

PARLIAMENTARY DEMOCRACY IN THE LISBON TREATY

**The Role of Parliamentary Bodies in Achieving Institutional
Balance and Prospects for a New European Political Regime**

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*Parliamentary Democracy in the Lisbon Treaty:
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for a New European Political Regime*

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Sotirios Petrovas,
May 2008,
Chicago, IL., USA.

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Introduction

The Lisbon Treaty is depicted as the epilogue of a long period of extreme uncertainty and passionate debate on the future of the European Union.¹ Depending on the approach, the beginning of this period may be dated back to the early 1990s and the fall of the Iron Curtain² or to 1999 and the final phase of the Economic and Monetary Union (EMU).³ In the first case, the prospects of enlargement of the Union to almost thirty Member States, accomplished in 2004 and 2007, heralded a vital necessity of institutional reform, with the aim of achieving greater efficiency. In the second case, it is the transformation of an economic community into an authentic political union that triggered a twofold reflection on both the finality of the European Union and its democratic nature. Was the EMU the ultimate goal or a mere prerequisite for the still-to-come political union? And if the latter were to come into being, what form would it have to take?

Two were the concerns: the first entailed improved efficiency of decision-making as a result of imminent enlargement; the second implied the consequent need for transparency and legitimacy in the political process. The failure of the Nice Treaty to provide answers and innovative solutions to these issues revealed the deficiencies of the prevailing system and of its method. Hence, the Laeken Declaration of 2001 marked the official recognition of the aforementioned challenges and constituted the basis for the Convention on the Future of Europe, presided by former French President Valéry Giscard d'Estaing. Two means were put forward to avoid a deadlock: setting up common projects (the policies) or reforming the institutional architecture (the polity). The former relates to the substance (*what* is done) whereas the latter involves the rules and procedures (*how* it is done). Although both are equally important at the time, adapting the norms and the institutional framework appeared as a prerequisite for the success of future policies. The Convention therefore went beyond its initial mandate and introduced an unprecedented constitutional dimension to the revision of the treaties: the resulting constitutional treaty had a precise purpose to create a renewed polity, closer to the citizens and thus more democratic and legitimate. Unfortunately, despite its undeniable advances, it was rejected by referendum.

The Lisbon Treaty is now what is left of it. As Giscard put it, 'the toolbox is the same, only the order has been changed'. To what extent does the new treaty pursue the alleged objective of the Constitution and render the European Union more democratic?

Indeed, the so-called Lisbon Treaty is nothing different than a Constitution in disguise: the provisions are practically the same, with minor differences due to the reactivation of hot issues during the 2007 intergovernmental negotiations and

¹ The Lisbon Treaty was signed on December 13, 2007, in Lisbon, following the Intergovernmental Conference (IGC) convened by the Member States during the European Council of June 21-22, 2007. It entered into force on December 1, 2009.

² See Leinen, J. (2008), *The Winners of the New European Treaty*, Friedrich Ebert Stiftung, International Policy Analysis, April 2008, p.4.

³ Marhold, H. (2002) *Le nouveau débat sur l'Europe*, Presses d'Europe, Introduction.

consequent compromises. The ‘mini-treaty’ therefore appears to be the final act of a long-drawn-out effort to adapt the Union to the challenges of the new century.⁴

We shall endeavor, throughout this study, to answer our question by putting the focus on the institutional implications of democratization, and particularly on parliamentary institutions. Party politics, the electoral procedure, and case studies on specific policies will not be dealt with. We will however come to discuss related issues such as the impact of the Treaty on the efficiency of the political process or the nature of the Union (federal or intergovernmental).

A preliminary part will allow us to establish the concepts, definitions and tools of analysis necessary to our work and the approach we intend to follow (Preliminary Part). Then, we will examine the impact of the Lisbon Treaty at the European and at the national level. First, the changes concerning the powers of the European Parliament will highlight the democratic advances in the inter-institutional relations (Part 1). Then, the intervention of national Parliaments in European Union affairs will help us evaluate the changes in the domestic setting (Part 2). An overall discussion comparing the findings in Parts 1 and 2 will then allow us to make general assessments on the nature of the political regime of the post-Lisbon Union (Part 3).

