republic, the legitimacy for exercising political power emanates from a mandate by the citizens. The citizens are the sovereign and delegate their power to elected institutions.

The Council represents the member states. All governments must rely on democratic structures and elections in their countries. The rule of law mechanism should discover undemocratic practices and allow to overcome them.

The Council itself is in need of important reforms. The transparency of the decision-making process must be improved. The citizens have the right to know the voting of each government and the argumentation for the respective vote. This right of information and transparency is enshrined in the EU Charter of Fundamental Rights.

The European Parliament is the Citizens Chamber in the EU. The elected Members represent in their decision making all the EU citizens. The Electoral Act of 1976 asked for uniform procedures for the direct European Elections. Unfortunately, this promise was not fulfilled until today.

We still see 27 national election campaigns and rules. The standards for selecting the candidates differ from country to country. The national fragmentation of the preparation and conduction of the direct elections to the European Parliament is a decisive weakness for a European public sphere and the deliberation about European public goods, which should define in a transnational debate which ones are needed and how to achieve them in the best way.

Therefore, the European Elections have to be "Europeanised". From the next elections in 2024 onwards the citizens should have two votes: one for the candidates of the respective national lists and another vote for the candidates of transnational European lists presented by the Congresses of European Political Parties. Transnational European Lists will be an incentive for European Party Families to engage in a common election campaign. The election manifestos should be much more concrete. The citizens should get better information about which European public goods and which citizens' demands are on the agenda of the European parties. Alternatives for the future of the EU should become visible. Making an informed choice with the vote is essential for democratic elections.

The top candidates on the transnational European lists should be the candidates for the election of the President of the European Commission. It is a democratic right of the citizens to know before the elections who will govern them after the elections. The candidate who could represent a majority in the newly elected European Parliament by the candidate's own party or by forming a coalition with other parties will be presented to the European Council for formal nomination. Coming out from a truly European election process and elected by the Parliament will strengthen the legitimacy and authority of the Commission President's cabinet and ambitious program for the legislature.

The EU as a democratic union of democratic states will have a bigger resilience to match the challenges and problems emanating from inside or outside the European Union.

**From these considerations some recommendations for treaty changes can be made:**

- **Article 14 TEU should have a new paragraph stating: "the EU citizens have two votes, one for the national candidates and one vote for the candidate on the transnational I**
- **Article 17 TEU paragraph 7 must be adjusted: "the Council has to respect the outcome of the European elections and the result of the negotiations between European political parties and their parliamentary groups".**
- **Article 223 TFEU should be changed: "the Council should decide by QMV on provisions necessary for the elections of MEPs and no more by unanimity and national ratifications".**
- **Article 223 TFEU must be changed to make the election of a Commissioner in the EP elections possible without the necessity to give up the job in the interim time between the elections and the formation of the new European Commission.**

---

**PART 3**  
**GENERAL IMPLICATIONS**  
**FOR THE EU TREATIES**

---

# Chapter 11

## Updating the EU competences to deliver new European public goods

### 1. Current state of play of EU competences

#### 1.1 The general philosophy about the EU competences in the Lisbon Treaty

The typology of competences in Title I (Categories and areas of competence of the Union) of Part One of the TFEU is the result of reflections that took place twenty years ago.

At the time, the main objective was to respond to the concerns expressed by the member states, faced with the gradual extension of the Union's competences into ever more areas, and to avoid any risk of "stealth" enlargement of the Union's competences (creeping integration) to the detriment of their competences (and those of their regions), particularly in areas where they consider that competence should continue to be theirs naturally.

All the provisions relating to the competences of the Union reflect this mistrust on the part of the member states, which increased even more after the failure of the Constitutional Treaty, and led to a multiplication of often useless safeguards.

#### 1.2 The principle of attribution of competences

The principle of attribution of competences was introduced into the EC Treaty by the Maastricht Treaty for the competences of the European Community, at the time when – and this is no doubt not by chance – the Community lost its "economic" label.

This principle is confirmed and reinforced by the Lisbon Treaty. According to Article 1 TEU, the member states shall establish a European Union among themselves, to which they shall "confer competences in order to attain their common objectives". Article 5 states that "the delimitation of the Union's competences" is governed by the "principle of conferral of competence", according to which "the Union shall act only within the limits of the competences conferred upon it by the member states in the treaties in order to attain the objectives set out in those treaties". The definition of this principle is made stricter by the use of a negative formulation (only act) which replaces the positive formulation (act) present both in Article 5 EC and in the Constitutional Treaty.

The inclusion in the treaties of a list of competences reserved for the member states, which was mentioned for a time, was finally abandoned in favour of the self-evident clarification that "any competence not conferred on the Union in the treaties belongs to the member states".

The member states were also keen to emphasise, particularly with regard to the Charter of Fundamental Rights, that its provisions did not have the effect of extending the competences of the Union or of modifying the competences and tasks of the Union as defined in the treaties.

### 1.3 The typology of competences and its scope

The typology of competences presupposes that the Union has been granted competence in a given area and seeks to clarify the relationship between the competences of the member states. It establishes a gradation in these relations of competence, according to the intensity of the consequences resulting from the attribution of competences to the Union or the exercise of its competences on the competences of the member states.

In this categorisation of competences, it is essentially the normative competence that is considered, that is "legislating and adopting legally binding acts". Moreover, within this normative competence, particular attention is given to certain legally binding acts, those involving "harmonisation of the laws and regulations of the member states".

Finally, Article 2(6) TFEU states that "the extent of and the procedures for exercising the Union's competences shall be determined by the provisions of the treaties relating to each area". Each area contains its own specific legal bases which, on the one hand, define the scope of the Union's competences, that is the objectives pursued, the material scope of the Union's action, its intensity and the nature of the act, and, on the other hand, lay down the arrangements for exercising these competences, that is the procedures applicable and the actors involved in the adoption of the act. These legal bases are therefore the real clauses attributing powers provided for by the treaty, allowing the concrete implementation of the various powers attributed.

### 1.4 The exclusive competence of the Union

The characteristic feature of exclusive competence is that it is the granting of competence to the Union, or in other words the existence of competence ("where the treaties confer exclusive competence on the Union"), which has the effect of excluding any competence on the part of the member states ("only the Union may legislate and adopt legally binding acts, as the member states may not do so"), even if the Union has not yet exercised that competence. This immediate relinquishment of competence by the States involves the entire area concerned and is definitive. Member states may, however, act to implement Union acts (Article 2(1) TFEU).

The areas concerned are listed exhaustively: the Customs Union, monetary policy (for member states whose currency is the euro), conservation of the sea's biological resources within the framework of agricultural policy; the common commercial policy. In addition, there is the establishment of the competition rules necessary for the functioning of the single market, but this exclusive competence is different from the others in that the member states have not lost all competence in this area. Their competence is deduced from one of the criteria for the application of EU competition law, namely the condition of affecting trade between member states, and their competence is limited to conduct which has a purely national dimension.

### 1.5 Shared competence

Where the treaties confer on the Union a competence shared with the member states in a given field, it is the exercise of the competence that is the determining criterion. Both the Union and the member states have competence to act in a given area (the Union and the member states may legislate and adopt legally binding acts in that area). As long as the Union has not exercised its competence, the member states alone are competent. However, once the Union has decided to exercise its competence, the member states can no longer exercise theirs to intervene in the area covered by the Union's action (theory of pre-emption). However, they do

not lose their competence and regain the right to exercise it when the Union decides to stop exercising its competence.

Protocol 25 on the exercise of shared competence, annexed to the Lisbon Treaty, states that “where the Union takes action in a certain area, the scope of that exercise of competence shall cover only the elements governed by the Union act in question and shall not therefore cover the whole area”. In other words, the extent of the loss of the States’ power to act depends on the action, at a given moment, of the Union legislator, and on the extent and intensity of that action.

Article 4(2) TFEU sets out a list of “principal areas” where the competences shared between the Union and the member states apply. These include the most important policy areas of the Union: the single market, agriculture and fisheries (with the exception of the conservation of the sea’s biological resources), economic, social and territorial cohesion, the environment, consumer protection, transport, Trans-European Networks, energy, the area of freedom, security and justice, as well as certain aspects of social policy and public health “as defined by this treaty”.

Paragraphs 3 and 4 of Article 4 TFEU refer to two areas in which, even if the Union has shared competence, the exercise by the Union of its competence “may not prevent the member states from exercising theirs”: “research, technological development and space” and “development cooperation and humanitarian aid”. The particularity of these areas is that it is essentially EU “actions” and “programmes” that are envisaged. In this context, it is perfectly conceivable that a European research or development cooperation policy, financed and managed by the Union, could coexist with national policies in the same areas, which are conducted in addition to the Union’s policy (or vice versa).

It has been argued that these areas are not really matters of shared competence since the theory of pre-emption, which is presented as the fundamental characteristic of shared competence, is expressly set aside.

However, when analysing the powers that are in fact attributed to the Union to exercise its shared competence in the different areas where it applies, the theory of pre-emption is far from always being the rule in the different areas where they apply.

- There is no example of an area in which the Union has made exhaustive use of its competence, thereby depriving the member states of their competence.
- The most common situation is where the Union’s action does not exhaust competence in a given area but covers only certain elements of it. Member states may continue to act in the areas not covered, provided that their action does not conflict with the Union’s exercise of competence and respects the principles of loyal cooperation and the primacy of Union law. In other words, Union and State actions coexist, without covering the same aspects of a given field.
- Pre-emption is mainly linked to the harmonisation of legislation. However, in several areas, such as social policy, consumer protection, environmental protection or judicial cooperation in criminal matters, this harmonisation can only consist of the adoption of minimum rules or prescriptions and the member states retain the possibility of adopting higher standards.
- The latest reform of the Common Agricultural Policy shows that it is perfectly possible to leave a great deal of room for manoeuvre to the member states, even in a policy which in the past was one of the most integrated. The EU regulation sets common objectives, a toolbox of possible interventions and a common set of indicators. On this basis, each country is free to choose the specific interventions it considers most appropriate for its specific objectives, based on a clear assessment of its own needs.

- The categorisation of an area as one of shared competence does not prevent the Union's action from being defined as primarily supporting (or backing up) and complementing the action or policy of the member states, which necessarily implies that it does not displace them. This is the case in social policy (Article 153(1)) or consumer protection (Article 169(2)).
- Coordination (not harmonisation) of national measures may be one of the Union's means of action in areas of shared competence, as is the case with social security schemes. The term coordination presupposes the retention of national competence.
- Finally, in several areas of shared competence, the Union's competence is essentially an operational competence. The most striking example is economic, social and territorial cohesion, where the Union takes action to strengthen its economic, social and territorial cohesion through the Structural Funds, which the Union manages. The intervention of the Funds does not take away from the States and, on the contrary, a principle of complementarity between the intervention of the Union and that of the states prevails. The situation is therefore no different from that of research and technological development, even if here the treaties did not deem it necessary to specify that the exercise of competence by the Union does not prevent the member states from exercising theirs.

## 1.6. Complementary or supporting competence

According to Article 2(6) TFEU, "in certain areas and under the conditions laid down in the treaties, the Union shall have competence to take action to support, coordinate or supplement the action of the member states, without thereby replacing their competence in these areas". This competence therefore has no impact on the ability of states to act, which in fact remain solely competent. This is guaranteed by the provision that "legally binding Union acts adopted on the basis of the provisions of the treaties relating to these areas may not involve harmonisation of the laws and regulations of the member states", a prohibition which is repeated in each of the specific legal bases relating to the policies in this category.

The list of relevant areas in Article 6 TFEU is exhaustive. It includes education, youth, sport and vocational training, culture, the protection and improvement of human health (with the exception of certain "common safety concerns in the field of public health" which fall under shared competences), civil protection, industry, tourism and administrative cooperation. It is further specified that it is "in their European context" that these areas fall within the competence of the Union.

## 1.7 A possible combination of categories of competence for the same area

While Article 2 TFEU might lead one to believe that a given area falls entirely within one of these three categories, the lists in Articles 3, 4 and 6 show that this is not the case. Thus, for example:

- **the common fisheries policy is a shared competence, except for the conservation of the sea's biological resources, which is an exclusive competence;**
- **social policy is a shared policy, "for the aspects defined by this treaty", which correspond to the areas in which minimum requirements may be laid down. For the other areas, the Union's competence is a complementary one or they even fall under national competence;**
- **similarly, in health policy, "common health security issues as defined in this treaty" is a shared competence, while the protection and improvement of human health is a complementary competence.**

## 1.8 Implementing competences and the agencies

The categorisation of the exclusive competences of the Union, the measures to implement Union law and policies is normally a matter for the member states, which must adopt all the measures of national law necessary for this purpose. This is only the case “when uniform conditions for implementing legally binding Union acts are needed”, in which case the Commission is normally competent (Article 391 TFEU). The Commission is also responsible for managing the Union’s programmes.

In this respect, although their existence is almost totally ignored in the treaties, agencies are becoming increasingly important in the Union. There are two main categories of agencies. The first are the six executive agencies of the Commission, which act as subsidiaries of the Commission, carrying out specific tasks on its behalf in the management of EU programmes. The second are the Union’s decentralised agencies, which contribute to the implementation of EU policies. They are led by a management board with, among other things, representatives from both the member states and the Commission. In this sense, they can act like centres of networking. They make it possible to go beyond the direct/indirect administration alternative and to ensure a centralised execution of Union law while allowing the states to participate in the exercise of the power of execution, not individually but collectively.

They may have different tasks and responsibilities:

- a first group of agencies supports single market, health and environment objectives related to registrations, certifications and authorisations at EU level (EASA, ECHA, EFSA, EMA, ERA, EUIPO);
- a second group has more operational responsibilities. This is particularly the case of the EU agencies which are active in the field of justice and security (EASO, EPPO, Eurojust, Europol, Frontex ...), but also EASA, EFCA, ELA and EMSA. It mainly helps member states by coordinating joint activities and can also provide operational support to national administrations;
- Some agencies have mainly rule-making and supervisory responsibilities: ACER, EBA, EIOPA and ESMA, which prepare technical standards for the energy and financial sector and ensure common supervisory practice across the EU.

A final group is mainly concerned with research, data collection and analysis aimed at supporting EU institutions and member states develop evidence-based policies (Cedefop, ECDC, EEA, EIGE, FRA).

## 2. Rethinking the EU competences to meet citizens’ expectations regarding European public goods

The current typology of competences does not make it possible to identify clear responsibilities for the modes of governance of European public goods. Indeed, three dimensions must be addressed in this context: the regulation of a public good, its provision and its financing.

The first dimension involves normative competence, the other two operational competence. However, as already mentioned, the definition of exclusive and shared competences addresses the question of the competence relationship between the Union and the member states only in terms of normative competence and not operational competence. The categorisation of competences makes it possible to determine whether the Union or the member states are responsible for regulating public goods, but it says nothing about who is responsible for providing and financing them, even though, in several areas of both exclusive and shared competence, operational competences are at stake.

The management of the euro is an example for exclusive competences, and the Structural Funds but also Europol, Eurojust, the European Public Prosecutor's Office or the European Border Guard for shared competences. A fourth dimension should also be considered, which is that of international representation, as it makes it possible to determine which of the Union or the member states participates in international negotiations relating to a public good (for example, climate conferences) or negotiates with third countries on this subject (for example, for energy supply).

