

From Rome to Lisbon: Really the End of the Road?



By **Dr Edward Best***

The signature of a “reform” treaty to replace the ill-fated Constitutional Treaty promises to conclude the problematic process of rewriting the formal bases of the Union. Assuming ratification, this will be greeted with relief both by those who have presented the last few years as a “crisis” and by those who simply want to put these institutional questions behind them and move on. Of so many elaborate plans, perhaps, this is the end.

Following its signature on 13 December 2007, the European Council pronounced that “The Lisbon Treaty provides the Union with a stable and lasting institutional framework. We expect no change in the foreseeable

future”. This new framework, moreover, despite the exceptions which had to be accepted and the inevitable textual mysteries of a reform treaty, was seen to represent an important improvement in terms of democratic accountability, clarity and effectiveness.²

It may be the case that the basic construction of a European edifice (including some recent extension jobs to accommodate new residents) has been completed, to enter a period, so to speak, of institutional home improvement. A shift of just this kind is suggested in the successive drafts of the preamble. In the July 2007 version, the Treaty was said “to complete the process started by the Treaty of



Signed Treaty of Lisbon.

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future...”¹ This was echoed by the European Parliament (EP) when adopting a favourable resolution in February 2008: “the Treaty of Lisbon will provide a stable framework which will allow further development of the Union in

Amsterdam and by the Treaty of Nice of adapting the institutions of the European Union to function in an enlarged Union.” In the final text, the Treaty is said “to complete the process started by the Treaty of Amsterdam and by the

*All references in these contributions refer to the renumbered articles of the Treaty on European Union and the Treaty on the Functioning of the European Union as agreed at Lisbon.

Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action”.

Yet this obviously does not suggest a sort of “end of history” for the European system. Even if major treaty reform is not going to take place in the foreseeable future, no-one would argue that the process of “improvement” should be discontinued and, independently of actors’ preferences, there seems no reason to believe that the dynamics of institutional change will now suddenly cease to operate.

This special issue of *EIPASCOPE* offers a preliminary reflection on the implications of the Lisbon Treaty for the evolution of EU governance and the constitutionalisation of the Union. The contributions draw on work carried out by members of the working group on “constitutional and institutional change” which has been created within the **EU-CONSENT** Network of Excellence, which is supported by the EU’s 6th Framework Programme and led by Professor Wolfgang Wessels at the University of Cologne. EIPA’s Unit I coordinates the Work Package on Institutions.

The first contribution focuses on the new system of binding EU acts, with its important extension of codecision as the “ordinary legislative procedure”, and a differentiation between “delegated acts” and “implementing acts” at non-legislative level. It is argued that overall the changes represent a qualified advance in decision-making and governance. Apart from the extension of majority voting, they do not promise any increase in efficiency beyond what was achieved through adaptation to enlargement. There should be an improvement in comprehensibility but there remain many variants and exceptions. And the formal changes do not in themselves, however, guarantee an increase in legitimacy, which will also require movement on other fronts.

Simon Duke then assesses the perspectives for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) after Lisbon. These areas of cooperation will continue to be intergovernmental. Nonetheless, some important innovations are introduced, notably the strengthened position of High Representative and the new European External Action Service, which could contribute to greater consistency and effectiveness of the Union’s role in the world. This will depend, however, on how the provisions are put into practice and, above all, on the political will of the Member States.

Brendan Donnelly considers the changes proposed concerning Justice and Home Affairs. In contrast to CFSP/CSDP, where the impact of EU measures is mainly felt outside the Union, this area constitutes the obverse side of the coin which is the internal market at the heart of the Union. It is therefore objectively understandable that the Member States should have come to accept the need to apply the same kinds of rules and practices in this areas as well. The transformation is nonetheless remarkable and, despite some continued exceptions and specificities, the result is a clarification which may be considered to be of a constitutionalising nature.

Some of the specific elements surrounding the former “Third Pillar” concern the possibility for “enhanced cooperation” within groups of Member States. This is addressed by *Funda Tekin* and *Wolfgang Wessels* in their contribution on flexibility. After reviewing the different concepts of flexibility which have emerged, and their respective implications for the European integration process, they discuss the specific changes introduced by the new Treaty, concluding that enhanced cooperation, as a form of flexibility which can have an “upward” effect is in fact unlikely to materialise to any significant extent.

The implications for further enlargement are dealt with by *Sonia Piedrafita*. The Lisbon Treaty was negotiated against the background of a new strategy on enlargement based on consolidation of existing commitments, better communication to citizens, stricter conditionality and the consideration of the EU’s capacity to integrate new members. Although the provisions reflect a less favourable atmosphere for enlargement and are intended to reinforce conditionality, they may not constitute significant changes in practice. Nevertheless, future accession processes are likely to be long and strict – which will also have implications for the EU’s policy with neighbouring countries.

Finally, *Thomas Christiansen* considers the Lisbon Treaty in the broader perspective of the recent evolution of debates over the EU system. He reviews the different episodes of treaty reform over the last decade, seeing them as part of a continuous process and looking at both the formal and informal dimensions of change. He concludes that, even if consideration of a formal “Constitutional Treaty” as such may prove to have been only a brief interlude in European integration, a process of constitutionalisation has been taking place – and is going to continue.

NOTES

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¹ Presidency conclusions, Brussels, 14 December 2007, 16616/07.

² European Parliament Resolution of 20 February 2008 on the Treaty of Lisbon, 2007/2286 (INI).