# Simplification of the EU Treaties: Weighing the Options

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Of the "challenges and reforms in a renewed Union" mentioned in the "Declaration on the Future of the European Union" (hereinafter the Laeken Declaration), simplification of the founding treaties of the European Community and the European Union (hereinafter TEC and TEU), without changing their content, is defined as "essential".[1] Before that, the Nice Declaration on the Future of the Union referred to simplifying the treaties as one of the most suitable ways "to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States".[2]

European integration is currently undergoing a period of profound transformation, with the greatest difficulties deriving from the coming enlargement and the urgent institutional reforms it requires. The growing attention of public opinion and increased sensitivity of European institutions to these issues could make it possible to achieve broad ambitions.

One of the main points of the debate on the political future of the European Union begun in December 2000 is whether or not to give the Union a constitution. The question was raised again at Laeken (14/15 December 2001), where the EU heads of state or government gave an *ad hoc* Convention the mandate "to consider the key issues arising for the Union's future

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[1] *"Laeken Declaration on the future of the European Union"*, Annex I to the Presidency conclusions, Laeken, 14 and 15 December 2001, p. 23, <http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm>.

[2] *"Declaration on the future of the Union"*, no. 23, adopted by the Intergovernmental Conference that ended with the signing of the Treaty of Nice.

development and try to identify the various possible responses".[3] The term Convention is significant in that it refers both to a certain procedure aimed at ensuring the greatest degree of representativeness for all institutional subjects involved, like the one that led to the drafting of the Charter of Fundamental Rights proclaimed in Nice, and to a body with constituent functions, like the American Constitutional Convention of 1787.[4] This Convention is composed of one representative for each national government and two for each national parliament; the same number is foreseen for the accession candidate countries,[5] in addition to two representatives of the European Commission and sixteen representatives of the European Parliament.

In this framework, the simplification of the treaties is inextricably tied up with the question of giving Europe a constitution. After Amsterdam, the European institutions themselves underlined the importance of inserting the work of the next Intergovernmental Conference (IGC) into a broader political and institutional framework. The topicality of the subject is underlined by a European Parliament resolution on the Nice Treaty and the future of the Union calling for a constituent process that will lead to the adoption of a European constitution.[6] Even more explicit is the Laeken Declaration which dedicates a section entitled "towards a constitution for European citizens" to this topic.[7] Therefore, the Convention's work and the simplification of the treaties cannot but be instrumental to the separating out of a fundamental treaty, the real core of a future European Constitution.

This article analyses why a simplification of the EC and EU founding treaties is being demanded by so many. It also looks into the techniques suggested by the most qualified legal authors for achieving that goal and the problems and prospects of such an operation.

## Why simplify?

Simplifying the treaties has been suggested as a way of solving the Union's problem of democratic deficit, considered one of the main reasons for the indifference of European citizens to European matters. Democratic deficit is the term used to describe the citizens' lack of control over the decision-making processes of European institutions – control that is a feature of national political systems based on democratic representation. Citizens are currently condemned

[3] Laeken Declaration, p. 24.
[4] Which drew up the Constitution of the United States of America.
[5] Which will be fully involved in the activities of the Convention "without, however, being able to prevent any consensus which may emerge among the Member States", Laeken Declaration, p. 24.
[6] In its "Report on the preparation of the reform of the Treaties and the next intergovernmental conference" (A5-0058/99, 18.11.1999), the EP stated the need to draft a constitutional charter. See also the "Report on the constitutionalisation of the Treaties" (EP, A5-0289/2000, 25.10.2000).
[7] *Ibidem*, Part III.

to a partial and fragmentary knowledge of the provisions of European law, making their involvement in Union life even more marginal.

Even the European institutions have reiterated the need to make community law and action more transparent, in that transparency is a very important political concept and one of the bases of democracy. [8] Simplifying the treaties would coordinate perfectly with the action taken by the Union and member states to improve the way in which community legislation is written.[9] It should be recalled that an inter-institutional agreement on the official codification of legislative texts was adopted on 20 December 1994[10] and that Declaration no. 39 annexed to the Treaty of Amsterdam stated that "the quality of the drafting of Community legislation is crucial if it is to be properly implemented by the competent national authorities and better understood by the public and in business circles".[11]

The word that best describes the nature of the Treaties is, in fact, complex. The numerous revisions of the last fifty years have led to an impressive increase in treaty provisions, turning them into a tangle of regulations sometimes dating back to different historic periods and not always coordinated. Some articles contain references to concepts that are obsolete, such as the title on Economic and Monetary Union which still refers to the ecu, even now that the euro is already in circulation. Besides the treaties, there are also various protocols containing exemptions and reservations on countries' positions in certain matters, which undermine the unity of the system and, above all, the clarity of its rules.