**Taking these four dimensions of modes of governance into account to define the contours of the three categories of competences gives the following table:**

	Exclusive competence	Shared competence	Complementary competence
Regulation	European legislation	National legislation, to be framed and progressively replaced partially or totally by European legislation*.	National legislation
Provision	European Union	European Union & member states Decentralised agencies	Member states
Financing	European Union	European Union & member states	European Union & member states
International representation	European Union	European Union ** or European Union & member states	European Union & member states

\* As mentioned, European legislation will not necessarily replace national legislation.

Different scenarios can be envisaged:

- a simple European recommendation;
- European legislation coordinating national legislation or policies;
- European legislation promoting mutual recognition of national legislation;
- framework legislation;
- harmonisation legislation in the form of minimum rules, which national legislation may exceed;
- full harmonisation legislation of national rules;
- European regulatory legislation (such as the RGPD).

\*\* Currently, in its areas of shared competence, the Union has exclusive competence to conclude international agreements where it has exercised its internal competence by adopting common rules and the agreement falls within an area already largely covered by those rules (the "AETR doctrine", formalised in Article 3(2) TEU).

Otherwise, it is a matter of shared competence, in the sense that the Union may decide either to exercise its competence and conclude the agreement alone, or to let the states exercise their competence or to conclude a mixed agreement.

**On this basis, it may be considered that some policy areas of competence should be reclassified.**

## 2.1 Policy areas of shared competence that should be granted exclusive competence

The rationale for granting exclusive competence is that the competence in question is conferred on the Union for the defence of the overall interest of the Union, within which the particular interests of the member states must find a way of adjusting to each other, which requires the drawing up of strictly identical rules binding on all member states. The exclusion of national competence is therefore self-evident, since to admit it would allow member states to pursue the separate satisfaction of their own interests at the risk of compromising the effective defence of the overall interest of the Union.

These criteria have guided the selection of the five policy areas currently considered to fall within the exclusive competence of the Union. It should be examined whether there are other areas (or sub-areas), involving pure European public goods or European public goods of common resources, in which exclusive competence should also be attributed to the Union for the same reasons. These could include:

- the common border control policy;
- the adoption of climate legislation to implement the Union's international commitments;
- the adoption of measures to ensure the Union's strategic autonomy, in the context of the Common Agricultural Policy, the common energy policy, the digital policy and the Union's industrial policy;
- measures to combat cybercrime;
- the establishment of the macroeconomic framework law, defining the overall deficit of the euro zone and allocating deficit rights to the states (for the states of the euro zone);
- establishing the rules necessary for the regulation of the single market;
- the establishment of rules on the rights and duties of Union citizens.

It must be stressed that this recognition of exclusive competence implies, at the same time, that the treaties should, in these areas or sub-areas, give the Union the means to fully and definitively substitute common action, based on uniform principles for the whole of the Union, for unilateral action by the member states.

## 2.2 Areas of shared competence where the Union should have exclusive external competence

Climate change is a striking example of the problems caused by the Union's lack of exclusive external competence. The very broad spectrum of climate negotiations and in particular the "adaptation" aspect, in which the Union's action is still fragmented, is the pretext found by the states to justify that the Union cannot claim exclusive competence to participate in these negotiations. Another example is the IMF, where states argue that the IMF's competences cover both economic and monetary policies. To remedy this situation, a specific provision should be made for exclusive external competence in these areas. This could also be the case for the proposed Digital Transformation Title.

## 2.3 Complementary competences that should become shared competences

The main feature of complementary competences is the means of action which the Union is explicitly deprived of, namely the use of a binding legal instrument to harmonise the laws and regulations of the member states.

Its significance is important. Indeed, it should be remembered that, in the context of shared competences, the harmonisation of legislation can lead to the pre-emption of competence by the Union and, consequently, to the more or less important divestment of the States. It is precisely this effect that this prohibition is intended to prevent, thereby guaranteeing that the Union's exercise of its competence cannot call into question national competence.

This protection of national prerogatives can, however, lead to a major limitation, both technical and political, of the Union's means of action, as the Covid-19 crisis has shown.

**The recognition of a shared competence for the European Union in the field of public health is the only way to enable the Union to respond to a very strong demand from citizens to see it become very involved in this area. The competence that would be provided for the European Health Union clearly indicates that it is not at all a question of the Union taking the place of its member states in all matters relating to public health. However, there are common challenges that cannot be met by individual member states alone and require joint action. The Union must have the means to do so.**

During the Covid crisis, given the prohibition of any compulsory harmonisation of national legislation, the Union could not be expected to adopt a framework imposing obligations on national authorities to organise a unified response to the health crisis. The Commission could do no more than invite the member states to coordinate their measures, by multiplying communications, guidelines, roadmaps and other orientations. However, it must be noted that the recommendations contained in these non-binding instruments were hardly followed and that coordination between member states was almost totally lacking. This is particularly true for the so-called "non-pharmaceutical" interventions to limit the spread of the virus, which have diverged from one member state to another. This lack of coordination has led to confusion and frustration, the potential for distortion of competition between companies in different member states and undermined the effectiveness of the measures adopted.

**A similar demonstration of the obstacle to the effectiveness of EU action represented by the categorisation of education and vocational training in the complementary competences has been made and should lead to a similar conclusion. One shortcoming that has been particularly highlighted is the impossibility of establishing rules ensuring mutual recognition of diplomas not for employment purposes, but for vocational training.**

## 2.4 Modulation of the categories of competence according to the needs identified in each area

In short, it is advisable to continue along a path already outlined by the Treaty of Lisbon and consider that an "area", which corresponds to several European public goods, should not be treated as a monolithic block but that it is composed of several sub-areas, which can or must be subject to different modes of governance and therefore fall under different categories of competence. Thus, for example:

- the need to ensure the strategic autonomy of the Union justifies that, in policies normally falling under shared competences, the internal and external measures necessary to ensure this autonomy should be considered as falling under the exclusive competence of the Union. The reasons which justified the attribution of exclusive competence for the protection of the biological resources of the sea are perfectly transposable;
- the need for a single representation of the Union in the major climate conferences (and perhaps other major conferences in the field of the environment) justifies a dissociation of the internal competence, which remains shared, and the external competence, which would become exclusive;
- in health protection, the realisation of a Health Union should replace in the areas of shared competence, the “common public health security issues”, without this policy becoming a shared competence in its entirety;
- in education and vocational training, the establishment of a European area of higher education, with mutual recognition of diplomas, justifies the attribution to the Union of a shared competence, without undermining the primary competence of the states for the organisation of the education system and vocational training.

## 2.4 Regulating the agencies

Given the development of the agencies, it would be useful to take the opportunity of a revision of the treaties to provide a better framework for their tasks and operations.

For example, recognition of shared competence in the field of the European Health Union would strengthen the role of the ECDC.

## 3. Re-assessing the EU policies for better delivery

Beyond the typology of competences, the question of the adjustment of competences will have to be addressed in the various EU policies.

Some competences should be significantly strengthened, given the limited powers they confer to the Union.

Firstly, there is the CFSP and CSDP, which are still based exclusively on intergovernmental cooperation, with a centre of gravity around the Council and the European Council, which must act unanimously. As for common defence, it will only become a reality when the European Council decides to do so and this decision is approved by the member states. It is therefore still to be built.

But this is also the case, in the TFEU, for industrial policy. The political term has been deliberately omitted and the title is “Industry”. The competence is almost exclusively national. However, the Union has been able to use its “meagre” competence to adopt specific measures to support actions in the member states and to implement funding programmes.

In Chapter 13 we will analyse the current situation of competences and decision-making **procedures in the main EU policies. We will also propose possible improvements to be introduced to meet citizens’ expectations regarding European public goods.**

# EU competences and decision-making processes – assessment of the current situation and proposals

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Pure public goods</b>					
<b>CFSP</b>	<p>Title V, Chapter 2, Section 1, TEU, Articles 23 to 41</p>	<p>Out-of-class competence, strictly intergovernmental in nature. There is no pre-emption linked to the Union's exercise of its competence.</p> <p>Based on three main instruments: (i) general guidelines, (ii) decisions defining a Union action or position and (iii) systematic cooperation between member states.</p>	<p>The general guidelines are defined in the European Council, which decides by consensus. The European Council also adopts the decision on the Union's strategic interests and objectives, acting unanimously.</p> <p>Decisions are adopted by the Council, which must vote unanimously, except for the adoption of a decision which</p> <ul style="list-style-type: none"> <li>defines a Union action or position on the basis of a European Council decision on the Union's strategic interests and objectives;</li> <li>implements a decision defining a Union action or position;</li> <li>appoints a special representative;</li> <li>defines a Union action or position on a proposal from the High Representative following a specific request from the European Council on its own initiative or on the initiative of the High Representative.</li> </ul> <p>A referral to the European Council is possible.</p> <p>The European Parliament plays no role.</p>	<p>Status quo.</p>	<p>Introduction of an enhanced qualified majority voting (75% of member states, representing 75% of the EU population) and strengthening of the role of the European Parliament (consultation).</p> <p>Greater role for the High Representative and the EEAS in the implementation of the CFSP.</p>

Common defence policy and military command	Title V, Chapter 2, Section 2, TEU, Articles 36 to 46	<p>CSDP is an out-of-class competence. Its specific purpose is to "provide the Union with an operational capability drawing on civilian and military assets" made available by the member states to carry out missions outside the Union in order to ensure peacekeeping, conflict prevention and the strengthening of international security.</p> <p>The establishment of a common defence requires a decision to that effect by the member states.</p> <p>Entrusting the Union with the task of defending its territory requires a revision of the treaties.</p>	<p>The decision-making procedures applicable to the CFSP also apply to the CSDP.</p> <p>But no qualified majority voting for decisions with military or defence implications.</p>		<p>Decisions on defence matters/CSDP need separate consideration.</p> <p>The possibility of using the <i>Passerelle</i> clause should no longer be excluded.</p>
Energy security	Part Three, Title XXI, TFEU, Article 194	<p>This is one of the objectives of energy policy.</p> <p>Shared competence but reserve competence to states to determine the conditions for the exploitation of their energy resources, their choice between different energy sources and the general structure of their energy supply.</p>	<p>Ordinary legislative procedure.</p> <p>Except unanimity and consultation of the European Parliament for measures that are essentially fiscal in nature.</p>	<p>Add to the objectives: ensuring the Union's strategic autonomy.</p> <p>This aspect would be an exclusive competence of the Union.</p>	<p>Generalisation of the ordinary legislative procedure.</p>
Judicial system		<p>The organisation of the judicial system is considered an exclusive competence of the member states, but an original and bold jurisprudential construction to oblige states to guarantee the independence of the judiciary.</p>	<p>Procedure for imposing political sanctions against a member state that violates the values of the Union, with the suspension of some of the rights attached to its membership.</p> <p>But requires a unanimous vote in the European Council (the state concerned does not vote) after approval by the European Parliament.</p> <p>A conditionality mechanism for the protection of the EU budget in the event of a generalised failure of the rule of law in a member state adopted under the ordinary legislative procedure. But the Commission's proposal had to be watered down and the European Council (which decides by consensus) interfered in the negotiations, in defiance of the treaty rules.</p>	<p>It could be said that the Union has exclusive competence to find that the values of the Union are not respected and to draw the consequences.</p> <p>Provide for other forms of sanction.</p>	<p>Enable the European Council to decide by qualified majority (if necessary, an enhanced qualified majority) that a state is in breach of the Union's values</p> <p>For these sanctions, ordinary legislative procedure.</p>

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Pure public goods (continued)</b>					
Single market regulation and competition policy		Shared competence for the single market. Exclusive competence to establish the competition rules necessary for the functioning of the single market.	Enforcement of competition rules is a matter for the Commission and the national competition authorities for antitrust and merger law and a monopoly of the Commission for state aid control.	Exclusive competence to establish the rules necessary for the regulation of the single market, including competition rules.	Status quo.
Financial stability		Unknown in current treaties		New area of competence exclusive or shared.	Ordinary legislative procedure.
Public infrastructure and Trans-European Networks (in the transport, telecommunications and energy infrastructure sectors)	Part Three, Title XVI, TFEU, Article 170	<p>Shared competence.</p> <p>The Union shall define guidelines setting out the objectives, priorities and broad lines of the actions envisaged and identifying projects of common interest, which may receive financial support.</p> <p>It shall implement any action that may prove necessary to ensure the interoperability of networks, in particular in the field of harmonisation of technical standards.</p> <p>Member states shall coordinate among themselves those policies at national level which may have a significant impact on the achievement of the objectives of the Trans-European Networks.</p>	Ordinary legislative procedure, but guidelines and projects of common interest that concern the territory of a member state require the approval of the member state concerned.	<p>Shared competence for Trans-European Networks.</p> <p>Extending the scope of the Trans-European Networks.</p>	Ordinary legislative procedure.

<p><b>External border control</b></p>	<p>Part Three, Title V, Chapter 2, TFEU, Article 77</p>	<p>The control of external borders is currently the responsibility of the member states, but the Union may adopt any measure necessary for the gradual establishment of an integrated external border management system.</p>	<p>Ordinary legislative procedure.</p> <p>A European Corps of Border and Coast Guards was established in 2016.</p>	<p>Shared or exclusive competence.</p> <p>It is necessary to check whether the Union has the necessary means of action within the current framework.</p>	<p>Status quo</p> <p>Strengthening the powers of the European Corps of Border and Coast Guards.</p>
<p><b>Common Agricultural Policy (food security dimension)</b></p>	<p>Part Three, Title III, TFEU, Articles 38, 39 and 43</p>	<p>This is one of the objectives of the CAP, which has long been forgotten because of agricultural surpluses.</p>	<p>Ordinary legislative procedure.</p>	<p>Add to the objectives: ensuring food security and the strategic autonomy of the Union.</p> <p>This aspect would be an exclusive competence of the Union.</p>	<p>Ordinary legislative procedure.</p>
<p><b>Right to asylum</b></p>	<p>Part Three, Title V, Chapter 2, TFEU, Article 78</p>	<p>Shared competence.</p> <p>Asylum policy is described as a common policy involving the adoption of measures defining a uniform status for several categories of persons eligible for international protection; common procedures; standards for the reception conditions of applicants and criteria and mechanisms for determining the state responsible for examining an application.</p>	<p>Ordinary legislative procedure.</p>	<p>Exclusive or shared competence.</p>	<p>Asylum is a textbook case of dysfunctional decision-making. Despite broad competences and the application of the ordinary legislative procedure, it has proved impossible so far to establish a comprehensive asylum system.</p>

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Common resources goods</b>					
<b>Migration</b>	Part Three, Title V, Chapter 2, TFEU,  Article 79	<p>Shared competence for legal migration: to determine the conditions of entry and residence, as well as the standards for the issue by member states of long-term visas and residence permits, including for the purpose of family reunification, and the rights of legally resident third-country nationals.</p> <p>Reservation of member states' competence to determine the volumes of entry of third-country nationals from third countries into their territory for the purpose of seeking paid or self-employed employment.</p> <p>Simple complementary competence for measures promoting the integration of third-country nationals, with a ban on any harmonisation of legislation.</p> <p>Shared competence for the fight against illegal immigration.</p>	Ordinary legislative procedure.	<p>Shared competence, including for measures promoting the integration of third-country nationals.</p> <p>Removal of the reservation of competence?</p>	
<b>Fight against climate change</b>	Part Three, Title XX, TFEU, Environment, Articles 191 to 193  Part Three, Title XXI, TFEU, Energy, Article 194	<p>This is an objective of both environmental and energy policy.</p> <p>Shared competence.</p> <p>In the context of energy policy: reservation of competence for States to determine the conditions for the exploitation of their energy resources, their choice between different energy sources and the general structure of their energy supply</p>	<p>Ordinary legislative procedure.</p> <p>Except unanimity in the Council and consultation of the European Parliament in the framework of the environment for measures:</p> <ul style="list-style-type: none"> <li>• affecting town and country planning, the quantitative management of water resources</li> <li>• directly or indirectly affecting the availability of such resources or land use, with the exception of waste management</li> <li>• significantly affecting a member state's choice between different energy sources and the general structure of its energy supply</li> </ul> <p>Also for essentially fiscal rules in both policies</p>	<p>New area of shared competence, without reservation of competence for states.</p> <p>Exclusive competence for climate legislation to implement the EU's international commitments?</p>	Generalisation of the ordinary legislative procedure.

