



## Kurzanalysen und Informationen

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### The “New European Union” – Characteristics, Contradictions and Challenges

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*Endorsement of the ‘Reform Treaty’, culminating in its’ signing as the Treaty of Lisbon in December 2007, promises to end the EU’s enduring institutional problems. The compromise reached is the best realistically possible outcome given the divergent interests in the EU27. Yet uncertainties and reservations remain: the Treaty must be ratified by all member states; and the proposed institutional solutions have to be tested in practice. Important areas of economic and social policy, along with much of foreign and security policy, and all of defence, are still the domain of national governments. The Single Market is yet to be completed and in several member state polities resistance to greater liberalisation is strong. The framework conditions for functionality have improved but this does not guarantee that governments will vigorously tackle common challenges in a coordinated and efficient way at national and European levels. Further differentiation within the EU appears unavoidable.*

#### **Overcoming institutional impasse: What Now?**

Before the eastern enlargement process began, and as it proceeded, it was widely held that institutional reforms were needed to enable the EU to operate efficiently with 25, 27 or more members. That is, apposite reforms should have been in

place before the 2004 enlargement was concluded. As attempts to streamline the EU (at Amsterdam and Nice) failed, political and technocratic logic altered. From some perspectives, enlargement became a precondition for institutional reforms in order to surmount gridlock.

After the debacle at Nice and the discouraging impression presented to the public by the

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horse-trading and opaqueness of internal EU diplomacy, the constitutional convention introduced a new approach. The 'Convention on the Future of Europe', representing national parliaments, the European Parliament (EP), national governments and the European Commission, discussed, for the first time in an open forum, the future design and functioning of the Union. Representatives of the then member states in waiting participated in the discussions without possessing formal voting power.

In summer 2003 the Convention presented a draft agreement on a European constitution. The qualities of that document (a leviathan of 465 articles, five protocols and three declarations) are debatable, but it made several important proposals. They included an enhanced ability to act, a simplification of decision-making procedures, expanded powers of the EP, and the consolidating of all existing treaties in one document. A draft Constitutional Treaty (CT) was signed by the then 25 member states in 2004. Eighteen states later ratified the CT.

The subsequent rejection of the CT in spring 2005 by the electorates of France and the Netherlands, two of the EU's founding members, demonstrated that disorientation and despondency about the future of Europe had intensified. After this shock, different proposals were floated on how to regroup and proceed. Given the obstructions, and largely exposed negotiation positions, it was a minor miracle that what became known as a 'Reform Treaty' (RT) was agreed at Brussels in June 2007.

The RT, which preserved much of the CT's substance, was accepted in October 2007 and signed as the Treaty of Lisbon (ToL) in that city in December.<sup>1</sup> The ToL introduces a better voting and decision-making system: double majority of 55% of member states and 65% of the total EU population, expansion of qualified majority voting (QMV), formal merger of overall responsibility for EU (not individual member state) foreign and security policy and external relations, a longer-term President, and a smaller Commission, reduced from a top-heavy college of perhaps 30 commissioners by 2014 to 20. It also allows for greater parliamentary oversight by national and European legislatures. A candidate (or candidates) for the Commission Presidency will be proposed by the European Council and accepted

or rejected by the EP. Deferral of the new arrangements to 2014-2017, which was needed to overcome resistance led by Poland, and other special provisions, confirm persisting national egotism and underlying rifts. A wide-ranging public debate about policymaking and the ultimate goals, instruments and limits of the EU has not yet happened.

Despite new parliamentary powers, the *Méthode Monnet*, with its elitism and secrecy, was quietly reanimated to push through the ToL (Wessel et. al. 2007). It may be that there is no other way to overcome the various blockades but it does not represent a more transparent and democratic Europe (Goulard 2007: 506). In fact, it restates one of the central contradictions and ongoing dilemmas of the EU: if it really is a Union of 'states and citizens', then why are its elites so averse to allowing European electorates the chance to confer a direct democratic imprimatur upon the compromises reached, and proposals presented by their governments and the EU institutions, by voting on the ToL in referendums? An opportunity of sorts is available to citizens via Article 8B of the ToL, whereby a quorum of not less than 1 million who are nationals of 'a significant number of member states' may ask the Commission to submit a proposal on a matter they consider requires a legal act (ToL 2007: 19).

The agreements reached in June 2007 and confirmed in December provide some grounds for hope that the long crisis will soon be over. Astute strategy by the German presidency (Maurer 2007), substantial compromises, and a certain fatigue after six years of quarrelling since Nice, make this possible. Yet disquiet and scepticism cannot be ignored. The target date for ratification by all member states of the ToL is 1 January 2009, in time for the next EP elections. If adopted, the ToL could serve as a quasi-constitutional basis of the Union that creates scope for further developments. Much depends on political leaders using the possibilities opened up to encourage 'self-assertion' (Schmidt 2000) by the EU, which is an implicit intention of the Treaty. The EU needs more than institutional reforms. These must be accompanied by substantive action in economic and social policy, adjustments in agricultural and regional policy and financing, and resolution in external affairs, security issues, and neighbourhood policy. Failure will throw the Union into an even deeper crisis.