⁴ Alain Lamassoure, for instance, is one among many to welcome the reform treaty as unblocking the Union’s ‘legitimacy crisis’; Collet, M., Roca, P. (2007) *Dossier Spécial: Traité de Lisbonne*, Euros du Village, Notre Europe, p. 7
<http://www.eurosvillage.com/IMG/pdf/dossierEDVtraitedelisbonne.pdf>

PRELIMINARY PART: Conceptual Foundations

The study of Parliamentary Democracy in the European Union (EU) is quite an ambitious project. It is therefore necessary to narrow the scope of our work, define the concepts and approaches that will constitute our theoretical point of departure and explain the reasoning that will lead us to our main conclusion.

In this preliminary part we will first try to give a general overview of the political system of the European Union in order to understand the overall framework within which the institutions evolve (Section 1). Our final aim is to examine the advances of the Lisbon Treaty by means of a visual model of analysis, in order to understand in what sense the Union is meant to become more 'democratic' and more 'efficient' (Section 4). To achieve this, we must define these two criteria separately, before comparing them in our model. Thus, we shall first try and understand how 'democracy' is to be understood for the purpose of our study, whether or not the European Union can be said to suffer from a 'democratic deficit' and the means to reduce it (Section 2). This will contribute to a better understanding of the approach to be followed. Then, we will examine the second criterion – efficiency, which we will link to the very purpose of European integration, as it was defined in the first years of the Communities; we shall therefore give a brief summary of the leading integration theories (Section 3).

For the sake of intelligibility, we will remain brief and concise.

1. Overview of the political system of the EU and separation of powers

Before studying closely the European Parliament itself, it is of utmost importance to get an idea of the general environment within which it evolves and the institutions it has to interact with. Therefore, in this first section, we shall give a quick overview of the European Union as a political system (A), then briefly discuss the principle of separation of powers as applied throughout the EU decision making process (B).

(A) The European Union as a political system

Is the European Union an authentic political system? According to the criteria established by Gabriel Almond⁵ and David Easton,⁶ a political system is defined by four components: (i) there must first be institutions that are both constant and governed by rules in their relations; (ii) citizens must put these institutions to use in order to achieve results, through organized groups (such as

⁵ Almond, G. A. (1956) 'Comparing Political systems', *Journal of Politics*, 18(2) : p. 391-409.

⁶ Easton, D. (1957) 'An Approach to the Study of Political Systems', *World Politics*, 9(5) : p. 383-400.

political parties); (iii) the decisions taken in the political system must have an effect on the citizens, whether it be economic, social or political; (iv) there must be ‘feedback’ so that citizens will express renewed demands that will lead to new results and so forth.

According to Simon Hix, the European Union is undeniably a political system as the four of these elements do indeed characterize it.⁷

First of all, the institutions of the Union are stable and established by the treaties⁸ and there are rules that regulate the relations between them. The existence of the Court of Justice has contributed to reinforcing the stability of both the institutions and the set of rules, notably through the early recognition of the primacy of EU law over domestic law,⁹ which is reaffirmed in a Declaration annexed to the Lisbon Treaty,¹⁰ and through the recognition of rules and principles that have ‘constitutional’ value within the EU legal order.¹¹ The latter demonstrates that not only rules do exist and are protected by the Court, but because some of them have a higher normative value they are harder to change and therefore even more stable.

Secondly, various groups try to have an influence over the institutions of the Union. The most obvious example concerns the Member States’ governments. According to Hix however, what differentiates the EU from any other international organization is precisely the fact that the governments have no monopoly on political demands: a variety of complex organizations, interest groups, political parties and civil society organizations are also in competition for influence over the input given to the institutions.

Thirdly, the impact of EU decisions on citizens is self-evident if we take a look at the way the media or national politicians portray the Union’s policies. The estimation that more than 80% of domestic legislation finds its origin in EU legislation¹² and the commonly given image that ‘Brussels’ decides – sometimes to the detriment of domestic interests – illustrates the perceived decisiveness of EU norms. Furthermore, the large number of policies that fall within the competencies of the Union,¹³ whether it be exclusive, shared or supporting competencies, and the number of legislative acts adopted each year by the Union’s institutions demonstrate the dimension taken by EU politics, to the point that Europe is often perceived overseas as being the world’s biggest norm producing machine.

Finally, the EU summits that take place four times a year between Heads of State and Governments as well as elections at the European Parliament are the tip of the iceberg, as far as feedback from the citizens is concerned. Indeed the reaction to EU decisions is an established and visible phenomenon that illustrates

⁷ Hix, S. (2005) *The Political System of the European Union*, 2nd edition, London: Palgrave, p. 1-26

⁸ The Lisbon Treaty defines the institutions of the Union at article 13 (1) TEU.