Although marginal, the problems caused by the numbering of the provisions resulting from the successive revisions should not be underestimated either. For example, after the amendments introduced by the Treaty of Amsterdam, every legal provision now bears two numbers. In addition to being a complication, this can also cause substantial errors.[12]

Some legal uncertainty is also engendered by the names. For example, despite the "single institutional framework", mentioned in Article 3 (TEU), only the Council can be qualified as "of the European Union", while the Commission and the Court of Justice continue to be "of the European Communities".

[8] J.-C. Piris, "La transparence dans les institutions communautaires", *Il diritto dell'Unione europea*, vol. 4, no. 4, 1999, pp. 675-93.

[9] J. Lipsius, "La conferenza intergovernativa del 1996", *Ibidem*, vol. 1, no. 1, 1996, pp. 121-61, particularly pp. 153 and 159.

[10] *Official Journal of the European Communities*, C 102, 4.4.1996, p. 2.

[11] *Official Journal of the European Communities*, C 340/139, 10.11.1997. Two important documents on simplification were submitted to the Laeken European Council: "Simplifying and improving the regulatory environment", Communication from the Commission, COM (2001) 726 final, 11.12.2001, which reiterates the urgency of a simplification of the *acquis communautaire*, and "Better Lawmaking 2001", Commission Report to the European Council, COM (2001) 728 final, 10.12.2001.

[12] This is the case of the new article 30 of the TEC, which corresponds to the old Article 36, which is a derogation of Article 30 now become Article 28 of the TEC.

Simplification is also justified by the diverse nature of the provisions of the European treaties: constitutional provisions, such as those on the single institutional framework and the fundamental principles, can be found alongside others that are predominantly legislative, such as the regulations for the voting procedures of the various policies. Just distinguishing the institutional provisions of the Treaties from the material ones would make the decision-making process for adoption of a regulation more transparent and would, therefore, improve the comprehension, acceptance and application of the regulation itself.

Legal doctrine and institutions have repeatedly pondered the reasons for the complexity of community law, the lack of transparency now having become a "political deficit".[13] The lack of clarity in the organisation and formulation of the treaty provisions must be attributed above all to the lack of clear legal categories able to describe the unique phenomenon of European integration exhaustively and precisely enough. Another reason which should not be underestimated is the method of revision set down in Article 48 TEU: the requirement that treaties introducing amendments be ratified by all member states before entering into force has frequently led to low profile compromises and vague or ambiguous provisions that can be interpreted in a number of ways.

Finally, simplification of the treaties becomes even more important in light of imminent enlargement. The citizens, businesses and institutions of the candidate countries have the right to certainties. The increase in the number of member states could provide the opportunity to bring order into EU law, and this kind of rationalisation could contribute to European integration, both politically and constitutionally.

## How to simplify

Various attempts to simplify the treaties have been made upon request of the institutions since the time of Maastricht. In fact, it was the extension of Brussels' fields of action set down in that treaty that brought the need for a restructuring of community law to the forefront. Making community law more accessible to the public and non-experts became all the more important with the birth of the Union's political pillar.

The most significant contributions have undoubtedly been those worked out by the European University Institute (EUI) in Florence, which in 1996 was charged by the Council Secretary General to formulate proposals for consolidation *à droit constant*.[14] And after the simplification carried out in the second part of the Treaty

[13] C. D. Ehlermann and A. von Bogdandy, "Un Traité unique pour le marché unique: les composantes du projet de Traité du Centre Robert Schuman de l'Institut Universitaire Européen", *Revue du marché commun et de l'Union Européenne*, no. 405, February 1997, pp. 81-5, in particular p. 82.