<b>Fisheries</b>	Part Three, Title III, TFEU, Articles 38, 39 and 43	Exclusive competence for the conservation of the living resources of the sea.	Ordinary legislative procedure.  Except qualified majority voting in the Council without intervention by the European Parliament for measures relating to the fixing and allocation of fishing opportunities.	Exclusive competence.	Ordinary legislative procedure.
<b>Regional policies</b>	Part Three, Title XVII, TFEU, Articles 174 to 178	Economic, social and territorial cohesion, which must in particular reduce the gap between the levels of development of the various regions and the backwardness of the least favoured regions.  Shared competence.	Intervention of the European Regional Development Fund, whose tasks, priority objectives and organisation are defined according to the ordinary legislative procedure.	Shared competence.	Status quo.
<b>Social policy</b>	Part Three, Title X, TFEU, Articles 151 to 161	Shared competence for aspects defined in the treaty: adoption of minimum requirements in nine areas.  Additional competence for: <ul style="list-style-type: none"> <li>combating social exclusion;</li> <li>modernisation of social protection systems.</li> <li>National competences preserved for: <ul style="list-style-type: none"> <li>remuneration;</li> <li>right of association, right to strike and right to lock out;</li> <li>definition of the basic principles of their social security system.</li> </ul> </li> </ul>	Ordinary legislative procedure.  Except unanimity in the Council and consultation of the European Parliament for: <ul style="list-style-type: none"> <li>social security and social protection of workers - protection of workers in the event of termination of the employment contract</li> <li>representation and collective defence of the interests of workers and employers</li> <li>conditions of employment for third-country nationals legally residing in the territory of the Union.</li> </ul>	Shared competence with retention of minimum requirements to avoid the risk of a race to the bottom and the reservation on the fundamental principles of social security systems.  Removal of the reservation of national competence for remuneration principles?	Generalisation of the ordinary legislative procedure.
<b>Employment</b>	Part Three, Title IX, TFEU, Articles 145 to 150  + Part Three, Title XI, European Social Fund, Articles 161 to 164	Coordination of national policies through the adoption of employment guidelines.  Incentive measures to the exclusion of any harmonisation of legislation.	European Council conclusions, qualified majority in Council and consultation of the European Parliament.  Ordinary legislative procedure.	Shared competence.	Generalisation of the ordinary legislative procedure.
<b>Fight against corruption</b>	Part Three, Title V, Chapters 4 and 5, especially Article 83	Is one of the forms of crime which the Union must combat in the framework of judicial and police cooperation in criminal matters.	Ordinary legislative procedure.  Except for operational police cooperation, which is probably less relevant here.	New area of shared competence to expand the means of control?	Ordinary legislative procedure.

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Community goods</b>					
<b>Internal market/ the four freedoms</b>	<p>Part Three, Title IV, Chapter 1 Workers, Articles 46 and 48</p> <p>Chapter 2 Right of establishment, Articles 50 and 53</p> <p>Chapter 3 Services, Article 59</p> <p>Chapter 4 Capital and payments, Article 64</p> <p>Title VII, Chapter 2, Article 113</p> <p>Chapter 3, Articles 114 and 115</p>	Shared competence.	<p>Ordinary legislative procedure.</p> <p>Except unanimity in the Council and consultation of the European Parliament for</p> <ul style="list-style-type: none"> <li>Measures that constitute a step backwards in the liberalisation of capital movements to and from third countries</li> <li>Harmonisation of indirect taxes</li> </ul> <p>Harmonisation of tax provisions</p>	Exclusive competence to establish the rules necessary to regulate the single market	
<b>Public health</b>	Part Three, Title XIV, TFEU, Article 168	<p>Supporting competence except common safety issues:</p> <ul style="list-style-type: none"> <li>organs and substances of human origin, and blood;</li> <li>veterinary and phytosanitary measures;</li> <li>medicinal products and devices for medical use.</li> </ul>	<p>Ordinary legislative procedure for incentive measures.</p> <p>Recommendations adopted by the Council by qualified majority without consulting the European Parliament.</p>	<p>Shared competence.</p> <p>With a reservation of national competence for the definition of their health policy and the organisation and delivery of health services and medical care?</p>	Ordinary legislative procedure.
<b>Fight against international organised crime (cooperation between judicial and police authorities)</b>	Part Three, Title V, Chapter 4, Articles 82 to 86 and Chapter 5, Articles 87 to 89	<p>Shared competence.</p> <p>But reserves national competence for the exercise of member states' responsibilities for maintaining public order and safeguarding internal security.</p>	<p>Ordinary legislative procedure.</p> <p>Except</p> <p>Unanimity in the Council and consultation of the European Parliament for operational police cooperation.</p> <p>Unanimous decision of the European Council after approval by the European Parliament to extend the powers of the European Public Prosecutor's Office to the fight against serious crime with a cross-border dimension.</p>	Shared competence.	Generalisation of the ordinary legislative procedure.

<p><b>Digital rights and cybersecurity</b></p>		<p>Not dedicated as such.</p> <p>Measures adopted on the basis of:</p> <ul style="list-style-type: none"> <li>• single market</li> <li>• research and technological development and space</li> <li>• Industry</li> </ul>		<p>New shared competence.</p> <p>Include among the objectives: ensuring the Union's strategic autonomy.</p> <p>This aspect would be an exclusive competence of the Union.</p>	<p>Ordinary legislative procedure.</p>
<p><b>Common Agricultural Policy (excluding food security)</b></p>	<p>Part Three, Title III, TFEU, Articles 38, 39 and 43</p>	<p>Shared competence.</p>	<p>Ordinary legislative procedure.</p> <p>Except in the case of measures relating to the fixing of prices, levies, aids and quantitative restrictions, which are decided by the Council by qualified majority without any intervention by the European Parliament.</p>	<p>Shared competence.</p>	<p>Generalising the ordinary legislative procedure?</p>
<p><b>Industrial policy</b></p>	<p>Part Three, Title XVII, Article 173</p>	<p>Complementary competence.</p>	<p>Ordinary legislative procedure.</p>	<p>Shared competence.</p>	<p>Ordinary legislative procedure.</p>
<p><b>Education</b></p>	<p>Part Three, Title XII, Articles 165 and 166</p> <p>+ in Title IV, Chapter 2, Article 53 (mutual recognition of diplomas)</p>	<p>Complementary competence.</p>	<p>Ordinary legislative procedure for incentive measures.</p> <p>Recommendations adopted by the Council under a non-legislative procedure by qualified majority without consulting the European Parliament.</p>	<p>Shared competence.</p> <p>With a reservation of national competence with regard to the responsibility of the member states for the content of teaching and the organisation of the education system and their cultural and linguistic diversity?</p>	<p>Ordinary legislative procedure.</p>
<p><b>Research and technological development and space</b></p>	<p>Part Three, Title XIX, Articles 179 to 190</p>	<p>Shared competence without pre-emption.</p> <p>Explicit exclusion of any harmonisation of legislation for space policy.</p>	<p>Ordinary legislative procedure.</p> <p>Except for specific programmes: qualified majority voting in the Council and consultation of the European Parliament.</p>	<p>Shared competence.</p>	<p>Generalisation of the ordinary legislative procedure.</p>

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Public goods and economic governance</b>					
<b>Euro and ECB liquidity</b>	Part Three, Title VIII, Chapter 2 Monetary Policy, Articles 126 to 133	Exclusive competence.	The implementation of monetary policy objectives is entrusted to the ECB.	Exclusive competence.	Status quo.
<b>Fiscal policy and public deficit</b>				Create a new exclusive competence to define an overall fiscal stance for the euro area member states.  Then exclusive competence to define the deficit rights derived from the overall fiscal stance for each euro area state.	
<b>Budgetary discipline</b>	Part Three, Title VIII, Chapter 1, TFEU, Article 126  Article 136(1) for the euro area states	Excessive deficit procedure. Article 126 TFEU lays down the basic principle that "Member states shall avoid excessive government deficits" and describes the different stages of the excessive deficit procedure.  An excessive deficit in a member state is established by a decision, but thereafter only recommendations are addressed to the member state concerned.  Can strengthen the coordination and surveillance of their fiscal discipline.	The Council decides by qualified majority on a recommendation from the Commission. The European Parliament remains completely outside the decision-making process and is only informed.		

<b>Stability and Growth Pact - preventive arm</b>	<p>Regulation 1466/97 on the strengthening of the surveillance of budgetary positions</p>	<p>Medium-term objective of a budgetary position close to balance or in surplus.</p> <p>Stability programmes (for states whose currency is the euro).</p> <p>Convergence programme (for other states).</p> <p>Early warning procedure in case of risk of serious slippage: recommendation and, if necessary, establishment of no action.</p>	<p>The Council gives an opinion on the recommendation of the Commission.</p> <p>Idem.</p> <p>Adoption by the Council on the recommendation of the Commission.</p>	<p>Excessive deficits remain limited by the SGP.</p>	
<b>Stability Pact corrective arm</b>	<p>Regulation 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure</p>	<p>Provides for sanctions for euro area states, which have been reinforced by Regulation 1177/2011.</p>	<p>Adoption by the Council on the recommendation of the Commission</p>	<p>Excessive deficits remain limited by the SGP.</p> <p>Deficit and debt limits are maintained but can be modified by a modified golden rule that takes into account investments in "priority European public goods"</p>	
<b>Fiscal compact</b>	<p>Title III of the Treaty on Stability, Coordination and Governance in EMU (TSCG)</p>	<p>Reinforces budgetary obligations and the automatic triggering of a correction mechanism.</p>			<p>Idem.</p>
<b>Macroeconomic imbalances</b>	<p>Article 121 in conjunction with Article 136 for euro area</p>	<p>Regulation on the prevention and correction of macroeconomic imbalances and Regulation on measures to correct excessive macroeconomic imbalances in the euro area.</p>	<p>The measures provided for are adopted by the Council on a recommendation from the Commission.</p>	<p>Reformed procedure</p>	

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Public goods and economic governance (continued)</b>					
<b>Exceptional circumstances</b>	Regulations 1175 and 1177/2011	Unusual circumstances beyond the control of the member state concerned and having a significant impact on the financial position of the general government or a severe economic downturn affecting the euro area or the Union as a whole.	The Council shall decide on a recommendation from the Commission.	Limits may be suspended in the event of a serious crisis.	National derogations are subject to the deliberations of the European Semester and must be authorised in the framework of the overall macroeconomic law.
<b>Coordination of the economic policies of the Union and the member states</b>	Part Three, Title VIII, Chapter 1, TFEU, Article 121  Article 136(2) for the euro area states	Block competence: member states coordinate their economic policies within the Union. To this end, they define the Broad Economic Policy Guidelines (BEPGs). But these take the form of recommendations, which are not binding.  Can draw up economic policy guidelines for themselves that must be consistent with the BEPGs.	The Council decides by qualified majority on a recommendation from the Commission. The European Parliament remains completely outside the decision-making process and is only informed.	Shared competence.	Adoption of the Broad Economic Policy Guidelines of the Union and the member states under the ordinary legislative procedure.
<b>Economic policy coordination and convergence</b>	Title IV of the TSGC	The economic policy reforms they intend to undertake will be discussed in advance and, where necessary, coordinated among themselves.  This coordination will involve the institutions of the European Union where required by European Union law.			

European Semester	Regulation 1175/2011 of the European Parliament and of the Council based on Article 121(6) TFEU	Strengthened coordination of economic, employment and budgetary policies through a comprehensive and ex-ante assessment of structural reforms, budgetary forecasts and macroeconomic imbalances.	<p>Commission to draw up an annual growth strategy.</p> <p>Adoption by the European Council of strategic policy guidelines.</p> <p>Specific recommendations to the member states by the Council on the basis of a recommendation from the Commission.</p> <p>Parliament is duly involved in the European Semester</p>	Strengthened coordination perimeter to ensure complementarity between national and European public goods.	
Priority European public goods				<p>New EU competence.</p> <p>Will have an impact on both national and EU budgets.</p>	List established under the European legislative procedure.
European budgetary capacity		<p>Not addressed in terms of competences. One provision states that the Union shall provide itself with "the means necessary to attain its objectives and carry through its policies".</p> <p>The main principle is that of financial equilibrium: "the revenue and expenditure of the Union's budget shall be in balance".</p> <p>The borrowing capacity is limited, as the principle is that the Union cannot use funds borrowed on the capital markets to finance operational expenditure. An exception has been introduced for Next Generation EU.</p>		<p>Maintain the "customs duties" resource.</p> <p>Recognise the Union's fiscal competence so that it can levy taxes itself and provide a framework for this. Include the current VAT resource transformed into a European "Chiffre D'affaires" tax.</p> <p>Non-fiscal resources linked to EU policies (plastic packaging contribution, carbon adjustment mechanism at borders, carbon trading system, etc.)</p> <p>Maintain the GNI contribution as a subsidiary measure by fixing the % of GNP allocated to the EU budget.</p> <p>Recognise and provide a framework for the Union's borrowing capacity.</p>	<p>Base and amount of the tax fixed in a decision adopted under the ordinary legislative procedure.</p> <p>Set in an own resources decision, to be adopted under the ordinary legislative procedure.</p> <p>Idem.</p>

	Legal basis (current situation)	Competences (current situation)	Decision-making (current situation)	Competences (proposal)	Decision-making (proposal)
<b>Tax harmonisation and coordination</b>					
<b>Indirect taxes</b>	Part Three, Title VII, Chapter 2, Article 113	Shared competence.  Harmonisation of legislation concerning “ <i>Chiffre D'affaires</i> ” taxes, excise duties and other indirect taxes to the extent that such harmonisation is necessary to ensure the establishment and functioning of the single market and to avoid distortions of competition.	Special legislative procedure unanimity in the Council and consultation of the European Parliament.	Shared competence.	Ordinary legislative procedure.
<b>Direct taxes</b>	Part Three; Title VII, Chapter 3, Article 114 and 115	Shared competence.  Directives for the approximation of the tax provisions of the member states which have a direct impact on the establishment or functioning of the single market.	Special legislative procedure unanimity in the Council and consultation of the European Parliament.  Unanimity also for the adoption of recommendations by the Council.	Idem.  Provide also for a coordination competence in addition to the harmonisation competence.	Proposal of the Commission.  In a first stage, transition to the ordinary legislative procedure for measures that do not directly affect member states' tax rates, bases or duties, such as measures to strengthen administrative cooperation and mutual assistance between member states in the fight against tax fraud and tax evasion, as well as for coordination measures.  Specific <i>Passerelle</i> clause?  Or simply propose an ordinary legislative procedure?
<b>Environmental taxation</b>	Part Three, Title XX, TFEU, Environment, Articles 192	Provisions that are essentially fiscal in nature	Special legislative procedure unanimity in the Council and consultation of the European Parliament.  Unanimity also for the adoption of recommendations by the Council.	Idem.  Possible contributions to EU own resources.	Ordinary legislative procedure.
<b>Energy taxation</b>	Part Three, Title XXI, TFEU, Energy, Article 194	Provisions that are essentially fiscal in nature.	Special legislative procedure unanimity in the Council and consultation of the European Parliament.  Unanimity also for the adoption of recommendations by the Council.	Idem;  Possible contributions to EU own resources.	Ordinary legislative procedure.
<b>Taxation to support other policy objectives</b>	Not explicitly provided for			Possible tax provisions that support the improvement of public health or transport policy.	Ordinary legislative procedure.

