

The conference on the future of Europe: obstacles and opportunities to a European reform initiative that goes beyond crisis management

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SWP Comment

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The Conference on the Future of Europe

Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management

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Since the Treaty of Lisbon, the European Union (EU) has been struggling to implement structural reforms. New steps towards integration have only been possible under intense pressure during crises, and treaty change has become taboo. The Conference on the Future of Europe is supposed to open a new path and generate new ideas for the development of the Union through a hybrid format of interinstitutional negotiations and citizen participation. However, its launch has been delayed considerably – and not only by the Covid-19 pandemic; the aims, level of ambition, and structure of the Conference have also been the subject of controversy among the EU institutions. To create the momentum for lasting reform, the Conference must overcome four obstacles: the scepticism of many member states, the taboo of treaty change, interinstitutional rivalries, and past difficulties that the EU has had with citizen participation.

“Not to be confused with ‘Convention on the Future of Europe’” warns the Wikipedia page on the Conference on the Future of Europe. In the namesake Convention in 2002–2004, a draft for a “Treaty establishing a Constitution for Europe” was developed. After a difficult period in which citizens in France and the Netherlands rejected the “Constitutional Treaty” in public referendums, there was a complete overhaul of the EU treaties in the form of the Treaty of Lisbon. This time, however, the EU Council is opposed to a similarly ambitious reform of the treaties. But what exactly the Conference on the Future of Europe is supposed to achieve remains unclear.

Before her being elected as the European Commission President, Ursula von der Leyen

put the Conference on the agenda in her candidacy speech as an election pledge to the European Parliament (EP), primarily to reform the *Spitzenkandidaten* principle, which had failed in 2019. Subsequently, the Conference fell victim to the Covid-19 pandemic. Its launch had originally been scheduled for May 2020, but it had to be postponed due to the lockdowns. Since then, the launch has been further derailed by institutional squabbles between the three main EU institutions (Parliament, Council, and Commission), in particular about who should lead the exercise. Although the three institutions have now agreed on a joint approach and a start in May 2021, the disagreement is indicative of the four main obstacles to a



successful Conference on the Future of Europe.

The Conference As a Reform Laboratory

The first major challenge is to clarify the scope of the reforms to be discussed, in particular whether treaty change should be included.

In principle, the Conference is intended to point out new ways to further the development of the EU. A look at the European agenda reveals a pressing need to fix structural deficits. Reform processes, such as in asylum and migration policy or in the banking union, have been stuck for years, and central structural deficits in the Eurozone have still not been eliminated. At the same time, the EU is struggling to maintain its global role in a world that is increasingly dominated by competition between great powers as well as in its crisis-ridden neighbourhood. The efforts to deal with the Covid-19 pandemic have raised new questions about competences in health policy. The 2019 European elections and their aftermath have also underlined the need to reform the selection process for EU leadership positions and its democratic legitimacy.

Overcoming the blockade of treaty change

Despite this obvious need for reform, the EU and its member states have only been able to find solutions to the many internal and external challenges over the past decade with great difficulties. One reason for this is that treaty change has become taboo. Since 2009, the EU has not touched its treaties during any of its structural crises — the Euro crisis, the migration crisis, Brexit, and the contestation of the rule of law.

A common argument against reforming EU primary law is that the EU treaties are based on a complex package of compromises between member states. Changes to the treaties would require unravelling this package, akin to opening Pandora's box. The ratifica-

tion process also harbours great political risks. In the end, not only all national governments, but also national parliaments, constitutional courts, and in some cases the citizens, via referendums, must approve treaty amendments. Such amendments are therefore very time-consuming and not suitable for responding rapidly to crises. For instance, eight years passed from the Laeken Declaration (2001) to the Constitutional Treaty and, finally, the Lisbon Treaty (2009). Even the “simplified treaty amendment procedure” to secure the European Stability Mechanism in 2011–2013 by adding a single sentence to Article 136 of the Treaty on the Functioning of the EU took more than two years (see SWP Comment 50/2015).

Hence, a majority of the member states will attempt to block treaty change from the Conference agenda. That would be a mistake on two counts. On the one hand, it would exclude reform proposals that require treaty changes — for example, in the institutional area. On the other hand, it would block the opportunity to link policy areas, which is precisely what the Conference would be well-suited to do with its broad, long-term approach. It would therefore be better to keep the outcome of the Conference open and to neither demand nor categorically rule out treaty changes.

