

UNDERSTANDING THE TREATY OF LISBON

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Abstract¹. *The entry into force of the Treaty of Lisbon comes at a time of continuing lack of agreement about its significance thus justifying a new and less polarized assessment. The article looks at previous assessments, including those that see the Treaty as a major breakthrough for efficiency backed by a new political dynamic and as the unnecessary and undemocratic imposition of a superstate and noxious policies. The article assesses the status, structure and style of the treaty and its contents, highlighting its provisions on values and rights, powers and policies, institutional changes, democratization and enhanced external activity. These, like assessments of the treaty, are often contradictory and point to the fact that Lisbon was yet another compromise document and not a master blueprint. Hence the resulting Union is likely to be a messy hybrid, being legalistic, lacking a single power centre, uncertainly democratic and enshrining more constructive ambiguity.*

Keywords: *Treaties, Lisbon, European Union, Reform*

On 1 December 2009 the Lisbon Treaty finally came into effect with the derisive jeers of the press ringing in its ears after the appointment of two relatively unknown figures to the two key offices it foresaw – a President of the European Council and the upgraded post of High Representative of the Union for Foreign Affairs and Security Policy. Yet the linked demands that the EU should have appointed star performers suggests that, despite the years of argument over the Lisbon Treaty and its failed inspiration, the Constitutional Treaty of 2004, it is still not very well understood. Indeed, such demands stood many earlier criticisms on their head, requiring the EU to have powers which had long been resisted, and suggested that some critics had come

round to accepting assessments which saw Lisbon as creating a new order. Moreover, Lisbon's coming into force also means that it is now disappearing into the two consolidated treaties which will continue to frame the Union and its activities.

All this suggests that the time is right for a renewed look at the treaty, one which gets away from the polarized interpretations which continue to dominate. Rather than being a great leap forward or a plunge into a disastrous super-state, Lisbon is best understood, as conventional wisdom has been coming to accept, just another complex compromise of which the Union has seen so many. And, as such, it has its own internal contradictions. Detailed

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examination makes this clear and exposes the limitations of some of the more extreme claims about it. However, how the treaty will actually be implemented, read and worked remains to be seen. In any case the reformed EU is likely to remain a complicated and ambiguous body.

Interpretations

Given the way that attitudes have changed, it is worthwhile spelling out the dramatic understandings which many people have had of the treaty. In fact, in the two years since it was signed Lisbon has been very diversely and politically interpreted and often without full attention to the detail of the revisions to the constitutive treaties of the EU which it entails. Assessments have been made more in the light of underlying attitudes to the EU and assumptions about how it is developing than of open-minded analysis. All sides in the political debate over the Union have thus made extreme claims about its significance. In fact, finding a convincing assessment is difficult where both status and contents are concerned.

Much criticism of the Constitutional Treaty focused on the fact that it was, allegedly, a constitution, and an unreadable one at that time. Despite the changes made during its negotiation, the Lisbon Treaty has also been criticised on grounds of its status, still seen by many as constitutional, its structure and its style, seen by some as even worse than that of the Constitutional Treaty. Lisbon has also been criticised for what it said as well as for what it could have been, is, or might be. And while most interpretations,

albeit for different reasons, see it as a very significant breakthrough, some supporters of integration see it as a dangerous failure.

For some supporters of integration, Lisbon was a major backwards step. On the one hand, there are those who saw it as a failure, even a betrayal of the essentials of integration, because it strengthens the role of the member states. Indeed, Guy Verhofstadt, the former Belgian Prime Minister, and Johannes Voggenhuber MEP initially regarded Lisbon as too lacking in ambition to be true. Some went further and saw the Treaty as reflecting the acceptance of one view of the civic malaise which lay behind the two 'no' votes in 2005, with both the French and the Dutch 'bizarrely' allowing their opposition to be transformed into a 'British' view (Ricard-Nihoul, 2007). This allowed aberrations such as supposedly letting the UK escape from the Charter and creating more confused variable geometry through the UK's opt-outs. Delays in implementing new decision-making were also deplored.

All this means that there was too much potential for an *à la carte* Europe. Thus Lisbon allowed member states to secede, to dictate policy, to devise their own forms of cooperation, notably in security, and to opt out from fundamental elements like the acceptance of EU values.² Their parliaments were also upgraded at the expense of the EU institutions. Moreover, citizenship was downgraded from an aim of the EU to merely a policy, mentioned only in the secondary Treaty on the Functioning of the European Union (TFEU). For reasons like this Jacques Delors has

² See the comment of Patrice Cardot on Giscard, d'Estaing, V. 'Quel est votre avis sur le contenu du traité?', *Blog de Valéry Giscard d'Estaing*, 12 November 2007 (via <http://vge-europe.eu>).

been somewhat dismissive of the Treaty, hinting both that the Union has settled for second best and that he is too kind to give vent to the many criticisms which could be made of it (*Euractiv*, 2009). *The Economist's* Charlemagne has written it off as a 'footling' treat, a fudge and a failure' (*The Economist*, 2009a).³

A second element in Lisbon's failure is, on the other hand, the way it reflected strong national egoism. Hence it was seen by several otherwise pro-integration observers as deliberately shot through with a consistent insistence on protecting national powers (Lequesne, 2007; also Aquilar, 2008). Duff pointed to the member states' right of initiative while others saw national parliaments as the real winners (*Euractiv*, 2007a). For others it is a treaty which seeks to be democratic while respecting the member states (Chopin and Bertoncini, 2008). Indeed for Palmer it was deliberately designed to help the UK and other member states to manage globalization (Palmer and Facey, 2008). Some went even further, as London sometimes did, and claimed that the Treaty marks the end of 'federalism'. By restoring power to the member states it leads to a more stable and less invasive form of integration. All this chimes with the UK government's views (Foreign and Commonwealth Office, 2007a; also Donnelly, 2007).

However, the majority of opinion, coming from opposing views, is that Lisbon is a very significant document indeed. This view was, and indeed still is, shared by some pro-integrationists. They saw it as a quantum leap forward, something which was indispensable

and ineluctable according to French MP Pierre Lequillier (Assemblée Nationale, 2008). It did this by securing the gains of the Constitutional Treaty. Hence EU leaders, like José Socrates, the Portuguese Prime Minister, all argued that the Lisbon will make the EU more effective, more democratically accountable and friendlier to citizens. Effectiveness for them came through things like the abolition of the European Community (EC) and the pillar structure, improvements in decision-making, and the strengthening of the EU's external role. Increasing transparency and power for the European Parliament (EP) add to democracy, along with, the Charter of Fundamental Rights, provisions for dialogue, easier access to the Court of Justice (ECJ), the right of petition and access to the European Convention on Human Rights (ECHR) (European Parliament, 2007, 2008a). And increased respect for rights and values, together with the right of petition, also means that the EU will be more responsive to its citizens.⁴ Hence, for Duff (2007) Lisbon is as significant as Maastricht in that it has many federalizing opportunities. More recently, Jo Leinen, a fellow MEP, has hailed the Treaty as a major step towards a federal United States of Europe: 'The Lisbon Treaty is better than reported, with it Europe is going forward towards political union' (*Open Europe*, 2009).

