Lisbon Treaty : Year I

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1. Continuity or change ?

The completion of the ratification of the Lisbon Treaty (from now on the Treaty) in November and its entry into force on 1 December 2009 marked the end of an extraordinary and unprecedented lengthy process of institutional change of the European Union. The Treaty had been signed on 13 December 2007, almost two years before its entry into force, by no means an excessive duration compared to the ratification of previous modifications of the Treaties.

But the Treaty – in strictly legal terms a substantial set of amendments to two previous treaties renamed in the process – has a long history. Initial proposals for institutional reform date back to the German reunification in 1989-1990. They went through lengthy debates that eventually led to the European Convention and the 'Draft Treaty establishing a Constitution for Europe' of 2003[1] and from there to the 'Treaty establishing a Constitution for Europe' of 2004[2]. If the current form of the Treaty is a clear consequence of the difficulties of the ratification process of the Constitution, the ideas that provide the substance can be traced back to the final years of the past century. The pages that follow are not a legal analysis but an attempt to identify changes and to assess their significance[3].

The Treaty introduces changes in the decision-making process and the institutional set-up, but, prima facie, few innovations. Most of the changes in the decision-making process take the form of extensions of existing

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procedures as, for example, more qualified majority voting in the Council and the extension of the areas to which co-decision applies. On the institutional setting, the changes are more visible, but not necessarily major innovations. The Treaty creates a "stable" (for two and half years, renewable once) President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy who is at the same time Vice President of the Commission responsible for external relations (from now on HR/VP). But there has already been a President of the European Council, as well as a High Representative and a Commissioner in charge of external relations. Changes in the length of a mandate and amalgamations and redistributions of competences are not, by themselves, radical changes. So, on the face of it, it could be argued that change is limited and that, on paper, the traditional institutional triangle is preserved.

Covered by this appearance of continuity, changes are much more profound for two reasons. The first is simply the change in character of the two new functions in terms of role, mandate, responsibilities and resources. The second reason is that political actors adapt their behaviour to the changes of the institutional set-up in which they operate. The introduction of new players is clearly a change than affects inter-institutional dynamics.

The sociology of organisations tells us that when this type of changes occur in a given setting, the new actors try to grasp as much power, competences and resources as they can and the older actors try to secure what ever they have and tend to minimise and resist change.

2. The decision making process: continuity within change

For years, a common feature of the debate on European integration included a more or less elaborated reference to the "democratic deficit", a concept as frequently used as poorly defined. At the risk of caricature, it can be said that in the debate on the Treaty all stakeholders wanted more democracy, which, in their view, meant more say for themselves. The Treaty pays tribute to most of these demands, but, at the end of the day, it is written by the governments, supported by careful administrations not prone to incur in undue risks.

2.1. The ordinary legislative procedure

Ordinary legislative procedure, this is the new name of the co-decision procedure which in essence remains largely unchanged. Under this mildly mysterious name lies a rather classical legislative navette procedure applied in bi-cameral parliaments, which is the 'travel' of a legislative proposal from one Chamber to the other, with a procedural mechanism aimed at reducing and overcoming divergences. In the case of co-decision this means two readings and, if disagreement persists, the holding of a conciliation committee, where the European Parliament (from now on the Parliament) and the Council sit on par.

If this becomes the general procedure, the Treaty secures a number of exceptions under the form of "special procedures". According to some early assessments, some 22 areas are affected, mainly in the foreign affairs and security fields[4], leading some observers to wonder if the "pillar" structure of the previous Treaty, that is the differentiation between "community" areas (mainly policies related to the customs union and the internal market) and the more intergovernmental ones (foreign policy, home affairs) are not still very much present[5].

Beyond the pending legislation affected by the transitional arrangement[6], how meaningful are these changes for the future? As a procedure, co-decision has been in place since the Maastricht Treaty that is for some eighteen years[7]. We can therefore identify some trends.

The first one is a reduction in the number of legislative acts considered under the co-decision procedure despite the extension of the policy areas to which this procedure is applied. From May 1999 to April 2004, some 400 texts where considered (average of 6.5 a month), but from May 2004 to December 2007, only some 220 where submitted to this procedure (average of 5 a month)[8]. According to sources in the Parliament, had the Lisbon Treaty been in force in the period 2004-2007, the number of legislatives acts considered under co-decision would have increased from around 300 to some 500[9]. This seems to be based on a rather extensive interpretation of the letter of the Treaty.

It is difficult to predict the future volume of legislation and therefore the significance of the extension of the areas in which co-decision is applied. Nevertheless, it must be noted that, following the completion of the internal market, the main areas of legislation have been new areas, in which national legislation where few and in which the national dimension was clearly felt as insufficient, notably environment. Then, events provide the needed impetus. Justice and home affairs legislation, after being blocked for years, benefited from a revival of interest in the aftermaths of the September 2001 terrorist attacks. There are no reasons why this should not continue. In the future, there will also be need to revisit current legislation and tidy it up due, mainly, to technological developments, but major increases in size are not likely, except if new needs emerge, as for example in the financial sector.