[14] Robert Schuman Centre, "A Unified and Simplified Model of the European Communities Treaties and the Treaty on European Union in Just One Treaty", European Parliament, Legal Affairs Series, W-9, October 1996.

of Amsterdam (1997), as suggested by the "Friends of the Chair" group nominated in parallel with the EUI,[15] the interest in clarifying the provisions of the Treaties did not subside. In 1999, on the request of the European Parliament, the EUI drew up a second project for simplification set in the framework of a possible constitutionalisation of European integration.[16] With a view to enlargement, the Commission then asked the Robert Schuman Centre to draft a feasibility report on reorganising treaty law in the form of a fundamental treaty.[17]

However, it is worth recalling that in 1995 the European Parliament had already asked the University of Lausanne to prepare a plan for consolidation of the treaties, which turned out to be a valuable re-examination of the entire body of treaty law, plus the proposal to merge the Treaties of the Union and of the Communities, putting the more technical provisions into protocols annexed to the main text.[18] In 1997, Cambridge University also published an interesting plan for consolidation which proposed reordering the legal *acquis* using the technique of "restatement".[19]

What is interesting to note is that the solutions proposed in these studies can be grouped according to four main models, corresponding to the degree of structural intervention on treaty law required: mere simplification; a Treaty/Charter plus protocols; codification and consolidation; constitutionalisation.

### *Simplification*

Simplification is the minimum objective. It means revising those provisions that are so complex that they make comprehension and the application of the Treaties and annexed protocols difficult. It involves removing provisions that are obsolete or have lapsed or updating them in respect of the *acquis*,[20] as well as eliminating surplus provisions that are not legally indispensable in order to reduce the overall length of the treaties.

### *Treaty/Charter plus protocols*

Many of the proposals for simplification of the treaties have been in favour of a general reorganisation. Behind this kind of proposal is the awareness that they

[15] Doc. SN 4230/96; Doc. SN 4464/96; Doc. SN 4692/96.
[16] Robert Schuman Centre, "Which Constitutional Charter for the European Union?", European Parliament, Political Series, n.105, May 1999.
[17] Robert Schuman Centre, "A Basic Treaty for the European Union", Florence, 2000, <http://www.iue.it/RSC/pdf/Draft-Treaties.pdf> .
[18] European Parliament, "Draft of a Consolidated Treaty of the European Union", Political Series, W-17, March 1996.
[19] For a summary, cfr. A. Dashwood and A. Ward (eds) "CELS (Cambridge) EC Treaty Project", *European Law Review*, vol. 22, no. 5, 1997, p. 395-516.
[20] J.-P. Jacqué, "La simplification et la consolidation des traités", *Revue trimestrielle de droit européen*, vol. 33, no. 4, 1997, p. 902-13, in particular p. 905.

contain different kinds of provisions (constitutional, of principle, concerning the general political orientation or the institutional framework, technical) which should be grouped together or at least distinguished from one another. In this context, the EUI's report of 2000 suggests that the problem of the length of the treaties could be solved by separating out all points having to do with a hypothetical Constitutional Charter into a fundamental treaty containing only provisions of a general or institutional nature, and putting technical provisions into special protocols. More precisely, the founding treaties of the European Community and European Union would remain in force (obviously without the provisions moved to the fundamental treaty) because of their high symbolic value, while the provisions disciplining the second and third pillars could be put into *ad hoc* protocols (along with the Euratom Treaty, as suggested by the Commission).[21] As compared to codification (discussed below), this option has the advantage that it highlights the core of principles that determine the Union's identity. What should not be underestimated, though, is that by relegating the provisions of the two pillars to as many protocols, this plan actually further complicates European law, on the one hand, and emphasises the separateness of the intergovernmental pillars from the historic nucleus of European integration, on the other, basically going against the current trend to give the European order greater unity and cohesion.

### *Codification*

In general, in the community sphere, codification is used to refer to acts of secondary legislation. With reference to the simplification of the treaties, this term (or also consolidation[22]) means the merging and restructuring of the Community treaties and the Treaty on European Union into a single, streamlined and comprehensive text. In fact, once the redundant and outdated provisions are eliminated (though consolidation), the material would be organised more rationally into a treaty containing five parts (according to the EUI proposal, of 1996): principles, Union citizenship, institutional provisions, activity and instruments, general and final provisions. The main advantage of codification, as also pointed out by legal doctrine,[23] is that it would make the texts more accessible.

During the negotiations that led to the Amsterdam Treaty, three kinds of codification were experimented, of which two contained the interesting proposals to merge not only the treaties but also the Community and the European Union structures themselves.[24] A merger of the first with the second

[21] Commission communication "A basic Treaty for the European Union", COM/2000/434, 12.07.2000.
[22] On this point, see Robert Schuman Centre, "Which Constitutional Charter…", p. 16.
[23] Ehlermann and von Bogdandy, " Un Traité unique pour un marché unique…".
[24] Doc. SN 4464/96; Doc. SN 4692/96.

and third pillars would certainly be of great symbolic value: it would facilitate interaction between the various fields of action of European bodies and could be seen as a move towards political integration.