A second, and related, supportive view sees Lisbon as being significant less for its contents as such than for its political effects. These are seen essentially as removing blockages and giving the EU a new dynamism. Thus Joseph Daul, then leader of the European

³ See also *The Economist* (2009b). Charlemagne sees it as a failure because it gives too much power to the European Parliament and could allow the ECJ to cause more mischief by its interpretations of the Charter.

⁴ For a full exposition of this attitude, based on the mandate, see Sutton (2008).

People's Party, and Duff saw the Treaty as re-launching the EU's momentum and replacing institutional wrangling and navel-gazing with better legislation and proper politics. Indeed Chopin and Macek (2007) see Lisbon as starting a necessary politicization in the Union (see also Brady, 2007). Equally, Vigo de Mendez MEP said that Europe had shown 'that it can find a solution' to the institutional impasse resulting from the French and Dutch rejection of the Constitutional Treaty in 2005 (European Parliament, 2008b). Fredrik Reinfeldt, the Swedish Prime Minister, and others saw it as opening the way to real policy development in areas which matter to citizens: energy, trade, and environment (*Agence Europe*, 20 February 2008, 21 February 2008). All told, Lisbon, seen from this perspective, adapts the EU to its new remit for a changing world.

Sovereignist opposition also saw, and continues to see, Lisbon as a major wrong turn. Such criticisms of the new Treaty's contents have often highlighted its alleged intention to subordinate national sovereignty and democracy to a 'super-state'. For many critics Lisbon is a constitutional transfer of powers from the member states to 'Brussels' even though there are counter claims and evidence to the contrary. This transfer, it is alleged, makes the Treaty inherently undemocratic. Such criticisms conveniently disdain the contribution which Lisbon makes to democratizing the EU through various new instruments and commitments. Nor does the Treaty establish a super-state, whatever this

means, as Vaclav Klaus, Coughlan (2007, 2009) and others maintain.⁵

The sovereignist view levelled four other charges against Lisbon. The first was that it was not necessary because the EU was working well, despite enlargement. And the solutions offered represented old thinking. Instead, the future lay with decentralized and networked structures of cooperation amongst states. The second was that Lisbon was a fundamentally anti-democratic imposition on the peoples of Europe. For Libertas – once a decisive force in the Irish debate on Lisbon– and many others, notably in the UK, the Treaty represented yet another deceitful and arrogant imposition of a revolutionary federalist agenda by the European elite aimed at minimizing national sovereignty and ignoring the clearly expressed desires of the European peoples (Open Europe, 2008: 8). For them the deceit lays in pretending that Lisbon was different from the Constitutional Treaty. It carried forward 95% of the latter so that it is a constitution by any other name. And the text was made deliberately obscure in order to hide its true meaning and origins so as to smuggle the Constitutional Treaty through. In denying all this political elites were trying 'to pull a fast one' on the peoples of Europe. This meant that a referendum was the only honourable way to ratify it.

Thirdly, its provisions were a threat to the sovereignty of nations. It transferred too many powers to already over mighty institutions which will enable them to grow even more powerful aided by qualified majority voting (QMV), the

⁵ Coughlan calls Lisbon a constitutional revolution by stealth which, given the many public denunciations of the Treaty's potential dangers over the years, is a surprising assessment. Interestingly, both the German and Czech constitutional courts dismissed the super-state claim.

passerelle clauses and the Treaty's self-amending nature. For many the President of the European Council was effectively the President of the new European state. So the member states lost vetoes, Commissioners and the protection provided by the pillar structure. The granting of legal personality to the EU and the creation of an embryonic diplomatic corps threatened national sovereignty in foreign affairs. Hence the nation was in danger of being absorbed by a European leviathan; the new right of secession being simply a diversionary tactic. Nor did the new provisions on national parliaments provide any meaningful balance. Hence, for Austin Mitchell, the UK MP, and Geoffrey van Orden MEP Lisbon would create a super-state imposed over the nations and peoples of Europe (*Hansard*, 11 December 2007, Col. 239; *Hansard*, 21 January 2008, Col. 1296; *Agence Europe*, 19 February 2008, 3). Coughlan (2007) argues that this is concealed by calling the new body the 'Union' because Lisbon is based on the assumption that there is a European people who can sustain a united polity. But there are no European demos. And, since legitimacy lies only with states, and hence with the Council (Bechtel, 2007), the EP is not worthy of the name and the Commission is subject to none of the controls found in normal western democracies. Nor can anyone remove the Commission. Nor could individual citizens use the ECJ in the way they can their national courts.

Finally, the new Treaty was seen as a policy threat, to business, government and people (Cash *et al*, 2008). The City of London is seen as especially

vulnerable. More specifically, 'national' policy areas such as health, criminal law, social security and energy are all seen as at risk (Open Europe, 2008). This is because the Treaty, by making the Charter legally-binding and supposedly removing commitments to undistorted competition, was seen as strengthening the right to strike, damaging the free market and encouraging retrograde and mercantilist policies. There are also worries about what the special protection given to public services will do. And, in all this, the UK government's red lines and alleged safeguards were seen as far too weak to be effective.

Perversely, however, some of those who feared the EU as a super-state also did so because it offers too few social guarantees. Indeed, some UK trade unions wanted to vote it down because new opt-outs would deny UK workers the legitimate and necessary protection of the Charter of Fundamental Rights.⁶ This tied in with another left-wing critique which is that, despite its new stress on protecting EU citizens in the world economy, the Treaty reinforces anti-social attitudes. For George (2008), it is a Stalinist document imposing a specific – and highly capitalistic – economic policy rather than just laying down institutional rules. Equally the Young Federalists saw it as establishing a Europe in which citizens are merely the audience and cannot influence affairs. And Sinn Fein and other Irish opponents largely echoed all this, regarding the Treaty as not only too militaristic, and therefore inimical to Irish neutrality, but also as insufficiently social. Notably it criticised Lisbon for doing too little for workers' rights and

⁶ See the comments of Brendan Barber of the Trades Union Congress quoted in *Euractiv* (2007b).

public services while also undermining the CAP.⁷

Though they come at it from opposing points of view, such opinions all seemed to believe that Lisbon made dramatic changes to the EU. And they do so usually because of their own political positions. But, as many saw at the time, the truth is that Lisbon is not susceptible of one simple interpretation, because it is a typical EU package deal. In other words it is more of a curate's egg treaty or one offering only partial answers.⁸ For many (e.g. Brady, 2007) Lisbon was a matter of tidying up and moving on. As a result it has both strengths and weaknesses (Palmer and Facey, 2008). On the one hand, it is often argued that it is a modest affair that does not transfer many new powers to the EU but is designed to make it work better (Brady and Barysch, 2007; Hofmann and Wessels, 2008). Hence, many of the myths Lisbon have encouraged, most of which were deployed against earlier treaties, are less than half-truths (see Foreign and Commonwealth Office, 2007b; BBC, 2004).