# Chapter 12

## How can we go beyond the current EU treaties?

The European Union must have the means to respond to the various expectations expressed by citizens at the Conference on the Future of Europe, calling on it to take more responsibility for meeting public goods needs, in the context of the new challenges it faces, which are no longer simply those of globalisation but of a risk of war on its own continent, which it could face now, as well as in the future.

Faced with this new situation, the current treaties certainly give it certain possibilities for strengthening its action, but the fact that this action is too limited makes it inevitable to envisage a revision of the treaties.

### 1. The possibilities of change in the framework of the current treaties

Three issues need to be examined: decision-making procedures, legal instruments, financial means at its disposal and the Union's competences.

#### 1.1 Decision-making procedures

With regard to decision-making procedures, the problem is the persistence of too many procedures that require unanimity in the Council and/or reduce the powers of the European Parliament. The unanimity requirement has many disadvantages: it increases the difficulty of reaching a compromise, as the right of veto encourages withdrawal from negotiations and feeds a mindset of preserving national interests rather than serving the common interests of the Union; it can lead to "blackmail" by some states linking several different dossiers; and it has the undesirable result that the legislation finally agreed is inevitably based on the lowest common denominator.

In addition, it usually results in the European Parliament having only consultative powers (even if, exceptionally, it is granted a power of approval, as, for example, in Article 312 TFEU for the adoption of the Multiannual Financial Framework), if it is not deprived of any intervention. The limitation of the European Parliament's powers is not, however, solely linked to the unanimity vote in the Council. Certain provisions of the treaties provide for the Council to act by qualified majority, while limiting the role of the European Parliament to simple consultation or even not providing for any intervention by the Parliament.

Certain solutions exist within the framework of the current treaties to get around the blockages linked to unanimity in the Council.

Firstly, there is the possibility for the Council to authorise, by a qualified majority, at least nine member states to establish **enhanced cooperation** between themselves, which must remain open to other member states. The authorisation decision is adopted by qualified majority, except in the field of CFSP, where it must be taken unanimously. This possibility, which is excluded in areas of exclusive competence of the Union, can only be used as a last resort, in situations where it is impossible to adopt a regulation for the Union as a whole in the foreseeable future. It has made

it possible to break the deadlock in which the European patent (now a unitary patent) and the European Public Prosecutor's Office had become bogged down. However, its use remains very limited. Furthermore, in the field of security and defence policy, the Treaty of Lisbon introduced the possibility for the Council to authorise, by a qualified majority, certain member states to strengthen their collaboration in the military field by establishing "permanent structured cooperation within the Union framework". This became a reality in 2017 and, whereas the idea was launched by only four states, it now brings together all but two (Malta and Denmark).

Secondly, states wishing to achieve cooperation that is not possible within the framework of the treaties have in the past had recourse to the conclusion of an **intergovernmental agreement** between states. Three examples are well known. The first is the Schengen Agreement, the conclusion of which was justified by the lack of competence of the EEC to adopt the compensatory measures made necessary by the abolition of internal border controls implied by the Single European Act, and which was incorporated into the European treaties by the Treaty of Amsterdam. The second is the Treaty on Stability, Coordination and Governance in Economic and Monetary Union (2 March 2012), which was concluded as an international agreement after the United Kingdom refused to amend the treaties and Germany refused to use enhanced cooperation. This treaty was intended to be temporary, with measures to be taken within five years to incorporate its content into the treaties. Ten years after its signature, this integration is still pending. Finally, the third is the treaty establishing the European Stability Mechanism (ESM) signed by all euro area member states at that time (2 February 2012). The signing of this treaty was made possible by the adoption by the European Council of a decision "amending Article 136 of the Treaty on the Functioning of the European Union in respect of a stability mechanism for member states whose currency is the euro", in accordance with Article 48(6) TEU. Interestingly, this treaty contains innovative rules for its entry into force, which is subject to the condition of ratification not by all signatories but by signatories whose initial subscription represents at least 90% of the total subscriptions to the ESM. Its integration into the TFEU has been discussed but not agreed.

Finally, since the Treaty of Lisbon, there has been a **Passerelle clause** concerning the modification of decision-making procedures within the European Union. It allows the European Council to adopt a decision either to authorise the Council to change from unanimity to qualified majority voting "in a given area or case" or to authorise the substitution of the ordinary legislative procedure for a special legislative procedure for the adoption of a legislative act. The European Council shall act unanimously after obtaining the consent of the European Parliament, by a majority of its component members. The draft decision of the European Council is forwarded to the national parliaments, which have the right to object. If a national parliament objects within six months, the decision shall not be adopted; if there is no objection, the European Council may adopt the decision.

The *Passerelle* clause is not applicable to decisions with military or defence implications, nor to the decision on own resources (Article 311 TFEU), nor to decisions implementing the flexibility clause (Article 352 TFEU). Moreover, its wording means that it cannot be used to strengthen the role of the European Parliament in non-legislative procedures, which do not provide for any intervention by the European Parliament, such as in the CFSP, but also in economic policy coordination and budgetary discipline.

In addition to this general *Passerelle* clause, there are specific clauses in the field of social policy and environmental policy which allow the Council to decide to make the ordinary legislative procedure applicable to all or part of the decisions which are adopted according to a special legislative procedure with unanimous voting in the Council and consultation of the European Parliament. No intervention by national parliaments is foreseen.

The Commission presented four communications in which it explored the possibilities of using the general *Passerelle* clause in the field of CFSP (December 2018) and in the field of taxation (January 2019), as well as the specific *Passerelle* clauses in the field of energy and climate (April 2019) and in social policy (April 2019). While these communications were welcomed by the European Parliament, the Council's reception was much colder, and they were put on ice.

Finally, while some of the shortcomings of the ordinary legislative procedure could be corrected in the framework of the current treaties, others need a revision of the treaties: (i) the total absence of a framework for the first reading, particularly in terms of deadlines, which explains why certain proposals remain blocked; (ii) the requirement of a "reinforced" majority of the members making up the European Parliament at second reading.

## 1.2 Legal instruments and financial means

As regards legal instruments, the principle is that in order to exercise the Union's competences, the institutions adopt regulations, directives, decisions, recommendations and opinions.

Where the treaties do not provide for the type of act to be adopted, the institutions choose it on a case-by-case basis, in compliance with the applicable procedures and the principle of proportionality. In this case, no amendment of the treaties is necessary.

On the other hand, an amendment of the treaties must be considered when the treaties have specified the type of instrument to be adopted and this instrument is not appropriate to enable the Union to provide a European public good effectively, which is notably the case when the only act that the Union can adopt to coordinate the action of the member states is the non-binding instrument of a directive.

**As far as financial means are concerned, the main difficulty stems from budgetary limits. However, various means have been mobilised to circumvent this.** Thus, the Juncker Plan (now Invest EU) consisted in using the European budget as a guarantee for the EIB to raise a larger amount of money at low rates and to finance strategic investments by European companies in various fields. The establishment of a mechanism to reinsure national unemployment benefit schemes at the euro area level was suggested in 2017 by the Commission as an option to provide the euro area with macroeconomic stabilisation capacity, but it has provoked significant divisions among member states. In the context of the Covid-19 crisis, the Commission proposed on 2 April 2020 a variant of this mechanism in the form of an EU instrument for temporary support to mitigate the risks of unemployment in emergency situations, which was in turn endorsed by member states. The aim is to provide financial assistance to member states, in the form of EU loans, mainly to finance short time working schemes or equivalent measures to protect workers and the self-employed. To this end, the Commission has been empowered by the member states to borrow money on the financial markets on behalf of the Union.

Such instruments are very interesting as they try to align interest rates with the lowest rates obtainable by the Union institutions, and could be used to widen the range of instruments at the Commission's disposal, notably in climate change policies to protect European citizens through the creation of reinsurance systems for member states against floods, storms, fires, drought, and so on.

A further step was taken with the Next Generation EU plan. The Commission has been given the exceptional and temporary power to borrow up to €750 billion on the capital markets on behalf of the Union until the end of 2026, the proceeds of which will be used not only to grant loans to

the member states, but also up to €390 billion for Union expenditure. In a very lengthy reasoned opinion, the Council's Legal Service concluded that this arrangement was compatible with the treaties and in particular with the principle of budgetary equilibrium set out in Article 210 TFEU, but this opinion was not unanimously shared.

It would therefore be useful, in terms of legal certainty, to specify in the treaties the conditions under which the Union may resort to borrowing.

### 1.3 The Union's competences

It is here that the possibilities for developments not requiring a revision of the treaties are the most limited.

Admittedly, Article 352 TFEU contains a clause usually referred to as the flexibility clause, which may be applied when action by the Union appears necessary, within the framework of the policies defined by the treaties, to attain one of the objectives referred to in the treaties, without the treaties having provided for the necessary powers to act to that end, and allows the Council, acting unanimously after obtaining the consent of the European Parliament, to take appropriate measures.

However, the **flexibility clause** can only be invoked "within the framework of the policies defined by the treaties", which seems to indicate that it should no longer be possible simply to rely on one of the objectives of the Union as defined in Article 3 TEU to create a new policy on the basis of the flexibility clause, such as a policy in the digital field or a policy ensuring the strategic autonomy of the Union. Another important limitation is that action based on the flexibility clause may not "involve harmonisation of the laws and regulations of the member states in cases where the treaties exclude such harmonisation", that is essentially in the areas of supporting, coordinating and complementary action.

## 2. The main procedures and method for treaty changes

**If a revision of the treaties is envisaged, it will necessarily be the revision procedure under ordinary law. Indeed, the simplified procedure introduced by the Treaty of Lisbon can only concern the amendment of the provisions of Part Three of the TFEU, relating to the internal policies and actions of the Union, and cannot entail or imply any amendment of the provisions of any other part of the EU and TFEU treaties. Nor may it increase the competences conferred on the Union in the treaties.**

**According to Article 48(1), the initiative for revision of the treaties may come from either a member state (through its government), the Commission or the European Parliament. To this end, Article 48 (2) provides that a draft revision must be prepared and submitted to the Council. The Council notifies the national parliaments of this draft (without saying anything about the role they can play) and forwards it to the European Council. The revision procedure can be triggered if the European Council adopts a simple majority decision in favour of examining the draft (Article 48 (3) TEU).**

The Council's role is limited to forwarding the draft to the European Council, without being able to decide on the proposals, whether or not to issue a favourable opinion on them. If the Council were to be given such competence, it would necessarily have to decide by qualified majority, in application of Article 16(3) TEU ("The Council shall act by a qualified majority, except where the treaties provide otherwise"). This would amount to granting a blocking minority in the Council the

possibility of preventing the European Council from deciding by a simple majority on the merits of proposals and, in so doing, the Council would be encroaching on the powers attributed to the European Council, in violation of Article 13(2) TEU, according to which each institution shall act within the limits of the powers conferred on it by the treaties, in accordance with the procedures, conditions and purposes laid down therein.

**The “normal” way is then to convene a Convention composed of representatives of national parliaments, the Heads of State or government of the member states, the European Parliament and the Commission, which examines the draft and adopts by consensus a recommendation to the Intergovernmental Conference of representatives of the governments of the member states (IGC). However, the European Council may decide by a simple majority, with the approval of the European Parliament, not to convene a Convention if the extent of the proposed changes does not justify it.**

**The next step is the convening of the IGC to agree on the amendments to be made to the treaties, on the basis of the recommendation of the Convention (or the mandate given to it by the European Council if a Convention is not convened).**

**Finally, these amendments enter into force after being ratified by all member states in accordance with their respective constitutional requirements.**

### **3. What initiative should be proposed to revise the EU treaties following the Conference on the Future of Europe?**

**In view of the demands made at the conference, it seems quite clear that a Convention should be convened, and the European Parliament can oppose any decision by the European Council not to convene a Convention.**

**The European Parliament can, in this context, take the initiative to draw up a draft to be submitted to the Council and then to the European Council.**

In a more ambitious scenario of treaty changes, this draft could take the form of a “fundamental law” of the Union. To this end, a change in the architecture of the two treaties should be proposed. The EU Treaty would become the receptacle of the fundamental law, with a change in its title. It would only contain the fundamental rules relating to the values of the Union, the objectives and competences of the Union, the democratic principles, the rules for the functioning of the institutions, which should evolve towards an extension or even a generalisation of qualified majority voting (possibly reinforced, to be considered) in the Council and a strengthening of the role of the European Parliament), the conditions for recourse to reinforced cooperation and the conditions for revising the treaties and joining the Union. All the other rules, namely those concerning the CFSP, should be repatriated to the TFEU, in the fifth part External Action of the Union, which is their normal place. Amendments to the TFEU could be referred to an IGC since the fundamental principles would be contained in this basic law.

The European Parliament could draw up the text of this basic law, which would then be examined by the Convention, and then approved by it, in the form of a recommendation to the IGC.

There is nothing in the treaties to prevent an intermediate stage, which would be very important symbolically, being the organisation of a non-binding popular consultation at European level on the text of the basic law. If, during this consultation, the draft receives the approval of more than 50% of all citizens of the Union, and more than 50% in the majority of member states, it is submitted to the IGC. Otherwise, it is dropped.

Secondly, the IGC phase is essential, since it is in the IGC that treaty changes must be decided. Although the results of the popular consultation cannot bind the IGC, it is perfectly possible to envisage that the States make a (political) commitment to respect them and therefore to endorse in the IGC the text of the fundamental law if it has received the support of the citizens. There remains the most delicate stage of approval by the states.

The consultation stage will thus be an important political and symbolic step, even if its legal effects will remain limited.

**Nevertheless, in the current circumstances, a less ambitious scenario seems to be more plausible. This is a scenario of limited and targeted treaty changes which will be presented in detail in Chapter 13.**



# Chapter 13

## Implications for the EU treaties

In this chapter we are presenting a precise list of targeted treaty changes on the TEU and TFEU, building up on our entire Report. The precise justification for these changes can be found in its various chapters as well as on the general theoretical background we are presenting at the end of this Report. A final table makes the comparison between these changes and the language of the current treaties.

