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## Implementing Lisbon: narrowing the EU's 'democratic deficit'?

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### BACKGROUND

The European Union is often perceived as suffering from a 'democratic deficit'. Frustration with the EU's standards and performance in terms of representation and accountability has been a loyal companion to the debates on European integration since at least the early 1990s. The Lisbon Treaty aims, among other things, to improve the quality of democracy in the EU. Will it do the trick?

For many European citizens, the Union is a distant bureaucratic apparatus that lacks the appropriate institutional structures for democratic input. Bemoaning their inability to participate in – and influence – the EU's decision-making process, people feel like objects rather than sovereign subjects of European politics. As a result, many of them refuse to engage with Europe or to endorse or even acknowledge its actions. The negative outcomes of successive referenda on EU treaties, and the decline in support for European integration and trust in EU institutions documented by opinion polls and voter turnout at European Parliament elections, are all seen as signs of public apathy and growing estrangement.

The situation is compounded by the attitude of national governments, which frequently use the EU

as a scapegoat for their own failures, but do not shy away from claiming its successes as their own. Such conduct is mitigated by the circumstance that the EU's decision-making process in the Council is not fully transparent.

Moreover, there has been a drift in several EU countries towards 'renationalisation' – often disguised as subsidiarity – to offset their alleged loss of national control over EU policy-making. While there may well be more rhetoric and symbolism than substance in this, the success of xenophobic parties (usually also anti-EU) and the emergence of Eurosceptic contenders in national electoral arenas across Europe are consolidating this trend.

These developments have increased awareness that tackling the EU's apparent democratic shortcomings is a *sine qua non* condition for the success of the European project. The Laeken Declaration of 2001 reflected this idea by stating that "the Union needs to become more democratic, more transparent and more efficient". The efforts undertaken to achieve this goal materialised in a number of institutional and procedural reforms introduced by the Lisbon Treaty.

### STATE OF PLAY

The new Treaty seeks to enhance the democratic legitimacy and effectiveness of the EU by:

- (1) strengthening the European Parliament;
- (2) increasing the involvement of national legislators; and
- (3) introducing elements of direct democracy into the Union's policy-making process.

#### Strengthening the European Parliament

The European Parliament profits most from the provisions of the Lisbon Treaty as the new primary law boosts its legislative, budgetary and nomination powers.

In *legislative* terms, the Parliament has been put on an equal footing with the Council as co-decision becomes the “ordinary legislative procedure”. The Lisbon Treaty has extended co-decision to almost all areas where the Council decides by Qualified Majority Vote (QMV). In pure numbers, the Parliament’s co-decision rights have been expanded from 45 to 85 areas, most notably in the area of Freedom, Security and Justice but also in such policy fields as agriculture, fisheries, trade and even certain aspects of economic coordination.

In *budgetary* terms, Lisbon has given the Parliament full parity with the Council in approving all expenditures related to the annual budget. Moreover, it has abolished the distinction between compulsory and non-compulsory expenditures, allowing MEPs to have the last word on every category of financial spending.

As for the Parliament’s *nomination* powers, Lisbon has upgraded the right introduced by the Nice Treaty for MEPs to approve the designation of the Commission President. Under Lisbon, the Parliament enjoys a better-defined role in the nomination process, since it now *elects* the Commission President on the basis of a candidate *proposed* by the European Council taking into account the outcome of the European Parliament elections.

### **Involvement of national parliaments**

The Lisbon Treaty strives to encourage national parliaments to get involved in EU policy formulation, particularly by means of the so-called ‘yellow card’ and ‘orange card’ provisions. These create

an early warning mechanism, giving domestic legislators eight weeks to scrutinise any proposal for EU legislation in order to assess whether it abides by the subsidiarity principle.

Objections of non-compliance from at least one-third of all (chambers of) national parliaments require the Commission to review the proposal in question (the ‘yellow card’). Should the Commission decide to proceed anyway, it is obliged to justify its decision in a reasoned opinion and to refer to the Parliament and Council for the final say on the matter. If more than a simple majority of national parliaments raise concerns, the Parliament and Council can reject the flagged proposal before the first reading (the ‘orange card’).

Furthermore, the new Treaty extends national parliaments’ rights to information and allows them to block the use of the so-called “simplified revision procedure” under which the European Council can decide unanimously in favour of shifting from unanimity to QMV. In order to prevent such a move, any national parliament must voice its opposition within six months of a proposal being formally tabled.