On the other hand, it definitely has a number of weaknesses. It is not easily readable, even in a consolidated version. Moreover, it does not produce a single text. More significantly, it postpones much needed reforms, it allows too many exceptions. It also left a number of questions unanswered such as how the roles of the Commission President, the President of the European Council, the High Representative and the rotating Presidency of the Council will be coordinated.

However, this does not mean that Lisbon is a wholly insignificant piece of tidying up. As the House of Commons Foreign Affairs Committee (2008) observed, while there is much continuity, the changes it makes should not be downplayed. And, as Donnelly (2007: 2) said, although a 'reasonable debate' can be had on whether Lisbon maintains the pace and even the quality of integration, compared to other preceding treaties 'the new Treaty emphatically does not represent a change of integrative direction'. The view presented here is that Lisbon is certainly significant but by no means as dramatic as both out-and-out supporters and opponents believe. A fair assessment is that of Graham Watson MEP who described the Treaty as 'a step forward for Europe but a victory for nobody' (Euractiv, 2007b). That said, as the total contradictions in interpretation and analyses of the first Irish referendum have showed there remains both a lack of understanding of the treaty and persistent tendency to confuse it with existing policies.⁹ This points to the continued need for a nuanced analysis of the status and contents of the Treaty and what they mean for the Union.

The Treaty of Lisbon: Status, Structure and Style

As a document the Constitutional Treaty was attacked on three grounds: status, structure and style. Given that the Treaty of Lisbon emerged against this background, we might have assumed that a new draft would have remembered the criticisms and offered a text which

⁷ See, for example <http://No2Lisbon.ie/en/topic6> (accessed 13 December 2007).

⁸ For nuanced assessments see Mulver (2007) and European Policy Centre (2007).

⁹ As well as the Millward Brown (2008) report, see the *Flash Eurobarometer* of 18 June.

avoided such pitfalls. This has not been the case. Hence the same kind of criticisms are still being made, often more vigorously.

In terms of status there was great emphasis – both from supporters and opponents – on the Constitutional Treaty's constitutional nature, even though it was nowhere near a real constitution (Church and Phinnemore, 2006) and, as many pointed out, given the controversial inclusion of Part III, it was far too long to be a useable framework constitution. There was also quasi universal condemnation of its style: too prolix, too difficult to follow and needing too much interpretation. Even though Lisbon eschews all obvious constitutional references, the similarity of content leads many to see it as still a constitution. Nigel Farage of UKIP indeed still consistently refers to it as the 'European Constitution'. The apparent fact that Lisbon restructures the EU, while transferring powers to 'Brussels', thus telling member states what they can and cannot do, and creating powerful new institutions to monitor them, is held to justify this view. For many eurosceptics, it is a constitution re-branded under another, misleading, name. Yet such arguments are equally applicable to previous treaties, all of which had constitutional dimensions.

What Lisbon does is to continue a process of constitutionalisation, but without a constitution (Donnelly, 2008). It is part and parcel of what some authorities see as an evolving EU constitution on British lines and one that

is often amended because of its detailed nature (Besselink, 2007).¹⁰ In any case, to others, and probably correctly, the dropping of the constitutional claims and colouring is more than just a matter of 'rhetoric and legal form'.¹¹ Not to recognize that there is a major change is to ignore the way that the Treaty evolved. Doing away with many claims, aspirations and symbols while no longer repealing the old treaties was a major concession, and one regretted by many (Duff, 2007). From this point of view Lisbon is a sad return to tradition, even if, in reality, it does enhance the constitutional nature of the Union as the consolidated versions make clear.

Second, in terms of length and structure, some – on both sides of the argument – would say there are still problems. The Treaty is certainly longer than some of its predecessors. Thus the complete *Official Journal* version took up 271 pages. The Treaty of Amsterdam, by contrast, was only 144 pages long and the Treaty of Nice 87 pages (*Official Journal*, 1997, 2001, 2007). According to arch Eurosceptic Daniel Hannan MEP it amounts to 76,250 words, compared to the 67,850 words in the Constitutional Treaty, and only looks shorter on paper because of the use of smaller type (Hannan, 2008). But, in a way, nationally-minded critics have only themselves to blame for some of this since so much of the Treaty is taken up by protocols and declarations seeking to address Polish, British and, eventually Czech fears.

In any case, such differences should

¹⁰ Some authorities would, however, argue that the removal of the most obvious 'constitutional' symbols and features does not wholly deconstitutionalize Lisbon.

¹¹ But see also Chalmers (2007) who sees the Treaty as marking a return to European liberal democracy and ordinary EU law instead of constitutionalism.

not be interpreted as signalling greater legal and political change. Much of the content is designed to clarify as opposed to expand what the EU does. And to do this, much of the text in the Treaty on European Union (TEU) and Treaty establishing the European Community (TEC) and their associated Protocols is revised to produce a somewhat clearer and more logically structured set of provisions setting out what the member states have empowered the EU to do and how. Various obsolete or outdated provisions are either removed, revised or have references updated; many provisions are moved to more obvious locations; and numerous references to institutions or other bodies, procedures or mechanisms are adjusted to accommodate formal title changes. Hence the consolidated versions are somewhat more manageable than they were.

Nonetheless, the result was a very detailed and, for many, overly technical treaty that many believe cannot be understood by anybody other than the most expert of lawyers and treaty 'anoraks'. Yet, somewhat confusingly given the comments on its length, Lisbon itself is actually quite simple in structure, consisting of only seven articles (Official Journal, 2007). And, in the manner of the Treaty of Amsterdam, these have already disappeared now that it has come into effect. The seven articles were composed almost entirely of instructions to amend the TEU and TEC, doing this not by adding a separate Part but by integrating new material at relevant points, thus bringing the two treaties more overtly, if incompletely, into a functional relationship, thanks to the renaming of

the TEC as the more prosaic Treaty on the Functioning of the European Union. The title change is necessary because of the abolition of the EC. This is a simplification of a kind. It may explain why there was less policy based opposition to Lisbon than in 2005.

Nonetheless, Lisbon's provisions can be lengthy. Article 1 contained 61 numbered instructions to insert or amend specific TEU provisions. Article 2 ordered similar amendments to the TEC, with eight 'horizontal amendments', generally updating terminology, and making 286 'specific amendments' to things like the competences of the EU, revised institutional and procedural arrangements, and 'new' or adjusted policy provisions. The article also renamed the TEC. With these changes all references to the 'Community' disappear. Like the European Coal and Steel Community before it, the EC passes into history. And, for Craig (2008) the architecture of the TFEU has benefited more from Lisbon than the TEU.