### 1. Articles of the TEU that should be amended

#### Article 3:

completing the objectives of the Union

- (3):
  - Paragraph 1 adds improvement of the quality of human health after environment and an explicit reference to the fight against climate change.
  - Add a paragraph: objective of ensuring the protection of the rights of Union citizens.
  - Add a stronger reference to gender equality.
  - Add a paragraph on digital: possible wording “implementing digital policies that empower people and businesses for a people-centred, sustainable and more prosperous digital future”.
- (5):
  - add the objective of strengthening the Union's strategic economic autonomy, in the following terms.
- **“The Union should develop instruments and capacity to act to ensure sovereignty about its democratic choices. This should be reflected in the various internal and external policies, notably foreign affairs and defence, security, energy, research, industrial, digital, food, health, social, education, media and culture”.**

#### Article 4:

relations between the Union and the member states

- Deletion in (2) of the sentence: “In particular, national security remains the sole responsibility of each member state”.
- Add in (3) “the obligation or commitment of member states to ensure the autonomy of the Union's decision-making process from external interference aimed at undermining the achievement of the Union's objectives”.

### **Article 7:**

to amend the voting rules in the European Council to establish a serious and persistent breach of the Union's values.

### **Article 10:**

add a reference to participatory democracy.

### **Article 11:**

strengthening the channels of participatory democracy available to European citizens.

### **Article 13:**

add a paragraph to introduce a reference to gender balance in the composition of the EU institutions.

### **Article 14:**

composition of the European Parliament (two votes for each citizen).

### **Article 17:**

appointment of the President of the European Commission.

### **Article 21:**

completing the objectives of the Union's external action.

### **Article 22:**

- (1):
  - modify the voting rules in the European Council.
- add a (2) providing for the adoption of a "broad strategic document to guide external action at the beginning of each institutional cycle.

### **Article 24:**

introduce the possibility of political sanctions (inspired by Article 7) against states which fail to fulfil their CFSP obligations.

### **Article 31:**

change the voting rules in the Council from unanimity to an enhanced qualified majority.

## 2. Articles of the TFEU that should be amended

### Article 3:

- in (1):
  - Modify point (b): the establishment of rules necessary for the regulation of the single market, including competition rules.
  - Add a new point after (c): "the determination of the overall deficit for all member states whose currency is the euro".
  - Add a new point after the current point (e): "the establishment of rules guaranteeing the Union's strategic autonomy in the context of the Common Agricultural Policy, the common energy policy and the common digital policy".
  - Add another new point: "the establishment of rules relating to the rights and duties of citizens of the Union".
- In (2):
  - the Union shall also have exclusive competence for a) (current text); b) participation in international climate conferences and the conclusion of agreements in the field of climate change.

### Article 4:

- In (2):
  - Modify point (e) to "protection of environment and fight against climate change".
  - Modify point (k) to "European Health Union".
  - Add a point (l): digital transformation.
- Add (5): "In the areas of education and vocational training, the Union shall have competence to carry out activities, in particular to define and implement programmes and to organise the recognition of diplomas; however, the exercise of that competence shall not result in member states being prevented from exercising theirs, especially regarding the content of teaching and the organisation of the education system as well as their cultural and linguistic diversity".
- Add (6): "In the area of industry, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in member states being prevented from exercising theirs".

### Article 6:

- Delete points (a) and (b).
- Amend point (e) to refer only to youth and sport.

### Article 10:

add at the end "with a particular attention to intersecting forms of discrimination".

### **Article 19:**

- (1):
  - on social discrimination: application of the ordinary legislative procedure; delete (2).

### **Articles 20 and 23:**

provide that citizens may also benefit from the protection of Union delegations in third countries.

### **Article 21:**

delete (3) (unanimity required for measures concerning social security or social protection).

### **Article 22 on electoral rights:**

application of the ordinary legislative procedure.

### **Article 23:**

application of the ordinary legislative procedure.

### **Article 25 on citizens' rights:**

application of the ordinary legislative procedure and elimination of the need for approval by the member states.

### **Article 39:**

- replace in the objectives of the CAP security of supply by food security;
- integrate here the objective of contributing to the protection of public health through measures in the veterinary and phytosanitary fields (currently in Article 168, which would focus on human health);
- add the objective of contributing to the protection of the environment and the fight against climate change;
- add the objective of strengthening the Union's strategic economic autonomy.

### **Article 53:**

delete "mutual recognition of diplomas, certificates and other qualifications".

### **Article 64:**

deletion of (3) which requires unanimity for measures which constitute a step backwards in Union law as regards the liberalisation of capital movements to or from third countries.

### **Article 79:**

deletion of (4) and addition of a point (e) to (2), to remove the prohibition on harmonisation of legislation in respect of measures to promote the integration of third country nationals.

### **Article 81:**

deletion of (3) (exception to the ordinary legislative procedure for family law).

### **Article 83:**

- (1):
  - para. 2: add after trafficking in human beings and sexual exploitation of women and children "gender-based" violence.

### **Article 86:**

- (4):
  - deletion of the requirement for unanimity in the European Council to extend the powers of the European Public Prosecutor's Office.

### **Article 113:**

application of the ordinary legislative procedure for the harmonisation of legislation on indirect taxes.

### **Article 114:**

deletion of (2)

### **Article 118:**

delete (2)

### **Article 121:**

- (1):
  - provide for the adoption of a decision (and no longer a simple recommendation) for the broad economic policy guidelines of the member states and the Union, in accordance with the ordinary legislative procedure (instead of simply informing the European Parliament)

### **Article 122:**

provide at least for consultation of the European Parliament

### **Article 126:**

- (6) to 11:
  - provide at least for consultation of the European Parliament before the adoption of decisions by the Council?
- (14):
  - application of the ordinary legislative procedure to lay down detailed rules and definitions for the application of the Protocol on excessive deficits.

### Article 148:

- provide for the ordinary legislative procedure for drawing up the employment guidelines.
- Furthermore, for the procedure of (4), include procedure to provide at least for consultation with the European Parliament.

### Article 149 on employment policy:

delete paragraph 2

### Article 153

- (2):
  - allow for the adoption of minimum requirements in all areas (including the fight against social exclusion and the modernisation of social protection systems), generalise the application of the ordinary legislative procedure.
- (4):
  - remove the reservation of competence of the member states for the definition of the fundamental principles of social security systems.
- (6):
  - include pay within the Union's competences?

### Article 155:

the decisions implementing the agreements between social partners concluded at the level of the Union should be adopted by the Council after consultation with the European Parliament.

### Article 165 on education:

- (1):
  - add "by defining and implementing programmes", before "encouraging cooperation...".
- (2):
  - first indent: add in fine "and through common contents of the European citizenship education".
- (4):
  - delete "excluding any harmonisation of the laws and regulations of the member states".

### Article 166:

- (1):
  - add "by defining and implementing programmes" before "which...."

- (4):
  - delete “excluding any harmonisation of the laws and regulations of the member states”.
  - add a paragraph: “In order to make it easier for persons to take up and pursue activities of further education employment, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications”.

### **Article 168 on public health:**

see amendment proposed under health chapter of the report.

### **Article 170:**

widening the scope of Trans-European Networks?

### **Article 173 on industrial policy:**

- (1):
  - add to the objectives: strengthening the Union's strategic economic autonomy.
- (3):
  - in paragraph 1 delete “excluding any harmonisation of the laws and regulations of the member states”;
  - delete paragraph 2 (This Title shall not provide a basis for the introduction by the Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed person)?
- other amendments to be made?

### **Article 191:**

- (1):
  - make the fight against climate change an objective in its own right of the Union's environmental policy (currently only mentioned in the last indent (promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change).

### **Article 193 on environment:**

delete (2) to generalise the ordinary legislative procedure.

### **Article 194 on energy:**

- (2):
  - delete paragraph 2;
- delete (3).

### **Article 206 on EU trade policy:**

add a reference to the objective of strengthening the Union's strategic economic autonomy.

### **Article 207:**

generalise qualified majority voting for the conclusion of trade agreements?

### **Article 215 on restrictive measures:**

provide at least for consultation of the European Parliament?

### **Article 218 on international agreements:**

should qualified majority voting not be generalised, and provided for in particular for association agreements and the agreements referred to in Article 212 with the states that are candidates for accession (even if it is true that these are most often mixed agreements), and also remove the need for approval by the member states of the agreement on the accession of the Union to the ECHR.

### **Article 223 on international agreements:**

adapting the procedure for adopting the Act concerning the election of representatives to the European Parliament by direct universal suffrage.

### **Article 235 on the European Council:**

introduction of a new paragraph on the proposed "enhanced qualified majority".

### **Article 237 on the Council:**

introduction of a new paragraph defining the proposed "enhanced qualified majority".

### **Article 289:**

provide for the possibility of a legislative initiative by the European Parliament.

### **Article 294:**

provide for the European Parliament to vote by a majority of the votes cast at second reading.

### **Article 310 on financial provisions:**

to enshrine and provide a framework for the Union's ability to borrow and to "raise" taxes in the context of its various policies.

### **Article 311 on EU own resources:**

application of the ordinary legislative procedure for the adoption of the own resources' decision (possibly with an enhanced qualified majority in the Council?).

## Article 312 on the multiannual financial programme:

- application of the ordinary legislative procedure for the adoption of the Multiannual Financial Framework;
- provide that the regulation on the Multiannual Financial Framework will determine the “priority European public goods”.

### 3. New articles to be introduced

3.1 New title on digital policies.

3.2 In Title VII “Economic and Monetary Policy”, Chapter 4, “Provisions specific to member states whose currency is the euro”, introduce an article enshrining the Union's competence to adopt a decision on the macroeconomic framework, which would finish the overall deficit of the euro zone and then allocate deficit rights proportionally to the budgets of the member states. This decision would also include a new golden rule, taking into account investments in “priority European public goods”.

3.3 In a place to be determined (economic policy, social policy or a specific title as for the ESF?), introduce a provision allowing for the creation of a European (Re)Insurance Fund.

3.4 Provide a more appropriate legal basis for instruments such as SURE, the Next GenerationEU instrument or the European Sovereignty Fund that the Commission is considering creating?

Both SURE and the Recovery Instrument are based on Article 122 TFEU, but this legal basis raises several questions.

- The first is procedural, since Article 122 totally excludes the European Parliament.
- The second relates to the conditions of application of this provision, which refers to the possibility of taking the necessary measures to deal with “serious difficulties”. There are therefore uncertainties about the possibilities it offers. Thus, it is far from certain that it could serve as a legal basis for the creation of a sovereignty fund. As the Commission has not yet tabled a formal proposal, there is no information to date on the legal basis it intends to mobilise.
- The third is the financing of such instruments. SURE and the Recovery Instrument were financed by a loan from the Union. One avenue to explore could be to include in the financial provisions the Union's borrowing capacity, to indicate that these loans could be used to finance common funds intended to finance common projects, within the framework of the Union's various policies, in particular energy, digital, environment, economic, social and territorial cohesion (list to be specified) and that the conditions of use of these funds must be defined by the European Parliament and the Council in a regulation adopted in the framework of these policies.

---

# **PROVISIONAL EPILOGUE**

---

# Political reasons to call a European Convention in order to discuss some treaties reforms

After the unexpected illegal Ukraine war triggered by Putin, and the political and economic crisis we are going to suffer, many challenges will come out for European Union.

First: **a new international order**, more polarised and splintered, and less globalised politically; more oriented to the conflict; fractured into economic and monetary blocs and supply chains. An international order with an increasing weight on the Indo-Pacific area, as the theatre of rivalry between USA and China decouples the largest economies in the world.

Second: **the endeavour of a common defence**. A stronger, resilient and cohesive European defence and security policy based on decision-making autonomy.

The "strategic compass" extends the mutual assistance (Article 42.7 TEU) to neutral European countries, non-members of NATO, Austria, Cyprus, Finland, Ireland, Malta, Sweden.

The Union should contribute to build up a European security architecture, until now non-existent.

Third: **enhance the competence of European Union on energy, in a looming climate emergency**. Tackle the climate crisis driving a green transition and a clean and renewable energy source. Abandon dependence on Russian gas and oil, switching the source of fossil fuels from Russia to other suppliers.

Fourth: **strengthen European health security**, after pandemic. A part of this endeavour must be addressing the current global food crisis.

Fifth: **a European agreement on migration and asylum**, based on European values, and particularly solidarity: with migrants and within the European Union of member states, distributing responsibility. Probably, we are going to see increasing refugees, because the war has left developing countries facing an economic shock.

Sixth: **new fiscal rules**, including a harmonised tax system at the European level.

Seventh: **the reshuffling of budgets**. European resources and permanent funds of economic and social recovery.

Eighth: **a social pillar** in the European Union.

Ninth: **enlargement of European Union** towards Balkan countries, including Ukraine, Moldova and Georgia.

Ten: **stronger European institutions**. Qualified or super-qualified majority voting in all matters, without exceptions (for example, defence, foreign policy, tax policy). Legislative initiative to the European Parliament. To insert the Charter of Fundamental Rights into the Treaty on European Union. To denominate "Law" the "Regulations".

To address these ten challenges in a shared and cooperative form, the European Union needs a reform of the treaties. Every reform has followed a crisis in the European life: Treaty of Maastricht, Treaty of Amsterdam, Treaty of Nice, Treaty of Lisbon. Now, after the Ukraine war, in an age of new threats, the primary European law should be at the same level of the political scenario ahead of us.

For that reason, a Convention must be called in the spirit of European integration, which is more than just cooperation.

---

**ANNEX**  
**THEORETICAL BACKGROUND:**  
**EUROPEAN PUBLIC GOODS**  
**AND EUROPEAN CITIZENSHIP**

---

# Chapter 14

## The governance of European public goods

### 1. Introduction

The European Union is confronted with a growing number of tasks and challenges required to protect and defend its citizens. However, the governance of these tasks is not able to fully satisfy the demands and expectations European citizens have. It is therefore necessary to improve the rules for more efficient and democratic policy making. This note is a contribution to the reflection on the Future of the European Union.

The first driver of post-WWII integration was Federalism, as promoted by A. Spinelli who emphasised the desire for peace. However, the federalist concept has remained ambivalent in the European context. The model for the creation of the United States of Europe was inspired by the USA, where Roosevelt had centralised many competences in the federal government, but living conditions remain unequal across the states. In Europe, Spinelli's centralising federalism failed because the attachment to national identities was stronger than the argument for peace. The Swiss-German model of federalism creates more equal living conditions, but given the heterogeneity between EU member states, this is not fully applicable to Europe.

The Monnet method, also called neofunctionalist approach, is built on the principles of intergovernmental cooperation and subsidiarity. It was dominated by member states and not by a centralised decision-making authority. The integration of specific economic functions generated positive externalities (economies of scale) which legitimised member state governments and contributed to the model's success. It also created systemic disequilibria which required additional steps of policy coordination. As a result, the integration process deepened and generated a growing number of European public goods. In all treaty revisions, competences of the European Union were enlarged, new policy areas included, intergovernmental cooperation became more complex, and democratic control rights (notably for the European Parliament) were timidly strengthened. However, the veto-power by member states and the haphazard assignment of competences to European institutions have generated gridlock and undermined the support for European integration.

