

The Treaty of Lisbon: an impact assessment

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Federal Union submitted written evidence to the House of Lords committee, which you can read here: <http://www.federalunion.org.uk/europe/071213HofLsubmission.pdf>

We reproduce below extracts from the House of Lords report where the evidence submitted by Federal Union has been taken into account. The complete report can be read here: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/62/62.pdf>

Transparency in the Council of Ministers

4.65. The Lisbon Treaty includes a transparency clause (new Article 16(8) of the amended TEU): “The Council shall meet in public when it deliberates and votes on a draft legislative act.” Each meeting of the Council of Ministers will be divided into two parts, dealing separately with legislative acts and nonlegislative activities, the first half only being public.

4.66. The European Parliamentary Labour Party called this change a “long overdue reform that was driven by the 2005 UK Presidency” (p S139). Federal Union considered that the provision could, if applied properly, “make a great deal of difference to the way in which the European Union functions.” It could enable national parliaments to hold their governments to account more effectively for their actions in the Council of Ministers; could oblige national governments to explain and justify their actions more completely, contributing to public understanding; and might make national governments less willing to support proposals that they could not justify to their voters (pp S142–143).

4.67. Professor Peers said that the move was “welcome” and “should be implemented by the publication of the proceedings of the Council’s public meetings in a form of *Hansard* (which could be online only)” (p S152). Federal Union felt that not just a final vote but “every stage of the legislative procedure should be open to scrutiny”, especially all amendments to legislative proposals (p S142).

4.68. However, Lord Brittan of Spennithorne regretted the move, considering that “the position in which there was haggling and negotiation rather than the necessity to take up public positions was on the whole a good arrangement” (Q S376).

Conclusion

4.71. The provision requiring the Council of Ministers to meet in public when it legislates is important. The Council of Ministers will continue to meet in private when it is discussing and voting on non-legislative matters. We believe that the proceedings of the public meetings of the Council of Ministers should be recorded and published for public consumption.

European Parliamentary party nominations for President

4.93. A number of our witnesses thought it likely that the obligation on the European Council to take into account the elections to the European Parliament would result in European Parliamentary parties going to the next European Parliamentary elections in 2009 not only with lists of Parliamentary candidates and programmes, but with proposed Commission Presidency nominees. John Palmer felt that this would be “of very considerable importance because in the European Council it will allow Presidents of the Commission to point to a direct mandate” (Q S28). He considered that this would strengthen the democratic legitimacy of the Commission President (p S15).

4.94. Brendan Donnelly felt that this development might strengthen the democratically legitimising capacity of the European Parliament, providing an obvious political consequence of European Parliamentary elections. “If the President of the European Commission were demonstrably a candidate issuing from and supported by the current majority in the European Parliament, then this would fundamentally change the relationship between Commission and Parliament, making it more like that between national parliaments and national governments. It would also change the nature of European Elections, giving to electors a sense of personal choice and involvement in European decision-making” (p S133).

4.95. Professor Peers considered this development “wholly appropriate on democratic grounds”. The public would “know who they were ‘voting for’ as Commission President”, and “it would be unreasonable for EU leaders to refuse to nominate someone whose sponsoring party had won more seats in the EP than any other party” (p S153).

4.96. Federal Union told us that such nominations would “give the President of the Commission the same kind of legitimacy as that enjoyed by the prime minister of a Member State”, and that the alternative was the selection of a President “as a result of opaque and distant negotiations behind closed doors”, which was not the way that positions of political importance should be determined (p S143). Jo Leinen MEP agreed that “[f]rom 2009 onwards the President of the European Commission should not be found after the elections behind closed doors in the European Council, it should be an open process before the elections” (Q S340).

4.97. The European Parliament’s election of the Commission President, combined with the need for a vote of confidence by the Parliament for the entire College, would, in the eyes of the European Parliamentary Labour Party, “make it clear that the Commission is not a bunch of unelected bureaucrats, but is a politically accountable executive dependent on the confidence of the elected Parliament” (p S140). The Coalition for the Reform Treaty and Business for New Europe also supported the move, which in their opinion made the Commission more democratically accountable (p S130; p S122).

4.98. The Commission told us that the requirement to take into account the elections was “quite significant” and that “it is correct that there is a debate about who should lead the Commission following direct elections to the European Parliament” (Q S315). Neil O’Brien felt that the European Parliament was gaining a significant power in electing the Commission President, and “in the future Commission Presidents are more likely to have a strongly integrationist bent in line with the general opinion of the European Parliament” (Q S81).

4.99. Lord Brittan of Spennithorne told us that “‘taking into account’ does not mean the same as ‘following’”. According to him, “what it will mean is that it would be difficult for Member States to come up with a proposed president who was known to be violently contradictory to and opposed to the weight of opinion in the European Parliament ... I do not think it is going to make as much difference as all that” (Q S351). He thought that “‘take account of’ gives the flexibility but at the same time a nod in the direction, in effect saying it has to be acceptable to the Parliament, which is about right” (Q S363).

