

The democratic credentials of the new European Union: does the Constitution increase the EU's democratic legitimacy?

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Why democracy matters in the EU

The origin of the European Union is the recognition that there are issues too big for an individual country to solve on its own. European integration is necessary to enable effective solutions to be applied to common problems. Much of the debate about the development of the EU has been around the need to make sure that European decision-making is democratic.

This is because, if national decision-making can no longer be effective on an issue and the power to deal with an issue has been transferred to the European Union, then the European decision-making must be just as democratic as the national decision-making it has replaced. In fact, many people argue that it should be more democratic, in order to compensate for the fact that it is further from the citizen.

Secondly, the protection of human rights under the rule of law must be observed as rigorously in the European Union as it is within the member states.

Two meanings of “democratic deficit”

The term “democratic deficit” has been widely used in this context. It is interesting to note how the meaning of the phrase has changed over time.

When it was first coined in 1977, it related to the inability of the EU to act in the face of a common need by European citizens for European action. The institutions of the EU were, for example, unable to establish a single market.

The Single European Act of 1986 and the introduction of QMV in the Council of Ministers changed this picture considerably. Suddenly, the institutions in Brussels acquired new powers to act, if anything in excess of public understanding and preparedness. It is no accident that the unpopularity of the EU in some member states dates from the programme to create the otherwise-popular single market and the realisation that EU law actually has a real impact on the way we live. The modern-day democratic deficit describes the extent to which the powers of the EU and the control by citizens over the way those powers are exercised are still out of step.

Five decision-makers in the European Union

This briefing will examine the development of decision-making in the EU by looking at five different elements, all of which might have some influence on the decisions that are taken:

- European Commission
- member state governments
- European Parliament
- member state parliaments
- the citizens

In the case of the European Commission and the national governments, their influence on decision-taking might be exercised either by ministers or by civil servants. This briefing will not draw a distinction between the two because the ministers are politically accountable for the decisions taken by their civil servants in their name.

The fact that these two elements will see so many decisions taken by civil servants adds to the importance of the role of the European Parliament and the national parliaments. In addition to their legislative role, they also have the function of scrutinising the actions of the corresponding executive bodies. Parliamentary accountability is an essential accompaniment to executive power.

The citizens have been included as a separate element as distinct from their representation through the political institutions. The EU is more than a union of states: it is better understood as a union of states and citizens. There are some ways in which citizens might have an interest that cannot be expressed through the executives and legislatures of the Union or the member states.

Five areas of decision-making

This briefing will examine the role of each of the five democratic actors in each of five different areas of decision-making:

- Leadership of the EU
- The legislative process
- Controlling justice and home affairs
- Foreign and defence policy
- Protecting human rights

What do we mean by gaining influence?

It should be pointed out that influence in this context is not a zero-sum game. If one element in the political process gains influence, that does not mean that another must necessarily have lost it.

As noted previously, interdependence between the different countries of Europe already exists and the creation of the EU is a means of reclaiming influence back to the representative political institutions. A well-designed institutional system should expect to see the influence of the various political elements rise. As the influence of a political element grows, so does the importance of its accountability.

Leadership of the EU

European Commission.....possibly an increase
member state governments.....possibly an increase
European Parliament.....possibly an increase
member state parliaments.....no change
the citizens.....possibly an increase

The European Commission is the executive of the European Union, with the right to propose legislation and to implement the policies of the EU. The choice of its members is important in establishing the political leadership of the Union.

Under the terms of the constitution, the president of the Commission will be nominated by the European Council by qualified majority; that nomination must then be approved by the European Parliament. The newly-elected president of the Commission will then appoint other Commissioners who will themselves be approved by the EP. The president will also acquire the right to sack and reshuffle the members of the Commission, as a prime minister may do with his/her cabinet today (I-26(3)).

New in the constitution is the requirement that the European Council should decide about the president of the Commission “taking into account the elections to the European Parliament” (I-26(1)). The European political parties could exploit this to nominate candidates for president of the Commission and turn the European elections into an explicit choice between them. If this should happen, the Commission will acquire a stronger political mandate, the EP will gain more influence over the Commission and its political programme, and the citizens will gain a clearer voice in choosing the leadership of the Union. Such a change will not happen automatically: it requires a conscious decision by the European political parties to exploit this opportunity.

The European Council will choose itself a chair to serve for a 2½ year period, as opposed to the six-monthly rotation among the member states as at present (I-21(1)). This new system is intended to enable the leaders of the member state governments to provide greater leadership, although it is unclear how much influence the European Council chair will have compared with that of the Commission president.

The legislative process

European Commission.....no change
member state governments.....increase
European Parliament.....increase
member state parliaments.....increase
the citizens.....increase

The basic legislative procedure in the EU is that the Commission proposes legislation and the European Parliament and the Council of Ministers (representing the member state governments) together decide. For some legislation, the EP and the Council must both agree to the legislation (this is known as co-decision); in other areas, the EP’s role might only be consultative with only the Council having a formal say.

The constitution will increase the number of policy areas which are subject to co-decision, thus giving the EP more influence over legislation, including areas such as agriculture and the budget (I-19(1)). The range of policy areas to which QMV will be applied rather than unanimity will also increase.

A second change in the legislative procedure is to end the six-monthly rotation of the presidency of the Council around the member states and instead introduce longer-term chairing arrangements (I-23(6)). This will enable the Council to take a longer-term view of legislation: at present, there is a rush at the end of every six month period to pass some legislation through so that the member state government in the chair can claim a few successes. This often results in rushed and badly prepared decisions. More continuity will enable the member state governments to have a more reliable input to European legislation.