The Treaty of Lisbon's remaining five articles were short and functional. Article 3 confirms that the Treaty is concluded for an unlimited period, and Article 4 notes two specific protocols which amend existing protocols and the *Treaty establishing the European Atomic Energy Community* (TEAEC). Article 5 was redolent of the Treaty of Amsterdam, since it provided for a renumbering of the amended TEU and TFEU in line with an annexed table of equivalences.¹² Article 6 provides for ratification while Article 7 confirmed the 23 languages in which authentic versions of the Treaty exist. Names and signatures follow.

¹² All except five of the current 55 articles in the TEU gain new numbers as do all TFEU provisions

In addition to the text of the Treaty itself, there were 13 legally-binding Protocols, an Annex, a Final Act (with 68 more signatures and 65 individually numbered Declarations). Five of the Protocols – covering the role of national parliaments in the EU, subsidiarity and proportionality, the euro group, permanent structured cooperation and the EU's planned accession to the ECHR – were originally part of the Constitutional Treaty. The remainder were new, confirming the importance of competition for the internal market, regulating the application of the Charter in opt out states, interpreting the exercise of shared competences and expanding on 'services of general interest' (i.e. public services). Many of these testify to the way that responding to member state doubts and demands, as is the norm in traditional negotiations, makes the Treaty structurally much more complicated. The final two Protocols repealed ten existing Protocols, adapted more than 24 others to reflect changes brought about by the Treaty, and amended the TEAEC.

The Final Act next listed the texts that the 2007 IGC agreed and printed 50 Declarations relating to provisions in the TEU and/or the TFEU and 'adopted' by all the member states and 15 interpretive statements made by one or more states. Declaration (52) is of note since it affirms the attachment and allegiance of 16 member states to the various symbols not taken over from the Constitutional Treaty. In all this Lisbon is structurally no different to earlier amending treaties like.

Understanding what the EU looks like now the Treaty is in force requires consolidated versions of the TEU and TFEU

incorporating the myriad amendments. Unofficial versions existed even before Lisbon was signed, provided by various public bodies (e.g. Assemblée Nationale, 2007 Foreign and Commonwealth Office, 2008). Other versions followed (e.g. Broin, 2008) while, earlier than in the past, the Council eventually made available online consolidated versions in all official languages in mid-April 2008 which were subsequently published in the Official Journal (2008).¹³ A further version was promised for early 2010.

What all these versions revealed was a neater and better structured formal legal account of what the EU will hence forward be able to do. While lacking the clearer division into 'Parts' contained in the Constitutional Treaty, Lisbon bequeaths the EU more readable basic treaties. As one commentary insists, it brings 'real added-value in terms of reading logic' by differentiating between the more constitutive and structural dimensions of the EU in the TEU and relegating detailed functional matters to the more accurately, if less appealingly, named TFEU (Gros-Verheyde, 2007: 6). Thus the amended TEU is not dissimilar to Part I of the Constitutional Treaty and offers a reasonably brief starting point for understanding the EU. It sets out, among other things, the EU's aims, values, principles, and structures plus provisions on external and cooperative action, treaty amendment, membership and withdrawal. Excluding the preamble, this runs to 6275 words, two-thirds of the length of the French Constitution and one quarter of that of the German *Grundgesetz*.

¹³ Whether by design or coincidence publication was on 9 May, Europe Day, one of the symbols of the EU contained in the abandoned Constitutional Treaty.

However, style also remains an issue. Indeed some critics have come to say that they actually preferred the infinitely more comprehensible Constitutional Treaty. In fact Lisbon is clearly less readable precisely because the signatories were responding to popular clamour in 2005, were no longer seeking a constitution as such, and were following the norms of international treaty negotiation particularly those necessary to encourage 27 parties to agree amendments to existing texts. For one Irish critic at least, the resulting text was simply 'gobbledegook' (Browne, 2008).¹⁴ Equally, Wyles (2007) remarks that 'the constitutional treaty reads with the clarity of a children's fairy tale compared to its extraordinarily lifeless progeny'. Sceptics also made much of Giuliano Amato's wry comment that in order to make the Treaty seem non-constitutional, it had been written in deliberately unreadable language (Hague, 2007).¹⁵

Yet, very often the implication to be drawn from such criticisms is that the existing treaties are easily comprehended, which is hardly the case. However, as will be seen, things do become clearer if the consolidated versions are used. That said, and on a par with Maastricht, Amsterdam and Nice, Lisbon does little to move the text beyond what is often regarded as impenetrable legalese (e.g. *The Times*, 2007), especially if the text is read on its own and not through the consolidated versions. In any case, to

expect more reader-friendly language is to ignore the fact that EU treaties are negotiated and ultimately approved by sovereignty-conscious member states generally intent on retaining as much control as possible over the activities and direction of the EU. Achieving this necessitates detailed and often complex, if not always precise, legal language.

To sum up, the Treaty of Lisbon needs to be seen as disappearing treaty, lacking what most people would see as a direct constitutional dimension. It amends, consolidates and reshapes the existing treaties and then vanishes, leaving behind treaties which may be complex but which are still more cohesive and comprehensible (Dinan, 2008). Lisbon leaves behind a TEU which will be more of a guiding document. It also revises the former TEC which, despite renaming, remains closer to the past than the TEU.

The Contents of the Treaty of Lisbon

For many sovereignists the Treaty of Lisbon should have been rejected not simply because it is a rambling, inaccessible and largely constitutional text but also because of what it actually contains and what this means for an already despised EU. Equally supporters have welcomed the changes it brought to an EU which they saw as plethoric and ineffective.

In fact the Treaty of Lisbon has introduced a range of reforms to the EU, few of which are particularly radical.¹⁶

¹⁴ Much the same was said of Maastricht when it was circulated without a consolidated version of the TEC to accompany it.

¹⁵ According to the *Free Europe website* (www.freeeurope.info): 'The 27 member governments agreed in Lisbon October 18, 2007 on a new version, called the Reform Treaty, renamed to the Lisbon Treaty - the same content but extremely difficult to read. Why? They wanted to avoid new referenda'.

¹⁶ For discussions of the Treaty, see: Gros-Verheyde (2007); Kurpas et al (2007); Kurpas (2007); Sauron (2008); Fisher (2008); Hofmann and Wessels (2008); Poncins (2008).

And, even when they do represent a notable change to the *status quo*, as with the creation of a President of the European Council and the formal transfer of legal personality from the Community to the EU, their projected significance has often been exaggerated. Commentators and critics alike are thus prone to sloppily de-contextualizing and misrepresenting the relevant treaty amendments. For example, as the selection of Mr Van Rompuy shows, the President of the European Council will not be an 'EU President' and legal personality does not turn the EU into a super-state.¹⁷ However, Lisbon introduces many practical changes which, if successful, should result in a better functioning EU. It also helps simplify the EU, thus increasing the prospects of it being better understood. Equally, however, in addressing their particular demands, it complicates further the relationship of some member states, notably the UK, with the EU.