<sup>1</sup>The Treaty of Lisbon amends the Treaty on European Union and the Treaty establishing the European Community. Although a chief goal of the new Treaty was to simplify the EU's legal basis, it is also not especially concise. There are around 160 pages of amendments to previous treaties followed by another 100 or so for protocols and annexes. An additional Final Act comprises 13 Protocols and 65 Declarations.

TABLE 1 The Constitutional Treaty and the Treaty of Lisbon: Features and Differences

| Issues                          | Constitutional Treaty   | Treaty of Lisbon  |
|---------------------------------|---|---|
| Designed for ....               | Union of States and Citizens  | High Contracting Parties  |
| Character                       | Based on existing treaties with no extensive downsizing or simplifications                    | Changes incorporated into the EU/EC Treaties as amendments, including modifications, protocols and declarations, taking account of the specific concerns of member states   |
| Name                            | Constitutional Treaty   | Treaty of Lisbon. Two substantive clauses amend existing treaties: <i>Treaty of the European Union</i> and the <i>Treaty Establishing the European Community</i> , renamed the <i>Treaty on the Functioning of the EU</i>   |
| Charter of Human Rights         | Incorporated in the Treaty  | A protocol of the Treaty (not binding for the UK and Poland)  |
| Symbols                         | Flag and Hymn   | Not part of the Treaty but 16 states signed a separate declaration affirming they will use the symbols  |
| Competencies                    | Exit from the EU possible   | National parliaments have more power to repatriate competencies   |
| Qualified Majority Voting (QMV) | QMV extended to most decisions except taxation, social benefits, defence, some foreign policy | UK opt-out and opt-in arrangements regarding the euro, asylum and border controls remain; extended QMV delayed until 2014 or 2017.  |
| Titles and phrasing             | “Union Minister of Foreign Affairs”, “European Law” and “European Guideline Law”              | Replaced by “High Representative of the Union for Foreign Affairs and Security Policy” (the previously used term); the term “European Law” has been replaced by the old formula “Regulation and Directive”. Almost complete removal of references to the ‘European Community’ or ‘European Communities’, which has tended to confuse many observers, in favour of a ubiquitous title of ‘European Union’. |
| Economic and social affairs     | Commitment to free market and competition   | As a result of French pressure, a reference to “undistorted competition” has been removed. A “commitment” to free markets and competition is underlined elsewhere; the ECB’s attempts to acquire a special institutional status have been rejected; a protocol enabling the EU to protect the “internal market” has been added  |

Sources: Miller, Vaughne (2007); Hänsch, Klaus (2007); Seeger, Sahra and Janis Emmanouilidis (2007).

### Foreign Affairs, Security, and the Neighbourhood

If resolving internal demands and problems represents a formidable undertaking, those challenges that stem from outside are potentially more serious and even threatening to the EU. A gradual shift towards a more ‘realist’ interpretation of and approach to external policy can be detected. At the same time some progress in the Common Foreign and Security Policy (CFSP)

and the European Security and Defence Policy (ESDP) has occurred. The full range of policy instruments and resources will need to be deftly and sometimes forcefully applied: diplomatic skill, structural economic power, technical and technological assets, financial aid, and human and conventional security capacities on regional and global scales. As the EU can no longer be primarily a ‘consumer of security’ rather than a provider of it, this must include an advanced and coordinated military capability backed by the

political will, if necessary, to deploy it. Intergovernmentalism continues to predominate, as all 'decisions with military implications or those in the area of defence' remain cordoned off from QMV (ToL 2007: 51).

A development that should give the EU a greater external presence and improve the efficiency of its functioning in the foreign and security policy area is the merging of the offices of High Representative for CFSP (HR) and that of Commissioner for External Affairs. The HR will chair a 'Foreign Affairs Council' and 'ensure implementation of the Decisions adopted by the European Council and the Council'. To fulfil 'his mandate', the HR 'shall be assisted by a European External Action Service' (ToL 2007: 36). Before it can credibly claim to be a comprehensive global actor the EU has to impress itself as the premier regional power, meaning on the European continent and in its wider neighbourhood. Although the EU attempts to establish itself in such a role by offering positive incentives, developing institutionalised relations, and building economic, commercial and cultural partnerships, some neighbours do not want the EU dominating the regional agenda. There are opponents to EU visions and preferences, prominently a resurgent Russia.