⁹ ECJ, case 6/64, *Costa vs. Enel*, of July 15, 1964.

¹⁰ Declaration 17 of the Lisbon Treaty.

¹¹ Opinion 1/91 of December 14, 1991, of the European Court of Justice, §21.

¹² Maurer, A. (2001) *Les parlements nationaux après Amsterdam : adaptation, recalibrage et européanisation par processus*, Document destiné à la rencontre du Groupe de travail, XXIV^e COSAC du 8 au 9 avril 2001.

¹³ See articles 3 and 4 TEU.

the circular interaction between political demand and results and their mutual renewal.

The European Union seems therefore to fit Almond and Easton's fourfold definition of a political system. But it is not (yet?) a state, as the '*fonctions régaliennes*' remain within the hands of Member States (monopoly of physical coercion, internal order, external security and to a large extent justice). Furthermore, the European Union differs from classical political systems in the way the separation of powers is implemented.

(B) The separation of powers in the European Union

At the time of the first European Communities in the 1950s, the very purpose of Monnet and Schuman's project was to concentrate decision making in some key fields of the economy in order to reach higher efficiency and, through cooperation, ensure mutual control of the steel and coal industries.¹⁴ However, no government was willing to accept any type of uncontrolled attribution of powers to a body of experts. It was thus decided that not only would the Member States appoint the High Authority themselves, but they would also vote on propositions it would issue. On the insistence of the Dutch and Belgian governments most noticeably,¹⁵ a 'Common Assembly' was created to hold the High Authority accountable for its actions.¹⁶ Thus the latter was under a triple constraint and under the direct or indirect control of governments.

This mechanism thus provided practical solutions for problems due to political concerns. In addition, it followed the philosophy of separation of powers, although in a very new and specific way. Whereas the classic separation of powers theory implies a horizontal attribution of prerogatives with the possibility of checks and balances between legislative, executive and judiciary, this mechanism corresponded more to a sort of 'linear' separation of powers as the competent authority depended on the stage of the normative process reached. This is called the 'Community method'. It relies upon the following principle. The monopoly of the right of initiative belongs to the Commission; the Council votes on the texts (all the more often by qualified majority rather than unanimity) on an equal footing with Parliament (with some exceptions however); the implementation of the measure belongs in principle to the Commission. On top of the process, the Court of Justice exercises judicial control (here again with some

¹⁴ These fields were considered to be of strategic importance as they were at the basis of any military economy, coal providing energy and steel allowing the construction of weapons, armored vehicles, etc. This was a way for the French government to have guarantees that no German army could emerge without indirect control from Paris. At the same time it corresponded to the British and the American governments' desire to uphold an industrialized western German republic that could be a solid barrier to communism in the east.

¹⁵ Dirk Spierenburg, head of the Dutch delegation in the 1950's, compared the High Authority to a 'potential congregation of experts exercising a dictatorship over national coal and steel industries'. The need for control was also stressed by the Belgian government, see Griffiths, R.T. (1990) 'Die Benelux Staaten und die Schumanplan-Verhandlungen' in Herbst, L., Bühner, W., and Sowade, H. (eds) *Vom Marshallplan zur EWG* (München : Oldenbourg) p265-266.

¹⁶ The context and reasons for the creation of the Common Assembly shall be discussed in Section 2 of part 1.

exceptions). The principle expressed by Montesquieu according to which, by the disposition of things, power must stop power, seems therefore to be respected at EU level.¹⁷

Having presented the general traits and essential principles of the system of the European Union, we shall now proceed to the question of how this system can become ‘more democratic’.

2. How can the European Union become ‘more democratic’?

It is claimed that the Lisbon Treaty heralds an increase of the democratic character of the Union. As has been said, the broader context of the emergence of the Constitutional Treaty, which is now presented to the citizens under a new nickname, denotes a deeply rooted concern relating to the democratic nature of the EU. The 2001 Laeken Declaration, the mandate of the 2007 IGC and the report adopted by the European Parliament in January 2008 are but a few indicators of this passionate trend.

In order to properly support such claim, however, some preliminary methodological precautions need to be taken. First, without going into too much detail, we must define elements of what is to be commonly understood as being ‘democratic’ (A). Claiming that the Union is to become *more* democratic implies either that it is *not* or that it is *not enough* democratic. A second paragraph will therefore be consecrated to the study of the infamous ‘democratic deficit’ of the European Union (B). Identifying the problem will then lead us to the solutions that can be proposed (C).

