



## Brief Theoretical Considerations on the Review of the European Union Constituent Treaties

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**Abstract** *In the European Union, the possibility of reviewing the constituent treaties contributes to the adaptation of legislation and European policies to the new requirements of the international life. As it is well known, before the entry into force of the Lisbon Treaty, there was only one procedure for reviewing the Treaties. The Lisbon Treaty regulates three procedures for reviewing the treaties: one ordinary and two simplified. Regardless, however, of the initiated procedure, Member States must unanimously adopt the review of provisions in cause. The review procedures are found in Article 48 of the Treaty on European Union.*

**Key words:**

Review Treaties; the European Union; the ordinary procedure; the simplified procedure; bridging clause

**JEL Codes:**

K30

### 1. General aspects on Treaties review

Under international law, provided that the reasons for which they were concluded or the conditions of application require the transformation of certain provisions in order to be adapted to the new requirements, the international treaties in force can be changed. Usually, treaties contain express clauses regarding the changing procedure by way of amendments to be adopted by unanimity, by qualified majority of two thirds or by simple majority. In general, change is a generic term indicating any change made to the text of a treaty. However, the terms used for such a change vary and are often equivalent: amendment, review. The amendment refers to certain changes, partial and less important, and the review shall designate substantial and extensive changes to the text of a treaty<sup>1</sup>. In any of those cases, there are two general rules on amending treaties (art. 39 of the Vienna Convention, 1969):

- any treaty can be amended only by agreement of the parties;
- for changes to take effect, the agreement must follow, in principle, the prescribed steps to conclude the treaty (Negotiation, adoption, ratification, entry into force).

And in the meaning of EU law, the review shall be defined as any change or addition to the founding

Treaties, any judicial intervention that has the same legal value as the originating Treaties. Unlike international law, where we have two rules for the amendment of a treaty, in EU law, we distinguish between classic review, specific to international law and independent review.

### 2. The classic review of constitutive treaties, under international law

Each constitutive Treaty contains a review clause. Thus, in the Treaty of Paris it was stipulated that "after the transition period, the government of each Member State and the High Authority may propose amendments to this Treaty. The proposal will be submitted to the Council. The Council issues, by two-thirds majority, a favourable opinion in a conference with representatives of the governments that will be immediately convened by the President of the Council in order to reach a common agreement on the amendments to the Treaty. Amendments shall enter into force for all Member States after being ratified by all Member States in accordance with their respective constitutional requirements" (Art. 96, TEAEC, the variant from 1951). Similar provisions are also found in the Treaties of Rome, as follows: The Government of any Member State or the Commission may submit to the Council, proposals on the review of this Treaty (CEEC, respectively TEAEC). If the Council, after consulting the Assembly and in the cases received from the Commission issues a favourable opinion at the reunion

<sup>1</sup> For further details, see Dumitra Popescu, Adrian Năstase; Ion M. Anghel; Nguyen Quoc Dinh, Patrick Daillier, Alain Pellet, *op. cit.*

of a conference with representatives of Member States governments, convened by the President of the Council in order to reach a common agreement on the amendments to this Treaty, amendments shall enter into force after being ratified by all the Member States, under the internal constitutional procedures of each Member State (Art. 236 EECT and art. 204 TEAEC, variant from 1957).

Currently, provisions relating to the revision of Treaties of the European Union are found in art. 48 of the Treaty on European Union. The doctrine states that this article is one of the most important of the Treaty (François-Xavier Priollaud, David Siritzky, 2008). The text of the new art. 48 TEU, as amended by the Lisbon Treaty replaces the single revision procedure of the Treaties, provided prior to 2009 (the year when the Treaty of Lisbon has entered into force). Thus, under the mentioned article, Treaties may be amended in accordance with an ordinary revision procedure. Also, they may be amended in accordance with some simplified revision procedures: a simplified procedure aimed at internal Union policies and activities and a simplified procedure named “bridging clause”.

Regarding *the ordinary procedure* (par. 1-6 of art. 48, TEU), we briefly mention the following: The Government of any Member State, the European Parliament or the Commission may submit to the Council, proposals for the amendment of Treaties. These proposals may, among other things, either increase or reduce the competences conferred upon the Union, in the Treaties. These proposals shall be submitted to the European Council, by the Council and the national Parliaments shall be notified. If the European Council, after consulting the European Parliament and the Commission, adopts by simple majority, a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, the European Parliament and the Commission. The European Central Bank is also consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt, by consensus, a recommendation addressed to the Conference of representatives of Member States Governments. The European Council may decide by a simple majority, with the approval of the European Parliament, not to convene a Convention if this is not justified by the proportion of changes. In the latter case, the European Council shall define the terms for the Conference of Member States. In order to adopt by common agreement, the amendments to be made to the Treaties, the Council President shall convene a

conference of representatives of the Governments of Member States. Amendments shall enter into force after being ratified by all Member States in accordance with their constitutional requirements.