### **Introducing the citizens’ initiative**

Last but not least, the Lisbon Treaty foresees more direct popular input into EU law-making by virtue of the *citizens’ initiative*. This instrument allows more than one million citizens from a “significant” number of Member States to take the initiative by inviting the European Commission to submit a legislative proposal (within the remit of its competences).

## **PROSPECTS**

The Lisbon Treaty innovations focus on strengthening democratic scrutiny at all levels of EU policy-making. But will they actually cure the supposed ‘malaise’ of the European Union?

### **Turning the tide?**

Take the European Parliament: while Lisbon strengthens, once again, its position within the EU institutional architecture, much depends on the implementation and impact of the assembly’s new powers.

Faith in the democratic benefits of a stronger Parliament might, in fact, prove altogether misplaced. On the one hand, the extension of its co-decision rights stirs well clear of vital areas such as taxation, social policy, energy and foreign policy; there are still more than 100 areas where the Council decides without the

Parliament’s involvement. On the other hand, even where the Parliament’s powers are strengthened by the Lisbon Treaty, its role remains somewhat limited. For example, in the budgetary arena, the new Treaty explicitly grants the Council responsibility for the multi-annual financial framework, which essentially determines the overall orientation and composition of the budget. Put simply, the Parliament remains unable – on its own – to impose its priorities on the Union’s long-term spending plans, since this rests firmly in the hands of EU Member State governments.

Moreover, there is a risk that the quantitative increase in the Parliament’s powers might weaken its operational capacities in qualitative terms: the extension of co-decision could in practice delay or even block the legislative flow. Past experience suggests, however, that the Parliament is likely to

gradually adapt its internal procedures and practices to master the significantly larger volume of work.

The Union's 'output efficiency' could nevertheless be undermined by political stalemate. In the first few months since the Lisbon Treaty entered into force, the Parliament has already demonstrated its willingness to flex its new legal muscles. In a clear display of power, MEPs rejected the SWIFT agreement with the US, pressed the Council for a greater say in the future set-up of the European External Action Service and effectively compelled Commission President José Manuel Barroso to enhance the Parliament's powers within the framework of the new inter-institutional agreement between the two bodies (including an indirect right of initiative).

In other words, the Parliament's rising assertiveness may well provoke turf wars among the institutions and thereby undermine the Union's overall efficiency.

Then again, from a more general perspective, the assembly's increased powers could bridge the gap between the Union and its citizens. Given that the European Parliament is the only EU institution with a direct popular mandate, it is reasonable to assume that more parliamentary authority would strengthen democratic accountability. Similarly, it is arguable that a stronger European Parliament would eventually persuade citizens of its relevance in the EU.

Such arguments sound appealing, except for the non-trivial detail that they have so far failed the reality test. The logic of expanding the Parliament's powers in order to 'democratise' the Union inspired all previous rounds of treaty revision. Yet, progressive increases in the Parliament's status have only been matched by falling rates of citizen participation and interest in European affairs: voter turnout at European elections has alone dropped from 62% in 1979 to 43% in 2009. So why should the result be different this time around?

Interestingly, the Lisbon Treaty could set stage for a *rapprochement* between the Parliament and the Commission. As the (s)election of the Commission President is tightly linked to the outcome of European elections, and as more legislative proposals from the Commission require the Parliament's approval, the degree of interdependence between the two institutions is bound to intensify.

Thus, as the Commission and Parliament become more interconnected and share a common interest in dragging the Union out of its current phase of internal exhaustion, they might be more inclined to '(re)join forces'. Indeed, the support of a strengthened Parliament could reinvigorate a weakened Commission. Similarly, the 'politicisation' of the Union could boost citizens' interest in the Parliament

as the only directly-elected EU institution. Conversely, if the Parliament and Commission continue to treat each other as institutional rivals, the increase in the assembly's powers is unlikely – once again – to capture the attention of the European public.

### **New (veto) players**

The stronger role bestowed by the Lisbon Treaty on national parliaments could also have a number of consequences at both national and European level.

At the national level, the 'yellow' and 'orange card' provisions offer national legislators – for the first time – an avenue to make their voice heard, distinct from that of their governments. The opportunity to exert *ex-ante* control will deprive national parliaments of the overused argument that they are sidelined in the EU's law-making process. Moreover, the inherent need for national parliamentary debates could combat political lethargy and encourage the Europeanisation of national discourses.

