

The Treaty of Lisbon – a step towards enhancing leadership in the EU?

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Abstract

The Treaty of Lisbon as well as its predecessor – The Draft Constitutional Treaty – has been widely discussed under the objectives of the Laeken Declaration, aimed at improving the effectiveness, transparency and democratic accountability of the EU. Although these declared objectives play a role in the revision of the Treaties, a hidden agenda also underlies the reform. In light of an enlarged, but deeply divided Union challenged by ever more pressing problems, the lack of institutional provisions for effective leadership seems to be of major concern to the member states. However, enhancing leadership in the EU is not an easy endeavor, as the system is highly fragmented, characterized by manifold contradictions in its institutional structure, and faced with strong vested interests of the member states. This paper highlights the institutional innovations of the Lisbon Treaty aimed at enhancing political leadership in the EU. It shows that leadership is not enhanced across all institutions of the EU alike, but the reform clearly privileges the Councils. Their capacity for jointly exercising leadership is enhanced through delegation of powers to third actors and the redefinition of the voting rules. Integration-minded member states choose for this reform in order to overcome problems of collective action and to contain the power of veto-players. Euro-skeptic member states are the potential losers of the envisaged reform.

1. Introduction

The Treaty of Lisbon as well as its predecessor – The Draft Constitutional Treaty – has drawn considerable attention in both public debate and scientific research. Debating these treaties and assessing their achievements was, from the outset, framed by the Laeken declaration. This declaration, issued by the European Council in 2001, set the stage for a far-reaching reform of the European Union (EU). The central objectives of the reform, as defined by the declaration, are improving the effectiveness, the transparency and the democratic accountability of the EU. In order to underscore these objectives, a Convention was established for elaborating proposals for a fundamental treaty revision. As the Convention consisted primarily of Members of Parliament of both the national and European level, the procedure of treaty revision was regarded as a major step towards making European decisions more effective, more democratic, and more transparent (Goeler and Marhold 2003, Risse and Kleine 2007). The objectives of the Laeken declaration appeared to be already achieved through the well-paved way towards reform.

However, this way towards reform turned out to be paved with high hurdles. The Draft Constitutional Treaty elaborated by the Convention was only adopted by the Council after initial stalemate under the Italian presidency. Eventually, it was rejected in referenda by the citizens of France and the Netherlands. As a consequence, the perception of the whole reform process and its results took on a much more critical stance (Moravcsik 2006, Crum 2008). The process of both elaborating of and deciding on the Treaty seemed no longer as an improvement of democratic accountability, but rather as a series of the usual intergovernmental bargains with the European Council clearly dominating the scene. Accordingly, the envisaged innovations did not appear to improve effectiveness, transparency and democratic accountability but, on the contrary, to exacerbate the complex and opaque character of the Union.

Nevertheless, whether scholars criticize the most recent reform of the EU or whether they approve it as a major step into the desired direction, the criteria for assessment remain the same: the objectives of the Laeken declaration. Complementing but also contrasting these views, I argue here that, although the Laeken objectives play an important role for giving direction to the revision of the treaties, there was and is also a hidden agenda underlying and driving the reform. In light of an enlarged, but deeply divided Union challenged by pressing problems, the lack of effective leadership hampers European decision-making and action. This is of major concern to the member states, particular those who clearly aim at deepening integration. Although the institutional structure of the EU does not provide a clear framework let alone explicit positions for exerting leadership, European elites have often taken on a

leadership role in order to promote integration. Such a role has been performed either by the Commission and in particular its President, or by Heads of State and Government, individually or as a group. Commission President Delors, but also the German-French tandem, acting in different combinations, are examples in case. However, in a Union of 27 member states, single personalities or small groups of leaders have hardly the authority to give direction to the integration process as a whole. On the other hand, without political leadership, the process of European integration is doomed to stagnate, as it was often the case in the past. Therefore, if integration is to proceed, the EU is in need of effective leadership.

However, enhancing the leadership capacities of the EU is not an easy endeavor, as the Union is highly fragmented, characterized by manifold contradictions in its institutional structure, and faced with strong vested interests of the member states. Nevertheless, a series of innovations regarding the institutional structure of the EU and its procedures of decision-making, first adopted with the Draft Constitutional Treaty and then maintained in the Lisbon Treaty, are, in my view, clearly aimed at enhancing the leadership capacities of the EU. These innovations refer particularly to the intergovernmental institutions of the Union, whereas its supranational institutions are, if at all, only marginally improved in their capacity to lead. This gives rise to the following questions: first, does the reform, as laid down in the Lisbon Treaty, enhance the leadership capacities of the EU; second, what are the implications of the reform for the balance of power between the European institutions and the power relations between the member states; third, what are the motives underlying the choices for reform and why could this reform be achieved in spite of strong resistance from some member states.

