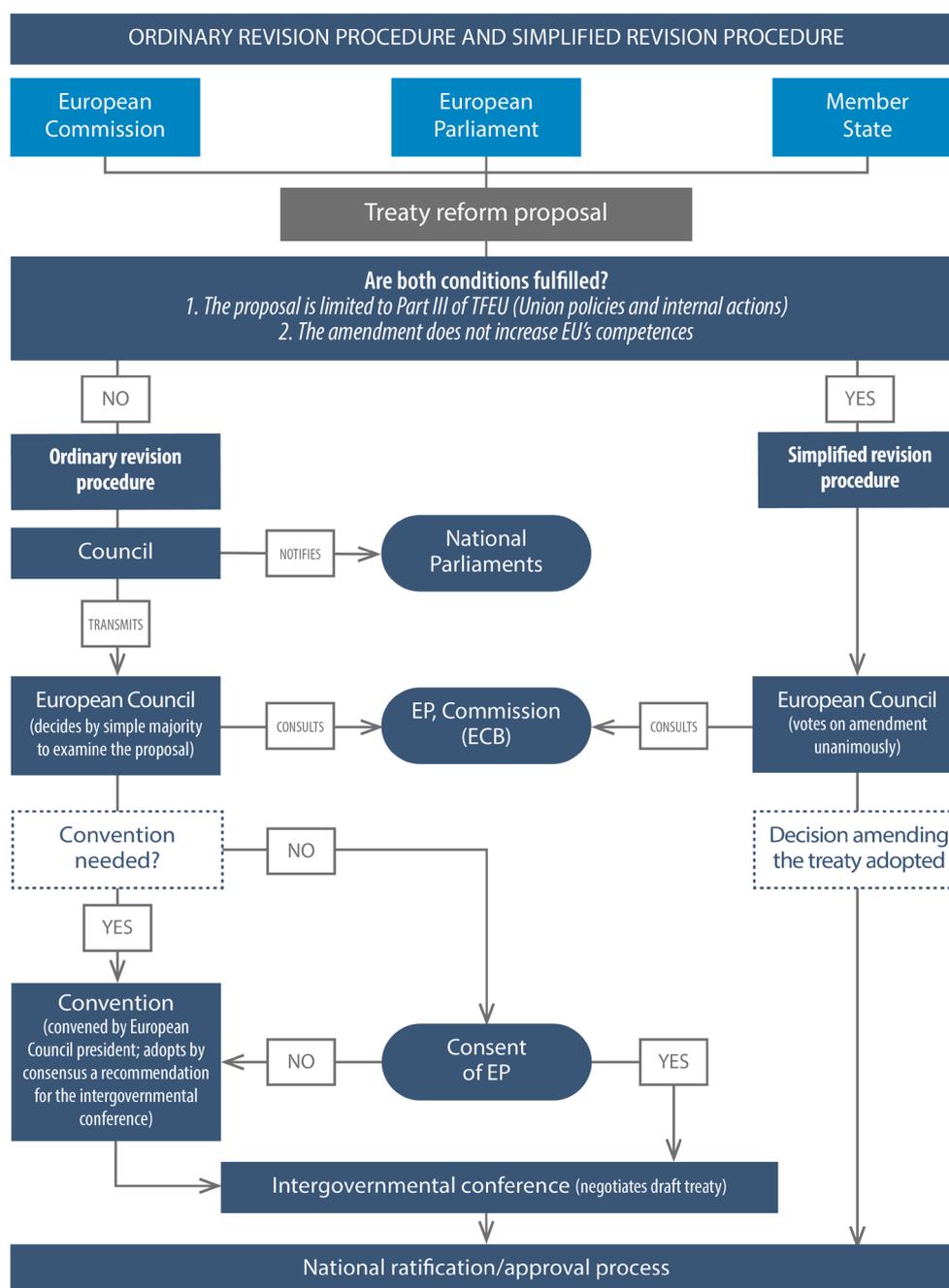


# How EU Treaties are changed

The EU's founding Treaties have been revised by the Member States in numerous rounds of reforms. Such Treaty revision is a way to ensure that EU primary law evolves, adapts, and responds to new developments and changing needs. The last comprehensive Treaty reform dates back to the Lisbon Treaty, which entered into force on 1 December 2009. While another comprehensive Treaty change is not yet on the agenda, the recent debates on the 'Future of Europe' triggered a number of reform proposals, some of which would necessitate revision of the EU Treaties. Such revision is governed by Article 48 of the Treaty on European Union (TEU), which provides for two main procedures: the ordinary and the simplified revision procedures. The former applies to the TEU, to the Treaty on the Functioning of the EU (TFEU) and to the Euratom Treaty; the latter only to part of the TFEU.