The second trend is a clear tendency by the Parliament and the Council to reach an agreement during the first reading: in the period 1999-2004, less than 30 per cent of legislative proposals where agreed on the first reading; in the period 2004-2007, the figure was more than 60 per cent[10]. This means also that more time is needed, as an average, for the first reading in order to reach agreement. Negotiating at this early stage has the added bonus of not being subjected to a deadline, which exist at a latter stage of the procedure. Finally, some observers consider that this trend of early, more political than technical agreements between the Parliament and the Council, weakens the role of the Commission in the process[11].

As the originators of a piece of legislation, the Commission services have worked for a substantial amount of time on a given project and have the expertise and the technical knowledge related to the text. They will debate with the other institutions on the basis of this type of arguments but will be hill equipped to use the purely political arguments (opportunity, timing, impact on a specific constituency, reaction of the public opinion, etc.) that prevails among the members of the Council and the Parliament.

2.2 The budgetary procedure

The Treaty simplifies greatly the budgetary procedure, establishing one reading in each of the branches of the budgetary authority (Parliament and Council), on a proposal from the Commission. If Parliament and Council do not come to an agreement, a conciliation committee is convened in order to reach a joint position within 21 days.

Apart from this procedural modification, the Treaty introduces two substantive changes. The first is the suppression of the distinction between compulsory – mostly agriculture policy expenses – on which the Council had the final say, and non compulsory expenses, putting both branches of the budgetary authority on an equal footing. The second change is the recognition of the Multiannual Financial Framework (MFF) - the five years ceiling of expenses - as a legally binding act to be adopted unanimously by the Council after the consent of the majority of the members of the Parliament. It remains to be seen what, if any, political effects the inclusion of the MFF in the Treaty will have and how the Parliament will play its cards.

The Parliament position is that these modifications, in order to be to put into practice, require (1) the adoption of the new regulation containing the MFF and (2) the adaptation of the Financial Regulation to the new principles on how to adopt and implement the budget. As usual, the initiative on both texts belongs to the Commission. Furthermore, the Parliament wants a revised inter-institutional agreement containing mainly rules on the collaboration of the institutions during the annual budgetary procedure before the budgetary procedure for 2011 starts. The negotiations for the adoption of these new instruments will require several months and some sort of transitional procedure will be needed to deal with the 2011 budgetary procedure.

At the beginning of March 2010, the Commission adopted three proposals to take into account budgetary affairs in the context of the entry into force of the Lisbon Treaty. The proposals involve: (1) the regulation on the MFF for 2007-2013, (2) amendments to the financial regulation applicable to the general budget of the European Communities and (3) the inter-institutional agreements between the European Parliament, Council and Commission on cooperation in budgetary matters.

What is clear is that the Parliament will seek to apply the principle of joint approval by the two branches of the budgetary authority to all other budgetary procedures not specifically mentioned in the Treaty. This includes mainly the adoption of amending budgets, whose number the Parliament has always considered excessive, and the transfers (moving appropriations from one part of the budget to another) irrespective of their nature (payments or commitments) and of their amounts. In the past, Parliament has used to the full its increasing budgetary powers[12]. There is every reason to expect that the Parliament will use its new prerogatives to extend its powers.

2.3. The extension of qualified-majority voting in the Council

According to Parliament sources, the Treaty expands the number of areas in which the Council shall act by a qualified majority (158 cases) and reduces the need of unanimous decisions (58 cases). Other sources indicate more modest changes. A report by the House of Lords indicates that "The number of extensions is somewhere between 40 and 60 depending on interpretation" and refers to a statement by the Foreign Secretary to the House of Commons on 21 January 2008 indicating that the United Kingdom would not be affected by or could opt-out of 16 of these and that another 14 were “purely procedural”[13].

Be that as it may, one needs to consider the circumstance that the Council in practice rarely votes. Analysing data from 1994 to 2004, academics reached the conclusion that "Too few of the agreed decisions are submitted to explicit and public voting for us to have a secure overview of the patterns of decision-influencing, and in the recorded instances of contested voting the number are too small to support clear overarching assertions"[14].

This does not mean than the extension of qualified majority voting is useless. The "danger" of being outvoted in the Council is meant to be a deterrent for countries which obstruct a decision and make them more amenable. The purpose is to put a premium on flexibility and the search for a common decision.

Bearing that in mind, the impact of the "double majority" (countries and population) required in some of the Treaty dispositions appears an almost abstract question. Until 2014, on the basis of a transition clause, the voting majority requirements will be same as those included in the Nice Treaty, which are even more restrictive than the ones of provided by the Lisbon Treaty, and the blocking minority will be a mere four member states.