Against this background, I will highlight in the following the institutional innovations of the Lisbon Treaty under the hypothesis, whether and to which extent these innovations aim at enhancing the leadership capacities of the EU. First, I briefly sketch the leadership problem in the EU. Second, I give an overview on the most salient institutional and procedural reforms envisaged with the Lisbon Treaty. Third, I analyze to what extent and in which respect these reforms will improve the leadership capacities in the EU. Forth, I discuss the rationale underlying the reform, and how it is framed in view of the dualistic structure of the Union as a combination of reorganizing decision-making and delegation of powers to third actors. Fifth, I give a tentative explanation why the integration-minded member states were willing to make these choices and why the Euro-skeptic states finally subsided to the will of the majority. Finally, I will draw conclusions with regard to the impact of the reform on the institutional structure of the EU. In particular, I claim that the power balance between the European institutions is slightly redressed in favor of the Councils. This however does not strengthen the intergovernmental dimension of the EU but it enables the Councils to act more coherently and

consistently and thus to take, to a certain extent, the lead in European integration. The price for this achievement is that every member state has a less influential voice in European affairs and that in particular the smaller and the Euro-skeptic member states are potential losers of the envisaged reform.

2. Political leadership in the EU

Clear positions for exerting political leadership were not envisaged when the European Communities were founded. Although the Rome Treaty did provide for the European Commission to play a major role as a motor of integration, this role did not enable it to take the lead in European affairs. The Commission's scope of action was from the very beginning constrained by establishing the Council of Ministers as the institution that takes major decisions. But also the Council could not simply take on the leadership role. As the representation of the member states, it was primarily conceived as an intergovernmental body, serving to accommodate diverging interests and preferences of the member states. The continuous bargains characterizing interactions in the Council hamper it to perform as a unified strategic actor. Other European institutions, as the Parliament or the Court of Justice, can even less perform a leadership role, although they may exert significant influence on the course of integration. The European Parliament is not only constrained because of its limited – though increasing – competences, but also because of its function of an arena for deliberating on various political options. The European Court of Justice, as guardian of the legal order of the EU, is bound to observe and to interpret European law.

In spite of this institutional constellation, political leadership was always needed for European integration to proceed. In the past, leadership was incidentally provided by either the Commission and in particular by its president or by members of the European Council, that is, heads of state and government. Some Commission presidents were more proactive in taking on a leadership role, as was in particular Jacques Delors (see e.g. Ross 1995). Others performed in a more reactive style, but nevertheless managed to promote European integration behind the scenes. The leadership role of the Commission not only lies in proposing and promoting certain integration projects. It is as much based on the capacity to mould these proposals according to the expectations and preferences of the member states and to find not the lowest, but a common denominator to which they all can agree.

Political leadership is also exerted in the intergovernmental arena of the European Union, that is, by the Council. In particular the German-French tandem played a major role in different

phases of European integration. This is not to say that France and Germany together led the European Community or Union according to their preferences. But as these countries often pursued opposing interests, resulting in different preferences and visions, they were central in forging a compromise for the Council as a whole. That is, the positions of these two countries were often representative for the whole Community or Union, and so were, in most cases, the compromises that the two countries forged (Froehly 2003). More in general, the country holding the presidency of the Council has often played a leadership role (Tallberg 2006).

This constellation however has dramatically changed. With successive enlargements, increasing the number of member states to 27 and thus more than doubling it within two decades, but also in face of increasingly complex challenges and unresolved problems, the positions and preferences of the member states become more complex, more diverse, and potential coalitions between them more volatile (see for the case of France and Germany: Vogel 2004). Accordingly, it becomes more difficult to forge compromises among member states or to launch proposals to which all members can easily agree. Negotiations between member states become also more burdensome or costly in terms of package deals or side payments. Therefore, not surprisingly, European elites are looking for new means to ensure progress in European integration. In my view, this is one of the main motives why negotiating a treaty reform was given highest priority. In the following section, I will examine whether this motive can be traced in the institutional innovations of the Lisbon Treaty.

3. The substance of the Lisbon Treaty concerning the institutional structure of the EU

The Lisbon Treaty, as compared to the Treaty of Nice that is actually in force in the European Union, envisages significant changes in the role and functioning of the major institutions of the EU: the Councils, the Commission and the Parliament (see CEPS et al. 2007, House of Lords 2008). Although to different degrees, all these institutions are to be strengthened in their respective position through seemingly slight, but in fact far-reaching institutional and/or procedural innovations. However, by far the most extensive innovations refer to the working of the Councils.

With regard to the *Council* (formerly called the Council of Ministers), the Treaty provisions aim at improving its capacity of decision-making by:

- Strengthening cooperation in the office of the rotating presidency;

- Extending majority-voting to a significant number of policies (Art. 16,4 TEU); and
- Redefining the criteria for qualified majority-voting, thus significantly lowering the threshold for taking binding decisions (Art. 16,4 TEU).

Although the rotating presidency on a half year term is maintained,¹ a protocol to the Treaty states that three successive presidencies have to work together in close cooperation and on the basis of a joint working program. Majority voting is extended to new policy areas, among which such sensitive areas like Justice and Home Affairs. The most spectacular step in this context however is the fundamental redefinition of qualified majority-voting. The system of weighted votes, in force since the founding of the European Communities and only altered with regard to the relative voting weight of the member states after successive enlargements, is completely abolished. Instead, the new rules provide that every state, whether large or small, has one vote at its disposal. 55% of the votes of the member states, but at least 15 votes (currently out of 27) are required for a decision to pass. In order to ensure that the larger member states cannot easily be outvoted, an additional criterion for qualified majority-voting is introduced. Thus, a positive vote has to represent at least 65 % of the population of the Union (Art. 16,4 TEU).

