

# Background briefing: How the Treaty of Lisbon will make the EU more democratic

December 2007

The Treaty of Lisbon (formerly known as the Reform Treaty) was signed on 13 December 2007 and it marks the next stage in the development of the European Union. Each successive step since the Treaty of Rome has extended the powers of the European Union and improved the Union's democratic functioning, and the Lisbon treaty is no exception.

Its predecessor, the Constitutional Treaty, drafted by the Convention on the Future of Europe but rejected in two referendums in 2005, was a more far-reaching document; but in its place the Treaty of Lisbon nevertheless represents real progress towards a more efficient, effective and democratic European Union.

The Laeken Declaration of December 2001 that launched the process of drafting improvements to the institutions observed that "citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform."

This briefing shows how the Treaty of Lisbon will, when implemented, increase the rights of citizens and the powers of elected parliamentarians within the EU.

## Why democracy matters in the EU

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

Democracy is the idea that decisions are based on the will of the majority; various institutional and electoral mechanisms are used to identify that majority will. However, if those decisions cannot be implemented because the institutions to implement them are not adequate, those decisions are rendered meaningless. The will of the majority must not only be identified but also be capable of being expressed, otherwise democracy is left hollow.

For this reason, the very fact that the

European Union is providing the means for the member states to work together to deal with things that they could not do alone is in itself a democratic advance.

However, there are two further democratic criteria that the European Union must observe.

First, if national decision-making can no longer be effective 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. Federalists are especially vigilant in ensuring that the Europeanisation of a policy area should not be used as a means of removing democracy from the way it is handled.

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

member states. Federalists are insistent that human rights do not become less important as the political institutions become more geographically distant.

## Who takes decisions 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 have an influence on the EU's decision-making:

- **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 may be exercised either by political figures (Commissioners or ministers) or by civil servants. This briefing will not draw a distinction between the two



because the political figures ought to be accountable for the decisions taken by the civil servants who work for them.

The fact that these two elements see so many decisions taken by civil servants actually adds to the importance of the role of the European Parliament and the member state 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 companion to executive power.

The citizens have been included in this briefing as a separate element 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. On some occasions citizens have an interest that cannot be expressed through the executives and legislatures of the Union or the member states.

## Which decisions are taken?

This briefing will look at the changing influence of the five decision-making elements in the context of five key aspects of the political life of the European Union. Do they gain influence or lose it as a result of the Lisbon treaty?

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. After all, the creation of the EU is intended as a means of reclaiming influence back to representative political institutions away from impersonal forces acting beyond the reach of the nation state.

The five issues looked at in this briefing are:

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

An examination of each of them follows.

For each reference, we give both the paragraph number in the Treaty of Lisbon (LT) and the article number that will appear in the future Treaty on European Union (TEU) or the accompanying Treaty on the Functioning of the European Union (TFEU) (i.e. after the amendments proposed in the Treaty of Lisbon have been applied).

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## 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 Lisbon treaty, the president of the Commission will be nominated by the European Council by qualified majority; that nominated candidate must then be elected 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 acquire the right to sack and reshuffle the members of the Commission, as the prime minister may do with the cabinet today (LT para 18, TEU article 9D(6)).

New in the Lisbon treaty is the requirement that the European Council should act "[t]aking into account the elections to the European Parliament" (LT para 18, TEU article 9D(7)). 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 (by QMV) to serve for a 2½ year period, as opposed to the six-monthly rotation among the member states as at present (LT para 16, TEU article 9B(5)). This new system is intended to enable the leaders of the member state governments to provide greater leadership, although it remains to be seen in practice how much influence the European Council chair will have compared with that of the Commission president.

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## The legislative process

<b>European Commission</b> .....	<b>no change</b>
<b>member state governments</b> .....	<b>increase</b>
<b>European Parliament</b> .....	<b>increase</b>
<b>member state parliaments</b> .....	<b>increase</b>
<b>the citizens</b> .....	<b>increase</b>

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 areas of policy, the EP and the Council must both agree to the legislation (this is formally called the "ordinary legislative procedure" (LT para 236, TEU article 249A) and more commonly known as co-decision); in other areas, the EP's role might only be consultative with only the Council having a formal say.

The Lisbon treaty 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 (LT para 49, TEU article 37(2)) and the budget (LT para 265, TEU article 272). 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 (LT para 17, TEU article 9C(9) and LT para 189, TFEU article 201(b)). 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 treaty (the Protocol on the role of national parliaments in the European Union and the Protocol 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 consid-

ering legislation (LT para 17, TEU article 9C(8)). At present, much of the debate and many of the 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.

