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**Correcting Past Mistakes:  
The Failure of the European Constitution and  
Its Resurrection as the Lisbon Treaty**

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## **Correcting Past Mistakes: The Failure of the European Constitution and Its Resurrection as the Lisbon Treaty**

**Adam Kreidman\***

The failure of the EU Constitution was seen as a major blow to European integration, but European leaders are determined to ensure that it is only a minor setback. With the causes of the Constitution's rejection still fresh in memory, the EU has crafted the Lisbon Treaty, which is intended to fulfill most of the same objectives while avoiding those aspects which incited the greatest controversies. Both in terms of concept and in marketing, it appears that the EU has been successful in pinpointing the weaknesses of the Constitution, and the Lisbon Treaty should therefore achieve the success that the Constitution never had.

The original impetus for the drafting of the European Constitution remains, as the EU has undergone a profound transformation in the nearly twenty years since its advent. Through alterations in global affairs over time and especially the enlargement process, the EU has undergone radical changes that, first in 2004, drove EU leaders to conclude that the original EU treaties, the Treaties of Rome and Maastricht, needed to be expanded in order to meet the needs of the continuing EU integration process. It was from this conclusion that the concept of the Constitution was born.

During 2002 and 2003, representatives from all relevant parties met in Brussels to discuss the crafting of the European Constitution. This included government and national parliament representatives from each of the EU's member states, a representative from each applicant nation, and sixteen representatives from the European Parliament. Under the guise of the Convention on the Future of the European Union, these 105 representatives completed the first published draft of the European Constitution in July of 2003; it was finalized in June of the following year (Gathani).

The document included many changes to the EU structure as well as codification of existing practices. It created a new position in the European Council, that of president, which would be elected by the members of the Council for a thirty-two month term; it implemented qualified majority voting in 40 additional areas, which would require a majority of EU member states representing a minimum of 65 percent of the total population for legislation to be accepted; it increased the power of the European Parliament by allowing it to, along with the Council of Ministers, reject legislation subject to qualified majority voting; it created a common foreign and security policy for the EU; and it codified the notion that EU law supersedes state law in specific areas. These are only a few of the changes introduced by the Constitution. The Constitution's passage would have been a landmark event for the European Union, but it rapidly became apparent that this was not to be.

In late 2004 the Constitution was signed by representatives of the EU member states. With Ireland the only country required by its national constitution to hold a referendum on the European Constitution, it was expected that most nations would leave passage of the document to national parliaments. Germany, for one, brought up the possibility of holding a national referendum, but national law prohibited it. German Conservative MP Peter Hintze said that the

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“problem with plebiscites is that people virtually never vote on the issue in question” (qtd. in “Germany”). Bowing to pressure from their citizenry, however, France and the Netherlands agreed to hold referenda, and the United Kingdom was also deliberating on the same course of action.

Opposition to the Constitution began to grow over time, as ‘Euroskeptics,’ or opponents of European integration, claimed that it stripped national governments of too much of their power. The very fact that the document was called a Constitution disquieted many, and the common foreign and security policy as well as the president position in the European Council were enough to convince many EU citizens that the Constitution was not worthy of passage. The writings of columnist Jim Allister reflected the sentiment: “To oppose the European constitution is to stand up for the rights of our nation state instead of surrendering them to unelected bureaucrats in Brussels” (Allister). There was a persistent fear that the European Union was beginning to completely usurp the responsibilities of each member state’s national government.

Opposition to the European Constitution did not necessarily mean that most EU citizens disagreed with reform, however. Some of its opponents believed the beneficial reforms of the treaty were coupled with aspects so problematic that the Constitution was essentially too comprehensive to be acceptable. As the European No Campaign stated on its web site, passage of the Constitution would mean that “all its unwanted features, false compromises and the lack of democracy will be set in stone” (European No Campaign, “What We Want”). Though national governments generally voiced support for the Constitution, the EU citizenry was highly skeptical of the document.

Ironically, some of the most vociferous opposition to the European Constitution came from France. Though much of it was for the same general reasons that many opposed the Constitution throughout Europe, this particularly intense French opposition may have been triggered in part by purely domestic factors. France’s president during the Constitution ratification process was Jacques Chirac, who, like the president who came before him, was not well-liked by most of the French people. Chirac was a major supporter of the European Constitution; according to William Rees-Mogg, “The opportunity to pay off old scores against their presidents may have been too good to miss” (Rees-Mogg, “Will”). At the time, the French economy was also underperforming, and the introduction of the euro was blamed for this plight. The French began to believe that the expanding European Union was not the boon to their fortunes that they had expected it would be.

There existed harsh opposition to the Constitution in the Netherlands as well. Again, economic concerns were on the minds of the Dutch. Referring to the euro, Oda Selbos made her reason for discontent with the EU clear: “Everything has doubled in price,” she said (qtd. in Browne, “Dutch”). Coupled with concerns over Turkey’s possible entry to the EU, the Dutch were prepared to vote no on the European Constitution in their referendum on June 1, 2005. According to Anthony Browne, “the referendum on the constitution was likely to become a protest vote about the direction of the EU” (Browne, “Dutch”).