These provisions imply that decision-making in the Council is significantly facilitated, since they enable to outvote a larger group of member states. However, outvoting the large member states by a group of smaller member states is made impossible because of the population criterion. Thus for example France, Germany and a third large member state, let us say Italy, plus a small one could form a blocking minority, whereas all the 10 accession states together could not do so. More important however is the opposite case, that is, a positive vote, supported by several large states and some smaller ones, could easily pass in spite of opposition of a number of smaller states. For example, the large member states from the original “six”, that is France, Germany and Italy, plus Spain would nearly suffice to fulfil the population criterion; if their case would find support from 11 smaller member states – let us say the Benelux, Portugal, Ireland, the Baltic States plus Cyprus, Malta and Slovenia – a positive decision could be reached.² However, contrary to the initial intentions, these rules will only come into force from 2014 onwards. This postponement of the application of the new voting system is a concession made to Poland (Dinan 2008).

¹ The Draft Constitutional Treaty envisaged also for the Council of Ministers a longer-term presidency. Such a far-reaching delegation of powers however was rejected by the member states.

² Under the regulations actually in vigor, decided with the Treaty reform of Nice, these 15 states together would represent 180 of the weighted votes; which is far less than the required 255 votes for a qualified majority. See TEC, Art. 205,2.

With regard to the *European Council*, the Treaty of Lisbon introduces far-reaching innovations as well. It reinforces the position of the European Council as the highest body for decision-making and directing the course of integration through:

- Transforming the European Council into a formal body of the EU (Art. 13 TEU);
- Attributing to it the function of defining “the general directions and priorities” of the Union’s development (Art. 15 TEU);
- Creating the position of an elected president for a 2 ½ years term (Art. 15,5 TEU); (in contrast to the actual system of rotating presidencies for a period of six months).

Although the European Council, established in the 1970ies as an informal arrangement, was for the first time officially mentioned in the Treaty of Maastricht, it is only with the Treaty of Lisbon that it is acknowledged as a formal body of the EU. As part of the institutional architecture of the Union with far-reaching powers to decide on the overall direction of integration, the political weight of the Council, and with it the weight of the Union as a whole, is significantly alleviated. In addition, the position of an elected president of the European Council, who “shall not hold a national office” (Art. 15,6 TEU), enables the Council to exert a more pronounced leadership role (Blavoukos et al. 2007). Unlike the actual situation, where a Council president is at the same time head of state or government of a member state, the elected president can perform as an agenda setter and an honest broker without interference of his or her national interests. Additional regulations, specifying the tasks of the Council President, further contribute to strengthen his or her role as promoter of European integration and consensus-building among the member states (Art. 15,6 TEU) (see also Blavoukos et al. 2007:239-241).

The position of the *European Parliament* is improved by extending its legislative and budgetary powers and by giving it the right to elect the Commission president.

The powers of Parliament are extended through:

- Extending the procedure of co-decision, which is now labelled the “ordinary method of legislation”;
- Extending its budgetary powers to the obligatory expenses of the EU;
- Allowing it to elect the President of the Commission on a proposal of the Council (Art. 14,1 TEU).

Parliament has claimed, since the reform of Maastricht that introduced co-decision for a selected number of policy-fields and issues, to extend this procedure to all legislative decisions in the Union. However, member states regularly rejected these claims, making only some

concessions by piecemeal extending the range and scope of this procedure (Maurer 2005:178). With the provisions of the Lisbon Treaty, co-decision is not only significantly extended to include more and in particular more sensitive policy-fields, thus further constraining national sovereignty. In addition, it is also now labelled as the “ordinary legislative procedure” (Art. 49 TEU; Art. 14 and others TFEU). Some observers therefore conclude that Parliament will become “a full and equal co-legislator beside the Council” (Crum 2005:214).³ Electing the president of the Commission has also been a longstanding claim of the Parliament. Such a step not only assigns an additional electoral function to the Parliament; it also significantly enhances its control over the Commission.

The *European Commission's* position is improved by only minor, though not unimportant steps, through

- Reducing the number of Commissioners with one third (Art. 17,5 TEU);
- Electing its president by Parliament on a proposal of the Council (Art. 17,7 TEU)
- Giving the Commission President the right to dismiss a single Commissioner (Art. 17,6 TEU).

These provisions may significantly impact on the position of the Commission. First of all, they might change the nature of the Commission as a collegial body of all states as they break with the principle that every member state is represented in the College of Commissioners. In practice, the Treaty provision implies that each member state participates in two out of three terms in the Commission while staying for one term outside. This rule however will only come into force in 2014. Reducing the number of Commissioners is seen in particular by small member states with much suspicion, as they fear to have less influence on Commission decisions. On the other hand, it is particularly the small member states who often favour the Commission as an actor, because they thus hope to contain the power of the larger member states in the Council. The reduction of the number of Commissioners might improve the Commission's independence from member states' interference, which has persisted throughout the history of European integration in spite of clear treaty regulations banning it. Furthermore, a Commission president elected by Parliament implies a major change as compared to the actual practice. An elected president might be less responsive to the claims of the Council; instead, he or she could be more responsive to Parliament. This in turn may imply transforming the Commission into a more political body at the expense of its rather technical character (Hix et al. 2007). The power of the Commission President to dismiss single

³ This citation refers to the Constitutional Treaty but as the respective regulations were not changed, it applies to the Lisbon Treaty as well.