Nevertheless, the new stipulations could also overburden national parliaments and have an impact on governments.

Most domestic legislators are already struggling with their current workload and the eight weeks allowed for filing a complaint against an EU proposal would raise the bar even higher. Most national parliaments will therefore have to introduce major organisational changes to be able to scrutinise a record body of EU legislation effectively.

In certain Member States, the enhanced role and interest of national parliaments could also (further) limit the executive's room for manoeuvre. Governments might be obliged to consult and coordinate more closely with their parliaments, which could restrict their autonomy but at the same time improve transparency. In other cases, governments could be tempted to (mis)use the new powers given to national parliaments to indirectly influence or even obstruct EU policy-making.

At the European level, the stronger role for national parliaments could foster EU-wide debates and cooperation between national and European legislators. To make use of their new prerogatives, national parliaments and even domestic political parties will have to intensify cross-border cooperation. Moreover, the enhanced involvement of national parliaments could reinforce the ties between domestic and European parliamentarians.

It is also theoretically possible that the strengthened role of national parliaments could increase the number of potential 'veto' players, with negative spill-over

effects on the overall efficiency of EU decision-making. In practice, however, this seems rather unlikely for a couple of reasons. Firstly, the eight-week time-limit for lodging objections adds only marginally to the normal length of the legislative process. Secondly, based on past experience, national parliaments may not be ready or willing to draft reasoned opinions on European legislative proposals frequently.

At any rate, the potential impact of both 'cards' will become clearer only if and when they are actually used, thus creating precedents and prompting responses.

### Empowering citizens

The Lisbon Treaty fuels the engine of direct participatory democracy by encouraging citizens across Europe to mobilise in order to push the Union's legislative 'button'. The citizens' initiative has already attracted the interest of civil society associations, NGOs and the media, and raised hopes that it will help counter public disengagement with EU affairs and stimulate transnational dialogue and debate.

However, the Treaty provisions on the citizens' initiative leave many issues unsettled. The 'technical' questions that need to be answered include, among others: the criteria for lodging submissions, the eligibility conditions, the minimum number of Member States (and of signatures from individual countries); the form, wording and maximum reach of an initiative; the required age of signatories; transparency and verification of signatures; deadlines for submitting and deciding on an initiative; and reimbursement of costs.

Besides that, two more fundamental aspects deserve special consideration.

First, there is need for more concrete and objective criteria to govern Commission decisions to present or reject a legislative initiative, as Lisbon merely stipulates that any proposal must relate to the implementation of the EU Treaties. If an initiative is discarded, the negative answer should include the precise reasons for the rejection as well as suggestions of alternative bodies and tools to consult thereafter. Without proper explanations and instructions, refusals could actually end up widening the gap between citizens and EU institutions still further.

Second, will it be evident that a majority of Europeans support each citizens' initiative? One

million people account for a mere 0.2% of the entire EU population. This represents a low threshold even compared to similar instruments in a number of Member States. Consequently, policy-making risks falling prey to a 'tyranny of minorities' backed by resourceful and well-organised interest groups. As a potentially valuable safeguard, it seems appropriate that the submission of a 'successful' citizens' initiative be followed by consultation with other interest groups and stakeholders before the Commission comes up with a legislative proposal.

Yet again, the first ever case(s) of its actual use are likely to determine the eventual impact of the new provision.

### Input, output and national capitals

The Lisbon Treaty entered into force only a few months ago. It is therefore far too early to deliver a verdict on whether the new provisions will substantially contribute to making the Union more 'democratic'. But one thing is already clear: the strengthening of the European Parliament, the enhanced involvement of national parliaments and the introduction of more elements of direct democracy will not suffice to bridge the existing gap between the EU and its citizens.

Boosting the EU's *input* legitimacy is important. However, ordinary citizens (and elites!) will only appreciate and identify with the European project if it makes tangible contributions to everyday life. Ultimately, the Union will be judged on the *output* it generates.

More practice and experience with the Lisbon Treaty are needed to ascertain its 'democratic' implications. Nevertheless, it is clear that the Member States bear the main responsibility for making the 'new EU' capable of providing the kind of returns which may convince the citizens of its added value. Only if national capitals are ready, willing and able to deliver will the innovations laid down in the new Treaty stand a real chance of effectively countering the EU's alleged 'democratic deficit'.



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*The issues raised in this paper are discussed within the EPC's EU Politics and Governance Forum.*

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