Whatever the reasoning of their peoples, both France and the Netherlands rejected the European Constitution in their referenda. As the Constitution required unanimous approval for passage, the two nations’ no votes immediately put the document’s future in doubt. The EU did not initially admit defeat on the matter, claiming instead that there would be a “pause for reflection” until passage of the Constitution could be pursued once again (Browne, “No Way”). Eventually, however, the EU admitted that the Constitution, in its proposed form, was dead. The “pause” became a “period of reflection” as EU leaders weighed their options and decided what to do next (Watt).

The “period of reflection” ended in 2007. Supporters of the Constitution tried and failed to develop persuasive arguments with which to sway its opponents in France and the Netherlands, leaving observers to comment that the period “has been all pause and no reflection” (Peel). Though the Constitution appeared to be a futile proposition, the desire for reform remained and

was supported by opinion makers throughout the EU. A survey conducted in 2006 revealed confirmed this: “There is widespread support for cherry-picking key elements of the EU constitution” (Corlin). This is essentially what happened, as Germany, which held the presidency at the time, introduced the Reform Treaty in June of 2007.

The details of the Reform Treaty were devised by the European Council during a meeting in Brussels. The negotiations were nearly derailed by Poland’s opposition to the qualified majority voting system that most nations wanted included. Poland insisted on the adoption of a different voting system, citing the impact of World War II as support for their demand: “If Poland had not had to live through the years of 1939 to 1945, Poland would be today looking at the demographics of a country of 66 million,” said Polish Prime Minister Jaroslaw Kaczynski (qtd. in Mahony). Poland was eventually granted a reprieve from the qualified majority voting system until 2014, which ended the dispute and restarted the progress of the Reform Treaty.

As development of the Reform Treaty continued, it became obvious that it was not the European Constitution. In fact, some nations believed that too much of the Constitution had been removed from the Reform Treaty. Regardless, this did not placate some national governments, which saw the Reform Treaty as a political liability. Wary of another failure, the writers of the Reform Treaty granted to the United Kingdom and Ireland the ability to opt-out of some of the terms, in addition to the slightly reduced scope of the new document.

Portugal subsequently assumed the EU presidency, and scheduled an intergovernmental conference in October for the finalization of the Reform Treaty. A series of concessions in the final stages of the negotiations ensured the Reform Treaty’s acceptance in the IGC. Many nations received specific benefits, some symbolic, and others more substantive: Poland ensured that small groups of nations can delay the passage of legislation; Italy was given an extra seat in the European Parliament; Austria was allowed to retain its quota on foreign students for five years; and Bulgaria was permitted to use the name “evro” for the euro currency in accordance with their Cyrillic alphabet (“EU Leaders”). The Reform Treaty was signed on December 13th in Lisbon, Spain by 26 prime ministers and presidents from EU member states; its official title was to be the Lisbon Treaty (Woodcock). British Prime Minister Gordon Brown was conspicuously absent from the official treaty signing, and later claimed that he had been obligated to attend a House of Commons committee meeting.

Instead of replacing the Treaties of Rome and Maastricht, as the Constitution would have done, the Lisbon Treaty amends them. It also contains many of the same provisions as the Constitution, such as the introduction of the presidency of the Council of the EU and the qualified majority voting system. Overall, the conclusion is that “the practical outcome of both treaties is pretty much the same” (Mulvey). The discrepancies lie mostly with the language that could be construed as supporting the notion of a single European nation. In particular, the text referring to the EU flag and anthem has been eliminated along with most of the Constitution’s preamble, in addition to the aforementioned opt-outs. EU leaders believe that these changes, and the fact that the Lisbon Treaty no longer has the name “Constitution,” though superficial, should help avert the contentiousness of the debate on the European Constitution.

But it is becoming obvious that this is not the case. Ruth Lea of the opposition group Global Vision says of the situation: “It is now clear that the Reform Treaty is in all but name the Constitutional Treaty” (Lea). Therefore the debate on the Lisbon Treaty is very much the same debate that Europe has already had with the Constitution. However, now that the domestic and economic issues that hung over the French and Dutch referenda are no longer extant, the disagreements with the terms of the Lisbon Treaty appear to be more uniform.

Opponents continue to argue that the Lisbon Treaty perpetuates the EU’s “democratic deficit.” They believe that, as the EU takes on more powers at the expense of national parliaments, EU citizens are being increasingly separated from any semblance of a democratic process. As the European Parliament is the sole directly elected EU institution, those who complain of a “democratic deficit” are especially concerned with the qualified majority voting

system and the Lisbon Treaty's removal of individual member state veto power in many areas of policymaking. While these are legitimate concerns, they also contend that the Council of the EU presidency and the single foreign policy representative created by the Lisbon Treaty are part of an effort to create a single European state. However, examination of the text of the Lisbon Treaty reveals these particular charges to be baseless. Neither position has a significant amount of power without the backing of member state governments.