Reforms only during crises

Both a feature and a symptom of the blockade of treaty change is that, in the last decade, changes could (almost) only be pushed through during crises. “Every crisis also offers an opportunity” has become a common saying in Brussels. The EU has indeed often adopted far-reaching integration measures in a very short time. But these steps were taken only under high pressure, and they only went as far as was necessary to contain the immediate crisis. Two examples illustrate this “integration in crisis mode”.

The first example is the Eurozone. Here, the member states agreed to set up first a temporary — and later a permanent — Euro “rescue fund” with the European Sta-

bility Mechanism to contain the sovereign debt crisis. With the Euro Plus Pact and the Fiscal Compact, groups of 19 and 25 member states, respectively, reached two agreements on budgetary measures. In 2014–2015, the Eurozone also established the first components of a banking union. However, since the acute crisis pressure started to subside in the Eurozone from 2015 onwards, completion of the banking union has hardly progressed.

A second example is the common asylum and migration policy. In 2015–2016, the EU significantly expanded the mandate of its border control agency, Frontex, in a relatively short period of time and adopted the controversial refugee distribution scheme. However, since significantly fewer refugees are now arriving in the EU, a thorough reform of the asylum and migration system has stalled.

What these examples have in common is that the reform processes have a) only come about as a result of severe pressure due to crises, b) been ad hoc in response to individual, particularly pronounced crisis indicators, and c) not addressed structural deficits. In contrast, progress in the reform processes not driven by crises has been slow. For example, in September 2016, the heads of state and government of the EU-27 launched the “Bratislava Roadmap” to underline the EU’s capacity to act and its added value in response to the Brexit vote. Although individual legislative projects such as the establishment of a Travel Information and Authorisation System were adopted, the fundamental problems of the EU’s asylum and migration system, which were the focus of attention, could not be resolved. Later, then-president of the European Council, Donald Tusk, initiated the “Leaders’ Agenda” for 2017–2019. As part of it, the 27 heads of state and government agreed to tackle reform blockades, inter alia on the banking union and the democratic legitimacy of the EU. However, in the absence of any pressure from a crisis, none of these dossiers registered substantial progress, even though they had been declared *Chefsache* (a matter for the bosses).

An EU that is only capable of reform during crises cannot be stable in the long run. As a political construct with loose direct links to its citizens and a scarcely evolving European public sphere, the EU is particularly dependent on output legitimacy. Every existential crisis damages its acceptance among the population. Consequently, the Conference needs to demonstrate that the EU is capable of generating reform initiatives without acute crises pressure.

The Conference As an Interinstitutional Body

The second major challenge is balancing the interests of the EU institutions. The associated conflicts are already apparent in negotiations on the mandate and structure of the Conference and will shape it.

In her candidacy speech in July 2019, Ursula von der Leyen promised the EP “new momentum for democracy in Europe”, a conference that would deal primarily with the reform of the so-called *Spitzenkandidaten* principle and a right of initiative for the EP. This electoral promise was intended to compensate the EP and persuade Members of the European Parliament to accept the fact that, with von der Leyen’s election, the European Council had prevailed over the EP on the *Spitzenkandidaten* principle.

Since then, however, the von der Leyen Commission’s political impetus for the Conference has waned considerably. In a January 2020 communication, the Commission shifted the focus from institutional issues to a broader outreach along the Commission’s policy priorities and the European Council’s Strategic Agenda. Institutional reforms – including the *Spitzenkandidaten* principle and further steps to strengthen democracy in the EU – should no longer be in the focus. Finally, in her “State of the European Union” address in September 2020, von der Leyen only mentioned the Conference in the context of the development of an “EU Health Union”.

In contrast, the EP embraced the idea of the Conference with great enthusiasm. In

two resolutions adopted in January and June 2020, the majority of MEPs spoke out in favour of ambitious goals that, in addition to broad-based citizen participation and an open agenda, focus on institutional reforms without excluding the option of treaty change. The Conference is thus seen as an opportunity, on the one hand, to strengthen input legitimacy through citizen participation and, on the other, to deepen integration, including an expansion of EU competences and greater powers for the EP.

