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DECISION-MAKING IN THE EUROPEAN UNION BEFORE AND AFTER LISBON (DEUBAL)

Policy Brief

Decision-making before and after Lisbon:
The making of Lisbon and its aftermath

Amy Verdun
University of Victoria, BC, Canada

1: Introduction

The Laeken 2001 European Council agreed to set up a Convention to examine the Future of Europe (Presidency Conclusions 14-15 December 2001). The European Union (EU) had become too cumbersome—too bureaucratic. It lacked efficiency, effectiveness and democratic accountability and it was too far removed from the citizens who could no longer understand what the EU was all about. Also, it lacked capacity to deal with the globalised world. If it were to enlarge so as to include many of the former communist countries, Cyprus and Malta and perhaps more countries in the future, it needed reform. With all this in mind it was decided to review the EU’s institutional rules. The group would examine how to deal with the problems that were seen as the leftovers of the Nice Treaty (Duff 2001).

The result is well known (see for example CEPS, Egmond, EPC 2007; Laursen 2008). After extensive deliberation the Convention, with its 105 delegates, representing mostly national parliaments and governments of EU member states and candidate countries, as well as representatives of EU institutions, led by former French President Valéry Giscard D’Estaing created the final text: ‘A Treaty Establishing a Constitution for Europe’. Though signed by all Heads of States and Governments in Rome on 29 October 2004 the text was however rejected in two referendums in 2005, in France and the Netherlands. There followed a reflection period of two years, even if some member states still continued with referendums...
and the ratification process so as to gauge the support for the document that had been created. Eventually it led to the acceptance of a watered-down version of institutional changes captured in the ‘reform treaty’—now known as the ‘Lisbon Treaty’ (it was signed in Lisbon on 13 December 2007). This treaty too required approval in popular referendums in various member states and a final signature by some heads of state (Poland and Czech Republic). Although it was often trying, eventually Lisbon Treaty had been ratified. It entered into force in December 2009.

This policy brief seeks to examine the institutional rules and the decision-making process in the EU before and after the Lisbon Treaty. Its purpose is to examine what were the challenges that the EU responded to that ultimately led to the Lisbon Treaty? What institutional changes were made? What has been the outcome of these changes, and have they led to the desired results? How can we make sense of these results from a theoretical perspective? European integration theories typically focus their attention on intergovernmental bargaining, the underlying interests at stake, the functional drive underlying the integration process, and the role of experts. By looking through these theoretical lenses we will assess what can be learnt about the process of institutional change in the EU during this period and what might lie ahead.

In order to address these questions the remainder of the policy brief is structured as follows. The next section examines the challenges to which Lisbon was supposed to be the answer. Section three examines the institutional and decision making changes that were made by means of the Lisbon Treaty. The final section concludes.

2: Challenges?

The Laeken declaration invited the Convention to assess two matters: first how would the EU operate with 25-30 member states? Second, it asked how to make the EU better understandable to a wider audience. Before turning to these questions, let us first examine the process of enlargement.

The EU of six, later nine, twelve, and even fifteen had not been fundamentally altered in terms of how it was governed. The EU had been created for a small community. With every enlargement it was merely a patchwork (Verdun and Croci 2005). In the early 2000s, the upcoming enlargement, which was to include perhaps 8-10 Central and Eastern countries (CEECs) and two small Mediterranean islands, was due to become the largest enlargement to date, adding various smaller member states but also a large quantity of member states. It was clear to all that the simple patchwork would no longer be satisfactory. The challenges before the EU was how to maintain the EU’s explicit consociational institutional structure (Schmitter 2003) that allows member states at once to be represented as sovereign nations whilst

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2 For the ease of argument in this policy brief I will refer to the European Community and European Communities also as the European Union.
allowing for the voice of the people also to be represented. With various nations having fewer than a million citizens, it was going to be a challenge to get that balance right. So the first major challenge was to find the right structure to accommodate larger number of member states, of which numerous would be small ones.