Supporters of the Lisbon Treaty claim that its passage is necessary for continued enlargement of the EU. Charles Grant of the European Center for Reform calls the enlargement process "a means of spreading democracy, security and prosperity across the continent," and thus supports the Lisbon Treaty (Lea). They also have said that the Lisbon Treaty is needed because the current foreign policy apparatus of the EU is ineffective. Various officials can currently claim to speak for the European Union in some capacity on foreign policy matters. The Lisbon Treaty would give such authority to a single person called the High Representative of the Union for Foreign Affairs and Security Policy, which, according to Lisbon Treaty supporters, would strengthen the voice of the EU in foreign policy matters while keeping the unanimity requirement, which would preserve national autonomy.

For many of its opponents, however, the Lisbon Treaty represents a continuing loss of national sovereignty. Ruth Lea claims that if the Lisbon Treaty passes, "there will quite simply be no more significant powers left... outside the orbit of the EU's formal institutions" (Lea). Supporters of the Reform Treaty cannot really say that this is untrue. It would, indeed, give the EU some influence in nearly all matters of importance. But supporters of the Reform Treaty have stated that this loss of sovereignty is actually the way by which the "democratic deficit" will be eliminated. In effect, the EU becomes more democratic at the supranational level because individual nations relinquish more of their intergovernmental powers. It may be a convincing argument for many, but the reactions to it appear to be contingent on an individual's view of the EU.

The differences between the European Constitution and the Lisbon Treaty have not convinced many Europeans that referenda are not needed. In the United Kingdom, which had planned a referendum on the Constitution but did not see a need after the votes in France and the Netherlands, support for a referendum on the Lisbon Treaty had been very strong since its introduction. Supporters of a referendum claimed that, as the British government had agreed to hold a referendum on the European Constitution, there should be a referendum on the Lisbon Treaty. The British government rejected this argument, maintaining that the sundry opt-outs and exceptions that were provided to the United Kingdom during negotiations were proof that the Lisbon Treaty was truly different from the Constitution and could not be legitimately argued to be a threat to national sovereignty. Yet there remained a great deal of skepticism and demands for a national referendum. "It was fascinating to sit here and listen to the debate about how removing the symbolism changes this" said Irish politician Bertie Ahern (Smyth, "Political"). Nevertheless, Prime Minister Gordon Brown was ultimately able to keep the vote on the Lisbon Treaty in the parliament. The Lisbon Treaty was passed in the United Kingdom on March 11th, 2008, by a vote of 346-206 ("EU treaty").

France was similarly able to avoid a referendum and pass the Lisbon Treaty in parliament. As one of the more socialist nations of Europe, France had originally been concerned with the Constitution's stipulation that "free and undistorted competition" should be a priority of the EU (McNamara). France's President Nicolas Sarkozy pushed for the line's removal and succeeded. Despite widespread support for a referendum, the French parliament voted on the Lisbon Treaty on February 8<sup>th</sup>, 2008; it passed both houses with an overwhelming majority.

The government of the Netherlands has also taken efforts to avoid a referendum. The Dutch people are not as hostile to the Lisbon Treaty as they were to the Constitution, but they nevertheless do not view it in a very favorable light. Like the United Kingdom, the primary concern of the Dutch is with the new powers given to the EU by the Lisbon Treaty and the loss of

national jurisdiction over certain matters. The Dutch government appears to have been successful in keeping the Lisbon Treaty vote in the parliament, and the final vote should take place in mid-2008.

Ireland's constitution, unlike those of all other EU member states, required a referendum on the Lisbon Treaty. This drew the attention of all EU nations, as the referendum in Ireland was to be the only one held. The Irish debate on the Lisbon Treaty was similar to what was seen when the European Constitution was being considered, with most of the same arguments being presented. Irish opinion polls were initially favorable for supporters of the Lisbon Treaty prior to the vote, but they become decidedly more unclear by the day of the referendum, which was June 13<sup>th</sup>.

Irish voters dealt the Lisbon Treaty a resounding blow when they voted against it by a margin of 53.4%-46.6%. The result of the Irish referendum means that the Lisbon Treaty has an uncertain future. Commission President Barroso has said that he does not want the result to affect the continuation of the ratification process. He has indicated that he does intend to allow the Irish referendum to lead to the death of the Lisbon Treaty. However, Luxembourg's Finance Minister Jean-Claude Juncker said that the EU is now in the midst of a "crisis," and that the Irish result is "not good for Europe" (qtd. in "EU States").

There are now several potential paths for the Lisbon Treaty. It could share the same fate as the European Constitution, which many European leaders insisted was not dead after its own referendum defeats; or it could be reworked specifically to address the concerns of the Irish, in a similar fashion to what was done with the Treaty of Nice, which in 2001 was also rejected in an Irish referendum, but was later passed after changes were made. What the situation confirms is that the EU is not easily understandable for many of its citizens. Until the leaders of the EU can find a way to simplify the content of the reform process, or cogently convey the intricacies of it, they will likely face further defeats in their efforts.

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