Energy represents a huge challenge, not only for environmental reasons, but because of the EU's large and growing dependency, mainly on states in its neighbourhood, almost none of which could be described as reliable liberal democracies. EU energy security is complicated by a relationship with Russia that has undergone significant change, seemingly in Russia's favour, in recent years (Wood 2008).

Along with advancing its material interests, the EU is under pressure to prove itself an authentic 'normative power' in international affairs: one that projects its, allegedly distinctive, values in the world and has the capacity and will to promote and defend them. The nature, scope and intricacies of this task, and the number of cases it has to deal with, suggest the EU will be hard pressed to sustain the interest-based partnerships needed for its economies and societies to function in peace and prosperity, and simultaneously pursue a role as driver of regional democratisation and unconditional upholder of human rights.

These are some of many exogenous concerns that the better cohesion promised by the ToL can assist the EU to deal with. The world outside, however, is largely independent of the EU's formal internal configurations.

## The Agenda Ahead

The EU is featured by a lack of correspondence between the proclamation of grand visions and projects and the more prosaic but critical requirement to formulate and apply convincing policy designs. The agenda ahead is not so much determined by what the Union *wants* to achieve but what the Union *has to do* in order to meet challenges presented by globalisation, enlargement and real or potential threats to economic and physical security. Solutions that are found often reflect political processes of interest equalisation rather than 'maximum European value added' outcomes from invested community funds. Different understandings on the nature and purpose of the EU underpin these limitations. Nonetheless it is possible to identify a more or less common pool of values - though it is uncertain how deep this pool is - and policy preferences that indicate a social and environmental bias. In some areas more distinct manifestations of a 'European political will' have begun to emerge and must be exploited.

### *Public support and a diversified Union*

At first appraisal the ToL, which represents a partial retreat from the CT and erases the term 'constitution', offers a basis for solving some of the EU's major problems. It will become apparent soon enough if this basis has or can be built upon. Institutional actors and national politicians must convince publics that the EU project is one in their own interest. Well functioning institutions, responsible policies, economic success including employment growth, and improved security will demonstrate this better than public relations campaigns. It is possible that one parliament or electorate will reject the ToL. Only Ireland has a constitutional obligation to hold a public referendum though the governments of other states may realise they have a political obligation. It would be perilous to ignore unrelenting public demand. If a parliamentary or popular veto were to occur, it is unlikely that a majority of member states would accept a blocking of integration by the renegade. A negative vote implies a split of the EU or an exit from it by that particular state. The exit of one (or more) state/s would not mean the end of the EU but would seriously damage its credibility.

### *Reforms of EU policies*

Solving the institutional question does not automatically fix all other challenges. Reforms of core

EU policies must be driven forward to promote economic growth, employment and structural change. The current system reflects a *quid pro quo* international political economy rather than an optimal use of common resources. The next opportunity for a serious discussion will be the 2008 mid-term review of agricultural and regional policies. This could be combined with a re-design of the EU 'own resource' (financial) system. An essential step would be to clarify regional, national and EU wide competencies in order to define the potential 'European value added' of specific policies. It appears that fundamental changes could not be expected but rather small steps such as further de-linking of agricultural subsidies from the means of production. Some proposals may only be put on the table when earnest discussion on the next financial period commences around 2012. In the meantime, spending must be shifted from subsidies to investment that promotes European networks in technology, education and innovation. One area that could benefit is environmental policy where the EU has set itself ambitious emission reduction targets and presupposed that a then requisite economic and social transformation will successfully occur. The real test of EU commitment will come when financial demands and other diverse effects catch up to the political rhetoric.

#### *Increased membership and structural change*

Since 2004 the EU is not only larger but far more heterogeneous. This affects decision-making constellations and interest equalisation through financial transfers. To the present, economic integration has been successful, reflected by a tremendous increase in flows of goods and capital and the inclusion of central and eastern European economies into the networks of (Western) European enterprises. The gradual convergence of countries with different income and productivity levels is not an overwhelming macroeconomic challenge as it promotes positive welfare effects (Kohler 2007). It is a social challenge because it causes temporary - and perhaps longer-term - hardship for some regions and sections of populations affected by structural changes, production relocation or outsourcing. Hence it is also a political challenge. Compensating losers, the basic purpose of the so-called European Globalisation Funds, might mitigate tensions. However, the practical effects of this 'sign of solidarity' are restricted as the program designed to help 35,000 to 50,000 workers laid off per year has a budget of only €500 million per year. The major burdens of mitigating adjustment hardships will be should-

ered by national welfare systems. (Euroaktiv, 2 March 2006).