This issue of larger size with many small members breaks down as a matter of weighted voting in what was thus far known as qualified majority vote with various fixed numerical given to the votes of the Ministers in the Council of Ministers. Another matter was how one would want to deal with blocking minorities or majorities. Furthermore, Germany had considerably more citizens than the other three large member states. The question came up as to whether Germany’s larger size should be reckoned in the voting weights. In other words, voting was a major point of challenge.

As said, the second key point was how to make the EU better understandable: simpler to its citizens. There were many different aspects related to this goal. The first was to make the institutions easier to understand, thus simplification of institutions—reform—was on the table. The eventual Constitution sought to include all the treaties but also to include the Charter of rights. In making these changes Valéry Giscard D’Estaing and his two vice-Presidents—Giuliano Amato and Jean-Luc Dehaene—made a huge step and crafted the changes as a major constitutional change. In trying to make the EU more likable, and easier to understand, they interpreted their mandate as an invitation to be bold and ambitious—in fact more so than many thought they would be. It was a gamble. Some argue that it was not ever quite as ambitious or path breaking as presented (Pernice 2009: 21-22) but needless to say it would either convince the EU citizens or scare them away. In the end all the talk about Constitution and the EU becoming a state on the whole worried enough persons; with the French and Dutch negative referendums as the clear indicators.

Overall the Convention first, and the Lisbon treaty later, sought to find ways to deal with efficiency and effectiveness. With the Treaty Establishing a Constitution for Europe (or ‘Constitutional Treaty’ for short) having been signed by all Heads of States and Government it offered a good stepping-stone for further collaboration. The Constitutional Treaty already sought to deal with changes to qualified majority voting, the role of the European Parliament and an increased role for national parliaments and for citizens, offering ways to keep the European Commission’s size under control, dealing with the question of how to have more of the decision making fall under qualified majority rule rather than unanimity. Furthermore, the Constitutional Treaty sought ways to reform the rather awkward sounding names for legislative acts. All in all, the Constitutional Treaty proposed changes on many issues that had been challenging in terms of its institutional architecture.

The major challenge was now to convince voters, parliaments and national leaders. Thus, when the two referendums in France and the Netherlands took place, and turned out negative, the leaders of many countries felt that it would be hard to renegotiate a totally different package, especially because it was unclear what exactly the Dutch and French voters were against as far as the actual treaty was concerned (Hainsworth, 2006; Taggart 2006). They were clearly dissatisfied. Yet, it was doubtful that any minor institutional changes could address this
dissatisfaction. In the end the changes to the Constitutional Treaty, so as to turn it into the ‘Reform Treaty’, were mostly about taking out the indicators of ‘statehood’, and thus staying to some of the more cumbersome structure. The Lisbon Treaty, just as the ones that had come before, amended previous Treaties. It was a Treaty among sovereign states; the air of a ‘Constitution’ had been taken away. As had been the case before, only if all member states signed and ratified would it enter into force.

3: Institutional Changes

What changed with the Lisbon Treaty? Let us first look at some institutional changes. Perhaps the most salient changes are those related to voting in the Council of Ministers. The Lisbon Treaty introduces a voting system using a double majority. Between 2014 and 2017, the new system will gradually replace the system stipulated in the Nice Treaty that requires a Qualified Majority Vote with a triple majority. Under the rules laid out in the Nice Treaty member states had fixed weights for their size. A qualified majority meant having 255 of the 345 of the weighted votes, representing at least 14 member states and having 62 per cent of the EU population. In the new system a majority means having 65 per cent of the weighted votes (by actual population) and fifteen member states. The new system was put in place to ensure effective decision making in the enlarged EU. Furthermore, the new rules were a response to concerns by large member states that with the growth in small member states, the balance would be off; smaller member would be more than disproportionally represented. In fact the new rules enhanced the voting power of the large member states quite considerably (see Schure and Verdun 2009). Whether or not this system will actually have an impact is still open to investigation. Some suggest that it may not make too much difference (see Thomson, our project).