However, many national governments in the Council have reservations about the Conference. The Council was the last institution to define its position in June 2020. Evidently, the more sceptical member states prevailed, and the Council aimed, above all, to limit the scope of activities of the Conference. In accordance with Article 48 of the EU Treaty (TEU), treaty changes were set to be excluded from the start. In terms of content, the Council preferred the Conference to follow the Strategic Agenda of the European Council. Institutional reforms are not mentioned – thus binding the Conference to the topics already set on the EU’s agenda by the heads of state and government.

The Conference must therefore strike a balance between these very different visions for the further development of the EU – between a partial deepening of integration in individual policy areas (as envisaged by the Commission), a programme to accompany the Strategic Agenda of the European Council (as proposed by the Council), and a return to significantly deepening the level of integration (as advocated by the EP).

The conference as a trilogue

The institutional squabbles over the mandate of the Conference, however, were as much about its structure as its overall aims. With regard to the composition of the Conference, the EP, the Council, and the Commission agree that not only national governments and the Commission but also the EP and national parliaments should be represented. Although the Council explicitly

distinguishes the Conference from a convention, its composition thus corresponds to the model of the latter, as provided by Article 48 (2) TEU.

In addition to the pandemic, an inter-institutional dispute over the leadership of the Conference has delayed its launch. At the Constitutional Convention, the Presidium, under the leadership of former French President Valéry Giscard d’Estaing, had a decisive influence on the final outcome. The EP therefore called for the Conference on the Future of Europe to be led by a co-ordinating body made up of representatives of the three main EU institutions, but under the leadership of the EP. The Council, on the other hand, called for an independent “eminent European person”, i.e. a former head of state or government, to take the lead.

As a compromise, the EU institutions have agreed that the Conference should be under the shared leadership of the Presidents of the Parliament, the Council, and the Commission. They will be assisted by an Executive Board composed of three representatives from each institution plus four observers – mainly so that each party group in the EP can have a seat at the table. Although this compromise defused the dispute over the leadership issue in order to get the Conference started, it simultaneously created a very complex structure at its top. In effect, this imports the institutional struggles right into the leadership of the Conference. It also turns the Conference into an institutionalised trilogue, in which the three main EU institutions, accompanied by national parliaments, wrestle over the future direction of the Union.

Another controversial issue is how to deal with the outcome of the Conference. The EP wants all institutions to commit themselves to implementing the Conference’s recommendations as fully as possible. The Council, on the other hand, only wants to have a report drawn up for the European Council. In that case, the Conference would be in danger – similar to the EU citizens’ dialogues in 2018 – of failing to deliver any meaningful policy reforms.

The Scepticism of the Member States

In the interinstitutional negotiations on the structure and mandate of the Conference, the Council was by far the most hesitant. This brings up the third challenge. Many national governments are sceptical about the added value and format of the Conference. From their point of view, the Conference ties up resources needed for urgent challenges that should be dealt with through regular EU legislative processes and co-ordination measures. The Council decision on the Conference was therefore significantly less ambitious than the Commission's communication and EP resolutions.

In addition, the time component must be taken into consideration. Originally, the Conference was aimed to run two years: from May 2020 until the first half of 2022, with a view to the French presidency of the Council of the European Union. Implicitly, it was also intended as a sign of the European reform agenda for Emmanuel Macron's election campaign in the French presidential elections in April/May 2022. Although the start of the Conference has been delayed by one year, the EU institutions nevertheless decided to end it during the French Council presidency in 2022. This means that the Conference will be significantly shorter and coincide almost entirely with election campaigns in Germany and France. These are conceivably difficult circumstances for the "Franco-German engine" to agree on far-reaching initiatives for the development of the EU. Due to the delayed start, it would make sense to extend the Conference, for example until the end of 2022 or mid-2023.

Finally, the Conference cannot function without the active support of the national governments. The member states are still the "masters of the treaties" and consequently decide what is possible within the EU framework. Any initiatives conceived within the Conference on the Future of Europe will therefore need the support of the member states and the EP, either as regular legal acts or in the form of treaty

amendments. For the latter, the national parliaments will need to give their consent as well.

The Conference As a Democracy Laboratory

The fourth major challenge for the Conference is the involvement of citizens. Potentially, the Conference offers the opportunity to introduce an element of participatory democracy into the political system of the EU.

However, precisely how this participation is to be structured — as long as the pandemic and contact restrictions persist — remains a difficult question. The Commission has offered to establish a multilingual online portal through which EU citizens can discuss with each other and submit their suggestions to the EU institutions. It is up to the individual member states to organise additional local events. It must be ensured that the results are comparable through an overarching common concept and that the citizens' ideas are included in the wider Conference debates.