The changes fall under six broad headings: *the structure of the EU*, values and rights, powers and policies, institutions and decision-making, democracy and external action. On the first of these, the structure of the EU, an obvious consequence of Lisbon is the formal restructuring of the EU to remove the 'pillars' and abandon the EC, thus bringing reality into line with everyday parlance.¹⁸ From now on there will simply be the EU with all policies except

the Common Foreign and Security Policy being pursued using the one institutional framework provided by Commission, Council, EP and ECJ. And the EU now inherits legal personality from the EC, just as it does external representations. Lisbon neither creates nor significantly extends this to the detriment of national sovereignty as has often been suggested. However, the EU is still not clarity personified. New and extended opt-out arrangements, particularly for the UK, on newly communitarised Justice and Home Affairs (JHA) matters, mean that some member states remain less engaged than others.¹⁹ Moreover, thanks to a relaxation of the rules on enhanced cooperation, there is a stronger possibility of groups of member states pursuing such cooperation in external and other fields. The euro group also gains more solidity. Furthermore the separation of the executive between Commission and High Representative and Council could prove problematic, as could the role of national parliaments in challenging alleged breaches of subsidiarity. In other words, this is no streamlined superstate structure.

A second effect of the Treaty is to give greater emphasis to the EU's *values* and the *rights* of its citizens. The former are expanded to include minority rights and supplemented with a list of further values and then given greater prominence in a new Article 2 TEU. Applicant states are

¹⁷ Much media coverage of the new 'President' was particularly sloppy. Even respected media outlets misrepresented the post. See, for example: *The Economist* (2008); *International Herald Tribune* (2008).

¹⁸ This is a slight oversimplification. The Treaty of Lisbon did not do away with the European Atomic Energy Community (EAEC/Euratom). It lives on and the TEAEC is amended to reflect various changes affecting the EU institutions. There is also a Declaration (54), adopted by five member states, calling for the content of the TEAEC to be brought 'up to date' and for an IGC to this end to be convened 'as soon as possible'.

¹⁹ A planned referendum in Denmark in late 2008 had in fact to be called off although it might have resulted in a number if not all of the Danish 'opt-outs' being rescinded.

also now expected to promote them as well as fulfilling any requirements laid down by the European Council before being admitted. Member states, unhappy with their lot may withdraw from the EU, although the understanding is that they will negotiate an agreement on future relations before withdrawal becomes effective. As for the latter, the Charter of Fundamental Rights, proclaimed again on 12 December 2007, is given 'the same legal value' as, even if it is not written into, the TEU. Furthermore, Lisbon commits the EU itself to acceding to the ECHR. All this is important, at least symbolically. Its longer term impact on the development of the EU legal system remains to be seen, although the effects of the pre-existing rights contained in the Charter are circumscribed and more so in the case of the Czech Republic, Poland and the UK, thanks to a dedicated Protocol.²⁰

The protocol reflects the wariness of many member states about extending the *powers and policy competences* of the EU; what Hofmann and Wessels (2008: 7-8) call the 'sovereignty reflex'. Lisbon provides plentiful evidence of this. Thus the Treaty formally introduces the principle of conferral as the basis for the EU's powers: the EU has competence to act only where its member states have formally conferred

on it such a competence.²¹ In all other cases 'competences not conferred upon the Union in the Treaties remain with the Member States' (Articles 4(1) and 5(2) TEU). Furthermore, clarification of the nature of EU responsibilities is provided by labelling competences as either 'exclusive' (i.e. customs union, competition, monetary policy for the eurozone, conservation of marine biological resources under the common fisheries policy, and the common commercial policy), 'shared' with the member states,²² or designed 'to support, coordinate or supplement' the actions of the member states' (Articles 2-6 TFEU). Renewed emphasis is also given to the EU acting in accordance with the principles of subsidiarity and proportionality. Furthermore, certain member state competences are made explicit. Thus, 'national security remains the sole responsibility of each Member State' (Article 4(2) TEU). As Hofmann and Wessels (2008: 8) observe, the Treaty is more explicit than before about 'taboo zones' and 'domaines réservés'.

Regarding the EU's policy competences, Lisbon provides for only very limited extensions. On the internal, domestic level the lists of areas for 'action' are extended to include space and humanitarian aid (shared competences) and sport and administrative cooperation

²⁰ The government of Donald Tusk which came to power in October 2007, so after the Treaty of Lisbon was agreed but before it was signed, initially considered abandoning the protocol as part of its efforts to reduce Poland's sense of isolation in the EU following the hard-nosed, veto-threatening behaviour of the Kaczynski twins: Prime Minister Jaroslaw and President Lech prior to and during the 2007 IGC. The latter continued to press the point but finally settled for a non-binding statement about sovereignty alongside the Ratification Bill which then went through Parliament easily enough in early April 2008. However, the President delayed signing it until the Irish ratified. Soon afterwards the Czechs got similar gains as a sop to President Vaclav Klaus who had brought up an alleged threat from the Charter to the Benes decrees which enshrined the take over of property from expelled Germans in 1945.

²¹ In order to convince President Klaus, this point was forcefully restated by the European Council decision of November 2009 which set up the Czech guarantees about the Charter.

²² Sensitivities over the meaning of 'shared' led to the adoption of the Protocol on the *exercise of shared competence*.

(supporting competence). These, as well as the existing 'spheres' for 'measures' of energy, civil protection and tourism are also given dedicated treaty provisions detailing what is envisaged at the EU level. Only in the case of energy does Lisbon expand the EU's competence to any significant degree. In the future the EU is to act in a 'spirit of solidarity' to ensure a functioning energy market, promote energy efficiency and secure supplies (Article 194 TFEU). Where established competences are concerned, the one area of real note is the environment. In Article 174 TFEU Lisbon inserts a new and explicit call on the EU to promote measures at the international level aimed at 'in particular combating climate change'. Here Lisbon responds to recent public concerns and desires. In other cases, like the references to space and the European Research Area, the effect is to give expression to existing practice agreed by the member states. Lisbon also gives more prominence to the Union's role in matters of policing and justice, notably in asylum and immigration. Similarly it innovates in its mention of 'services of general interest'. This is one of a number of areas where it tries to respond to the social concerns which lay behind many 'no' votes in 2005. Indeed the treaty now includes a horizontal clause requiring the Union to bear the social dimension in mind in all its legislation. Also, decisions taken in these areas, and under the revised powers, are no longer to be described as 'laws' as they were in the Constitutional Treaty. Interestingly, the Treaty also makes provision for a reduction of EU

competences, to the benefit of member states through new treaty amendments, mainly under the ordinary mode of revision.²³

In terms of *institutions and decision-making*, the EP is once again a major beneficiary from treaty reform. In making co-decision – renamed 'the ordinary legislative procedure' – the default decision-making procedure and extending it to more than 50 new treaty provisions, Lisbon increases the EP's formal role in policy-making. For the first time, for example, it will co-decide details of the Common Agricultural Policy and the Common Fisheries Policy with the Council. It also sees its assent role – renamed 'consent' – extended to new areas, notably to the Multi-annual Financial Framework through which the EU is funded, the establishment of a European External Action Service, and certain treaty amendments. Similarly, it gains equal rights over the budget with the Council plus powers to propose treaty amendments or block the implementing powers of the Commission whose President it will now also 'elect' thus potentially politicising EP elections.