4.100. Questions remain regarding party nominations for Commission President. Will the elected President feel beholden to the political party or group which put his or her name forward? Will the President always be a candidate of the majority party or group? Could the Council refuse to nominate someone sponsored by the party commanding the majority in the Parliament? Experience will tell.

Conclusion

4.109. The Treaty states that the European Council will need to take into account the elections to the European Parliament in nominating its candidate for election by the European Parliament to the post of Commission President. One consequence of this is that the European Parliamentary parties are more likely to go into European Parliamentary elections with proposed candidates for Commission President as well as their parliamentary candidates and programmes. The need for the European Council to take into account the results of the parliamentary elections is not a bar to the European Council coming to its own decision as to its preferred candidate, but the Council will continue to be unlikely to nominate a candidate who could not command the parliamentary majority necessary for election. In that sense there is no fundamental change from the current system which requires the Parliament’s approval of the European Council’s nominee, but the practical consequences of the Treaty provisions are as yet unclear.

Democracy and national parliaments

4.179. Some considered that an increased role for the European Parliament was part of a victory for democracy as a whole in the Union. Federal Union saw democracy as the “big idea” of the Lisbon Treaty, and Andrew Duff MEP and the European Parliamentary Labour Party also saw democracy as the winner (p S143; p S135; p S139). Elmar Brok MEP told us that the Treaty was good for democratic accountability, and that the important Treaty change was “the stronger roles of national parliaments and the European Parliament” (Q S333) (for analysis of the role of national parliaments under the Lisbon Treaty, see Chapter 11). The Government saw national parliaments among the winners from the Treaty, particularly this Parliament when its veto over *passerelles* (see Chapter 3) was taken into account (Q S240). Professor Peers agreed that the national parliaments stood to gain, and Lord Brittan of Spennithorne concurred: the Treaty, and in particular the card procedures (see Chapter 11), enhanced the role of national parliaments and this was one of the Treaty’s most important aspects as far as the UK was concerned (p S155; Q S385). The Speaker of the Portuguese Assembleia da Republica, Jaime Gama, addressing a parliamentary meeting hosted by the European Parliament in December 2007, went so far as to say that “national parliaments are the greatest winners”. The Commission stated: “The Treaty of Lisbon significantly increases the involvement of national parliaments” (p S161).

4.180. Federal Union told us that “[n]ational parliaments are one of the big gainers from the Reform Treaty, or rather, they are if they want to be” (p S143). This was due not only to the cards, but also to the requirement for the Council to legislate in public, which would make it easier to hold national ministers to account (see also p S161). However, the actual impact would depend on national politicians’ willingness to organise themselves, rethink their procedures, and get involved. Likewise Timothy Kirkhope MEP said, “I am concerned about the quality of democracy as opposed to the quantity in this context. The level and standard of scrutiny which exists in terms of our own national legislatures is extremely patchy” (Q S332). Elmar Brok MEP called for cooperation: “It is not a question of whether it is the national parliament or European Parliament. We have to become stronger through cooperation to do our job and control our bureaucracies, both the national and European ones ... the Treaty of Lisbon gives us a better possibility of doing that if we want to do so” (Q S333). John Palmer advised national parliaments to combine forces with the European Parliament, for instance by admitting their MEPs as non-voting members of EU scrutiny committees (Q S24). Sir Stephen Wall observed that this Parliament had been more cautious about involving MEPs than some others (Q S230). Brendan Donnelly reckoned that the Treaty’s provisions embodied the view that “national parliaments represent an important source of legitimacy and national political discourse” for the EU (p S134). He recommended that parliaments should respond by improving their scrutiny of national ministers in the Council; and by producing reports which compelled attention on merit, quite apart from procedural rules.

4.181. David Heathcoat-Amory MP was one of the representatives of the House of Commons in the Convention on the Future of Europe. He considered that, whereas each of the EU institutions gained something from the Treaty, “the losers are national parliaments” (Q S48). In his view this was because in the Convention national parliaments were disorganised and had no unifying agenda. Neil O’Brien, Director of Open Europe, likewise considered that, weighing the provisions regarding national parliaments against the simplified revision procedure (see Chapter 3) and other changes, the net effect was negative (Q S100). The Campaign against Euro-federalism saw the cards as “small compensation” for the transfer of law-making powers to the EU (p S125).

Conclusion

4.187. The Treaty’s effects on the balance of influence between the various EU institutions will only be observable over time. The European Parliament gains significant extra influence, which is seen by some as being at the expense of the Commission and the Council. The addition of a full-time President of the European Council introduces a rival pole of influence to the Commission President. The position of High Representative is significantly enhanced by the Treaty. But a smaller Commission may be a more effective Commission. The ECJ’s jurisdiction is significantly extended. The opportunities for national parliaments to exercise their role are enhanced (see Chapter 11).