Commissioners will improve his or her position vis-à-vis the College as a whole, and thus enhance his or her leadership role.

In addition to these changes regarding the individual institutions of the EU, the Lisbon Treaty also envisages a series of regulations affecting the institutional structure of the Union as a whole. Thus, the pillar-structure is abolished by transforming the Communities into the Union (Art. 1 TEU), although the policy fields of the second and third pillar remain differentiated through modes of decision-making. In particular, the Common Foreign and Security Policy (CFSP) will continue to require in most cases unanimous voting (Title V, Art. 21-46 TEU). Furthermore, the CFSP is being improved by creating the position of a “High Representative of the Union for Foreign Affairs” (Art. 18 TEU). The person in charge will hold a “double hat”, so that the distinction between the intergovernmental and supranational dimension of the EU is being blurred. On the one hand, he or she is supposed to form part of the Commission as its vice president (Art. 18,4 TEU); on the other, he or she will be affiliated to the Council Secretariat. The High Representative will perform as the permanent chair of the Council of Foreign Affairs and thus offset the rotating presidency in this council (Art. 18,3 TEU); This enables him or her to improve decision-making and consensus-building as well as overall policy continuity and coherence in this council. He or she will be supported by an “European External Action Service” (Art. 27,3 TEU). A further innovation refers to the role of national parliaments in European affairs (Art. 12 TEU and Protocol Nr. 1). They are given a more clearly defined voice in decision-making so that the accountability of the Union is improved and supervised also by national legislatures.

Altogether, the reform of the Lisbon Treaty marks a significant step towards improving the position of all major institutions of the EU, although to a different degree (CEPS et al. 2007, House of Lords 2008). It is in particular the Councils that undergo the most far-reaching innovations, followed by Parliament, whereas the Commission is only subject to minor reforms. Interestingly, all these innovations were, for the largest part, already included in the proposals of the Convention (Crum 2005). That means, they survived the successive intergovernmental bargains, leading first to the adoption of the Draft Constitutional Treaty and then the Lisbon Treaty. As such, they are to be regarded as the essentials of the reform that the majority of member states did not wish to sacrifice in face of strong opposition from some veto-players. At most, they accepted longer transition periods for the implementation of some of the new rules as well as minor temporarily exceptions in narrowly defined cases.

4. The objectives underlying the reform

What are the objectives underlying the reform? First, it is clear that the innovations described above do respond in one or another way to the declared objectives of the Laeken Declaration. Efficiency in particular is improved by a series of innovations: facilitated decision-making in the Council, a reduced number of Commissioners, an elected resp. designated president for the European Council and the Council for Foreign Affairs, a High Representative for Foreign Affairs, and generally improved conditions for consensus-building in different decision-making bodies. Democratic accountability is also improved, particularly by extending the competences of Parliament in legislative and budgetary matters and by allowing it to elect the Commission President. The latter, though, gives Parliament primarily a veto power, as it is not free to choose a candidate. Instead, the Council continues to designate the candidate, and he or she only needs a vote of approval by Parliament. Furthermore, national Parliaments get a certain say in European affairs, an innovation, that may also slightly improve the democratic legitimacy of European decisions. Improving transparency is the objective that is least achieved; most regulations or measures meeting this objective in the original proposal of the Convention were later amended or abolished in the course of intergovernmental bargains on the Treaty reform. In addition, as a number of minor concessions to certain member states were made during this process, transparency was further reduced. Altogether, we see a clear hierarchy in meeting the Laeken objectives. Efficiency plays the most prominent role; democratic accountability is of minor importance and transparency is not achieved at all. As transparency is a precondition for holding the Union accountable, the complexity and opaqueness of some of the new regulations even tend to offset some of the achievements in the area of democratic accountability.

Thus on balance, efficiency turns out to be the objective that was most successfully pursued and implemented with the Treaty reform. However, efficiency is a very broad and comprehensive objective, covering a whole spectrum of meanings. In principle, it can be achieved by highly diverging means. Therefore, the way in which this objective was met with the treaty reform hints to an underlying, more specific objective. In my view, efficiency for a large part stands for providing the EU with more clearly defined leadership capacities or with institutions that allow for exercising political leadership. Most significant in this context are the innovations with regard to the Councils: the strengthening of the position of the European Council, the establishment of longer term presidencies detached from national interests, the creation of the position of a High Representative for Foreign Affairs with a “double hat”, and, above all, the facilitation of majority voting. These innovations altogether tend to improve the leadership capacity of these bodies and the Union as a whole. However, these leadership capacities are not simply enhanced across all institutions of the EU. As we have seen, the reform clearly privileges the position of the Councils. Therefore we can conclude, at this point, that the leadership capacities of the EU are enhanced in a selective way. Why this is the case,

will be discussed in a later section. In the next section, I will first point on how leadership can be and is being ensured in the European Union, a political system characterized by a dualistic structure.