EU institutions also disagreed on how to involve citizens on the European level. The Parliament, in its January 2020 resolution, advocated for citizen and youth "agoras" with representatively selected individuals; the Council, in its June 2020 document, envisioned conferences in Brussels, Strasbourg, and member states; and the Commission, in its January 2020 press release, spoke merely of participation "from all corners of the Union". In March 2021, the three EU institutions agreed to organise "European Citizens' Panels" as part of the Conference, which should be representative in terms of geographic origin, age, gender, and socio-economic background. For now, the agreement only states that the recommendations from the citizens' panels should provide input into the Conference's plenary. Given the ongoing pandemic, it is clear that these citizens' panels will initially have to take place in virtual form.

Previous experience with participatory democracy in the EU

Even before the pandemic, the EU was struggling with participatory democracy. When it comes to comparable instruments of citizen participation, the EU institutions have so far hardly been willing to translate citizens' recommendations into political initiatives. For example, the Treaty of Lisbon introduced the European Citizens' Initiative (ECI), which enables Europeans to make proposals for legislative initiatives to the Commission. The ECI has been available since 2012. The previous Juncker Commission also organised citizen consultations, in which Europeans were able to submit their feedback on legislative initiatives to the Commission via internet surveys. Inspired by French President Emmanuel Macron's Sorbonne speech in 2017, the member states also held national citizens' dialogues in 2018.

However, the results of these citizen participation formats have hardly been incorporated into the EU's decision-making processes. Also, due to major logistical hurdles, only 6 out of 76 registered ECIs have reached the threshold of one million signatures. The Commission has evaluated five of them but did not fully implement the proposals of any of the successful ECIs. As a rule, it referred to existing EU legislation or ongoing legislative processes. In two cases, the Commission remained completely inactive. A citizens' initiative against the Transatlantic Trade and Investment Partnership (TTIP), which collected more than three million signatures, was rejected by the Commission on grounds of a lack of competence – wrongly, as the European Court of Justice ruled in 2017. The Commission's citizen consultations on the abolition of daylight saving time, which attracted a great deal of attention in Germany, have also been inconclusive to date. The citizens' dialogues merely resulted in a report for the Council of the EU.

When implemented in this way, citizen participation weakens rather than strengthens the democratic legitimacy of the EU. It

creates an illusion of participation opportunities but ends up having no impact. If the Conference is to generate positive impulses for democratic legitimacy from citizen participation, it should make sure that the following conditions are fulfilled. First, the citizens involved should be selected using representative standards to account for differences in age, gender, geographic location, socio-economic standards, and political affiliation. Ireland, for example, has practiced this successfully in its citizen consultations. Second, because the European dimension and the pandemic make logistics considerably difficult, the EU should provide every conceivable logistical support for participation, from online platforms to the necessary translation services to covering the costs of physical consultations. Last but not least, citizen participation needs, above all, to be given assurances that its results will be incorporated into the deliberation processes between the EU institutions.

Prospects for the Conference

The conception of the Conference as a hybrid of interinstitutional negotiations and citizen consultations was hardly feasible in the face of national lockdowns and European travel restrictions imposed in the wake of the Covid-19 outbreak. But the shortcomings of the Conference format go deeper than mere incompatibility with a global pandemic. Even when transnational physical meetings are possible again, the questions of how to overcome the institutional turf wars and how to reform the EU in the absence of urgency generated by a crisis will remain on the table. In view of the difficult negotiations on the format of the Conference, two very different development paths are conceivable.

Scenario 1: A counterproductive show

The first possible development is that the interinstitutional differences are not effec-

tively addressed, and a lack of will to conduct thorough reforms on the part of national governments persists. As a result, the Conference is dutifully launched in 2021, but with an ambivalent mandate and on the basis of minimal compromise, accompanied by the continued scepticism of national governments concerning the feasibility of far-reaching EU reforms. During the course of 2021/22, citizens are involved in the debates digitally and, if possible, via physical meetings throughout Europe at some later point. More ambitious reform proposals, however, are dismissed either with reference to ongoing legislative processes in the EU, or because treaty changes would be necessary, which the member states reject. At the end of the process, the Conference leadership solemnly presents its results to the European Council — a report that invokes the European spirit but contains few concrete recommendations. The European Council duly takes note of the report and makes a non-binding promise to implement the citizens' demands within the framework of its Strategic Agenda.

