

**Evangelos Venizelos**

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### **The Conference on the Future of Europe as an Institutional Illusion**

The Conference on the Future of Europe is currently underway on the basis of the joint [Declaration of 10 March 2021](#). On 10 – 12 December, [200 citizens gathered on campus in Florence and online](#) to discuss topical issues such as protecting democracy and the rule of law, European values and identity. The European University Institute has been selected as one of the four host institutions for the „European Citizens’ Panels“ in the framework of the Conference. Nine months after the Joint Declaration there is ample evidence from the Conference that allows us to assess this institutional event. The Conference might best be described as a campaign to stimulate public interest for EU politics.

It is clear that the Conference has neither the legal basis nor the institutional character to address the Union’s structural problems in the face of great challenges. A fortiori, the Conference does not cover the so-called democratic deficit of the Union. Perhaps it would be better to have a more modest name that does not create misunderstandings, that is, expectations higher than those it can meet.

### **A Hybrid Political Process**

The official website provides a lot of relevant information about the composition and responsibilities of the joint presidency, the executive committee and the joint secretariat, the rules of procedure, the multilingual digital platform, which is the main tool for dialogue, the way in which the European Citizens’ Panels are set up or how the decentralized events are organized. Of particular importance is the description of the composition of the Conference Plenary in which representatives of the institutions of the Union, national parliaments, the governments of the Member States and

randomly selected representatives of European citizens coexist. The combination of institutional and random representation is a key feature of the Conference.

As to the institutionally and politically crucial question „what will be the outcome of the Conference?“, the official answer according to the joint declaration of 10 March 2021 is that „The final outcome of the Conference will be presented in a report to the Joint Presidency. The three institutions will examine swiftly how to follow up effectively to this report, each within their own sphere of competences and in accordance with the Treaties“.

According to the official website on 04.12.2021, 38.406 platform participants, 271.833 event participants, 11.042 ideas, 17.793 comments, 4.290 events have been recorded. As a political process the Conference has taken on interesting dimensions and this makes it necessary to clarify the institutional possibilities and the legal nature of the Conference.

### **A Simulated Convention with No Legal Basis**

From its very founding act, the joint declaration of 10 March 2021, its composition and mode of operation, it is obvious that the Conference on the future of Europe is formed as an institutional and procedural hybrid, with a symbolically heavy name and without any legal basis. This is paradoxical as the Conference is positioned in the EU institutional environment, where the reference to an appropriate legal basis is a prerequisite for any initiative, and the debate on due process, even on ‘comitology’, often takes on sophisticated characteristics. In the case of the Conference, the opening joint declaration does not invoke a legal basis with reference to provisions of the TEU or the TFEU. In addition, as specified in the revised Council position agreed to by the Permanent Representatives Committee on 3 February 2021, the Conference does not fall within the scope of Article 48 TEU. This position places the Conference categorically outside the procedure of the revision of the Treaties.

The Conference has thus nothing to do with the Convention provided for in Article 48(3) TEU, which is convened in the most serious version of the Treaty revision

procedure. At most, one could perhaps argue that the Conference is an informal simulation of the Convention of Article 48(3) TEU – and this only in terms of the procedure and not in terms of the content of the deliberation which are not of a regulatory nature and do not concern the drafting of the text of the Treaties, but instead pertain to the formulation of reports, ideas and proposals for the Union's policies.

The three EU institutions, through the Joint Presidency and the Executive Committee, have taken full control over the convening, the procedures, the plenary, the documents and the conclusions of the Conference. They have placed it within the institutional frame of the Union that leaves no room for 'intergovernmental' initiatives that go beyond the framework of the Treaties and the existing competences of the European Parliament, the Council, the European Council and the Commission.

It is, of course, important to increase the interest of Member States' societies in the Union's processes, to give a platform to randomly selected European citizens representing civil society, to set up forums for inter-institutional dialogue and dialogue with national parliaments and national governments or with consultative bodies, such as the Committee of the Regions (CoR) or the European Economic and Social Committee (EESC). However, such procedures can also be seen as an attempt to substitute, on the one hand, the European demos, which is not institutionally constituted, and on the other hand, the intergovernmental character – at least in the final phase according to the article 48 (4) (6) (7) TEE – of all 'constituent' decisions concerning the Union and the course of European integration.

Therefore, the Conference should not be underestimated as a process of dialogue and political participation. Nevertheless, it is possible that the Conference, as an institutional and procedural hybrid under the strict tutelage of the EU institutions, may create the illusion that a quasi-constitutional procedure is taking place, while this is not the case.

### **A Campaign to Stimulate Public Interest**

The hefty title 'Conference on the Future of Europe' might therefore be misleading and should probably have been more modest and accurate and actually describe the substance, the objective and the limits of the initiative. This is in fact an interesting campaign to outline the priorities of EU policy and to stimulate the participation of European societies in a dialogue on the state and the future of the Union. As already noted, the hybrid element lies in the involvement of the institutions of the EU and the Member States in informal consultative democratic processes with the participation of European citizens who express their interest to do so. This is an important incentive for European citizens, but it does not change the Union's institutional framework and the rules governing its operation and its relations with the Member States.

It is obvious that the so-called democratic deficit of the EU can not be addressed by such hybrid procedures. The democratic deficit concerns the structural elements of the EU institutional edifice, and the issues it raises reach down to the core of phenomena such as the limits of state sovereignty, the institutional nature of the Union and its deferral competences, and the challenges of European liberal democracies due to their inherent intersection with the perils of populism. These Issues , which become acute in times of crises such as the current one, will hardly be addressed through informal consultation processes, even if these are digital and multilingual.

The conference will undoubtedly produce a lot of interesting papers , but they are already produced in large quantities and good quality by the European Commission, the supporting services of the European Parliament, the CoR, the EESC . So there is not really an urgent need for it.

### **Adjusting Expectations**

After all, the real and urgent agenda of the discussion on the state and the future of the Union only partially intersects with the agenda of the Conference. The Conference is not the appropriate and, above all, not the competent forum to discuss the ECB/ESCB quantitative easing programme (PSPP and temporarily PEPP), the prediction of the inflation curve and its implications on monetary policy, the energy crisis, the

post-pandemic Stability Pact rules, EU enlargement, EU-USA relations, EU-NATO relations and so on.

The future of Europe is primarily affected by the way the new German government will operate, the outcome of the upcoming presidential election in France, developments regarding the rule of law in member states such as Poland and Hungary, the global supply chain which concerns a very crucial aspect of globalization, as well as the duration and outcome of the energy crisis. The future of European integration is therefore affected by harsh questions that are decided in international correlations and conflicts of interest.

In the field of European Constitutional Law, the crisis of the European liberal democracy and the rule of law, the challenges to the autonomy and supremacy of the EU legal order cannot be addressed by hybrid forms of inter-institutional dialogue and consultation with randomly selected citizens. On the contrary, they can be better addressed by facing the problems of sovereignty, identity, political equality of the Member States, cohesion and inclusiveness of the societies of the Member States.

It would be, in other words, harmful for the Conference on the Future of Europe to give the false impression that the state and prospect of European integration is a soft issue of consultative democracy that can be solved as long as we are discussing it. This can be a dangerous institutional illusion.

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