#### *The Single Market and European Social Models: Harmonisation in social affairs is limited*

The combined forces of globalisation and eastern enlargement have placed sectors of the EU economy and labour market under pressure. They incite fears that transform into demands for stronger protection and underpin anti-enlargement and anti-liberalisation attitudes in some old EU states. The prospect of solving these problems through harmonisation in economic and social fields is muted because 'widening' the EU increased the variation of preferences and requirements in economic policy. Some projects of liberalisation have been postponed or diluted (like the service directive). Anxieties are reflected in a movement to preserve a 'European economic and social model'. In reality, different models with varying levels of efficiency exist in Europe. Scandinavian 'flexicurity' paradigm but it is questionable whether it could be transferred to all other members (Knogler et al 2007). It is more likely that each country will develop its own means of adjustment as the scope for coordination of economic and especially social policy is limited (European Commission 2007a).

Much depends on whether the EU, especially its larger member states, can overcome growth and employment problems. The past year or so was an improvement but it remains to be seen if economic expansion and lower unemployment will be sustained (European Commission 2007a). In light of the upturn there are signs that in some countries reforms may be watered-down. Countries with 'Continental' and 'Southern' models have much work to do on their labour markets and pension systems in order to cope with demographic change. Notwithstanding what has been achieved, the single market is incomplete and its growth-promoting potential is not being fully realised (Wood and Quaisser 2007). Instead of further strengthening this central pillar of the EU, some member states are undermining its' functioning. They attempt to hinder transborder mergers and acquisitions and protect their national network industries. French President Nicolas Sarkozy's insistence that there be no reference in the ToL to the inviolability of 'free and open competition' was a telling indication of this concern..

#### *New approach needed for the Lisbon Agenda*

The results of the Lisbon Agenda, which set the ambitious goal of transforming the EU into 'the most dynamic, knowledge-based economy in the

world by 2010', are so far disappointing (Pisani-Ferry 2005). Two basic reasons are responsible: the agenda was too broad and had contradictory priorities; and there was insufficient implementation of reforms in the member states (Kok 2003). What is also evident is that the strategy of 'open coordination' does not offer adequate incentives to achieve the best solutions in keeping with a 'benchmarking approach'. The EU is threatened with failing to achieve its stipulated goals, despite a stricter application of Lisbon provisions. The 2005 revision to focus on growth and jobs with less objectives and a streamlining of the process may help (European Commission 2007b). Recent reports indicate some advances but a gap between goals and reality persists. National governments bear a large responsibility. Greater emphasis on cross-border externalities, such as migration and higher education, and judicious use of greater financial means in these areas would better support the strategy at the community level (Pisani-Ferry 2005).

#### *From enlargement to differentiated forms of EU-Integration*

Enlargement, one of the most successful EU policies in the past decade through its promotion of democracy and free market economies in CEE, has come to a preliminary end. For security reasons the countries of the Western Balkans may constitute an exception and – as happened with Bulgaria and Romania – be admitted as members before they are genuinely ready. Other candidates, including and perhaps especially Turkey, will be treated more cautiously. Sarkozy recently rejected an 'accession perspective' for Turkey in an official document and supported the 'privileged partnership' concept favoured by most Christian Democrats – and most of the public – in Germany. Further enlargements will be guided much more by cost benefit calculations and full membership will not always be the final result. Differentiated forms of integration will emerge and be applied within the context of neighbourhood policy.

#### *The Common Foreign and Security Policy needs high priority*

The CFSP represents a key test of the EU's capacity for self-assertion. Until now national ap-

proaches prevail. This will not change much in the short term but improved cooperation is possible and required. If trouble in Kosovo explodes the EU will again be asked difficult questions: is it capable of taking over from the US-led NATO as the leading security actor with responsibility for confined regional issues? What implications are there for an actor with global ambitions? Better coordination of armaments industries and equipment acquisitions enables more investment in areas like strategic airlift capability. It would also send a signal to those that might seek to exploit what they perceive is an under-prepared or irresolute EU.

#### *Conclusion: Confronting internal and external challenges*

A ratification of the ToL by all member states would overcome some of the hindrances of Nice and mean that the EU is better equipped institutionally. Extension of QMV should facilitate more rapid compromises and decision-making. A drawback is that the QMV extension – to up to 50 more policy areas – will not occur until 2014 and in full form not until 2017. This means that all member states, and pertinently here the poorer ones, retain veto power during negotiations on the next EU financial period (2014-2020) and will have the leverage to block proposed changes or enforce their own. In tax and social policies, EU competence remains limited under the new treaty. Meanwhile, there is also a continuing reliance, or hope, that before 2017 no severe external crisis emerges to seriously threaten the EU or some of its member states and publics. While the visibility and prestige of the High Representative for CFSP should increase, this field will remain largely intergovernmental and member states dependent, if such a crisis did occur, on their own capacities: alone, in some form of neo-traditional alliance, or on NATO. Internal security has seen improved EU-wide cooperation though national supremacy is retained there also with various opting-out rules, in particular for the UK. The will of national governments to introduce and sustain reforms, coordinated with EU partners, is critical. The ToL and improved institutional functionality alone cannot determine this.

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