For the European Union, this would not only be another missed opportunity for reform. Organising a "Conference on the Future of Europe" with much fanfare, promising an elaborate mechanism for citizens' involvement, and then not taking their proposals seriously would ultimately only demonstrate how great the distance is between the EU citizens and Brussels. This would do more harm than good to the democratic legitimacy of the EU. Instead of strengthening the EU internally before the next crises — which are certain to arise — the Union would continue to be capable of reforms only when crisis situations come to a head and pose an existential danger. In the long run, such crisis-driven reactions rightly reinforce doubts about the EU's capacity to act.

Scenario 2: A European impulse

In the counter-scenario, the Conference on the Future of Europe can be used as a catalyst for genuine European reform. In the

course of the Conference, the participating national and European institutions succeed in drawing up a roadmap for structural reforms through the active participation of citizens. The reform proposals are presented to the EU institutions after extending the Conference to the end of 2022. After the German parliamentary elections in 2021 and the French presidential and parliamentary elections in 2022, there is a window of opportunity before the European elections in 2024 to push through substantial parts of these proposals, primarily with secondary law reforms, but also treaty change if necessary. As a result, the European elections in 2024 can take place on a new, strengthened institutional basis.

Making this ideal-typical vision of the Conference a reality, however, will require considerable effort as well as courage, also from Germany, which should let go of the approach of gradual development of the EU only in times of crisis. Germany already took a major step into the unknown during the budget negotiations in the summer of 2020 by abandoning its traditional opposition to the EU's own debt in the face of the forecasted severe economic consequences of the Covid-19 pandemic. More such steps are necessary to make the EU fit for the future. To succeed, three conditions must be met.

First, the Conference should have an open mandate with no taboos. Treaty change cannot be a goal in itself, but neither should this option be categorically excluded. In the interest of credible citizen participation, the Conference should ensure from the outset that although citizens' proposals are not intended to determine the outcome of the Conference, they are nevertheless incorporated into the deliberations in a concrete and comprehensible manner. The year 2020 has already shown how quickly the focus can shift politically — from an emphasis on institutional issues and the *Spitzenkandidaten* principle in the aftermath of the European elections in 2019 to the need to reflect on the competences of the EU in health policy in the wake of the Covid-19 pandemic. The decisions already taken on the Next Generation EU (NGEU) fund — including the

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expansion of the EU's ability to issue debt and the prospect of new own resources for the Union — also offer points of departure for additional reforms. These historic steps towards deeper integration would benefit from a close link to the Conference. Last but not least, institutional adjustments in foreign and security policy are also pressing and may require treaty change.

Second, a successful Conference depends on the political impetus from — and participation of — the national capitals. In the end, EU reforms will only be implemented if they receive the necessary support of national governments in the (European) Council. Treaty changes or more far-reaching reforms, such as the recent decision to renew the Own Resources Decision for the NGEU fund, additionally require the approval of the national parliaments.

Germany and France have a particular responsibility in this respect. In the course of the pandemic, the EU succeeded in initiating extensive changes in the EU budget with NGEU. The prerequisite for this was not only a classic Franco-German compromise, in which both sides overcame significant differences and made concessions to reach a joint understanding that most member states could support. It was also followed by a joint effort to involve various other groups in the EU — in particular the Frugal Four and the Visegrád states — which was sometimes a politically arduous process.

If the Conference is to be successful, a comparable European policy initiative from Berlin and Paris is just as necessary as the involvement of other groups of member states. From the autumn of 2021, the new German government in particular will be called upon to launch initiatives for the further development of the EU — in and outside the Conference — together with other (groups of) member states.

Third, the leadership of the Conference must succeed in combining the impulses from citizen participation, the European and national parliaments, and the national

governments into a coherent package. The warning against opening Pandora's box is justified when it comes to treaty changes. At the same time, a Conference in which package solutions can be combined with institutional reforms across all policy areas offers the chance to spark new momentum in the EU's reform processes, which have been blocked for years. If the EU reform deadlock is to be broken, the Conference on the Future of Europe needs an open mandate, the political support of the member states, and a leadership capable of tying the various political strands together into a workable compromise for reform.

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