5. Political leadership in the context of the dualistic structure of the European Union

In principle, in a dualistic system as the EU, consisting of both intergovernmental bodies taking the most important decisions and supranational institutions that have hardly powers to take binding decisions, but significant resources to influence the course of European integration, leadership can be allocated in different ways. It can be allocated to either the Commission or the Council or to single member states and, also, to all of them. If we put aside this last option, which would simply reproduce the actual power balance in the Union, all other options have far-reaching impacts on the institutional structure of the EU. Allocating the leadership role to the Commission would imply strengthening the supranational dimension of the Union. Empowering a group of member states would imply transforming the EU into a hegemonic system, led by one or a few, most probably large, member state/s. Allocating the leadership role to the Council as a whole means to establish or improve a system of joint leadership. As the Councils have to mediate between the interests of the member states, they are not per se able to act as a unified actor exercising leadership (Tallberg 2006). Therefore, attributing to them a leadership role implies further institutional provisions. On the one hand, the leadership role could be improved by establishing rules that effectively contain the power of veto-players. On the other hand, it could be improved by delegating certain powers to third actors or institutions.

When interpreting the innovations of the Lisbon Treaty against this background, it becomes clear that the reform neither aims at transforming the EU into a supranational organization nor a hegemonic system led by a few member states. Both options would by far transcend the actual consensus underlying European integration. Instead, member states through this reform clearly chose to first and foremost strengthen the leadership role of the Councils (Tallberg 2006). Such a choice however does not simply imply strengthening the intergovernmental dimension of the Union. On the contrary, this dimension, resulting in problems of collective action, has to be contained in order to enable the Councils to perform a leadership function. Therefore, to fulfil such a function, institutional reforms are required that contain the weight

and dominance of intergovernmental bargains in the Councils and enhance the conditions for jointly taking action.

The Lisbon Treaty clearly enacts such reforms by, first, changing the voting rules in the Council and, second, delegating certain powers to third actors and institutions. Changing the voting rules constrains the possibility of single or even larger groups of member states to hamper decision making and thus to act as veto-players. Under the rules of the Lisbon Treaty, particularly smaller member states are in fact no more able to perform such a role. Even larger member states are significantly constrained in acting as veto-players, as they are able to do so only in case that they find allies willing to support their case. With the new regulations, only groups of states that represent at least 35% of the population of the EU are able to block a decision. Conversely, a much lower number of member states, as compared to the actual situation, are needed for a successful decision. Thus altogether, the Council can much more effectively reach joint decisions and intergovernmental bargains are pushed to the background.

Delegation of powers to third, independent actors or agents is the most preferred method, according to principal-agent theory and other similar approaches (Tallberg 2006), where actors have common interests, but are at the same time hampered in pursuing these interests because of strong and diverging individual interests. This is exactly the constellation characterizing the Council and the European Council. As the individual interests are often short-term interests, dominating the decisions of actors, whereas the common interests are rather long-term, the latter are more difficult to pursue. This is even more the case, when Council decisions require unanimous voting or highly qualified majorities, as it is still the case under the Lisbon Treaty in certain policy areas. In these situations, delegation of certain powers to an elected president, who is able to act in the interest of the common, long term objectives, may help to overcome stalemate or non-decision (Tallberg 2006, Blavoukos et al. 2007). In a similar vein, the High representative for Foreign Affairs may act in the interest of common objectives, where member states are not able to do so. Therefore, the permanent presidencies of the Councils were particularly established for those cases where decision-making is still bound to unanimity, that is, the European Council and the Foreign Affairs Council.

Interestingly, the extension of Parliament's powers can also be read as a form of delegation of powers to a third party. Under the Lisbon Treaty, the Council will have to compromise its position with that of the Parliament in all legislative matters. As the Parliament in most cases favours European solutions above national ones or above non-decision, its increased legislative powers will put pressure on the Council to adopt legislation that further promotes European integration.

Altogether, both containing the veto power of a larger number of member states and delegating powers to seemingly neutral, but in most cases integration-minded actors clearly impacts on the performance of the Councils. Intergovernmental bargains are contained in favour of improved conditions for collective action. This in turn improves the leadership capacities of the EU. This form of leadership neither allows for a hegemonic position of one or a few member states nor does it take on a supranational form. Instead, the EU continues to be based on joint leadership, but this leadership is now more clearly institutionalized and more explicitly embedded into the intergovernmental structure of the EU's political system.

Delegation of powers however is not an invention of the Lisbon Treaty but has characterized the European Union since the foundation of the Communities. In the initial constellation, it was the Commission who represented and pooled all the delegated power of the EU. With the Lisbon Treaty, no specific additional functions, let alone an explicit leadership role, are allocated to the Commission, although it would best be placed to represent and pursue the common interest of the member states. Instead, as far as delegation occurs, it is established, first, in a fragmented form, since delegated powers are not concentrated in favour of one institution or agent but allocated to a number of actors and institutions with specific functions. Second, it is established under the control of the Councils, as these actors and institutions perform their tasks in close cooperation with or under the supervision of the Councils. This in turn means that the leadership functions of the EU are enhanced without however empowering actors or agents that tend to foster supranationalism.

6. Why were member states willing to adopt this reform?

In the foregoing section, I discussed the rationale underlying the reform of the Lisbon Treaty. This however does not explain why member states pushed forward or supported the reform or, else, did not prevent its adoption. After all, treaty revisions require unanimous decisions, so that vetoing the reform was a viable option.

When discussing explanations for the reform, most scholars refer either to functional pressures - in particular, those emanating from Eastern enlargement – or to the official objectives set by the Laeken Declaration (Crum 2005, Laursen 2006). In these views, the Laeken objectives reflect the motives of the member states underlying the reform. Although this is the case to a certain extent, member states also pursued more specific objectives. In addition, they obviously pursued contradicting options, so that the final outcome was by no means assured.