## Ordinary and simplified revision procedures

The Lisbon Treaty introduced a distinction between ordinary and simplified revision procedures. The **ordinary** revision procedure envisages a 'Convention' and 'common accord' of the representatives of the governments of all Member States (intergovernmental conference, IGC), whereas the simplified procedure requires only a unanimous decision of the European Council. Both procedures are subject to national approval in each Member State in accordance with national constitutional requirements. In both cases, the initiative to amend the Treaties may come from the Commission, the Parliament or a Member State.

Making a **Convention** the norm follows the Conventions used in drafting the Charter of Fundamental Rights (1999-2000) and the Constitutional Treaty (2002-2003). A Convention is composed of representatives of: (a) the national parliaments, (b) Heads of State or Government, (c) the European Parliament, and (d) the Commission, although the Treaties do not specify the relative weight of the four. It adopts by consensus a 'recommendation' to the IGC, but there is no obligation for the IGC to take it into account. The ordinary revision procedure can proceed without a Convention, if not justified by the extent of the planned amendments – provided Parliament gives consent.

Generally, the procedure has been perceived as lengthy and laborious, in particular due to the need for unanimity in the IGC. The **simplified** procedure (Article 48(6) TEU), for the '[less fundamental parts](#)' of the Treaties, allows amendment by a unanimous decision of the European Council *without* an IGC or Convention – but does not avoid the national approval process. The procedure was first used in the sovereign debt crisis, to amend Article 136 TFEU, providing for a stability mechanism for financial assistance. The simplified procedure can only be used when the planned change does not increase EU competences, and concerns provisions on EU policies and internal actions, covered in Part Three of the TFEU (see box).

**EU policies and internal actions:** internal market; free movement of goods; agriculture and fisheries; free movement of persons; services and capital; area of freedom, security and justice; transport; common rules on competition, taxation and approximation of laws; economic and monetary policy; employment; social policy; the European social fund; education, vocational training and sport; culture; public health; consumer protection; trans-European networks; industry; economic, social and territorial cohesion; research and technological development and space; environment; energy; tourism; civil protection; administrative cooperation.

Article 48(7) TEU lists the '**general passerelle clause**' as another variant of the simplified revision procedure. It provides that the European Council may authorise qualified majority voting (QMV) in the Council in areas otherwise subject to unanimity, or to switch to ordinary legislative procedure where the Treaties provide for a special legislative procedure. The decision of the European Council needs to be taken unanimously and after obtaining consent of Parliament. National parliaments must be notified of the intention and may effectively veto such a decision. In addition to the general clause, 'special passerelle clauses' provide for similar arrangements in particular policy areas (e.g. Article 192(2)(c) for environment).

## Amendment by means of an accession treaty?

Accession treaties are not listed under the formal Treaty revision procedures and are not normally regarded as such. Nonetheless, Article 49 TEU, which governs the accession of new members, provides that an accession agreement concluded between the Member States and the acceding state should contain not only the conditions of admission but also '**adjustments** to the Treaties [...] **which such admission entails**'. In the past, amendments resulting from the accession of new Member States have included, for example, institutional provisions (e.g. adjustments to the weighing of votes in the Council for the purposes of QMV) or temporary derogations from the provisions on free movement of persons ('transitional periods' following the EU enlargements of 2004, 2007 and 2013). Article 49 TEU covers adjustments to the Treaties, which are *connected* to the acceding states, and include the composition of the institutions, languages and the territorial scope of the Treaties. By contrast, a withdrawal treaty under Article 50 TEU does *not* function as an additional Treaty revision procedure, i.e. a withdrawal treaty may not modify the Treaties.

EU Treaties may only be modified under the procedure explicitly aimed at this, as [held](#) by the **Court of Justice** in 1976 (*Defrenne* case). The Court later [added](#) that instruments, such as a declaration annexed to the Treaty or a decision of the Heads of State or Government, intended to *clarify* certain provisions, may serve as 'instruments for the interpretation' of the Treaties (*Rottmann* case).