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## Controlling justice and home affairs

<b>European Commission</b> .....	<b>increase</b>
<b>member state governments</b> .....	<b>increase</b>
<b>European Parliament</b> .....	<b>increase</b>
<b>member state parliaments</b> .....	<b>increase</b>
<b>the citizens</b> .....	<b>increase</b>

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 gradual transfer of authority in the Amsterdam and Nice treaties so that the Commission and Parliament have acquired increasing influence in these areas. The Treaty of Lisbon will take this a substantial stage further. The pillar structure will, in many respects, finally disappear, as QMV and co-decision will be applied to a new range of issues (LT paras 65-85, TEU articles 62-69).

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 widely published, which meant that member state parliaments often found it hard to hold their respective governments to account for the decisions that were taken. Both the European and member state parliaments are now given a clear role in scrutinising these actions in the future (LT para 64, TEU article 61B and LT para 66, TEU article 65(3)).





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 (LT para 20, TEU article 9F). 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 (LT para 65, TEU articles 62(2), 63(2) and 63a(2)). At present, member state governments can find it hard to ensure that effective decisions can be taken in these areas because of the unanimity provisions. QMV will make their decision-making more effective.

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## Foreign and defence policy

**European Commission** ..... **increase**  
**member state governments** ..... **increase**  
**European Parliament** ..... **no 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 this is an area in which the Lisbon treaty 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, had foreign policy implications.

The Lisbon treaty will bring together 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 High Representative of the Union for Foreign Affairs and Security Policy (LT para 19, TEU article 9E).

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 greatly. The voting method in the Council will remain as it has been since Maastricht, namely unanimity on deciding policies with the possibility of 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 that might lead to a common defence." (LT para 27, TEU article 11(1)). Decisions in this area will be taken by unanimity: any member state can block it (LT para 27, TEU article 11(1)).

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## 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 on the European Convention of Human Rights, to which all member states of the EU are signatories. Only bodies with international legal personality may be signatories to this convention, so it therefore has not been applied 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 given legal force. The Lisbon treaty changes this with an explicit recognition of the legal value of the Charter (LT para 8, TEU article 6(1)). However, there is an exception for cases in the domestic courts of the United Kingdom and Poland (Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom)).

The EU will finally acquire international legal personality (LT para 54, TEU article 32) and so will be able to become a signatory to the ECHR in its own right in due course (LT para 8, TEU article 6(2)).

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





# How the Treaty of Lisbon will make the EU more democratic

## Other issues

There are many other issues that have attracted attention in the debates over the new treaty. Questions such as the distribution of votes among the member states in the Council or the number of members in the European Commission have proved very controversial. They are not considered in this briefing because they do not affect the relative importance of the institutions. They reflect instead the relative balance of influence among the member states.

In a media and political climate that perpetuates the illusion that the EU is a place for each member state to fight for its own interest, rather than a place for the member states to fight together for their citizens' interests, it is not surprising that such national questions attract the most attention. It is not the case, though, that they are the most important issues in the Lisbon treaty, and they are certainly not the only reason why it should be supported.

The case for the treaty can be made on the advances it represents for citizens and their elected representatives.

## Conclusion

The European Union started life as a club of six member states with relatively little power for the parliamentary assembly. Since then, and as its founders intended, its democratic institutions have acquired an increasingly important role of their own. The European Parliament is increasingly significant as a centre of influence in the EU's decision-making process, in addition to the role still played by the Council of Ministers. The Treaty of Lisbon will increase this role further. The methods of diplomacy continue to give way to the methods of democracy at the European level.

In addition to these changes at European level, parliaments in the member state capitals also gain influence over the decision-making of the Union to an extent that they have not had before. They will be able to scrutinise the actions of their respective governments in the Council, and to question legislative proposals from the Commission.

The citizens of Europe will also gain new rights and new means of influence, in addition to those they currently have through the representative institutions. No other interna-

tional body gives individuals such a right of redress in its court (LT para 20; TEU article 9F(3)(a)), for example, or to collect signatures in support of a citizens' initiative (LT para 12, Article 8B(4)).

The EU is truly a small revolution in the way that international cooperation is conducted. This is why it has been so successful. But, to remain successful, it must continue to reflect and promote the interests of the people of Europe, both in what it does and also in the way that it acts. That is what the Lisbon treaty will enable it to do.

## More information

The following documents are all available from Federal Union at the address below, or on the website.

- Parliamentary democracy in Europe - Richard Laming
- Really citizens? - John Pinder
- The new EU Reform Treaty: a briefing on what was agreed at the June 2007 European summit

The full text of the new treaty is also available on the website.

## Join Federal Union

Federal Union was founded in 1938 and campaigns for federalism for the UK, Europe and the world. It argues that democracy and the rule of law should apply between states as well as within them. It is the UK section of the Union of European Federalists.

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Date .....

I want to join Federal Union and enclose a cheque payable to "Federal Union" for:

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