As discussed above, the most outstanding result of the reform is strengthening the Councils and its procedures of decision-making in order to enable it to perform a leadership role in European integration.⁴ This implies, first, containing the power of single or groups of member-states which might act as veto-players in the Council and thus hamper rapid and efficient decision-making. It also implies, second, containing to a certain degree the role of the Commission as the most prominent actor in pushing forward integration. The overall objective is to pave the way for deepening integration, without however taking primarily recourse to the services of the Commission. Why did the member states choose for such a reform?

In the past, the Councils were often hampered in reaching binding decisions by too many veto-players in their own ranks. This constellation gave the Commission, the Court and also Parliament or an alliance of those institutions more room for manoeuvre to drive integration far beyond what the member states intended to agree upon (Toemmel 2008). In this way, member states partly lost control over European integration or they could exercise control only in the form of blocking further integration steps. This however meant acting against their common interest.

Therefore, by improving the Councils' procedures of decision-making and its capacities of action, it is, on the one hand, the aim to control and contain the expansive logic of the Commission's activities and other supranational actors and institutions. On the other hand, in light of the tremendous challenges actually facing the EU, it is the aim to maintain or improve momentum in European integration by taking the lead in this process and by forging it according to the interests of the member states.

With interests of the member states in this context I do not refer to the multiplicity of interests characterising the individual states, but to their common interest in promoting European integration. This interest, however, is not shared by all member states alike; on the contrary, there is - and has, since the first enlargement, always been - a marked cleavage between member states which are highly integration-minded, and those which are notoriously reluctant in this respect. Thus, to be precise, it is primarily the integration-minded member states that are interested in and inclined to strengthen the Councils.⁵

⁴ Surprisingly, this was the objective of Britain, France and Germany, although they pursued this aim through differing and even contradicting means. While Blair promoted the elected presidency, in order to ensure intergovernmental leadership, Germany and France promoted significantly facilitated majority voting, in order to strengthen leadership by outvoting veto-players.

⁵ Germany on the one hand and Britain on the other do not seem to fit into this pattern (see Magnette and Nicolaidis 2004). Germany is integration-minded, but did first and foremost demand to strengthen the Commission and Parliament, that is, those institutions promoting supranational developments. However, Germany was also strongly in favor of facilitating qualified majority voting in the Council. Britain is reluctant in European integration matters,

In significantly facilitating majority-voting, it is not so much the aim to rule out single veto-players in decision-making, but more so a group of potential opponents to further integration steps. And it is the new members of the EU which were primarily – but not exclusively – expected to form such a group.⁶ The same rationale, that is, containing the power of veto-players, underlies also other innovations of the Lisbon Treaty. For example, making presidencies more independent of individual member states reduces the opportunities for Euro-skeptic states to slow down the process of integration.⁷ Reducing the number of Commissioners not only weakens those member states that are temporarily not represented, but it detaches the Commission more in general from the member states' influence, thus containing in particular the influence of the veto-players. Giving Parliament a much larger say in legislation, in fact, facilitates majority-voting in the Council. Since Parliament, in its majority, is usually much more in favour of far-reaching integration-steps than the Council as a whole, the integration-minded member states can make use of Parliament's pressure as an additional leverage to push Council decisions forward. In this vein, Parliament's role can be seen as an agent promoting the common interest of the integration-minded member states.

Why then did the Euro-skeptic member states give their consent to this move towards stronger Councils and other institutional innovations, since this obviously is not in their primary interest? I suppose they had not really an alternative, because the procedure for Treaty reform was designed in such a way that there was not much room for opposition or alternative options. To say it in other words, the methods to contain the power of veto-players, that is, the exercise of joint leadership and the delegation of powers to third actors were already practiced in the procedure to enact the reform. Thus, establishing the Convention for elaborating a Draft Constitutional Treaty was not simply a step towards improving the transparency and democratic accountability of the reform, but it implied first and foremost a delegation of powers to third actors, in order to prevent strong opposition to be expressed against a far-reaching reform.⁸ Once the draft Constitutional Treaty was presented by the Convention, the integration-minded member states *unison* emphasised that falling behind this position would seriously threaten the whole reform. In doing so, they clearly indicated the bottom line of their

but proposed most fervently a permanent president of the Council. However, it was strongly opposed against facilitating majority voting in the Council. This however shows that strengthening the Councils has different aspects, appealing to different types of member states.

⁶ Though, ironically, it seems that it are particularly the old member states who recently engage in harder bargains among each other, as for example has been shown by the negotiations on the financial perspective 2007-13.

⁷ Thus, it was attributed to a lack in commitment of the Italian presidency that the negotiations on the Constitutional Treaty failed to be concluded by the end of 2003.