Another major change to the way the Council operates introduced with Lisbon is the feature of a Council Presidency. The analysis of the previous system led to conclusions that the rotating presidency had been crucially important, but that the time frame of six months was too short. Also, the frequent changes in ‘representation’ functions meant that it was difficult for the outside world to determine where the leadership was. The Lisbon treaty thus changed this system for the overarching Council Presidency. However, at the ministerial and working group level the rotating presidency remained intact. The Council President, whose mandate would be 2.5 year (once renewable), serves to be the coordinator on the agenda. Chosen from the group of former Heads of States and Governments, this individual would be elected with qualified majority. This system entered into force immediately. For an analysis of whether this system will matter see Tömmel 2010, Warntjen, this project, and Wessels, 2011).

Another change that was introduced with the Lisbon Treaty was a clearer outside representation. Lisbon called for the appointment of the High Representative of the European Union for Foreign Affairs and Security Policy. An external action service would support it. It envisaged a merger of the Commission delegations and these newly to be established Council representations (External Action Service). The other institutional changes that are particular salient are the increase in power of the European Parliament. The Lisbon Treaty makes co-
decision the ordinary legislative procedure. Whether or not his change increases the power of
the parliament is open to research. Early assessments give the impressions that it may not be
the European Parliament that is the greatest winner (see Christiansen and Dobbels, this
project; Mariotto and Franchino, 2011).

How can we make sense of these developments from various theoretical perspectives? There
have been various attempts at explaining the creation of the Convention, the steps taken by
the Convention under the leadership of a forceful president and the subsequent demise of the
constitutional treaty (Moravcsik 2005; Wessels 2005; Beach and Christiansen 2007; Kleine
2007; Tsebelis and Proksch 2007). Some have argued that one of the problems was the lack of
forceful action on the part of the EU and in particular the member states through the role of
the Council that led to the desire to make reforms. Others have argued for a more functional
logic arguing that it was long overdue to streamline the EU institutions. A domestic politics
approach is clearly needed to explain veto points in the European integration process. We see
member states deciding to hold referendums, and more often than not referendums are won or
lost domestically due to domestic political reasons (rather than the actual question on the
referendum or a solid understanding thereof). The research on understanding the struggles
over the changes to voting weights highlights the intergovernmental bargaining dimension.
Clearly on the agenda is a concern over loss of power or an interest in increasing power. Yet,
it is not all together clear that the fact that large member states have gained power in the
Lisbon Treaty voting arrangements that they will actually use that power. The studies that
make up the DEUBAL project suggest that the institutional rules are but one aspect in
determining the outcome of decision-making. What we are interested in is also what
interaction there is between the formal rules and the developed practices in the new Lisbon
architecture. We are interested in seeing what theoretical approach best explains the outcomes.

4: Conclusion

This policy brief sought to examine the institutional rules and the decision-making process in
the EU before and after the entering into force of the Lisbon Treaty. What were the challenges
that the EU responded to that ultimately led to the institutional changes that were made? What
has been the outcome of these changes, and have they led to the desired results? How can we
make sense of these results from a theoretical perspective? The brief suggests that the Lisbon
architecture is likely to affect the relationship between the member states and the EU
institutions, the relationship among EU institutions, and that formal and informal rules will
shape the way governance is to be taking place in the EU post-Lisbon. The various
contributions to the DEUBAL project show how those effects play out.
References:


Christiansen, Thomas and Mathias Dobbels (this project) ‘Implementing and Delegated Acts after Lisbon ‘ Towards the Parliamentarisation of Policy-Implementation?’, DEUBAL project.


Mariotto, Camilla and Fabio Franchino (2011) ‘Explaining outcomes of Conciliation Committee's negotiations’


Thomson, Robert (this project). ‘Double versus triple majorities: Will the new voting rules in the Council of Ministers make a difference?’ DEUBAL project.


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