Regarding the *simplified review procedures* (par. 7-8 of art. 48 TEU), as already mentioned, the first procedure envisages certain treaty provisions, and the second is known as the “bridging clause”.

According to the first simplified procedure provided in art. 48 TEU, this applies only if the total or partial review of the provisions of Part Three of the Treaty on the functioning of the European Union is wanted, i.e. that concerning the internal policies and actions of the Union. The initiative belongs to the government of any Member State, the European Parliament or the Commission. The project of total or partial review is presented to the European Council. The European Council may adopt a decision for total or partial amendment. The European Council shall decide unanimously after consulting the European Parliament and the Commission, as well as the European Central Bank in the case of institutional changes in the monetary area. This Decision shall enter into force only after the approval of Member States in accordance with their respective constitutional requirements.

The second simplified procedure “allows adopting an act by means other than those provided by the founding treaties, without resulting however in a formal amendment of the Treaties. The general “bridging clause” applies in two situations:

- in the case where the Treaties provide that an act must be unanimously adopted by the Council, the European Council may decide to allow the Council to adopt the decision by qualified majority;
- in the case where the Treaties provide that the acts should be adopted under a special legislative procedure, the European Council may decide to authorize the adoption of those acts under the ordinary legislative procedure<sup>2</sup>.

In both cases, the European Council shall decide unanimously and must obtain the consent of the European Parliament. Each national Parliament shall have, in addition, a right to object and prevent the activation of the general bridging clause. The bridging clause applies to all European policies, except to the defence policy and to decisions with military implications.

At a careful analysis of the texts presented above, we note that the review procedure envisages a preparatory stage with community character and a diplomatic stage. So, we shall remember that the preparatory phase, which develops at the Union level, is that where the

<sup>2</sup> According to [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0013\\_ro.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0013_ro.htm)

initiative of treaties review may belong to the government of a Member State, the Commission or the European Parliament. The project is then submitted to the European Council that must consult, in its turn, the European Parliament, and where the initiative belongs to one of the governments of Member States, to the Commission. Subsequently, the European Council shall convene a Convention for the review of this Treaty. After making the decision to convene a diplomatic convention, the diplomatic stage follows. The Convention's mission is to reach a common agreement on the total or partial review of an EU Treaty. We believe that under the Convention, nothing happens other than the completion of negotiations on amending the Treaty, the signing by representatives of Member States, because negotiations are held in the preliminary stage. In other words, the amendments are negotiated and agreed by the European Council, and the Convention's purpose is the formalities required by signature. Amendments will not take effect until all Member States have expressed their consent, according to their national constitutional rules. **In conclusion**, the EU Treaties may be amended totally or partially, in accordance with rules of the classic international law, under which the amendment of Treaties in force is following the procedure for their conclusion, namely: negotiation, signature and ratification by all States parties to the original Treaty.

### 3. Autonomous review of the constituent Treaties

Constitutive Treaties of the European Communities and the European Union have provided and still provide the possibility that the EU institutions could amend certain provisions.

However, these procedures are not specific to the European Union, being also used for other treaties concluded under the auspices of other international organizations. As an example, we bring to the forefront of attention, the following:

- art. XX of the Constitutive Act of the United Nations for Food and Agriculture (October 16, 1945) allows the Conference of the Organization to amend the constitutive act, by a vote of two thirds of the votes cast. Amendments adopted by the Conference must not, however, establish new obligations for Member States;

- art. XII of the Constitution of UNESCO (October 16, 1945) allows the adoption by the General Assembly, of some amendments to the constitutive act, by a majority of two thirds of the votes. This time too, it is expressly provided that the amendments should not have as object, "fundamental changes" of the organization's purpose.

- art. 41 of the Statute of the Council of Europe (May 5, 1949) contains a provision under which the Committee of Ministers can adopt amendments to the Statute.

### 4. Conclusions

In **conclusion**, we note that the Treaties which formed the foundation of the European Communities, and later of the European Union are international legal instruments governed by rules of public international law. The negotiation, conclusion, expression of consent, amendment of Community Treaties, respectively of European Union Treaties are specific stages of entry into force of any international treaties, governed by the same rules of international law.

### References

1. Anghel, Ion M., „*Dreptul tratatelor*”, vol. 1, ediția a II-a, revăzută și adăugită, Editura Lumina Lex, București, 2000;
2. Dinh, Quoc Nguyen; Daillier, Patrick ; Pellet, Alain, „*Droit international public*”, ediția a 7-a, L.G.D.J, 2002;
3. Priollaud, François-Xavier; Siritzky, David, „*Le traité de Lisbonne. Texte et commentaire article par article des nouveaux traités européenne (TUE-TFUE)*”, La documentation Française, Paris, 2008.
4. [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0013\\_ro.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0013_ro.htm) 5. <http://www.fao.org/docrep/003/x8700e/x8700e01.htm#20>
6. <http://www.un-documents.net/unesco-c.htm>
7. [www.coe.ro](http://www.coe.ro)