For the Commission, the abolition of the EU's pillar structure means that it – and the EP – gains a greater role across all areas of EU competence in JHA. There will now be a fully 'communitarised' area of freedom, security and justice including residual pillar three activities concerning police and judicial cooperation in criminal matters. Extensions of EU competences also increase the areas in which the Commission can be active. There is a change too regarding the

²³ It could also be argued that the Treaty conceives of the EU giving up legislating in areas of shared competence, thus allowing states further freedom of action.

Commission's composition. Since 1 December 2009 a Vice President and Commissioner for external relations has been 'double-hatted' as the High Representative of the Union for Foreign Affairs and Security Policy. The size of the Commission, originally supposed to decrease from 2014 to the equivalent of two-thirds of the number of member states, will remain at one member per member state thanks to an agreement reached by the European Council in June 2009 in advance of the second Irish referendum.

The upgraded High Representative is, however, no longer also Secretary-General of the General Secretariat of the Council, a task handed in November 2009 to the Deputy Secretary General. The High Representative is, however, responsible for chairing meetings of the Foreign Affairs Council. Neither this nor the creation of the post of President of the European Council results in the abolition of the rotating Presidency of the Council as is commonly assumed. Each member state will have its turn at chairing other Council meetings and co-running the Presidency, albeit now more formally as part of a three strong team Presidency. Meetings of the European Council, conversely, will be chaired by its President 'elected' for a two-and-a-half year term, renewable once, by a qualified majority vote of the Heads of Government and State in the European Council. Mr Van Rompuy and his successors are now to be responsible for 'driving forward',

preparing and ensuring the continuity of the European Council's work, facilitating 'cohesion and consensus' within the European Council and ensuring the external representation of the EU on CFSP issues.²⁴

If the new post may help to raise the profile of the European Council, much of the EU's day-to-day decision-making will continue to take place in the Council with an increased emphasis on QMV, the use of which Lisbon extends to a further 61 treaty provisions notably concerning the now 'communitarised' third pillar activities and most other existing JHA matters. For sovereignists this means the scrapping of the largest ever number of treasured national vetoes (Open Europe, 2008: 8). For the signatories, it is part of Lisbon's aim of enhancing the EU's efficiency. In practice it is neither. Both views ignore the fact that, in many instances, the shift to QMV concerns appointments and policy areas where there is usually a clear consensus among the member states on what the EU should do. Moreover, in areas where some member states did not want to see QMV used, unanimity has been retained (e.g. for tax harmonization, CFSP, treaty revision), 'emergency brakes' introduced (e.g. for social security and criminal justice matters) or opt-outs secured. So the degree of change should not be overstated. Moreover, the consensus norm so prevalent in the Council tends to negate the impact of any formal shift to QMV. Votes are only taken on between

²⁴ The job description was initially criticized as vague and ill-thought out, and not really justifying more than a part-time appointment, especially as it created unnecessary overlaps with the roles of the High Representative and the Commission President. However the press soon came to terms with the change and, as already noted, lambasted the EU for seeking conciliators, able to work within the new rules, rather than freebooting – though never actually identified – super celebrities.

10 and 22 per cent of decisions annually (Hagemann de Clerck-Sachsse, 2007: 13).

Things may change as a consequence of the replacement in 2014 – five years later than envisaged in the Constitutional Treaty – of the current QMV system by double-majority voting. This will see the Council formally adopting decisions on the basis of support from 55 per cent of the member states (currently 15 or more) representing 65 per cent of the EU's population. A blocking minority will require at least four member states. This is undoubtedly a simpler system to understand even if its implications for reaching a decision remain unclear (Kurpas *et al*, 2007: 59-80; Hofmann and Wessels, 2008: 17-18). Its potential to contribute to greater transparency is somewhat marred, however, by the decision, included at Poland's insistence, to allow member states to continue with the existing QMV system until the end of March 2017 and to invoke a revised version of the Ioannina Compromise even after this. Further transparency is expected to come from the requirement that the Council meet in public when deliberating and voting on draft legislative acts, although this could stymie debate or result in more substantive negotiations at the Permanent Representatives level.²⁵ Whether this will make the EU better understood by its citizens and others remains to be seen.

A renaming of the EU's Court of First Instance as the 'General Court' helps clarify its purpose, as does the re-designation of judicial 'panels' as 'specialised courts'. The title of the senior

Court of Justice remains unchanged, although an additional Advocate-General is, envisaged. Lisbon leaves the courts' roles essentially untouched after their overhaul in Nice. However, their jurisdiction is extended with the collapsing of the EU's pillars and the granting of legal personality to the EU, although restrictions remain, notably regarding the CFSP from which the Courts are generally excluded and police operations concerning the internal security of member states. A declaration (17) also recalls the established primacy of EU law over the law of the member states. Beyond the Court of Justice, Lisbon identifies, possibly against its will, the European Central Bank as an EU institution and introduces some changes to its procedures. It also introduces a Protocol setting out the composition and purpose of the Euro Group. It provides too for member states to establish, unanimously and with the consent of the EP, a European Public Prosecutor's Office charged with investigating offences against the EU's 'financial interests' (Article 86 TFEU).

Many of the institutional changes are designed according to the Treaty's rather brief preamble, to enhance the EU's efficiency. Equally prominent is the signatories' desire to enhance the '*democratic legitimacy*' of the EU. To this end, Lisbon brings to the EU a greater emphasis on promoting democratic input. In part this is addressed by the increased powers given to the EP whose role is, not surprisingly, stressed in a dedicated and prominent section on 'Democratic Principles' in the TEU. These evoke the

²⁵ The new transparency is widely seemed to have failed its first test when in December 2009 the Council went into confidential 'bilateral' huddles to decide financial legislation.

equality of EU citizens, the 'representative democracy' foundations of the EU and a commitment on the part of the institutions to actively seek the views of citizens and 'representative associations' whether through Commission consultations or an 'open, transparent and regular dialogue' between the EU institutions and civil society. A 'citizens' initiative' mechanism is also introduced. How many initiatives will collect the one million signatures from EU citizens from 'a significant number' of member states to propose treaty amendments so as to achieve unfulfilled Union aims is uncertain.²⁶ Other changes which are said to increase citizens' rights and influence include easier access to the European courts, dialogue between EU and 'social partners', a greater facility for suing EU agencies, the Charter and EU subscription to the ECHR. Participatory democracy as such is, however, not mentioned.