⁸ As Tsebelis and Proksch (2007) claim, the Convention was not left to produce a random result. Instead, member states carefully directed the Convention into the desired direction by vesting it with an integration-minded presidency that could effectively exercise leadership and even manipulate the outcome. See also Kleine 2007.

bargaining position, but they also took on a joint political leadership role to channel the reform into a more narrowly defined direction. The same applies to the period after the Draft Constitutional Treaty failed to be ratified because of negative referenda in France and the Netherlands. In this situation, member states first proclaimed a reflection phase stalling the reform process. The reflection phase was clearly scheduled to end when Germany took over the presidency (Dinan 2007: 69-77). Under this presidency, and again, under the joint leadership of the integration-minded member states, the final deal for the Lisbon Treaty was surprisingly quickly concluded (See Council of the European Union 2007). However, this deal *preceded* the Intergovernmental Conference. That is, the final negotiations on all contested issues of the reform were held under the premise of only laying down some basic parameters for treaty revision (Dinan 2008, see also Koenig et al. 2008). When the Intergovernmental Conference was officially opened under the Portuguese presidency, only minor issues were left open for discussion. The Intergovernmental Conference therefore had only to finalize the text of the treaty and to give it the name of the capital where it was adopted. It is true that some concessions had to be made to some Euro-skeptic member states in the form of longer transition periods, exemptions in special cases and minor opt-outs. However, these concessions are only cosmetics as compared to the far-reaching innovations that the treaty entails.

Altogether, the process to decide on and adopt the innovations of the Lisbon Treaty was already characterized by what the reform intends to accomplish: joint leadership, performed primarily by the Councils, that contained strong opposition of certain member states by partly delegating powers to certain actors other than the Commission and partly enforcing compliance through clearly emphasising the will of the majority.

7. Conclusion

In conclusion, it can be said that the Lisbon Treaty envisages far-reaching innovations with regard to the institutional structure of the EU and its procedures of decision-making. In the first place, these innovations strengthen significantly the position of the Councils by attributing to them a clear leadership role. Such a role however can only effectively be exerted at the expense of containing the power of single or groups of member states. This is particularly facilitated by changing the rules for majority voting to the advantage of the large and particularly the integration-minded member states, but also by delegating certain powers to third actors. Furthermore, they strengthen the Parliament seemingly at the expense of the Council, but in fact, by reinforcing the dynamics of European integration, in the interest of the integration-minded member states as well. They slightly change the position of the Commission by both

transforming it into a smaller and more technical body and, at the same time, politicising it under stronger supervision of the Parliament. In practice, all these innovations together imply strengthening the European level as a whole vis-à-vis the member states. This however does not mean strengthening the supranational dynamics of European integration. Nor does it imply strengthening the intergovernmental dimension of the EU. The results of the reform are to be seen in a more differentiated way. The Councils are enabled to stronger promote European integration and thus to pursue the common interest of the member states; a role which, in the past, had primarily been delegated to the European Commission. As the Commission has often used its delegated powers to push forward integration far beyond what member states were willing to accept, the Council has become reluctant to further transfer powers. Pursuing itself the common interest of the member states however implies a high price for the Council. It implies, first, that every individual state has less influence on the process of integration. Second, it implies that the larger and above all the integration-minded states will gain more influence on European integration. Third, it implies that member states that are less supportive to further integration will have less influence to shape this process according to their interests. Altogether, it implies that after ratification of the Lisbon Treaty, deepening of European integration in many policy areas and domains will no longer be based on an overall consensus among member states but will represent the will of only a majority of integration-minded states. Thus, shifts in the power balance of European institutions and actors do not so much affect the relationship between the Commission and the Council, or the intergovernmental versus the supranational institutions, but they affect in the first place the power balance between member states, those that actively promote European integration and those that prefer to slow it down or to give it another direction.

However, it remains to be seen how long it will take until ratification of the Lisbon Treaty is finally achieved, since the major opposition against the proposed reform does not rest with the member states, but with the citizens of Europe. Although it is often argued that their decisions are not based on the substance of the reform, but mostly on discontent with national politics, I rather assume that the citizens rightly perceive that this reform strengthens European integration vis-à-vis national control. Furthermore, it remains to be seen to which degree the parties that have lost this battle will nevertheless succeed in at least delaying, if not diluting full implementation of the reform. And last not least, it remains to be seen whether the member states are able to jointly exercise leadership. The innovations of the Lisbon Treaty provide a framework for such an endeavour, but this implies by no means a guarantee. Divergences between the member states might continue to hamper collective action. To sum up in other words: I would wonder if the major leap forward in European integration as attempted with the Lisbon Treaty would not be followed by a – though probably minor - step back.

References (still incomplete!)

Birkinshaw, Patrick (2004), A Constitution for the European Union? A Letter from Home. In: European Public Law, Vol.10, 1, pp. 57-84.

Blavoukos, Spyros, Bourantonis, Dimitris, and Pagoulatos, George (2007), A President for the European Union: A New Actor in Town? In: Journal of Common Market Studies, Vol. 45, 2, pp. 231-252. **CEPS, Egmont and EPC, Joint Study (2007)**, The Treaty of Lisbon: Implementing the Institutional Innovations.

Council of the European Union (2007), Presidency Conclusions. Brussels 20.07.2007.

Consolidated Version of the Treaty on European Union. OJ of the EU, C 115/13, 09.05.2008.

Craig, Paul (2004), Constitutional Process and Reform in the EU: Nice, Laeken, the Convention and the IGC. In: European Public Law, Vol. 10, 4, pp. 653-675.

Crum, Ben (2005), Towards Finality? An assessment of the achievements of the European Convention. In: Verdun, Amy/Croci, Osvaldo (eds.): The European Union in the Wake of Eastern Enlargement, Institutional and Policy-making Challenges. Manchester/New York (Manchester University Press), pp. 200-217.