A new approach is European neo-republicanism. It focuses on the existence and efficient management of European public goods (Latin: *Res Publica*). The neo-republican approach recommends a re-allocation of competences for the creation and management of public goods. It derives policy making competences from the nature of European public goods and not from states. European citizens are the owners of these public goods; they are not owned by member states. As owners of public goods, citizens have the right to make choices about their administration.

A European identity has gradually emerged and is strongest among member states using the euro. Citizens increasingly identify with the public goods they own. However, their administration is controlled by member state governments. These draw their legitimacy from national elections, so that the public sphere for European policy deliberation remains fragmented and policy decisions on European public goods lack coherence. The results of this governance are compromises with the smallest common denominator. They often generate negative externalities for others because national governments seek to satisfy partial constituencies rather than the general welfare of European citizens. This would be different with a European administration accountable to a Europe-wide constituency of citizens.

## 2. The nature of European public goods

Public goods are services and policies that affect all members of a group. They are defined by the reach of their externalities.

- Members of a group are individual citizens or subgroups such as member states.
- Externalities are costs or benefits to a third party that arise from another party's activity.
- The reach of policy externalities depends on who is affected by these policies, not on the identity of the group. Group members are affected by receiving benefits or by the cost of providing the necessary resources for their supply or both.
  - Local public goods affect only a small circle of citizens.
  - National public goods affect all citizens of a state.
  - European public goods affect all European citizens.
  - Global public goods have consequences for all human beings.
- When the benefits which group members derive from public goods exceed the costs that they must bear for their provision, the externalities are called positive. In the opposite case, they are negative.
- Positive externalities are an incentive for group members to cooperate, but if the group is very heterogeneous in size or interests, cooperation may stop before the optimal amount of public goods is provided. With the enlargement of the European Union, this problem of heterogeneity and policy gridlock has become a major cause for governance failure.
- This is determined by positive or negative externalities which arise when
  - it is not feasible to exclude group members from the potential enjoyment of the public good when there is "jointness in demand";
  - it requires cooperation to provide the public good jointly when there is no for benefits but "jointness in supply".
- The first condition of jointness in demand is also called non-excludability, the second condition of jointness in supply is also called non-rivalrousness. Goods are public when they are non-excludable, non-rivalrous or both; they are private when access is excludable, and supply is rivalrous.

Combining these two dimensions yields four groups of goods. Table 1 shows the matrix for classifying European public goods according to these criteria. The nature of public goods generates very distinct dynamics and incentives for their provision and management and has therefore consequences for the competences and responsibilities of governance.

- **Pure public goods** are non-excludable and non-rival. Anyone has access to use them and they require cooperation for their supply by a critical number of users. However, the efficiency of their provision is undermined by **free riding** when some group members seek advantages but avoid sharing the burden of costs. Free riding generates negative externalities. The efficient supply of such goods requires that they are administered by a **central authority** that has the power **to enforce fair burden sharing**. Such authority must be subject to **democratic control** by the members of the group, that is, by the citizens affected by the public policies.

- **Community goods** yield benefits for all members of the community, but their supply requires contributions from all members. Because they are non-rival in supply and access can be restricted, free-riding is avoided; the externalities are positive, and the interests of decision-makers converge. They will therefore **cooperate voluntarily**. Members who are not willing to play by the rules exclude themselves from their benefits. Problems for cooperation that arise from asymmetric information can be solved by soft guiding rules or by an impartial institution (like the European Commission) ensuring transparency of compliance. Community goods were the driver of the Monnet method.
- **Common resource goods** exist, where the supply of public goods is rivalrous, because the resources required for supplying them are limited. There is therefore an incentive to reap benefits at the expense of other members (zero-sum game). The interests of policy makers diverge, and distributional conflicts generate negative externalities which will **impede voluntary cooperation**. For this reason, a **central authority** must make decisions for the group and enforce compliance with policies in the interest of all. As in the case of pure public goods, this authority must reflect the **democratic** preferences of the citizens concerned. Because the euro is a common resource and limited in supply by the ECB, the European integration process has taken a new quality since the Maastricht Treaty.
- **Private goods** are excludable and rivalrous. They are efficiently supplied by markets that ensure that their consumption depends on the payment of a price that covers the cost. The pricing mechanism balances supply and demand by excluding from the market who is not willing or able to pay for the cost. With perfect competition, the price mechanism is efficient. There are no externalities. The European single market has created the conditions for a very large range of private goods. However, policies to sustain fair competition are a public good.

### Typology of public goods

	Non-rivalrous (joint supply)	Rivalrous (non-joint supply)
Non-excludable (joint demand)	<p><b>a) pure public goods</b></p> <p>Foreign and security policy, military command, energy security, judicial system, single market regulation and competition policy, financial stability, public infrastructure and Trans-European Networks, external border control, Common Agricultural Policy, granting asylum, European budget capacity</p>	<p><b>c) common resources goods</b></p> <p>the euro, central bank liquidity, budgetary policy (SGP), public debt, coordination of economic policies, employment policies, migration, climate change avoidance, fisheries, social policies, regional policies, fighting corruption</p>
Excludable (non-joint demand)	<p><b>b) community goods</b></p> <p>Four freedoms, education, public health, fighting crime (police cooperation), digital rights, industrial policies, R&amp;D, Common Agricultural Policy other than food security</p>	<p><b>d) private goods</b></p> <p>All tradable goods bought and sold in markets for a price</p>

Supplying public goods requires joint decisions. Markets cannot provide them because externalities inhibit the price mechanism. Given their public nature, a clear assignment of spending (demand) to the cost of production (supply) is not possible. Hence, a public authority must define the quality and quantity of public goods and ensure that all members of the group contribute to the funding of necessary resources.

- For community goods the budget constraint is weaker because free-riders can be excluded, but for pure public goods and common resource goods the budget constraint is hard. Free-riding must be punished by penalties, and non-cooperation must be eliminated by centralised decision making.
- Most European public goods have grown out of spillover effects from economic integration. However, the Lisbon Treaty also defines common fundamental values which generate a high-level externality. Dealing with this externality requires exclusive competences to ensure that the values are enforced.

It is the task of public authorities to provide and manage public goods efficiently. However, the mode of governance should take different forms.

- For community goods, policy guidelines and soft rules for policy coordination under the observance of the European Commission, the Council, and the European Parliament will generate flexible cooperation between member states.
- Because they are non-excludable, common resource goods and pure public goods require either binding rules with hard sanctions that ensure consistent policies over time, or – if changing conditions require policy adjustments to new situations – a European democratic authority should decide policies on which member states cannot agree.

The Lisbon Treaty has made an attempt to define modes of governance by distinguishing among exclusive, shared and supportive competences. However, the assignment of competences does not in all cases correspond to the incentive structure generated by the nature of public goods.

### **3. The conferral of competences and the responsibilities of governance**

When a public authority takes charge of the externalities, it recognises the common reach of the public good. In the European Union this recognition takes effect when member states “confer” competences for managing their public goods to the Union. Thus, European public goods are formally created by the conferral of competences to a European institution.

- All other public goods remain national, even if European institutions have “supportive” competences for policy actions and decisions are not allowed to be harmonised by European law. Hence, governments can coordinate and cooperate if they so wish, but negative externalities cannot be prevented.
- The conferral of exclusive and shared competences in the treaties does not assign clear responsibilities for the modes of governance of European public goods. This makes the governance of European public goods opaque, inefficient, and undermines democratic legitimacy. To ensure the efficient administration of public goods, it is useful to distinguish different modes of governance according to the way they combine the instruments to regulate, provide and finance.
  - Single decision and representation at EU level. A European authority decides and implements policies required for the optimal allocation of a specific public good. The treaties foresee this for Customs, competition policy and marine resources under the authority of

the European Commission; monetary policy and banking supervision (financial stability) under the authority of the ECB. A treaty change ought to add the fields of EU defence and strategic orientations for the Common Foreign and Security Policy.

- EU law defines rules and regulations for the single market, social policies, economic, social, and territorial cohesion, agricultural and fisheries, environment, transport, Trans-European Networks, energy, consumer protection, freedom, security and justice. New domains ought to be digital security and health protection.
- Intergovernmental Policy coordination among member states in the (European) Council can be soft and voluntary or more binding under an EU directive issued by ordinary legislative procedures (TFEU, Article 52). Most important policy domains are social protection, industrial policies, R&D, environment, energy, digital and health. Additional domains are civil protection, education and culture.
- Financial provisions
  - EU provisions with EU finance.
  - National provisions with EU finance.
  - National provisions with national finance but framed by EU laws.

The comprehensive list of European public goods. Some of the European public goods in Table 1 are already listed in the treaties. However, in the rapidly changing new world order new European public goods need to be recognised, too.

### 3.1 Pure public goods

- Presently, energy security is a shared competence. But again, for strategic reasons, it should be an exclusive competence of the Union.
- A fair and independent judicial system providing equality before the law is a pure public good. States not willing to guarantee these basic human rights must be sanctioned. Presently, the competences are not clearly defined between national governments and the European institutions. It should be an exclusive competence of the Union for all judgements relating to the fundamental values of the European Union. With laws issued by the ordinary legislative procedure.
- Transparency and fighting corruption are in the interest of all citizens in the European Union, but “agency capture” (hiding behind “sovereignty”) has prevented high standards in some member states. Providing transparency and the rule of law is a pure public good. It requires shared competences and a centralised policing agency at European level to enforce anti-corruption policies even when member states do not act.
- External border control is required to protect the security of European citizens. Today this is a shared competence. The means of enforcement are insufficient and should therefore be centralised.
- Single market regulation and competition policy is necessary to provide a fair and equal level playing field in the single market. While setting up the single market with the free flow of goods, services, capital and labour (four freedoms) has created a community with equal competitive conditions with the purpose of creating economies of scale and greater welfare, policing and maintaining these conditions is a service that benefits all members of the community and must be jointly provided by all member states. Competition policy therefore counts as a pure public good with exclusive competences for the Union.
- Providing food security is the core purpose of Common Agricultural Policy that should be an exclusive competence, but for all other aspects the CAP remains a shared competence.

- Financial stability and banking supervision generate positive (when stability is preserved) and negative externalities (when it is threatened) and is therefore correctly an exclusive competence of the ECB when it comes to systemic banks.
- Public infrastructure at the European level affects all citizens directly or indirectly. Trans-European Networks are a pure public good that generate positive externalities and can therefore be a shared competence, unless national obstacles create negative externalities.
- The right for granting asylum is derived from the common principles of human dignity which underly the European project and reflect European identity. This is a typical value externality and requires shared competences for policy design, although not necessarily for implementation.
- European budget capacity is necessary for the financing of public goods. The EU has currently three revenue sources: traditional own resources (agricultural tariffs, sugar customs duties, general tariffs), VAT-based own resources and national contributions. Traditional own resources are exclusive, the other two are shared. The sources of funding should reflect the assignment of exclusive and shared competences. This requires that the EU obtains the competences for passing tax legislation through the ordinary legislative process.

### 3.2 Community goods

- The four freedoms create the single market. They are restricted to the members of the EU community. Because the implementation of relevant policies is dependent on national legislation, it is classified as a shared competence, but the ground rules for the single market should be exclusive.
- Public health is a European public good when it affects all European citizens. This is the case, for example, in pandemics. Policy rules of how to deal with pandemics are therefore a community good. Providing health care to the population is a national public good (unless it violates European basic values).
- Fighting crime (police cooperation) across borders within the EU generates benefits for all citizens. Fighting local crime remains a national public good, but when criminals exploit the four freedoms, national police forces must cooperate seamlessly in all member states. Hence, a single authority (an FBI) should have the exclusive competency for enforcing EU law.
- Digital rights and cyber security create a common border transcending space that generates new opportunities for economic growth and welfare, but also security threats.
- Industrial policies are ambivalent. When they improve total factor productivity across the Union (for example, innovation spreading through supply networks) they are community goods, but insofar as they generate competitive advantages within the single market, they are common resource goods. Today they fall under supportive competences in the Lisbon Treaty, but they should be upgraded.
- Education has a similar ambivalence. Policies that support mobility in the European Union are community goods. Examples: recognition of degrees, diplomas, professional qualifications, language skills and so on. However, education also contributes to the construction of culture and national identities. Given that membership in the European Union is founded on common values and rights, policies that contribute to the spreading of these values are a European community good. Member states which refuse such policies and ban educational institutions that promote fundamental values are effectively excluding themselves from the community. The TFEU treats education as a supportive competence, but this does not enable the Union to remedy negative externalities. An upgrade to shared competences would handle this.

### 3.3 Common resource goods

- The euro is a common resource good because central bank liquidity is limited by the ECB in pursuit of price stability, and banks have unlimited access to short term liquidity through the money market and the standing facilities. The hard monetary budget constraint generates a zero-sum game that requires policy rules and decisions that are binding for all member states. Banking supervision is correctly delegated to the ECB as an exclusive competence. However, most policies that deal with the distribution of money have the quality of common resource goods.
- The coordination of economic policies has structural, budgetary and macroeconomic dimensions. Voluntary coordination only works when it generates positive externalities. This should be the case for the Broad Economic Policy Guidelines, or the Macroeconomic Policy Dialogue between European authorities, employers and trade unions, but when it generates negative externalities, it must be decided by the ordinary legislative procedure. This speaks for classifying economic policy coordination as shared competences.
- Budgetary policies and public debts potentially generate negative externalities if they remain under the competency of nation states. To avoid negative spillovers that damage all members in the euro area (as in the euro crisis) budget policies need to be treated as a European common resource good. Because money supply is constrained by the objective of price stability, financing national deficits requires binding rules for preventing excessive deficits and debt levels. These rules need to be set centrally with respect to the quantitative effects of national budgets on the aggregate euro area fiscal stance. This requires exclusive competences. However, the qualitative effects of fiscal policy (for example securing energy security or R&D) need to be considered as well, and that requires shared competences among member states. Budgetary policies are therefore one component in the package of economic governance.
- Migration, which is different from asylum, can generate positive externalities for the economies and productivity of member states and the Union, but it also generates costs for the administration. The distribution of these costs and benefits requires a balance under Union authority and therefore shared competences.
- Protecting the environment and combating climate change is a global public good to which the EU must contribute. It cannot remain a national good. The distribution of the costs of transition to a new economic model follow the logic of common resource goods and require shared competences.
- Fisheries are the classical common resource good and are therefore under the exclusive competence of European authorities.
- Social policies are a complex package of public goods. They are policies aiming at sustaining the individual and collective wellbeing and refer to fundamental European values. They have three dimensions.
  - They are pure public goods insofar they set social standards which determine the welfare and dignity of human beings living and working in the European Union. Setting essential standards for living conditions must reflect the ethical orientations of the European Union and therefore define social policies as pure public goods.
  - They are common resource goods to the extent that they may also affect monetary stability (for example, through their fiscal externalities and labour cost developments) and competitiveness of the euro area as a whole (relative to the rest of the world).

- Social policies are European community goods to the degree that they are related to the four freedoms. These are largely labour rights that improve the mobility within the EU (for example, transferability of health insurance, pension rights, unemployment benefits).
- Social policies remain overwhelmingly national public goods which affect national taxpayers and citizens. Welfare programmes are to preserve essential living standards in line with European values.
- To limit the spread of unemployment shocks across border, EU institutions should take on a re-insurance function of domestic welfare systems (for example, as exemplified by the temporary Support to mitigate Unemployment Risks in an Emergency (SURE)).
- Regional policies aim to improve social justice and fairness, but the distribution of costs is rivalrous.