2.4. The delegation of legislative powers

The Treaty allows the legislator (Parliament and Council) to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential points of a legislative act. The two institutions can set the limits and revoke the said delegation of powers. These 'delegated acts' may then be opposed by the Council or the Parliament if they exceed the scope of the delegation. This new possibility of control granted to the Parliament as co-legislator increases its powers.

The previous "comitology" mechanisms allowed member states to discuss and oppose measures proposed by the Commission[15]. A large majority of member states fear that the Commission might adopt highly important provisions after insufficient consultation and called on the Commission to pledge to consult experts when it drafts these provisions as part of delegated acts.

The Commission tried to respond to these concerns and adopted, on 9 December 2009, a communication on the implementation in which it sets out its intention to systematically consult the national authorities' experts of all member states which will be required to implement delegated acts once they are adopted. Furthermore, the Commission plans to set up an early warning system to enable Parliament and Council more effectively to plan how they exercise their prerogatives during a period of two months (extendable by one month at the request of either Parliament or Council) following the adoption of delegated texts.

There is no enthusiasm in the Council to delegate powers to the Commission without a strong supervisory mechanism, which implies the

introduction of a committee with almost vetoing power composed by representatives of each member state. In fact, the concern to reduce to the minimum the need for delegation has lead to an increase of the precision of legislative acts reflected in their increased length, especially in co-decision procedures[16].

It would not be surprising if the future confirms this tendency: (1) longer and more precise texts, and (2) in case of need for a delegation, the inclusion in the text of the legislative act itself of a specific and cumbersome ad hoc supervisory mechanism clearly incorporating the member states and the Parliament. What are the potential effects of this on policy making? There is no prima facie evidence that it should affect the volume of legislation or make the process more cumbersome and time consuming.

2.5. The role of National Parliaments

The Treaty provides national parliaments with a new role in the defence of the principle of subsidiarity. If one third of all national parliaments (parliaments are allocated "two points" to cover for the needs of bi-cameral parliaments, each chamber getting one) contest within eight weeks after adoption of the proposal, the correct application of the subsidiarity principle, the Commission will be obliged to review its legislative proposal and decide to maintain, amend or withdraw it. If more than half of national parliaments challenge a legislative proposal subject to co-decision under the subsidiarity principle and the Commission nevertheless decides to maintain its proposal, it will need to explain its motives. The Council and the Parliament will have the final say.

This appears, at first glance, as a kind of fake novelty. The Council, that is the governments of the member states, are co-legislators with the Parliament. Governments are under the control of their national parliaments. Parliaments are, in most cases at least, as some variations can be identified depending on the national institutional set-ups, in a position to control the position expressed by their governments in the Council if they are willing to do so. The most impressive example in that field being the Danish parliament which obliges its ministers to place "parliamentary

reservations" on final decisions by the Council until it has been consulted, although with an ad hoc and light procedure.

But what the Treaty clearly does is to provide a potentially interesting incentive for national parliaments to work together and react together if something they consider disturbing emerges in the initial phases of the European legislative procedure. If the mechanism is used, it may lead to more transnational policy debates. It provides also a formalised channel to make there voice heard directly as parliaments and not only through their national governments.

2.6. The citizen's initiative

The Treaty also introduces the European citizen's initiative. One million citizens from a significant number of member states may invite the Commission, within the framework of its powers, to submit a proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaty.

The Commission launched a consultation ("green paper") on the issue on 11 November 2009, before shaping the future regulation. This move was welcomed by the European Council in its conclusion of 11 December 2009, inviting the Commission to present a legislative proposal as soon as possible, with a view to its adoption within the first half of 2010.

Many issues need to be clarified[17], and some were at an informal meeting of European Affairs ministers on 13 January 2010, the consensus being that signatures should come from one third of the member states, that is nine in an EU 27. Ministers also discussed mechanisms to check the authenticity of signatures, the process for ascertaining the procedure's admissibility, and possible safeguards designed to counter attempts to abuse the citizens' initiative by harnessing it for means contrary to the Union's values.

The introduction of such a provision is surprising as it gives the impression that the Commission does not listen to its environment. In practical terms, the collection of a million signatures in nine states requires logistical capabilities that, for the time being, only organized interest or causes can

mobilize such as political parties, trade unions, important NGOs. All these organisations have access, not to say links, to the Commission, the Council and the Parliament. It would be difficult for the Commission to ignore a request backed by important organisations and supported by a large number of signatures.

The implementation of this new right will be handled with extreme care due to its potential political sensitivity. It is more than likely that some sort of pre-launching acceptability clause will be introduced otherwise it would be an open door to demagogic petitions. A clear reminder of the competences of the Commission and more generally of the European Union may avoid the launching of initiatives on which they have no say, such as the banning of the construction of minarets or a single seat for the Parliament.