Thirdly, two new provisions in the constitution (the protocols on the role of national parliaments in the European Union and on the application of the principles of subsidiarity and proportionality) will bring member state parliaments into the legislative process. They will gain the right to object to draft legislation on the grounds of subsidiarity or proportionality (i.e. that the proposed legislation is unnecessary or excessive) and ask the European Commission, proposing the legislation, to think again.

Lastly, the Council will meet in public whenever it is considering legislation (I-23(5), I-49(2)). At present, many of these debates and decisions take place behind closed doors. Opening up the proceedings of the Council will enable member state parliaments to hold to account their countries' representatives much more effectively than they have been able to in the past. This has the potential to increase considerably the influence that member state parliaments have in the approval of European legislation. In addition, it will become possible for the citizens to observe and influence the passage of European legislation in a way they have not been able to hitherto.

Controlling justice and home affairs

European Commission.....increase
member state governments.....increase
European Parliament.....increase
member state parliaments.....increase
the citizens.....increase

When justice and home affairs was first added to the powers of the European Union, in the Maastricht treaty of 1992, it was kept separate from the main decision-making system of the EU. The so-called pillar structure ensured that the European Commission and the European Parliament did not have the same role as they had in legislation relating to the single market, for example: the politicians and civil servants involved were all from the member state governments.

Since then, there has been a slow transfer of authority in the Amsterdam and Nice treaties so that the Commission and Parliament have acquired some influence in these areas. The European constitution will take this a substantial stage further (III-158 to III-178). The pillar structure will, in many respects, finally disappear, with QMV and co-decision being applied to a range of issues for the first time (I-41(1)(a)).

The intergovernmental procedures used for JHA in the past were always very secretive. Information about who was taking decisions and what decisions were taken was not published, which meant that member state parliaments often found it hard to hold their respective governments to account for the decisions that were taken. The member state parliaments are given a specific role in scrutinising these actions in the future (I-41(2)).

A further consequence of the end of the pillar system is that the European Court of Justice will acquire jurisdiction over these issues in a way it did not have before (I-28(1)). This will protect the rights of citizens better.

And among the new powers being brought under the scope of QMV are important JHA powers such as asylum and immigration (III-166(2)). At present, member state governments find it hard to ensure that effective decisions can be taken because of the unanimity provisions. QMV will make their decision-making more effective.

Foreign and defence policy

European Commission.....increase
member state governments.....increase
European Parliamentno change
member state parliaments.....no change
the citizens.....no change

It is often observed that the European Union's foreign policy is one of the most important areas where change is needed, but it is an area in which the constitution actually proposes relatively little change. As with JHA, the Maastricht treaty created a separate intergovernmental pillar for foreign policy, although the Commission had some degree of involvement because many of its responsibilities, such as trade or development policy, were essentially a form of foreign policy.

The constitution will integrate these different policy areas. It proposes that the two key foreign affairs posts, the high representative representing the Council, and the Commissioner for foreign relations, should be merged, so that a single individual will carry out both functions as Minister for Foreign Affairs (I-27). This should strengthen the ability of both the Council and the Commission to have their foreign policy decisions implemented. The member states have the major diplomatic resources and all the military resources in the EU; the Commission can integrate foreign policy decisions with the other external policies of the Union, such as trade and development policy. Both the Commission and the member state governments need each other.

Other than this, the decision-making of the EU on foreign policy will not change. The voting method in the Council will remain, as it was at Maastricht, unanimity on deciding policies with QMV for their implementation. The Council will continue to meet behind closed doors because the openness provisions apply only to legislative sessions.

There are new provisions to establish defence cooperation, including "the progressive framing of a common defence policy" (I-11(4)). Decisions in this area will be taken by unanimity: any member state can block it (I-40(4)).

Protecting human rights

European Commission.....no change
member state governments.....no change
European Parliament.....no change
member state parliaments.....no change
the citizens.....increase

The protection of human rights throughout Europe rests in the European Convention of Human Rights, to which all member states of the EU are signatories. Only states with international legal personality may be signatories to this convention, so it does not apply to the acts of the European Union. This has often been seen as an anomaly.

The Nice Treaty included a Charter of Fundamental Rights but, because of opposition from some member states at the time, it was not formally incorporated into the treaties. The European constitution changes this, including the Charter of Fundamental Rights as an integral part of its provisions (II). It will apply only to decisions of the Union and not to decisions of the member states.

The EU will also acquire international legal personality and so will be able to become a signatory to the ECHR in its own right (I-7(2)).

Both of these steps will increase the rights of citizens and protect them against the unfair or arbitrary use of executive power.

Democracy is not all that matters in the EU

The foregoing description explains how the European constitution will make the European Union more democratic. But there is more to legitimacy than the simple question of democracy. Not only must there be rules, but those rules might also be understood and believed by the citizens.

“Democracy requires not only the *cracy* but also the *demos*, not only the state but also the people. You can create the apparatus of a state at European level, with a common frontier, a single immigration policy, a common foreign and defence policy, and a single currency. All the attributes of the nation state, all its *functions*, can be transferred to the European level along the Monnet- functionalist model. But what we do not have and what we cannot conjure up is a *demos* – that is, a single European people.”
Michael Portillo, “Democratic values and the currency”, IEA, 1998

Whether or not this can be done is a primary political task for our time. Bismarck famously described politics as the art of the possible. But Jean Monnet, a century later, updated this notion. Politics, he said, is the art of making possible what is necessary.

More information

Federal Union	www.federalunion.org.uk
Union of European Federalists	www.federaleurope.org
Federal Trust	www.fedtrust.co.uk