### Constitutional considerations

1. Economists distinguish between **private** and **public** goods. Private goods are provided and allocated through the price mechanism by markets. Public goods are *jointly used and/or produced* by groups of people (communities). For this reason, the price mechanism is not efficient. These public goods need governance systems for collective decision-making. Universally shared values are also in the domain of public goods.
2. Public goods are defined by **externalities** and their **reach**.
  - a. An **externality** is an indirect cost (negative externality) or benefit (positive externality) to an uninvolved third party *that arises as an effect of another party's (or parties') activity*. Another way of saying this is that externalities arise when the partial interests of individuals, groups or states do not coincide with the general interest of the community of which they are part.
    - i. This means that European public goods are based on hard facts (the existence of externalities) and not on political preferences for European integration.
    - ii. However, because policy decisions can generate positive externalities, European policies create European public goods in the interest of European citizens.
  - b. In today's changing world, new European public goods must be created and jointly administered in the following policy areas:
    - i. security, and defence, including border control;
    - ii. Green Deal, environment and issues of climate change;
    - iii. digital transformation;
    - iv. the integration of climate-conform transport systems;
    - v. the integration of employment and social protection policies, including gender equality;
    - vi. an integrated single market for health services, including pandemic prevention.
3. The **reach** of externalities defines the "**level**" of governance. The European community is defined by the **reach** of the externality. Reach means: who is affected by them, who uses them, who consumes them, and who contributes to their production?

4. The governance of public goods depends on technicalities and on shared values that define the **optimal level** for administrating them.
  - a. **Local** public goods affect only a small community in a specific location. For example, a kindergarten in Helsinki does not normally affect children in Lisbon.
  - b. **National** public goods affect all citizens who are connected by the material and administrative conditions within the national territory, but with no or only minimal externalities to other territories.
  - c. **European** public goods are defined by externalities that affect all European citizens who are their owners and ultimate decision-makers (the sovereign). European public goods therefore have a broader material and administrative reach than national public goods.
  - d. **Global** public goods affect all mankind (for example global warming). The regulation of national and European public goods may generate externalities for the rest of the world, and these externalities are subject to the governance of global multilateral institutions (UN, IMF, World Bank and so on). Externalities that are created by European policies affecting the rest of the world must be managed by the European institutions at the level of global multilateral institutions. Only if national policies create global externalities that are not managed by European institutions is the involvement of national governments justified at the global level.
5. At each level of externality public goods can be distinguished by the **incentives** which externalities generate for actors to **cooperate**. This determines whether decision-making requires *more centralised or more decentralised governance structures*. This distinction also applies to the *financing* of public goods. An efficient economic governance of public goods must adopt to the **competences** of policy makers to these incentives.
  - a. The **governance of private economic goods** regulates the externalities generated by markets. At the core of European regulations for private goods stands *competition policy*, which has the objective to ensure the proper functioning of the European single market by preventing negative externalities that undermine the well-being of EU citizens, businesses, and society as a whole. This is particularly relevant in the case of *public procurement* when the supply of public goods relies on private markets. Public procurement rules must ensure balanced growth in regions and sectors of the single market. (See point 13 below).
  - b. The **governance of pure public goods** sets the rules for allocating public goods to citizens and for funding this allocation. The allocation of public goods generates economic benefits (positive externalities) in the form of *income growth for citizens*; the funding generates *costs for taxpayers* (negative externalities). Because citizens choose the allocation of public goods through the *democratic process*, taxpayers who are permanent residents in the European Union should have citizens' rights.
  - c. The **economic governance of community goods**, which generate a willingness to cooperate among member states because the net benefits are positive and potential losers can be compensated, requires rules for negotiating compromises between national interests. Hence, this is the domain of intergovernmental cooperation and shared competences between member states. It invites a *bottom-up* approach for policy making.
  - d. The **economic governance of common resource goods** is subject to the hard budget constraint which generates zero-sum games. What one party gains, the other loses. In a monetary economy, money is the binding constraint that limits the funding of public goods. In this case, the consistency between partial and general interests can only be accomplished by a unified decision-maker with exclusive competences. Monetary policy is the benchmark model with the ECB as the unified decision maker. It invites a *bottom-down* approach for policy making.

6. The **governance of public goods** constitutes a *system of rules* that stipulates how partial interests arising within the community can and should be regulated so that they become consistent with the general interest. It makes actors (individuals, firms, public authorities, national governments) accountable for the externalities they generate and establishes the rules for making partial interests coherent with the general interest as it emerges from the democratic process. The general interest is derived from the public good. Insofar as fundamental values like human dignity, freedom, equality and fairness structure private and public interests shared by the members of a community, public goods reflect fundamental values. The rules of the **governance** must be distinguished from **policies**, that is, the specific policy objectives that decision-makers wish to pursue at the European level.
  - a. *Governance systems* are founded on *constitutions*.
  - b. *Policies* are *rule-guided actions* that define the general interest represented by public goods.
  - c. *Choosing* among policy objectives that represent a general interest is a political process that takes place through the *democratic* institutions of governance. Hence, policies are determined by the outcome of *elections*.
  - d. Violating or *opting out* of the governance rules damages or annihilates public goods.
7. The **economic governance of public goods** manages the specific externalities which affect the material reproduction of society. It therefore determines the constitution for economic policy making.
  - a. The economic governance must internalise the *externalities caused by private markets* or national governments that impact the allocation of resources (goods, labour, capital). It maximises benefits or minimises costs for all those who “consume” the public good.
  - b. An efficient economic governance “*Pareto-optimises*” the *general interest* in a framework that enables some parties to improve their wellbeing without detriment to any other agent.
  - c. If a particular policy measure generates a gain for one party and imposes costs to another party, the loss must be *compensated* by the gain if the governance is fair.
8. There are several ways how **conflicts between partial and general interests** can be solved. Given that there are externalities at the European level, the welfare of European citizens requires a specific system of governance rules.
  - a. When externalities are “internalised”, the third party becomes accountable and is no longer “uninvolved”. This means that by assigning or conferring responsibilities for creating or regulating public goods the institutions are created that decide what the general interest is. This implies that **partial interests rank behind the general interest**.
  - b. Alternatively, if one party ensures the provision of public goods that generate positive externalities for others, it is a *hegemon*.
  - c. If one party can impose its partial interest to the detriment of the general interest, it is a *dominating* actor.
  - d. If there is no acceptable rule for internalising partial interests, the actors with partial interests may withdraw from cooperation and the public good will not be produced. This is the “*opt-out option*”.

9. Given that the European Union “is founded on the **values** of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights” (TEU, Article 2) and given the commitment to “respect the equality of member states before the treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government” TEU, Article 4), the economic governance of European public goods must be based on the principles described under point (6a), that is the European rules of governance have *priority over national* partial interests.
10. *Material externalities with European reach* automatically define what is a European public good. *Value-induced externalities* are defined by a broad political agreement that underlies the constitutional system.
  - a. Because the allocation of public goods is subject to the **funding constraint**, it requires setting priorities through the democratic decision-making process.
  - b. The changed international environment requires several new public goods that would generate positive externalities for European citizens. However, their creation is only justifiable if the marginal collective benefit derived from them exceeds the marginal cost to taxpayers.
11. **Economic public goods** are defined by the externalities that affect the *material reproduction of society* and therefore individual interests of all citizens.
  - a. Some of these externalities are created by European integration because by removing obstacles for the free circulation of goods, service, people and capital the scope of border-transcending partial interests and actions has increased. An efficient European economic governance must regulate these actions (which may originate in individuals, firms or public authorities) at the European level. Of course, actions which have economic consequences only at the local level remain subject to subsidiarity and decentralisation.
  - b. Some public goods exist because of material conditions (for example pollution); others are the result of institutions that support common values (for example, the European judiciary system) or common interests (for example, the European monetary union).



# Chapter 15

## The evolution of European citizenship

Union citizens enjoy a number of rights which may be granted to them by virtue of their status as Union citizens or which constitute fundamental rights enshrined in the Charter of Fundamental Rights.

### 1. Rights specifically linked to European citizenship

#### 1.1 A varying scope of right holders

Any person having the nationality of a member state enjoys the status of citizen of the Union (Article 9 TEU and Article 20 TFEU). The possession of the nationality of one of the member states of the Union is thus the necessary and sufficient access key to the possession of the citizenship of the Union and that the nationals of third countries are by principle excluded from it, but it is necessary to qualify the often-heard criticism that it perpetuates “a logic of differentiation and refusal of access to the rights for the nationals of third states”.

In fact, citizens’ rights are far from being exclusive and ordinary residents are authorised, although they do not have Union citizenship, to avail themselves of certain rights attached to it. Thus, the right of access to documents, the right to complain to the European Ombudsman, the right to good administration, including the right to dialogue with the Union institutions, or the right to petition are not the prerogative of Union citizens. As for freedom of movement and residence, Article 45(2) of the Charter states that it “may be granted in accordance with the treaties to third-country nationals legally residing in the territory of a member state” and Article 78 TFEU empowers the European Parliament to adopt, within the framework of the common immigration policy, measures relating to “the definition of the rights of third-country nationals residing lawfully in a member state, including the conditions governing freedom of movement and residence in other member states”.

In reality, only political rights (right to vote and to stand for election in European and municipal elections), democratic rights (right of citizens’ initiative) and consular and diplomatic protection abroad are specific to the European citizen.

#### 1.2 Rights with variable and ambivalent content

Although Union citizenship is “backed up” by national citizenship, it is an autonomous source of rights for nationals of the member states. Indeed, a number of rights are associated with the status of a Union citizen, listed in Part Two (non-discrimination and Union citizenship) of the TFEU and also enshrined in very similar terms in Title V (citizenship) of the Charter of Fundamental Rights (the Charter). The citizen of the Union is again the focus of Title II (provisions on democratic principles) of the TEU. Finally, Article 20 TFEU refers to the “duties” of citizens but is silent on the content of these duties.

Since “citizenship of the Union is additional to national citizenship and does not replace it” (Article 9 TEU and Article 20 TFEU), the main effect of the status of citizen of the Union is to recognise that the nationals of the various member states of the Union have a citizenship beyond their state of nationality. In this respect, citizenship of the Union has a double dimension: horizontal, relating to the relationship between citizens and the other member states of the Union, and vertical, concerning a direct legal relationship between the latter and the Union.

The core of the horizontal dimension of citizenship is the recognition of rights in other member states, essentially the right of free movement and residence on the territory of the member states. It also allows a citizen travelling or residing in a third country where their state of nationality is not represented to seek consular protection from any other member state. In this dimension, European citizenship is therefore aimed at the mobile citizen and leaves the sedentary citizen by the wayside. The content of the vertical dimension cannot, for its part, remain so modest as to border on indigence and embryonic stage.

The rights linked to the status of the citizen therefore remain limited, and are far from having the transformative effect on the Union that some had hoped for, but it is possible to strengthen them within the framework of the current treaties. The Council may, by a decision adopted unanimously after approval by the European Parliament, “adopt provisions to complement citizens’ rights” taking into account “the development of the Union” (Article 23 TFEU). However, these provisions can only enter into force once they have been approved by the member states in accordance with their respective constitutional rules, which limits the Union’s autonomy in this area.

If the rights linked to the status of the citizen are far from having the transformative effect on the Union that some had hoped for, it is possible to strengthen them within the framework of the current treaties. The Council may, by a decision adopted unanimously after approval by the European Parliament, adopt provisions to supplement citizens’ rights, taking into account the development of the Union, which must be approved by the member states in accordance with their respective constitutional requirements (Article 23 TFEU).

### **1.3 The free movement, original matrix of European citizenship**

Since the formalisation of European citizenship, the “right to move and reside freely within the territory of the member states” appears as the first of the rights attached to this status (Articles 20 and 21 TFEU and Article 45 of the Charter). This right extends to the Union citizen’s family members, irrespective of their nationality, who accompany or join him/her in the host State. Moreover, Article 18 TFEU, read in conjunction with Article 20, allows Union citizens and their family members to obtain the same legal treatment in the host state as nationals. Applying the power conferred on it by Article 78 TFEU, the European legislator has extended these rights, in a limited way and under fairly strict conditions, to third-country nationals who, after five years of residence in a member state, have obtained long-term resident status.

#### **1.3.1 A citizenship which has not really emancipated itself from market citizenship**

Article 21 provides that the right to move and reside within the territory of the member states shall be exercised “subject to the limitations and conditions laid down in the treaties and in the provisions adopted in implementation thereof”. Article 45 of the Charter does not contain this clarification, but Article 52(2) of the Charter states that “the rights recognised by this Charter which are the subject of provisions in the treaties shall be exercised subject to the conditions and limitations laid down in them”.

In this respect, it must be noted that Directive 2004/38 of the European Parliament and of the Council of 29 April 2004, which defined the conditions for the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, continues to give precedence to an "economic" logic, which leads to a multi-speed free movement regime.

It is true that every EU citizen has the unconditional right to reside in a member state other than their own, for a period not exceeding three months. This right does not imply equal treatment in social assistance benefits in the host state, as the latter is under no obligation to grant them to persons not engaged in an economic activity. This is mainly the case for tourists or business travellers, although some people, and in particular some precarious workers, have stays of fewer than three months separated by returns to their state of origin.

With regard to the right of residence for more than three months, the employed or self-employed worker enjoys a privileged status since they have this right without having to fulfil any other condition.

In addition, Union law guarantees every national of a member state the right to take up and pursue an activity as an employed person in the territory of another member state (Article 45 TFEU) and to take up and pursue activities as a self-employed person in the territory of another member state. These rights are also enshrined in Article 15 of the Charter: "Every citizen of the Union shall have the freedom to (...) work, to establish himself/herself or to provide services in any member state. The same does not apply to third-country nationals, even those with long-term resident status, whose access to the labour market may be subject to rules of preference granted to Union citizens.

Workers still enjoy full equality of treatment with workers from the host member state, in particular with regard to all social and tax benefits.

Every citizen must also have the freedom to seek employment in any member state (Article 15(2) of the Charter). Jobseekers have a right of residence for an initial period of six months, provided that they are actively seeking work, but they can only stay for a longer period if they can prove that they have a real chance of being hired. They are entitled to benefits of a financial nature designed to facilitate access to employment on the labour market, but the host member state is not obliged to grant them the right to social assistance benefits.

Economically inactive citizens, including students, must satisfy the condition of having "sufficient resources not to become a burden on the social assistance system of the host member state" during their stay in order to be granted a right of residence of more than three months. This condition, which is intended to prevent economically inactive Union citizens from using the social protection system of the host member state to finance their livelihood, has important negative consequences for the persons concerned. Firstly, in assessing whether an economically inactive citizen has sufficient resources to qualify for a right of residence, any social benefits claimed should not be taken into account. Secondly, a Union citizen, as far as access to social benefits is concerned, can only claim equal treatment with nationals of the host member state if their stay on the territory of the host member state meets the conditions of Directive 2004/38; this means that a member state has the right "to refuse to grant social benefits to economically inactive Union citizens who exercise their freedom of movement and who do not have sufficient resources to qualify for a right of residence". The poor citizens are thus considered as "profiteers" (the Court did not hesitate to refer to people who exercise their freedom of movement with the

sole aim of obtaining social assistance from another member state), who cannot benefit from the general principle of equality in law. The very limited competences of the Union in the field of combating social exclusion are probably not unrelated to this.