Only time, that is the experience acquired in dealing with the first initiatives, will provide answers to many questions such as the right degree of precision of the criteria for the acceptability of a proposal, the solidity of the support of national administrations in the verification of the signatures, the means to resolve contradictory initiatives and a long etcetera.

3. The institutional set-up: change within continuity

Any institutional setting is a system in which the modification of the role and attributions of one of the actors affects the role and performance of the other actors. This is even truer when new actors are introduced into the system and that is exactly what the Treaty does. The following lines concentrate on the two new main actors and the institution that, on paper, gains the most from the modifications that is the European Parliament. The role of the Commission hardly changes and the modifications of its functioning are more the consequence of the reinforced role, de jure and de facto, of its President, following previous treaty changes and the consequences of the last enlargement. As such, they are not a consequence of the new Treaty. A significant change provided by the Lisbon Treaty would have been the reduction of the size of the Commission[18]. But, in the framework of the so called Irish guarantees, there is a political agreement to stick to the current situation[19].

3.1. Changes in the Council

Up till Lisbon, in the system of the rotating presidency, a single national administration ensured the chairmanship of the working parties (preparatory bodies) in the Council, the chairmanship of the different formations of the Council and the presidency of the European Council. In other words, a clear political hierarchy and reporting line was ensured across the set-up, a common language and administrative culture was present. Civil servants behaved because they reported to their minister and ministers were careful because their head of government was exposed. It was also a way of securing some sense of "ownership" of the institution by the member states[20].

The shortcomings of the system were known, mainly: (1) six months is a very short period of time to ensure continuity and see processes going through, (2) the disparity in experience, size and means of the member states leads to extremely varied types of presidencies, (3) the loss of any previous experience after the largest enlargement. In a Union of 15 states, each had the presidency every 7/8 years; now it would take 14 years for a state to come back to the presidency.

The Treaty clearly makes the choice of continuity in office against commonality of line of command. In doing that, it limits the role of the rotating presidency to essential technical work with a political component: chairmanship of the Council configuration except Foreign Affairs, of the COREPER and of most of the working groups of the Council. What it fails to provided is a visible role to the head of state or government holding the rotating presidency.
The newly-appointed European Council President, the former prime minister of Belgium, Herman Van Rompuy, outlined his initials views on his mandate in a number of public appearances[21]. On this basis, it is possible to conclude that the he will try to drive the calendar of meetings – that is their frequency –, the agenda, the attendance through specific invitations and, probably more importantly, the conclusions of the meetings.

The Foreign and European affairs ministers would like to play an important role in the preparation and follow-up of European Council meetings

through the General Affairs Council (GAC). The Treaty stipulates that the GAC ensures that the different Council groupings' work is coherent, prepares the European Council meetings and ensures that follow-up is provided for them, in liaison with the President of the European Council and the President of the Commission. The modalities of this coordination are still open, but they will take the form of more or less formalised contacts with the rotating presidency and, less frequently, with all the GAC members.

It is nevertheless far from certain that the GAC will be able to fulfil this ambition. In a world of easy and instant communications, an increasingly large proportion of decisions are made through a set of informal contacts by the European affairs advisers to the Prime Ministers. Early sings indicate that the new President of the European Council is having some success in "plugging" his own team in that network.

It seems also pretty clear that the only structure which is present at every level of the Council (preparatory bodies, Committee of Permanent Representatives, all the Council configurations, European Council) in a supportive capacity, that is the Secretariat General of the Council, will see its influence increase notably through its support to the President of the European Council[22].

3.2. From the Secretary General / High Representative (SG/HR) to the HR/VP

The complexity of the acronym tells volumes about the difficulties of the office.

Much has been said and written about the 'double-hating' but comments have frequently missed the fact that the HR/VP is not taking over the totality of the functions of the out-going High Representative. In effect, the 'old HR' was also 'double-hated' and his functions as Secretary General of the Council are not passed to the new HR/VP depriving the office of the resources and support of the Secretariat General of the Council.

Similarly, the role of Vice-President of the Commission does not provide very much precision on the extension of the portfolio. The Commission, despite the clear reinforcement of the powers of its President in the last two Treaties, is still a collective decision-making body. Members of the Commission can only act on her behalf in so far as they have a proper and explicit delegation of powers of the Commission as a whole. Four other members of the Commission hold portfolios that relate to external relations: trade, development, enlargement and neighbourhood and humanitarian affairs. Furthermore, there is hardly any internal European policy without a substantial external projection (environment, migration, monetary affairs, agriculture, fisheries, transport, etc.). This will require coordination mechanisms that are not yet in place.