Codification is not without risks however: while simplification can be achieved by means of individual changes to the existing texts, codification, like the drafting of a Treaty/Charter, involves writing a new treaty which has to be ratified by all member states before entering into force. This could reopen the entire debate on European integration and offer some member states the opportunity to throw into question matters which are now considered final. This is probably one of the reasons why none of the various plans for codification has ever been adopted and why the Treaty of Amsterdam dedicated no more than a declaration to it.[25]

### *Constitutionalisation*

The most ambitious attempt to order the complex provisions of the European treaties is advocated by those who feel that the current stage of integration requires a revision of the fundamental texts, in terms of contents and functioning mechanisms, to express the Union's distinct *Weltanschauung*: the Union no longer considers itself mainly an economic entity and would like to progress towards more political goals and deeper involvement with its citizens. After a certain lull in interest following the Treaty of Maastricht, the need to transform treaty law into constitutional law was again brought into the limelight by German Foreign Minister Joschka Fischer in his speech at Humboldt University, Berlin.[26] However, as mentioned, one year earlier, the European Parliament had already asked a research group from the EUI to draw up proposals on how to reinforce the constitutional characteristics of the European treaties in the wake of the work done from a substantial point of view by the European Court of Justice.[27] The EUI project set forth three different strategies for the constitutionalisation of the treaties: drafting a consistent constitutional document, enriching the treaties with constitutional contents, modifying the procedure for revision of the treaties.

- The first suggests drafting a fundamental Charter containing the provisions of a constitutional nature, regardless of whether they are currently contained in the TEU or the TEC. This operation *à droit constant* would not

[25] Declaration no. 42.

[26] See <http://www.europa2004.it/Leaders_EU.htm#Fischer2000/05>.

[27] In opinion of the ECJ of 14 December 1991, "Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area", case C-1/91, *European Court reports*, 1991, p. I-6079 et seq., where the Court defined the treaties "the Constitutional charter of a Community based on the rule of law" (point 21).

change the present legal situation and would leave the existing treaties in force. Compared to the Treaty/Charter plus protocol model, this strategy has the advantage that it would enhance the unity of the system. Merging provisions from the various treaties into one document would be a form of recognition of that part of legal doctrine which defines the Union as "a single organisation with a single legal system",[28] in which the terms "community" and "Union pillars" merely indicate the different fields of action of a single subject.

In this context, it should be noted that the treaties could also be merged without merging the Community and the Union. This could have the effect, however, of accentuating the constitutional character of the treaties, without affecting the present legal situation.

• The second strategy outlined in the report, which takes up the 1997 Cambridge proposal mentioned earlier, calls for the integration into the treaties – finally – of those legal principles deriving from the case law that the subjects of the European order have been bound to respect for years. The idea is to reformulate and reorder the case law using the American system of "restatement", which would be an important step towards ever increasing certainty of law, in particular, with respect to the constitutional foundations of the Union's order.

In order to enrich the constitutional content of the treaties, still with the aim of consolidating the existing situation and introducing elements that define the Union's identity more precisely, the EUI suggested introducing a list of fundamental rights, identified by the case law of the Court of Justice as being in force in the European legal system.[29] This could also be useful in legitimising the Union's order before the national courts, which have frequently proven reluctant to relinquish their competences to a legal system that does not offer the same degree of safeguards. Therefore, this strategy would create both legitimation and identity, which could contribute to defining more precisely those values that make the Union unique with respect to other states and international organisations.

• With respect to the other two strategies, the third strategy proposed by the EUI is less easy to classify as *à droit constant*. Recognising that the treaties contain various kinds of provisions, some constitutional, some legislative or regulatory, a dual proposal is put forward. First, it is suggested that treaty law be hierarchised, demoting provisions that are of a predominantly technical nature to secondary legislative acts. Second, some changes in the procedure for the revision of the treaties are suggested: the European Parliament should be involved more in the revision of the treaties and revision should not always require unanimity.

[28] A. von Bogdandy, "The legal case for unity: the European Union as a single organisation with a single legal system", *Common Market Law Review*, vol. 36, no. 5, 1999, p. 887-910.