In parallel with this, Lisbon seeks to respect and involve national democracy through a dedicated Protocol on national parliaments and the Protocol on subsidiarity and proportionality. Thus it introduces a 'yellow card' procedure which allows national parliaments from, in most instances, at least one third of the member states to force a review of any Commission proposal within eight weeks. It also provides for the automatic communication of Commission proposals and Council agendas and minutes to national parliaments. This is an improvement on the *status quo* and

the changes signal willingness on the part of the member states to address the democratic legitimacy problems the EU faces, at least through national legislatures (see Barrett, 2008). Again, whether parliaments will succeed in using the procedure successfully remains to be seen.

A final formal aspiration of the member states in concluding the Treaty of Lisbon was to improve the coherence of what the EU does, particularly with regard to its *external action*. This is reflected in a number of policy and institutional developments. In considering these, it should be noted that the Treaty keeps the provisions on the CFSP firmly within the TEU and, in doing so, through its own 'specific rules and procedures' (Article 24(1) TEU) retains much of the existing intergovernmental framework for its operations. This was demanded by the UK, among others, which also secured a Declaration (14) emphasizing that the CFSP provisions affect neither the powers nor responsibilities of a member state to decide its own foreign policy nor its position within the United Nations (UN).²⁷ Despite this some voters in Ireland assumed that this meant that neutrality would have to go and would be replaced by conscription into an EU army. Hence the Declaration has not encouraged integrationists (Bendiek, 2007).²⁸

In terms of content, Lisbon brings the TEU up to date by spelling out the EU's CFSP aspirations and recognizing

²⁶ Various citizens' networks are already operating and a petition demanding a single seat in Brussels for the EP had attracted more than 1.2 million signatures by mid-February 2008. See www.oneseat.eu. For examples of active groups, see: www.citizens-initiative.eu and www.european-citizens-consultations.eu.

²⁷ The last point was important for torpedoing unfounded media assertions that the UK would have to surrender its Security Council seat.

²⁸ See also Rossioli in Agence Presse Europe, 8 March 2008, p. 4

the actual substance of its activities. Due recognition is given to what hitherto has been known as the European Security and Defence Policy. It is now the Common Security and Defence Policy (CSDP). The Petersberg tasks are expanded to include conflict prevention, joint disarmament operations, military advice and assistance tasks, peace-keeping and post-conflict stabilization. So as to implement the CSDP, member states are now required to make civilian and military capacities available to the EU and progressively to improve the latter. To this end the European Defence Agency, established by the Council in 2004, is to identify 'operational requirements' and promote measures to satisfy them. Moreover, member states may pursue 'permanent structured cooperation'. Moves to create so-called 'battlegroups' to implement CFSP measures requiring military action are an existing example of such cooperation. And a 'common defence' can be created if the European Council, acting unanimously, so decides.

In practice, therefore, some of what is 'new' under the CFSP banner simply gives formal legal recognition to what is already taking place on the basis of agreements reached by the member states within the European Council. There are exceptions, notably the new obligation for member states to assist, in line with the UN Charter, another if it is a victim of armed aggression on its territory. As with the CSDP generally the provision does not prejudice the 'specific character of the security and defence policies of certain Member States', code for the 'neutral' member states and particularly Ireland where opponents claimed that Lisbon, like previous treaty amendments, will lead to a further 'militarisation' of the EU and undermining of Irish neutrality (e.g.

Higgins, 2008). Such claims cannot be dismissed out of hand, even if the emotive language of 'militarisation' is suggestive of a more aggressive reality than the one to which the EU aspires or is likely to achieve. Moreover it tends to ignore the unanimity requirement for all CSDP and most CFSP decisions and the fact that the EU has neither military resources nor even a budget for CSDP operations, relying on member states for both. Nonetheless, the 'guarantees' secured by Ireland in June 2009 in advance of a second referendum contained a reassurance that the Treaty did not negate neutrality.

The most significant institutional changes in this area concern the expanded role and enhanced standing of the current High Representative. Although the title of the post has not been changed to Union Minister for Foreign Affairs as originally envisaged most of the other developments contained in the Constitutional Treaty have been carried over. So the renamed High Representative of the Union for Foreign Affairs and Security Policy, as well as chairing the Foreign Affairs Council, will also 'conduct' the CFSP and 'ensure' more generally the consistency of the EU's external action. And, as noted, she will be assisted by a European External Action Service (EEAS) comprising Commission and Council officials and seconded staff from member state diplomatic services. Reviled by opponents as a nascent EU diplomatic corps, and hence further evidence that the EU is assuming the trappings of statehood, the EEAS will work in cooperation with member state diplomatic services. Such institutional developments clearly have the potential to improve the EU's capacity to project itself internationally. However, much will depend on the ability of the High

Representative to overcome the political as well as logistical challenges of being a uniquely double-hatted functionary operating, initially at least, amidst the continued uncertainties associated with the development of the CFSP and in an environment of institutional novelty and competition, notably where the President of the European Council is concerned.

To summarize, what we have in the Treaty of Lisbon is an array of reforms that go some way to addressing the goal of 'enhancing the efficiency and democratic legitimacy of the EU Union and to improving the coherence of its action' set out in the Treaty's preamble.²⁹ The reforms are in many cases identical to those contained in the Constitutional Treaty. This was intentional (Church and Phinnemore, 2009). When the German government, holding the Presidency of the Council, set out in 2007 to prepare the mandate for the IGC that would 'negotiate' a replacement 'reform' treaty it was intent on retaining as much of the Constitutional Treaty as possible, ditching only what were seen as the truly unpalatable elements, removing all hints of constitutional colouring and adding only enough modifications to satisfy national needs to avoid referenda and ensure, as far as was possible, trouble-free parliamentary ratification. The fact that opposition continued showed that the constitutional dimension actually counted for much less than seemed to be the case in 2005.

The result is the Treaty of Lisbon, a traditional amending treaty which, in contrast to most of its predecessors, notably Maastricht, is a relatively

uninspiring compromise document containing functional and essentially pragmatic reforms. It is not without its contradictions and does not justify descriptions of it as a Machiavellian blueprint to transform the EU into either a superstate or a clean-cut federal polity. And it remains at best a poorly understood document, at worst a misrepresented and misunderstood document. Indeed a not insignificant number of Irish voters in 2008 voted in the mistaken belief that the Treaty contains measures which would force the abandonment of Ireland's neutrality, facilitate abortion and impose conscription. It is, however, significant, and will bring change even if not in the ways, or to the extent, either assumed by extremist commentators or intended by its drafters. All this begs the question as to how, whether in terms of its content or symbolism, Lisbon heralds the dawn of a new EU.

