

## Putin's Proposal to Modify the Russian Constitution: Keep Succession Options Open and Increase Freedom to Maneuver

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# DGAP COMMENTARY



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## Putin's Proposal to Modify the Russian Constitution

### Keep Succession Options Open and Increase Freedom to Maneuver

On January 20, 2020 – just days after his state-of-the-nation speech followed by the surprising resignation of the Russian government and the appointment of a new prime minister – President Vladimir Putin submitted constitutional changes to the State Duma, the lower house of parliament. They are likely to be approved there and then legitimized by a popular vote planned for April 2020. The amendments that Putin proposed reveal much about the future of Russia's political system and Putin's role in it.

President Vladimir Putin is re-arranging Russia's governing system at remarkable speed. This pace provides the Kremlin with time to manage next year's State Duma elections in the face of rising dissatisfaction among the electorate with socioeconomic conditions throughout the country. The constitutional amendments he proposed in late January may allow Putin to stay in power beyond 2024, thus defusing the critical question of succession. Putin's position and role

within the system might change, but – because constitutional reform would allow him to keep several options open – it is too early to say how. The amendments also include a proposal to give Russian constitutional order priority over international obligations. Germany and Europe should take note: these changes point to a transition by Russia into a more isolationist and self-reliant nation that is moving further away from multilateralism and rule-based global order.

#### RESTRICTING THE PRESIDENCY AND FOREIGN INFLUENCE

One proposed amendment would ban any person from serving as president of the Russian Federation for more than two terms by removing the phrase “in a row,” which had previously permitted Putin to return to the presidency after the single term of Dmitry Medvedev. The text also confirms six years as the length of the

presidential term. It is, however, still too early to conclude with absolute certainty that Putin will not continue to serve as president after his current term. Perhaps the ban on more than two terms will only come into effect after the modified constitution gets adopted, which could theoretically mean that Putin could remain in office for an additional two terms. Yet, there is also a chance that the ban will be implemented retroactively, which would exclude another candidacy by Putin.

tial ambitious, as many of them have been educated in the West.

The draft amendment also puts limitations on members of the two chambers of parliament, members of the government, leaders of many important state organizations, and judges. It bans all of them from holding a second citizenship or a permanent residency permit of any country. In other words, if the amendment becomes law, everyone working in these positions will have to either resign their second citizenships

ability in exercising presidential powers. The proposed amendment would give the upper house of Russian parliament – the Federation Council – a few additional competences. For example, it would have the right to consult with the president about the appointment of leaders to various branches of the executive, including the heads of security services. Another new competence would be the right to consult about the appointment of federal prosecutors. The current constitution only provides the Federation Council with the right to approve such appointments. Nonetheless, these additional rights should in no way be equated with veto power.

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## *It is too early to conclude that Putin will not continue to serve as president after his current term*

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Clearly, this amendment curtails eligibility for the post of president considerably. It states that only a person who neither holds nor has ever held citizenship or any form of permanent residence of another country can become president of the Russian Federation – though there is an exception for the Crimea. It also increases the span of time for which a candidate must continuously live in Russia before assuming office from 10 to 25 years.

Consequently, the amendment could exclude key figures of the Russian opposition who have lived abroad from running for the presidency – for example, Alexei Navalny who studied at Yale University in 2010. This limitation may also affect the intra-regime competition for the post as many of the system's current strongmen have previously spent time abroad. This is particularly true for their children, some of whom may have had presiden-

and residence permits or their current jobs. With this move, the Kremlin apparently intends to limit potential foreign influence on Russia.

### **STRENGTHENING THE PRESIDENT**

While the draft legislation restricts eligibility for the presidency and other state positions, it simultaneously strengthens the formal power of the president over both the prime minister and parliament. One of the proposed amendments would allow the president to dismiss the prime minister without dismissing the whole government along with him or her. Also, the president would no longer need a prime minister to nominate anyone as deputy prime minister. Rather, the president would only require approval by the lower house of parliament – the State Duma – to appoint someone to this office. Both changes would allow for greater flexi-

Despite giving more power to the Federation Council, the draft legislation would not strengthen parliamentarism as a whole. In fact, the amendments preserve the president's decisive influence over the upper house of parliament by continuing to allow him or her to appoint additional "representatives of the Russian Federation" to it. These representatives join the usual members of the Federation Council – two from each unit of the federation (the so-called federative subjects), one of whom represents the elected, legislative power and the other of whom represents the executive branch. The only meaningful restriction on the representatives appointed by the president is that their number cannot make up more than ten percent of the Council. But together with the representatives from the executive branch, they can easily uphold their stable majority in the Federation Council over the elected members. Aiming to maintain this leverage is probably an attempt by the Kremlin to mitigate the decreasing popularity of the ruling party United Russia, which was manifested in weakened positions resulting from recent regional elections.

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## TURNING THE STATE COUNCIL INTO AN INSTRUMENT OF STATE POWER

At present, the State Council is an extra-constitutional, advisory body around the president without formal powers. A new amendment would, however, make the State Council a constitutional body with a very general mandate and competences in the fields of state administration, domestic and foreign policy, social questions, and economics – which would be defined in a future federal law. The proposed legislation, therefore, could elevate the State Council to such an extent that it could affect the functions of all constitutional structures. Hence, there is a real possibility that the State Council, which is currently composed of those trusted by Putin, will play an important role in the future system of power in Russia.

## GIVING RUSSIAN LAW SUPREMACY OVER INTERNATIONAL OBLIGATIONS

Another proposed amendment would strengthen the supremacy of Russian law over international law and the decisions of international organizations affecting Russia. Its text explicitly states that decisions of international organizations adopted on the basis of international treaties or on Russia's membership in the given organization cannot be implemented on the territory of the Russian Federation if they contradict the foundation of Russia's constitutional system. The decision on whether such a contradiction exists would have to be made by the Constitutional Court before a given international regulation could be implemented. Although a federal law was passed in 2015 that already allows the Constitutional Court to consider whether decisions of international courts can be implemented in the country, the amendment would

entrench supremacy of Russian law in the constitution.

This modification could have serious, long-term consequences for human rights and fundamental freedoms in Russia. Decisions of the Council of Europe – where Russia's voting rights were restored last year – and the European Court of Human Rights will be much harder to implement there. If it also applies to decisions made by international arbitration, which is not clear from the text, it would gravely affect foreign investors and the business climate in Russia.

All in all, if the proposal is approved in its current form, it will be a significant step by Russia to isolate itself even further from the rule-based global order and to ramp up its process of political transition. While Putin has indeed increased his freedom to maneuver with these constitutional amendments, they mark only one milestone in Russia's transition process. Its end is not yet in sight, and all options are still open.

## The Kremlin's trajectory is moving further away from Europe

This move suggests that the Kremlin's trajectory is moving further away from Europe – calling the recent initiatives of French President Emmanuel Macron to repair EU relations with Russia further into question.

## CONTINUING POLITICAL TRANSITION

Importantly for Russia's domestic context, the amendments also address social issues that triggered a wave of protests across the Russian Federation in the past two years. The text introduces a minimum wage and an indexation of pensions connected to inflation.

Once the State Duma adopts the proposed modifications to the constitution, they will be subject to an "all-Russian voting" likely slated for April 2020. The draft legislation does not, however, clarify what exactly an all-Russian voting entails and how it differs from a conventional referendum – adding an element of uncertainty to the procedure.

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