Furthermore, the mandate of the HR/VP is not a simple merge of the mandates of the former SG/HR with the one of the Commissioner for external relations. The chairmanship of the monthly meetings of the Foreign Affairs ministers (the Foreign Affairs Council) must be added to the previous two mandates, with all what it means in terms of preparations and follow-up. Finally, a substantial activity of inter-institutional relations, notably with the president of the European Council and the president of the Commission, must also be added. By any reasonable standard, the size of the task is considerable and it is no surprise that the first problem of the HR/VP is diary management.

The second problem is the lack of functioning administrative machinery and the need to build it. This is to be done, not starting from scratch – which could have been longer but easier in many ways – but by merging pre-existing structures of the Council and the Commission secretariats, and incorporating staff of the foreign services of the member states, which are a rather diverse lot in terms of administrative culture, history, resources, etc.

The Treaty establishes that the HR/VP "shall be assisted by a European External Action Service" (from now on EEAS) which organisation and functioning shall be established by a decision of the Council acting on a proposal from the HR/VP "after consulting the Parliament and after obtaining the consent of the Commission". In other words, the structure of

the service had to be decided by the member states on a proposal of the HR/VP accepted by the Commission and indirectly also by the Parliament. In this latter case, the 'consultation' of the Parliament, that is the lowest procedure in terms of power, masks the reality. The decision on the structure of the new service must incorporate amendments to the financial regulations and to the staff regulations and a modification of the current budget. On these three issues, the powers of the Parliament are identical to the ones of the Council. Getting the agreement of the three institutions will indeed be a tall order.

In December 2009, the European Council invited the HR/VP to 'rapidly present, on the basis of the Presidency report adopted by the European Council on 29 October 2009, the proposal on the organisation and functioning of the EEAS with a view to its adoption, together with the related legal acts, by the end of April 2010'

What was produce within this deadline, following a political agreement among the member states, was a draft proposal for a Council decision establishing the organisation and functioning of the EEAS was made public[23]. It provides some assurances to the Parliament about its future role in the external action of the Union and its capacity to scrutinise the activity of the service. For the rest, it out lines a substantially autonomous service (treated as a separate institution in budget terms), limited to some 1,500 officers in Head Quarters and 2 to 3 per embassy abroad that is some 400 more, at least a third of them being diplomats on temporary loan (4 to 8 years) from the national foreign services, the rest being Commission or Council secretariat civil servants. This means that the vast majority of the European Union civil servants and other agents posted abroad will not be members of the EEAS (basically all specialised attachés –trade, financial, development, etc. - will remain officers of the Commission). The draft does not clarify the essential questions of the much needed deputies for the HR / VP. In terms of organisational structures, it keeps basically unchanged the Council secretariat structure dealing with crisis management, and for the rest ops for a rather classical division in geographical areas and support functions. Initial reactions to the process and the initial results have lacked lukewarm[24].

The EEAS will be in place at the earliest at the end of 2010, but it will take more time to operate in full. It is therefore meaning full to consider some of the decisions already take.

The business of all configurations of the Council is prepared by a number of preparatory bodies (working groups), chaired by a representative of the country holding the rotating presidency. As the Treaty establishes that the Foreign Affairs Council is to be chaired by the HR/VP, the issue of the chairmanship of the 39 preparatory bodies reporting to that specific configuration of the Council had to be addressed before the entering into force of the Treaty. The Council decision of 30 November 2009 dealt with that. In the area of trade and development (including the Trade Policy Committee) the 11 preparatory bodies will be chaired by the rotating presidency. The 8 bodies with a geographical scope will be chaired by representatives of the HR/VP. The situation was more mixed in bodies related to the Common Foreign and Security Policy (9 bodies out of 15 to be chaired by HR/VP representatives, the others by representatives of the rotating presidency) and the area of Common Security and Defence Policy (3 out of 5). This distribution of responsibilities generates, by design, some coordination problems.

Transitional decisions where take on the statute of the delegations or embassies, both to third countries and to international organizations. The Commission has some 140 offices abroad, which makes it one of the more dense diplomatic networks, only comparable to the ones of the largest member states[25]. Negotiations took place in November and December 2009 and the hectic pressure of time produced decisions marked by pragmatism: the rotating presidency (Spain) would ensure its pre-Lisbon functions in some 60 countries, the Commission permanent delegations would take over in 47 countries[26].

The situation of the delegations to multilateral organisations was even more complex. The international system is still built around nation-states, and the European Union is an odd entity in this context[27].The establishment and full operation of the EEAS will not be sufficient to clarify the situation in this area: it will require also a change of legal status of the EU in international organisations that is long and difficult negotiations.