The Treaty of Lisbon and the 'New' Union

For some critics, the Treaty of Lisbon will establish the feared super-state or, as Coughlan (2007) argues, a fundamentally new EU separate from, and superior to, its member states, overriding their national law, values and policies on citizenship, immigration and taxation.³⁰ For supporters, it will signify, as Merkel declared: 'a successful re-founding of the EU' (cited in Hofmann and Wessels, 2008: 4 – authors' translation). The former seems as unlikely now as when it was lugubriously announced at every previous treaty revision. Indeed, some see the new Treaty as ending the search for

²⁹ This is the view of the leader writer in *Agence Europe*, 1 December 2009, p. 3.

³⁰ The views of C oir, as found at www.lisbonvote.com

state-like constitutional arrangements.³¹ This is possible, but it is hard to be certain since the Treaty does not provide the final word on many of its reforms, being somewhat contradictory and sometimes sketchy. This forced the member states in early 2008 to come up with answers to a range of questions concerning whether the President of the European Council should have dedicated support staff, pending legislative proposals should be dealt with under co-decision where this is provided for in the Treaty, and whether the Foreign Affairs Council, chaired by the High Representative, should also deal with non-CFSP external affairs matters such as trade and development aid (*EU Observer*, 2008). And preparatory work and political positioning have not stopped since then.

What we can say is that post-Lisbon integration will be slightly more comprehensible since there will be no 'European Community' and no pillars. But Lisbon does not offer a complete definition of what the Union will be. Obviously it will be a body based on history, principles, values, treaties and the specific powers and functions conferred on it by the member states. Hence it is a body whose nature and existence is much less taken for granted than is the case with a nation state. As a result there is more in Lisbon on aims than is usually the case with national constitutions. In fact, as a polity, or governance system, the EU is defined by the treaties and what it does. It cannot, in other words, just 'be' as can a nation. Hence its powers are both specified and, increasingly,

circumscribed. And, as already noted, they could be withdrawn.³²

The treaties show the EU to be a legalistic affair, subject to rules and guidelines about operation, principles and relationships, not an untrammelled super-state. Indeed, the ratification process has added a new element in the increasing recourse being made to national constitutional courts to clarify national-EU relations. The EU thus remains a body with a push-me-pull-you relationship with the member states. Even though critics like *Open Europe* deny this, it is a voluntary body, which states can both join and, now explicitly, leave. And the TEU and TFEU are shot through with references to sustaining and respecting the member states, not to mention the principles of subsidiarity and proportionality. The long list of Declarations also makes it clear that when member states are difficult, they have assurances. Also, the EU can only revise its rules in the new simplified process if member states agree. And it can only use the 'catch-all' Article 308 TEC (Article 352 TFEU) within narrow limits as specified in Declaration 42. To this extent integrationist critics have justice on their side. There is little sign in all of this, as the Czech Constitutional Court recognized, of the end of sovereignty.

Despite the frequent talk of 'Brussels', the 'new' EU actually has no single centre of power, let alone an executive President. Indeed, by making the EP a co-legislator in a large number of cases, Lisbon increases the extent to which the EU is a matter of permanent negotiation

³¹ For true Federalists like Leinen and Kreutz (2008), Lisbon is not only not fully federal but marks a step backwards towards state control while emphasizing that the EU is parliamentary and not presidential.

³² It will be interesting to see whether an incoming Tory government in the UK is able to utilize this facility.

and lobbying, whether in or between the Commission, Council and the EP. Member states have to go on seeking allies and compensations in order to share in the joint decision-making process where consensus is likely to continue to be the norm, despite the introduction of new voting procedures from 2014.

While the Treaty as such does not steer the EU towards Europe-wide popular involvement, it does seek to move on the question of democratization, though clearly nowhere near as much as its critics would have wished. It places much stress on the Charter which, everywhere other than in the UK and occasionally Poland and the Czech Republic, is seen both as a protection and as a gesture towards the people. Whether the new mechanisms for engaging national parliaments in scrutinizing the work of the EU will, along with other communication measures, enhance the EU's democratic credentials, remains to be seen. There is some recognition of the problem and some potential for politicizing the Union in a traditional way, but whether this works and is accepted will depend both on the way the new rules are used and how public opinion responds. Here, as elsewhere, the Union's essential, constructive ambiguity, remains.

In other words, to take up the analysis of Laffan and Sudbery (2007), the EU remains an amalgam of problem-solving, quasi-political arrangements and diversity management.³³ In accepting that all is not well with the *status quo*, Lisbon rejects the arguments both for politicizing Europe and for setting boundaries to it. Rather it tries to develop, in a pragmatic and still somewhat piecemeal

way, the strange messy hybrid web of functional governance, supranational, intergovernmental and national, which is the EU. The Union is still a matter of member states essentially keeping external sovereignty while sharing some of their internal sovereignty. And it looks as though this will continue to be accepted by most. The EU generally only tries to grapple with problems which most think are best tackled in common so there is no obvious market for the loose, repatriating inter-governmental league desired by many sovereignists. This is especially so if this were to be based on ultra-liberal socio-economic stances.

Despite this, the EU's messy and hard-to-penetrate nature remains a complication. The EU's ambiguity, coupled with the general deficit of understanding amongst both opponents and the inert and ineffective governmental supporters of the Treaty, means that the differences of interpretation continue. And no doubt they will come to the surface as the new arrangements bed down. In other words the post-Lisbon Union is not a brand new order, merely a reworking of the old one. Nonetheless there has been sufficient change and sufficient political crisis for many to hope that the process of treaty reform will be halted.

Yet, even if there is now a feeling that big bang or omnibus treaty reforms are not wanted for the foreseeable future, the Treaty of Lisbon is unlikely to be the end of the line. With Lisbon, as its preamble claims, the process covering Amsterdam and Nice aimed at enhancing the EU's efficiency and democratic legitimacy and improving the coherence

³³ See also Kurpas *et al* (2007).

of its action has been completed. Indeed, in recalling its signing the European Council in December 2007 declared that the Treaty provides the EU with 'a stable and lasting institutional framework' and that EU leaders expected 'no change in the foreseeable future' (Council of the European Union, 2008: point 6).

However four factors suggest that the process of reforming the EU will not come to a dead end. To begin with, the Treaty is not, as already said, a precise blueprint and applying it could well throw up new problems and developments. Indeed the Spanish government has already pressed for an amendment to allow it to fully enfranchise the extra MEPs it was awarded but who could not be seated before the Treaty came into effect. Secondly, there will be political pressures for rethinking what the EU does. Ironically, these are less likely to come from supporters of integration than from

opponents. Sovereignists in particular will not end their efforts to halt or even reverse integration. Indeed, the British Conservatives have already made their intentions plain in this regard and some believe that the German constitutional court could play a similar role. Third, concessions to Ireland and the Czech Republic to secure ratification mean that further changes will accompany enlargement.

Finally, change is in the nature of the EU. Because it is not a state it is essentially defined by its own constitution. And this is a dynamic and always temporary affair. In other words there was no possibility that Lisbon could ever be a new 'Philadelphia'. So the reformed EU resulting from Lisbon has to be understood as a work in progress. It may last for longer than its predecessors but it is unlikely to bring real finality.

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