Crum, Ben (2008), The EU Constitutional Process: A Failure of Political Representation? RECON Online Working Paper, 2008/08.

Dinan, Desmond (2005), Governance and Institutions: A New Constitution and a New Commission. In: Journal of Common Market Studies, Vol. 43, Annual Review, pp. 37-54.

Dinan, Desmond (2007), Governance and Institutional Developments: Coping Without the Constitutional Treaty. In: Journal of Common Market Studies, Vol. 45, Annual Review, pp. 67-87.

Dinan, Desmond (2008), Governance and Institutional Developments: Ending the Institutional Impasse. In: Journal of Common Market Studies, Vol. 46, Annual Review, pp. 71-90.

Fossum, John Erik and Trenz, Hans-Joerg (2006), When the people come in: Constitution-making and the belated politisation of the European Union. European Governance Papers (Eurogov) Nr. C-06-03. <http://www.connex-network.org/eurogov/pdf/egp-connex-C-06-03.pdf>.

Froehly, Jean-Pierre (2003): Die deutsch-französische Kooperation als Modell der Konfliktmoderation. In: Kneipp, Danuta and Stratenschulte, Eckart D. (ed.): Staatenkooperation in der EU und darüber hinaus. Opladen, Leske + Budrich,

S. 23-27 **Gamble, Andrew (2006)**, The European Disunion. In: British Journal of Politics and International Relations, Vol. 8, pp. 34 – 49.

Göler, Daniel and Marhold, Hartmut (2003), Die Konventsmethode. In: integration Nr.4, S. 317-330.

Hainsworth, Paul (2006), France Says No: The 29 May 2005 Referendum on the European Constitution, In: Parliamentary Affairs, Vol. 59, 1, pp. 98-117.

House of Lords, European Union Committee (2008), The Treaty of Lisbon: an impact assessment. Volume I: Report. Published 13 March 2008.

Ivaldi, Gilles (2006), Beyond France's 2005 Referendum on the European Constitutional Treaty: Second-Order Model, Anti-Establishment Attitudes and the End of the Alternative European Utopia. In: West European Politics, Vol. 29, 1, pp. 47-69.

Kleine, Mareike (2007), Leadership in the European Convention, Journal of European Public Policy Vol. 14, No 8, 2007, pp. 1227-1248.

Koenig, Thomas, Daimer, Stephanie, and Finke, Daniel (2008), The Treaty Reform of the EU: Constitutional Agenda-Setting, Intergovernmental Bargains and the Presidency's Crisis Management of Ratification Failure. . In: Journal of Common Market Studies, Vol. 46, 2, pp. 337-363.

Laurson, Finn (2006), The EU's Constitutional Treaty: Why and Why Maybe Not? Paper prepared for the Annual ISA Convention, San Diego, CA, March 22-25, 2006. <http://www.sam.sdu.dk/staff/fla>

Magnette, Paul and Nicolaidis, Calypso (2004), The European Convention: Bargaining in the Shadow of Rhetoric. In; West European Politics, Vol. 27, 2, pp. 381-404.

Magnette, Paul and Nicolaidis, Calypso (2005), Coping with the Lilliput Syndrome: Large vs. Small Member States in the European Convention. In: European Public Law, Vol. 11, 1, pp. 85-104.

Majone, Giandomenico (2005), Dilemmas of European integration. The ambiguities and pitfalls of integration by stealth. Oxford (Oxford University Press).

Maurer, Andreas (2005), Negotiating the Nice Treaty: a joint but failed search for efficiency building. In: Verdun, Amy/Croci, Osvaldo (eds.): The European Union in the Wake of Eastern Enlargement, Institutional and Policy-making Challenges. Manchester/New York (Manchester University Press), pp. 174-199.

Moravcsik, Andrew (2006), What Can we Learn from the Collapse of the European Constitutional Project? In: Politische Vierteljahresschrift, Nr. 2, pp. 219-241.

Pinder, John (1991), European Community. The Building of a Union. Oxford (Oxford University Press).

Risse, Thomas and Kleine, Mareike (2007), Assessing the Legitimacy of the EU's Treaty Revision Methods. In: Journal of Common Market Studies, Vol. 45, 1, pp. 69-80.

Tallberg, Jonas (2006), Leadership and Negotiation in the European Union. Cambridge (Cambridge University Press).

Tömmel, Ingeborg (2008), Das politische System der EU. München (Oldenbourg), third edition.

Treaty Establishing a Constitution for Europe. Official Journal of the European Union, C 310, 16 December 2004.

Tsebelis, George and Proksch, Sven-Oliver (2007), The Art of Political Manipulation in the European Convention. . In: Journal of Common Market Studies, Vol. 45, 1, pp. 157-186.

Vogel, Wolfram (2004): Franco-German Relations in the EU-25: Five determinants of good leadership. American Institute for Contemporary German Studies, von: <http://www.aicgs.org/analysis/francogerm/vogel.aspx>.

Wessels, Wolfgang (2005), Keynote article: The Constitutional Treaty – Three Readings from a Fusion Perspective. In: Journal of Common Market Studies, Vol. 43, Annual Review, pp. 11-36.

.Whitman, Richard (2005), No and after: options for Europe. In: International Affairs 81, 4, pp. 673-687.