3.3. The Parliament

The Parliament did what it always does at the beginning of a new legislature and in case of Treaty succession: (1) adapt its rules of procedure; maximizing in the process its prerogatives, (2) negotiate with the other institutions and adopt an 'omnibus' resolution to clarify the situation of all pending legislative business notably the pieces affected by a change of legal basis in the Treaty. Also as usual, the Parliament wanted to up-date the framework agreement governing relations with the Commission in the light of the Treaty. To that end, it adopted on the 9 February 2010, a resolution setting out the "common principles" of the renewed framework agreement between the Commission and the Parliament. Although they have been approved by the two parties, these principles must be incorporated into a formal document and difficult negotiations on certain points can be expected.

On inter-institutional relations, the position of the Parliament is very consistent with the past, as the request can be summarised as follows: (1) a beefed-up dialogue through a set of regular meetings between bodies of both institutions, (2) the participation of Commissioners, including the HR/VP, to 'question hours' in the Parliament, (3) the consultation of the Parliament and the organisation of hearings in case of modification of the allocation of portfolios in the Commission, (4) the organisation of hearings of candidates to the posts of executive director of European regulatory agencies and (5) the consultation of the Parliament on the next review of the Code of Conduct for Commissioners.

When it comes to legislative initiative, the Treaty grants a majority of Parliament's Members, to request the Commission to submit proposals on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. The Parliament would like the inter-institutional to be specific on deadlines and modalities: response to every initiative within three months following adoption, presentation of a legislative proposal at the latest one year later or inclusion of the proposal in the following year's work programme, detailed reasons in case of refusal by the Commission.

The Commission is also invited to ensure that the procedure for assessing the impact of new legislative proposals is transparent and independent. To some in the Parliament this means that the assessment would necessarily have to be conducted outside the Commission. Commission sources note that the agreed text states that the impact assessment "shall be conducted under the responsibility of the Commission" and does not rule out the use of external experts. As far as international agreements are concerned, the Parliament will press the Commission to provide "immediate and full" information on negotiations. This will be particularly significant in the negotiations of trade agreements, as the Treaty requires the approval of the Parliament.

Interestingly, the Parliament is the cause of the first amendment to the new Treaty. The Parliament was elected in June 2009 under the previous Nice Treaty. The June 2009 European Council decided that when the Treaty would come into force, 18 extra seats would be added (four for Spain, two for Austria, two for France, two for Sweden and one each for the Netherlands, Poland, Italy, Slovenia, Bulgaria, Latvia, Malta and the United Kingdom). Ten days after the entering into force of the Treaty, the Council endorsed the amendment to the Treaty protocol on transition measures for the Parliament to temporarily increase the number of Members up to 754 (until the 2014 European elections, when the number will be reduced to 751). An intergovernmental conference will therefore be required to amend the Treaty, but the member states would like this to be very brief, limited to this issue alone and not preceded by a convention (as provided for by the Treaty). A majority of the Parliament seems to agree.

This limited increase will not affect the political balance in the Parliament, but may have some impact on the balance of power inside the parliamentary groups, where the allocation of positions and the distribution of relevant parliamentary work, follows numerical strength.

What are the potential effects of the increase of the Parliament's powers on its future relationship with the Commission? In a difficult adjustment period, with the introduction of a more visible intergovernmental institution as the European Council, the interest of the Parliament is to

support the institution on which its influence is the greater, that is to support the Commission.

4. Change or continuity?

For some, the Treaty and its implementation suffer from a timing error. Basically, it was intended to deal with the consequences of enlargement on the size of the institutions and the decision making process, attend to some tiding-up needs in the form of simplification and boast the standing of the European Union on the world stage in a context of increased globalisation.

Paradoxically perhaps, the previous institutional structure proved to be more resilient to the stress of the extension than initially foreseen, notably due to the efforts of the Commission and the Parliament. The real challenge was the initial financial crisis and its consequences. In purely institutional terms, the Treaty offered pretty little help to deal with the situation. But the European Union is something more than an institutional set-up; it is also a dense and complex net of social and political links, habits of working together, methods and capacity to mobilise expertise. These proved invaluable in addressing the problems as they unfolded.

Inevitable, comments and analysis of the Treaty have concentrated on changes and innovations. As a counterpoint, it is worth recording what seem to be some persisting elements.

The first is that institutional change is not over. The European Council meeting conclusions of 11 December 2009 stated that "The Treaty provides the Union with a stable and lasting institutional framework and will allow the Union to fully concentrate on addressing the challenges ahead". This seems to reflect a comprehensible institutional reform fatigue. Admittedly, the last institutional change has been record long, difficult and, as usual, has left the participants and promoters without any discernable political benefits. On the contrary, political costs have been high in some cases. No wonder they say 'no more'. So, the general consensus seems to be that no institutional reform will take place in the foreseeable future.