It is only with the acquisition of the right of permanent residence, which presupposes that the person concerned “has effectively supported himself or herself financially for five consecutive years”, that residence is no longer subject to any condition of economic activity or resources and allows full access to social rights and benefits in the host state.

### **1.3.2 Citizenship as a vehicle for equal treatment in a wide range of areas**

As a corollary of the right of free movement, the principle of non-discrimination has a virtually unlimited scope of application. For example, a citizen enjoying freedom of movement and residence who has been injured on a ski slope must have the right to use their own language in proceedings before the courts of the member state of residence, under the same conditions as nationals, just as a tourist who has been the victim of an attack must have the same right to compensation as a national. The principle of non-discrimination has also been applied in relation to a national rule prohibiting the extradition of nationals only, or a sports federation’s regulation prohibiting the participation in the national championship of a member state of an amateur athlete who is a national of another member state.

Article 22 TFEU and Article 40 of the Charter further extend their scope to the political rights of voting and standing in municipal elections in the host member state.

### **1.3.3 Rights enforceable against the state of nationality of the Union citizen**

A national of a member state who has, in their capacity as a Union citizen, exercised their freedom of movement and residence in a member state other than their home member state may rely on the rights attaching to that capacity, in particular those provided for in Article 21(1) TFEU, including, where appropriate, in respect of their home member state.

It is thus incompatible with the right of free movement for a Union citizen to be treated less favourably in the member state of which they are a national than they would be if they had not made use of the facilities provided for by the treaty. This case law mainly concerns regulations making the granting or maintenance of certain social and tax advantages subject to a residence condition. It is true that the state of origin can ensure that a certain degree of integration into its society is maintained, but the residence condition favours an element which is not necessarily representative of the existence of such a real and sufficient connecting link.

Similarly, a citizen who has started a family life in their host state has the right to continue to lead a normal family life on their return to the member state of which they are a national, with the presence of their family members at their side. In this respect, in a judgment that caused a stir, the Court of Justice of the European Union ruled that the state of nationality of a Union citizen could not refuse to recognise, “solely for the purpose of granting a secondary right of residence to a third-country national”, their marriage to a person of the same sex in their host member state in accordance with the law of that state, on the grounds that national law does not provide for same-sex marriage.

### **1.3.4 Rights conditional on the exercise of freedom of movement**

Citizenship has not been emancipated from the free movement of persons and has not resulted in a new division of competences between the Union and the member states in the field of

recognition and protection of the individual rights of settled European citizens. The principle remains that the rules of the treaties, in particular those on non-discrimination on grounds of nationality, are not intended to apply to "purely internal situations", where all the relevant elements are confined within a single member state. They cannot be invoked by the settled citizen, who has never made use of their right of free movement and has always resided in a member state of which they are a national.

The consequence is a possible "reverse discrimination", where the treatment of nationals is less favourable than that of nationals of other member states, and mobile citizens have more rights than sedentary citizens. This is particularly the case where EU law grants greater rights to EU citizens who have exercised the freedoms of movement provided for in the treaty than those conferred by national law. The most striking example is the rights conferred on the family members of a Union citizen who has exercised the freedoms of movement provided for in the treaty, which are often greater than those provided for in national law.

Only in exceptional cases where a settled citizen is confronted with national measures which result in the loss, in law or in fact, of the enjoyment of "the essential rights" linked to their status as a citizen of the Union, can this logic be exceeded. Thus, the Court has ruled that the state of nationality of a settled citizen of the Union cannot refuse a right of residence to third-country nationals who are members of that citizen's family, where the consequence of that decision is that the citizen is obliged, in fact, to leave the territory not only of the member state of which they are a national, but also of the Union as a whole. This is, however, only likely to apply to young children who are in absolute and imperative need of their parents' presence.

#### **1.4 Diplomatic and consular protection**

Every citizen of the Union "shall, in the territory of a third country in which the member state of which they are a national is not represented, be entitled to protection by the diplomatic or consular authorities of any member state, on the same conditions as the nationals of that state".

This provision merely extends to citizens of the Union the diplomatic and consular protection exercised by each member state for the benefit of its nationals and thus constitutes an application of the principle of equal treatment to this area. This right, which is exclusively reserved for Union citizens, was the subject of Council Directive 2015/637 of 20 April 2015.

Diplomatic protection does not bring the citizen into contact with the institutions of the European Union but with the diplomatic and consular services of other member states, of which they are not a national, even though the Union delegations may contribute to its implementation.

#### **1.5 The weak consistency of the vertical dimension of Union citizenship**

Firstly, there is a series of rights that can be enforced against the Union, which can be linked to the concept of good administration, understood in a broad sense, and which can be described as secondary rights, in the sense that they are mainly aimed at ensuring the protection of other rights: right to petition the European Parliament; right to apply to the Ombudsman; right to have one's affairs dealt with impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union; right to communicate with the institutions in one of the languages of the Union; right to access Union documents. Moreover, as already mentioned, these rights are not rights specifically and exclusively attributed to the European citizen.

Then there are the rights linked to the democratic dimension of the Union, both representative and participatory democracy.

Under the terms of Article 10, “the functioning of the Union shall be based on representative democracy”, in which “citizens shall be directly represented, at Union level, in the European Parliament”. The first manifestation of European citizenship was thus, long before its official consecration, the election of the European Parliament by direct universal suffrage. However, as the German Constitutional Court emphasised in its Lisbon ruling, it is not a “European people” that is represented in the European Parliament, but the peoples or citizens of Europe, as organised in their respective states, each of which enjoys separate representation in the European Parliament. The rules on voting and eligibility remain a national competence, although member states are bound, in the exercise of this competence, by the obligation to ensure that the election of members of the European Parliament is by direct universal suffrage, free and secret, as provided for in Article 39(2) of the Charter.

The Lisbon Treaty also introduced a form of direct participation of European citizens in European democracy, with the European Citizens' Initiative (ECI), which allows 1 million citizens to invite “the Commission to submit a legislative proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the treaties”. Presented as one of the great innovations of the Lisbon Treaty, its record is rather disappointing. First of all, it has not been very successful: in ten years, around one hundred requests to register an ECI have been submitted to the Commission, three quarters of which have resulted in the collection of the required 1 million signatures. Only six have reached this threshold. While they are referred to by the Commission on its ECI website as “successful” ECIs, this is hardly an appropriate term, as none of them have resulted in a proposal from the Commission.

## 2. Fundamental rights

Union citizens are among the beneficiaries of the 50 “rights, freedoms and principles” set out in the Charter of Fundamental Rights.

However, these rights are not granted to them in their specific capacity as citizens of the Union, except for the rights guaranteed by Articles 15(2) (freedom to seek employment, to work, to exercise the right of establishment or to provide services in any member state), 39 (right to vote and to stand as a candidate in elections to the European Parliament), 40 (right to vote and to stand as a candidate in municipal elections) and 46 (diplomatic and consular protection). The other provisions of the Charter sometimes define rights without specifying their beneficiaries (for example Articles 1, 9 or 13), sometimes state that “everyone” has “the right to...” (for example Articles 6, 7, 8 and 9); sometimes they state that “no one” may be subjected to any prohibited conduct (Articles 4, 5 or 19); sometimes they refer to specific categories of persons, such as “children” (Articles 24 and 32), “elderly persons” (Article 25), “disabled persons” (Article 26), “workers” (Articles 27, 28 or 30).

There are two major difficulties in making use of this extensive catalogue of issues.

The first is the determination of the debtors of the fundamental rights guaranteed by the Charter. Its provisions are addressed first of all to the institutions, bodies, offices and agencies of the Union, “with due regard for the principle of subsidiarity”, which in practice means in the exercise of the powers conferred on them by the treaties. They are also addressed to the member states, but they are only subject to compliance with the Charter “when implementing Union law” (Article

51(1)). Even if this condition is interpreted broadly, it means that the Charter cannot be invoked in situations not governed by Union law. For example, the Court has held that the conditions for granting a social assistance benefit fall within the sole competence of the member states, or that where member states grant or allow social partners to grant paid annual leave entitlements exceeding the minimum period of four weeks, as provided for in Directive 2003/88, such entitlements fall within the exercise of the member states' retained competence. Similarly, it appears that Article 14(2), which provides that the right to education includes the right to receive compulsory education free of charge, "cannot be invoked against the member states, which remain solely responsible for the organisation of their education".

The second, and probably most important, relates to the distinction between rights and principles.

Some provisions of the Charter set out "rights" because, given their clarity, precision and unconditional nature, they create obligations in themselves towards the Union institutions and the member states implementing Union law, without needing to be specified in Union or national law. The holders of the recognised rights may consequently rely on them before the courts of the European Union and the national courts, which are obliged to apply them.

In particular, the following have been classified as rights by case law: human dignity (Article 1); the right to life (Article 2); the prohibition of torture and inhuman or degrading treatment or punishment (Article 4); respect for private and family life (Article 7); protection of personal data (Article 8); the right to marry and the right to found a family (Article 9); freedom of thought, conscience and religion (Article 10); freedom of expression and information (Article 11); freedom of the arts and sciences (Article 12); academic freedom (Article 13); the right to property (Article 17); the right to asylum (Article 18); protection in the event of removal, expulsion or extradition (Article 19); non-discrimination (Article 21); equality between men and women (Article 23); the right of access to employment services (Article 29); the right to limitation of maximum working hours and to daily and weekly rest periods, as well as to an annual period of paid leave (Article 31, para. 2); the right to parental leave and maternity leave (Article 33(2)); the right to an effective remedy and access to an impartial tribunal (Article 47); the presumption of innocence and respect for the rights of the defence (Article 48); the principles of legality and proportionality of criminal offences and penalties (Article 49); and the right not to be tried or punished twice in criminal proceedings for the same offence (Article 50).

On the other hand, other provisions of the Charter are not sufficient in themselves, but must be given concrete form by national or European measures in order to have any effect. They do not therefore enshrine subjective rights, which can be invoked as such, but only "principles", which only become rights when they are implemented by the Union institutions or by the member states, when they implement Union law.

While both the institutions and the member states must observe the principles and promote their application, they are not obliged to adopt any particular measure to that effect. Article 52(2) provides that the provisions of the Charter "which contain principles may be implemented by legislative and executive acts of the institutions, bodies, offices and agencies of the Union and by acts of the member states when they are implementing Union law, in the exercise of their respective powers" and adds that they may be invoked before the courts "only for the purpose of interpreting and reviewing the legality of such acts".

The scope of the principles is therefore much more limited than that of the rights.

Several of the Charter's provisions, particularly in its titles entitled "equality" and "solidarity", enshrine the main "fundamental social rights" referred to in Article 151 TFEU, which the European Pillar of Social Rights has broken down into 20 key principles.

However, one observation must be made in this respect: the vast majority of these rights have been qualified as principles. This is the case for: the integration of people with disabilities (Article 26); the right to information and consultation of workers within the undertaking (Article 27); the right to collective bargaining and action (Article 28); protection in the event of unjustified dismissal (Article 30); social security and social assistance (Article 34); health protection (Article 35); access to services of general economic interest (Article 36); protection of the environment (Article 37); and consumer protection (Article 38).

For these principles to become rights, the Union would have to give them an operational content. But it must be remembered that the Union has only very limited powers in areas such as health protection, education, employment social protection and the fight against social exclusion. Similarly, the situation of people with disabilities is only considered in terms of prohibiting discrimination against them and not in terms of their integration. The protection of children's rights is included among the Union's objectives but is not the subject of any specific provision. Older people are only mentioned in a very indirect way through the mention, in the Union's objectives, of "solidarity between generations".

However, it follows from Article 51(2) of the Charter that the Charter "shall not extend the scope of Union law beyond the competences of the Union, shall not create any new competence or task for the Union, and shall not modify the competences and tasks defined in the treaties".



---

# **ABOUT THE AUTHORS & ABOUT FEPS**

---

## ABOUT THE AUTHORS

### Maria Joao Rodrigues - Coordinator

FEPS President, former Member for the European Parliament, Employment Minister of Portugal, Chair of the European Commission Advisory Board for Social Economic Research, final negotiator of the Lisbon Treaty

### Vytenis Andriukaitis

Former European Commissioner for Health and Food Safety, former national Minister in Lithuania and member of the Convention on the Future of Europe

### Mercedes Bresso

Member of the European Parliament, President of the Union of European Federalists, President of the Committee of the Regions and President of the Piemonte Region

### Stefan Collignon

Professor, Chulalongkorn University, Bangkok and European Institute, London School of Economics

### Gabriela Cretu

Romanian Senator, former Member of the European Parliament

### Marianne Dony

President of the Center of European Law, former Professor of EU Constitutional Law and President of the Institute for European Studies, Université Libre de Bruxelles

### Giovanni Grevi

Senior fellow, CSDS, Brussels School of Governance, and visiting professor, College of Europe, Bruges, and Sciences Po, Paris

### Robin Huguenot-Noël

PhD researcher in Political Economy at the European University Institute

### Guillaume Klossa

Executive President of Europa Nova, special advisor of the European Commission and author of the EC Report "An Industrial Media Strategy to leverage Data, Algorithms and Artificial Intelligence"

### **Jo Leinen**

Former Member of the European Parliament, Honorary President of the European Movement International

### **Diego Lopez Garrido**

Former Secretary of State for European Affairs in Spain, Director of Fundación Alternativas

### **Jernej Pikalo**

Former Deputy Prime Minister and Minister in Slovenia, Professor of Political Science

### **Daniela Schwarzler**

Member of the Bertelsmann Stiftung Executive Board, former Director of DGAP, Honorary Professor of political science at Freie Universität Berlin

### **Britta Thomsen**

Board member of the European Union Agency for the Cooperation of Energy Regulators (ACER) and former Member of the European Parliament

### **François Balate**

Former Head of Office of the FEPS President, former Director for Policy & Advocacy of the European Youth Forum

### **Christian Salm**

Head of Office of the FEPS President, Former policy researcher and analyst of the European Parliamentary Research Service

We want to extend our gratitude for valuable contributions to this report to Francisco Aldecoa, Tanja Börzel, Olivier Costa and Paolo Guerrieri.

## **ABOUT THE FOUNDATION FOR EUROPEAN PROGRESSIVE STUDIES (FEPS)**

FEPS is the European progressive political foundation and the think tank of the progressive political family at EU level. Our mission is to develop innovative research, policy advice, training and debates to inspire and inform progressive politics and policies across Europe.

**FEPS**  
FOUNDATION FOR EUROPEAN  
PROGRESSIVE STUDIES



Avenue des Arts 46, B-1000 Brussels, Belgium +32 2 234 69 00  
info@feps-europe.eu  
www.feps-europe.eu  
@FEPS\_Europe

POLICY STUDY PUBLISHED IN OCTOBER 2023 BY:

**FEPS**  
FOUNDATION FOR EUROPEAN  
PROGRESSIVE STUDIES



*Copyright © 2023 by FEPS*



ISBN: 978-2-931233-29-0 9782931233290