[29] Although the Laeken Declaration envisages the possibility of inserting the Charter of Fundamental Rights into the Treaties (p. 24) and the Commissioner Barnier, has declared that he is in favour of such a solution (see "Why Europe Matters", personal note from M. Barnier, <http://www.europa2004.it/Commissione_EU.htm#Barnier2001/10> ), it would be of strictly political value.

Since the provisions demoted to the rank of secondary law would no longer be decisive in determining limitations on sovereignty, they would no longer require unanimity to be modified. Indeed, there are already so-called "special" revision procedures, which acknowledge that activation of the laborious procedure called for by Article 48 would be inappropriate in certain cases.[30]

## Problems and prospects

### *The effectiveness of community decision-making*

The Laeken Declaration states that decision-making effectiveness is closely linked to the institutions' democracy and transparency: "The European Union derives its legitimacy... from democratic, transparent and efficient institutions."[31] Thus, any simplification strategies indicated by the Convention will have to improve the functioning of community institutions, making them more efficient during both the legislative procedures and the implementation of community law. Laws that are clear and concise allow the institutions that use them to exercise their powers more rapidly and with greater certainty. A significant step in this direction was taken, for example, with Article 9 of the Amsterdam Treaty, which brings together provisions on some common institutions of 1957 previously scattered throughout the treaty and the Merger Treaty of 1965. A fundamental treaty establishing the power of the individual institutions and defining their relative balance would continue this technique.

In trying to achieve efficiency, however, account must be taken of the Union's pillar structure, content of which should not be changed by simplification. Nevertheless, the Laeken Declaration seems to give the Convention the possibility to review the breakdown into pillars and, thus, the distinction between the European Community and the European Union.[32]

### *Powers*

One of the most important questions that the Convention will have to deal with is the delimitation of the powers of the Union and the member states. While the Nice Declaration on the future of Europe stated that it should take place on the basis of the principle of subsidiarity, the Laeken Declaration suggested a number of solutions to the problem, including " restoring tasks to the Member States" with the need, anyway, "to ensure, at the same time, that

[30] Examples are Art. 190.4.2 on uniform election procedures, Article 269. 2 on the system of own resources of the Community, Article 221.4 and 222.3 on the number of judges and advocates-general, respectively.
[31] Laeken Declaration, p. 23.
[32] *Ibid.*, p. 24.

the European dynamic does not come to a halt"[33]. Simplification of the treaties *à droit constant* would certainly help to clarify this aspect further.

As is known, the treaties are rather vague in defining the powers of the Community and the member states. The principle of attribution of competences set down in Article 5.1 of TEC, by which the Community acts within the bound of the powers granted it and the objectives assigned it, goes hand in hand with Article 308 TEC which allows the Community to take over new powers if this is needed to achieve any of the Community's objectives "in the course of the operation of the common market" – objectives that are set down in Art. 2 TEC. In this uncertain situation, the Court of Justice has had to intervene to rationalise, distinguishing between matters falling under the exclusive competence of the Community, such as trade and fishing policy, with respect to which the states have the right to pass only implementational rules or regulations (with the Community's authorisation), and matters of concurrent competence, in which Community action integrates that of the member states.

Since such a situation of regulatory uncertainty can cause paralysis in the community decision-making process or legislative procedure, simplification of the treaties should lead to the listing of powers for the Community, specifying their nature, whether concurrent or exclusive and, in particular, what the states can and cannot do. This would take up the recommendations of the Court of Justice. Simplification would be even more efficient if the list included the objectives of Union action and the corresponding competences needed to achieve each.[34] Finally, a list should also be drawn up of the matters in which the Community cannot intervene.[35]

### *Terminology*

The Laeken Declaration wonders whether "this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union".[36] The Convention should nevertheless distinguish between the political value of another such solemn "charter" and the legally binding nature of a fundamental treaty.

For this reason, the body of constitutional provisions separated out of the treaties should not be called either treaty/charter, fundamental charter or constitutional treaty. In the first two cases, the clarity and certainty attained through simplification *à droit constant* would be neutralised by the inevitable confusion between these terms and the well known Charter of Fundamental

[33] *Ibid.*, respectively pp. 21 and 22.
[34] This solution was strongly advocated by the EUI in its latest plan for the treaties.
[35] According to a recent proposal by I. Pernice in "Welche Institutionen für welches Europa? Vorschläge zur Reform der Europäischen Union im Jahr 2000", *Walter Hallstein Institut Papers* no. 2 (Berlin: Walter Hallstein Institut, 1999) p. 5, <http://www.whi-berlin-de>.
[36] Laeken Declaration, p. 24.