This view tends to underestimate the fact that institutional reforms have always been a consequence of necessity. The Treaty is not a complete and closed document. For a start, its implementation will be progressive, for example on the modalities of qualified-majority voting. It has also some built-in flexibility as the clauses paserelles demonstrates. But, more than anything else, the Treaty does not provide all the details needed for its full implementation. A substantial number of provisions need to be developed, among other means through inter-institutional agreements, and others will evolve through practice, notably the EEAS. More important perhaps is the fact that, in the course of the ratification process, some political commitments where made to Ireland, the Czech Republic and Poland that will have consequences in terms of Treaty amendments.

Taking into account the experience of the past and the challenges ahead, it is not adventurous to predict that institutional change will continue. What may be different is the formal shape of it. The opening of a comprehensive review of the Treaties with grand designs is probably over. But more modest and discrete changes will take place.
The near future will also provide opportunities for further adjustments notably through the Accession Treaties of new member states (Croatia, Iceland, etc.). The European Union has always been planning or implementing an institutional change. Why should this stop when we know that the new challenges will need new responses?

Secondly, there is no discernable alternative to the continuation of consensus politics. The European Union has always been political, not only as a project but also in its functioning. Political affiliation played an important part, even if far from exclusive, in the recent high level appointments. The association of national political parties in European parties contributes very powerfully to the work of the Parliament, but also to the shaping of the political landscape in a number of member states where the party system has not reached maturity yet. Their role is recognised by the Treaties and becomes particularly visible when, for example, the heads of state and government meet along party lines before each European Council.

The European political set-up is not a transposition of any of the national systems, not even an amalgamation of different elements picked up from the member states. It must be recognised as a system on its own[28]. Hence, the frustration and misunderstandings of a number of national political actors and observers once confronted with a political system that they are unable to read with national lenses.

As the European Union is still an ongoing institutional construction, the need for a much larger political support than the one needed in a finalised institutional setting will continue for the foreseeable future. In other words, it is still too early to envisage the extension to the European level of the classical model of adversarial politics which predominates in the larger member states: coalition politics along the lines of the smaller member states of continental Europe will prevail.

Finally, institutional settings seem to matter more than office holders. Names have been avoided in these pages because they do not really help to understand the situation and predict the institutional evolution. There is no denying that the personality and characteristics of office holders do matter but, considered from a medium term perspective that is with some distance from the media head-lines, they matter less than the hard facts.

Who ever would have been appointed for one of the new or older offices would have faced the difficulties of the current incumbents. It is possible to speculate about what would have been the performance of other potential office holders. It is true that matters of style and personality may have made things more or less visible, but the underlining difficulties of power definition, establishment of new practices, search for new inter-institutional agreements, etc. would have been the same.

If, as we have seen, transition periods in the case of treaty succession can be limited to 'one shot' operations if the institutional and administrative tools are in place and need only minimal adjustments mainly to deal with on-going business, this is not the case when innovations are more substantial in terms of redistribution of powers. One may also add that change always faces resistance. Vested interests, some times of a conflicting nature, are present all the way long and few coalitions are more

effective than conservative ones. The dust of inter-institutional tensions will settle, it always does, but it will take some time.

Notes

[1] For a documentary account, see NORDMAN, Peter (2003) The accidental Constitution – The story of the European Convention, Brussels, EuroComment, 406 p. There are a number of personal accounts of actors of the process, the most vivid and interesting one, unfortunately available only in Spanish, being MENDEZ DE VIGO, Iñigo (2005) El rompecabezas – Así redactamos la Constitución Europea, Madrid, Biblioteca Nueva, Real Instituto Elcano

[2] The best analysis of the Constitution is by PIRIS, Jean-Claude (2006) The Constitution for Europe – A Legal Analysis, Cambridge, Cambridge University Press

[3] For a legal analysis set in the political context, see PIRIS, Jean-Claude (2010) The Lisbon Treaty – A Legal and Political Analysis, Cambridge, Cambridge University Press.

[4] Assessment made by the outgoing Director General for external policies of the European Parliament (March 2010).

[5] Pierpaolo SETTEMBRI, unpublished preliminary research in 2009.

[6] In line with all previous treaty changes, the Commission introduced an 'omnibus' Communication to deal with pending co-decision files which was adopted on 2 December 2009. According to Commission sources, in terms of volume of legislation, 39 files change from the consultation procedure to the ordinary legislative procedure; one changes from the assent procedure to the ordinary legislative procedure; 8 Council Regulations/Decisions change to the ordinary legislative procedure and 16 proposals change their legal base, due to the introduction of new legal bases.

[7] PENNERA, Christian et SCHOO, Johann (2004) La codécision : dix ans d'application, Bruxelles, Cahiers de Droit Européen, n° 5-6, pp. 531-565

[8] Figures are available from the website of the European Commission

[9] See DUFF, Andrew (2009) Saving the European Union – The Logic of the Lisbon Treaty, London, Shoehorn Media Ltd , pp. 52-54

[10] KURPAS, Sebastian, GRON, Caroline & KACZYNSKI, Piotr Maciej (2008) The European Commission after Enlargement: Does More Add Up to Less? Centre for European Policy Studies (CEPS), February 2008, Special Report, 56 p.

[11] FUGLSANG, Niels. OLSEN, Kim B. (2009) Staying in the Loop – The Commission's role in first reading agreements, EPIN Working Paper, n°25, September 2009, 8 pages

[12] It is not by chance that the first battle of the Parliament recorded by PRIESTLEY, Julian (2008) Six Battles that shaped Europe's Parliament, London, John Harper Publishing, was on this subject as shown in Chapter 1 Tugging the purse strings: the battle for the budget, pp. 7-22

[13] HOUSE OF LORDS, European Union Committee (2008) The Treaty of Lisbon: an impact assessment, vol. I, Report, p. 49

[14] HAYES-RENSHAW, Fiona; VAN AKEN, Wim; WALLACE, Helen (2006) When and Why the EU Council of Ministers Votes Explicitly, JCMS, vol. 44, n° 1, pp. 161-94

[15] The evolution of this practice is well documented by BERGSTRÖM, Carl Fredrik (2005) Comitology. Delegation of Powers in the European Union and the Committee System, Oxford, Oxford University Press

[16] BEST, Edward; SETTEMBRI, Pierpaolo (2008) Legislative output after enlargement: similar number, shifting nature in BEST, Edward, CHRISTIANSEN, Thomas and SETTEMBRI, Pierpaolo (2008) The Institutions of the Enlarged European Union – Continuity and Change, Edward Elgar Publishing, pp. 183-204, see in particular page 189

[17] See MAURER, Andreas and VOGEL, Stephan (2009) Die Europäische Bürgerinitiative SWP – Studie, October 2009, 31 pages

[18] Article 17, § 5 of the Treaty on European Union states: "As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number." (Consolidated version of the Treaties published in the Official Journal of the European Union, vol. 51, 9 May 2008, C115, p.25).

[19] See PIRIS (2010), op. cit., pp. 49-60.

[20] See SEEGER, Sarah (2007) Rotation in the Council – Bringing Citizens Closer to the EU?, Center for Applied Policy Research (C-A-P, Munich), paper presented at the Symposium on the Future of the EU Council Presidency, Oxford, October 10-11, 2007, mimeo, 12 p.

[21] Notably at the dinner on the eve of 11 December 2009 European Council meeting and in his presentation of the results from the informal summit of 11 February 2010.

[22] Some observers point out that this seems to be in any case the analysis of both France and Germany who lost no time in securing the position of Secretary General for one of their nationals (until June 2011 for France and from there to June 2015 for Germany)

[23] See Agence Europe Documents n° 2533.

[24] See, for example, WEISS, Stefani (2010) External Action Service – Much Ado About Nothing, Bertelsman Stiftung, spotlight Europe, June.

[25] Useful data can be found in SPENCE, David (2006) The Commission's External Service in SPENCE, David with EDWARDS, Geoffrey ed. (2006) The European Commission 3rd edition, London, John Harper Publishing, pp. 396-425.

[26] The European Union would be represented by the rotating presidency in 60 countries, but only in 22 cases until the end of the presidency (July 2010). In the other 38 countries, this role would end with the summit, bilateral or multilateral, with the countries concerned. The Commission delegations would take charge of the tasks of the presidency in 47 countries, 31 of them in Africa, 7 in the neighbourhood and 9 in Asia/Pacific notably China and India. Embassies of other member states would assume the former tasks of the rotating presidency in 32 other third countries (8 Germany, 7 France, 7 United Kingdom, 4 Italy, 2 Belgium, 1 each Bulgaria, Netherlands, Portugal and Romania). Overall, this meant that relations with 139 countries where taken care of through this provisional decision. There are 196 member states of the United Nations. As there are, of course, no embassies of the European Union in the 27 member states, this leaves out 26 of the United Nations members, some of them covered by the use of multiple accreditations. In some cases, a clear willingness of constructive ambiguity can be perceived (Kosovo, Hong Kong, etc.).

[27] It is therefore not surprising that the EU representation to the entire United Nations system was left in the hands of the rotating presidency (New York, Geneva, Vienna, Rome and Paris) as well as in the case of the OECD and the Council of Europe in Strasbourg. The only multilateral delegation where the Commission replaced the rotating presidency was the delegation to the African Union. The representation of the EU in Geneva will be ensured by two Ambassadors, one to the UN system (EEAS) and the other to the WTO (Commission).

[28] One of the best debates on the type of politics in Europe is the dialogue between HIX, Simon & BARTOLINI, Stefano (2006) Politics: The Right or the Wrong Sort of Medicine for the EU? March 2006, Notre Europe, Policy paper n° 19, 50 p.