Rights. The term constitutional treaty cannot be used because it is not precise: constitutional provisions of this kind are contained either in a treaty *or* in a constitution (although the term constitution would not be out of place for an international organisation, considering that it has been adopted in the founding treaties of the International Labour Organisation and the UN Food and Agriculture Organisation).

The only valid alternative to constitution is the term "fundamental treaty", which reflects the legal status of the provisions in question.

### *The procedure for revision of the treaties*

Separating the constitutional provisions out of the written and unwritten community order into a fundamental treaty would call for a revision procedure ensuring its integrity. Article 48 TEU calls for amendment "of the Treaties on which the Union is founded" to take place "by common accord" and, therefore, with the unanimous consent of member states in the Intergovernmental Conference.[37] This revision procedure differs slightly from the procedure followed by states in international law, in which the consent and more generally the will of the national states is sovereign.[38] Indeed, Article 48 TEU calls for the intervention of EU institutions, in particular the consultation of the European Parliament. Yet this procedure has two basic shortcomings: unanimity is the only kind of voting foreseen and democratic legitimacy is scarce.[39] Given the risk involved in recourse to unanimity (low level compromise), the fundamental treaty could envisage unanimity for revision of matters of great importance, as well as qualified majority voting.

To address the lack of democratic legitimacy, the role of the European Parliament, which currently only has a consultative function in the revising of Article 48 TEU, should be strengthened. As the Court of Justice clarified in two historic judgements, "consultation…is the means which allows the Parliament to play an actual part in the legislative process of the Community , such power…reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly".[40]

[37] The Intergovernmental Conference is convened by the President of the Council of Ministers, upon approval from the Council after obligatory consultation of the Parliament and possible consultation of the Commission.

[38] Cfr. I. Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1998) p. 630: "The amendment of treaties depends on the consent of the parties and the issue is primarily one of *politics*." (emphasis added)

[39] Cfr. Robert Schuman Centre, "Reforming the Treaties' Amendment Procedures - Second Report on the reorganisation of the European Union Treaties submitted to the European Commission on 31 July 2000", Florence, 2000, <http://www.iue.it/RSC/pdf/2ndrapport_UK.pdf>.

[40] Judgement of the ECJ of 29 October 1980, SA Roquette Frères v Council, case 138/79, *European Court reports*, 1980, p. 3333 et seq., point 33. See also Judgement of the ECJ of 29 October 1980, Maizena GmbH v Council, case 139/79, *European Court reports*, 1980, p. 3393 et seq., point 34.

Thus, the minority of states must also be safeguarded against revisions of the fundamental treaty decided upon by a majority of states. To this end, the solution set down in Article 95 of the European Coal and Steel Community Treaty for so-called "small revisions" could be used, by which the Court of Justice intervenes in the procedure upon joint request by the Commission and the Council to assess the real need for amendment. Upon approval by the Court, the amendment proposed is submitted to the European Parliament for definitive approval. Like the minor revision of the European Coal and Steel Community Treaty, revision of the fundamental treaty could also call for the prior approval of the Court of Justice, which would act as constitutional judge to protect those states against the revision from possible prejudices resulting from the lack of a real need to revise the provisions of the fundamental treaty.[41]

## Conclusions

Simplification of the Treaties is meant to respond to the right of European citizens and the need of the judiciary to have a simple and readable text, but the constitutional perspective, that is, the separating out into a fundamental treaty of the provisions with constitutional content, also meets the requirements of a clear and stable juridical arrangement.[42] The latter is also related to the European Union's coming enlargement. In fact, the greatest risk posed by enlargement is that the European Union will find itself with rules that are too obscure for too many member states. Thus Europe could lose its political dimension and transform into a large free trade area. A free market is essential for guaranteeing democracy and equality in an economic context, but institutions are needed to guarantee democracy and equality outside the market, and to guarantee the market itself.

Thus, simplification of the Treaties is not only useful for reducing the Union's democratic deficit and making the contents of the Treaties more readable and comprehensible but, in a constitutional perspective, it should be concretely bound to the aim of reinforcing the EU's political and institutional dimension before the entry of the next candidate countries.

[41] Robert Schuman Centre, "Reforming the Treaties' ...", p. 14.

[42] This is also the point of view of the French Senate: "Contribution du Senat Français en vue des Travaux de la Convention", Conv 12/02 Contrib 1, 19 March 2002, p. 1-9, in particular p. 3, <http://www.europa.eu.int>.