(A) A common understanding of Democracy

It is not our aim here to conduct a comprehensive analysis of democracy. A plethora of academic literature already deals with the issue from an impressive array of viewpoints (cultural, geographical, historical, philosophical, etc.). Therefore, we shall briefly emphasize the main characteristics of what is to be understood as ‘democratic’ for the purpose of our study, and we will take the stand of an institutional approach, as discussed by Dimitris Chrysochoou.¹⁸

As both a method¹⁹ and value concept,²⁰ it appears that democracy, in general, is a combination of a set of principles and institutional machinery. Rather than a rigid and pre-determined system however, democracy is an ongoing and ever changing interaction between state and society, with the overarching

¹⁷ Montesquieu, (1758) *De l'esprit des Lois*.

¹⁸ Chrysochoou, D. N. (2000), *Democracy in the European Union* (I.B. Tauris, London, New York), p. 47 *et seq.*

¹⁹ According to the classical doctrine, democracy is a “means of realizing the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will”. Quoted in Chrysochoou (2000), *ibid.*, p. 49.

²⁰ According to Chrysochoou, democracy is the way to organize, promote and articulate in the best possible way the primary needs, interests and concerns of the citizen within the body politic.

principle that “ultimately, political authority rests within the demos”.²¹ The *demos* is therefore the central element of a democracy.

According to Schumpeter,²² democracy, as a *method*, is an “institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote”. Chrysochoou presents this as the neo-classical doctrine of democracy (also called ‘competitive model of democracy’).

But what interests us is more the description of democracy as a form of government. Schmitter and Karl therefore suggest the following definition: a “system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives”.²³

Schmitter and Karl then define a set of concepts, procedures and principles that characterize a democracy. The basic concepts are the existence of *rulers*, a *public realm* and *citizens*; there must be *competition* for power, through regular *elections* where the *majority rule* is the norm; finally, there must be a minimum degree of *cooperation* between the competing actors, and society has to present features of *independent groups* (or ‘civil society’). We shall refrain from discussing these concepts in the case of the EU, as it is not our main subject. Concerning the procedures, Schmitter and Karl enumerate Robert Dahl’s ‘procedural minimal’²⁴ and add to it two conditions: the preeminence of elected officials over non-elected officials and independence from the overarching political system.

Finally, according to Schmitter and Karl, the two governing principles explaining how democracy functions are the consent of the people and what they call ‘the contingent consent of politicians acting under conditions of bounded uncertainty’.²⁵

Having given a brief overview of what is to be understood by ‘democracy’, we shall now raise the question of the European Union’s ‘democratic deficit’.

(B) A democratic deficit in the European Union?

The Member States of the European Union undoubtedly constitute democracies, for reasons we will choose not to discuss or illustrate here. The question, however, is to determine whether the European Union itself constitutes

²¹ Chrysochoou (2000) *ibid*.

²² Schumpeter, J.A. (1994) *Capitalism Socialism and Democracy* London Routledge.

²³ Karl, T. L., Schmitter, Ph. (1991) *What democracy is... and is not*, JOD, Vol. 2 No. 3, 1991

²⁴ See Dahl, R. (1982) *Dilemmas of Pluralist Democracy*, Yale University Press, p. 11.: (1) Control over government decisions is vested in elected officials ; (2) the latter are chosen in frequent and fair elections ; (3) practically all adults have the right to vote ; (4) practically all adults may run for elective offices ; (5) citizens have the right to express themselves ; (6) citizens have the right to seek out alternative sources of information, and this right is protected by law ; (7) citizens have the right to form independent associations.

²⁵ Karl, T. L., Schmitter, Ph. (1991), *ibid*.

an authentic democracy (or at least a system accepted to be democratic),²⁶ or if it merely is an undemocratic system composed of democracies. Such an assumption is not paradoxical, as numerous cases can be mentioned where international organizations function according to secretive, uncontrolled and therefore undemocratic procedures, despite the fact that their main members are indeed the world's greatest democracies.

We first need to define what a democratic deficit is in the light of the previous paragraph, before determining whether there actually is one in the European Union.

What is a democratic deficit? The traditional approach is twofold:²⁷ input and output.²⁸ At the output of the political system, the question is whether the citizens' expectations are met; this may be determined by the 'distance' between the citizens' desires and the political decisions taken by the polity.²⁹ At the input of system, on the other hand, the question is whether the citizens are sufficiently represented during the political process, at its various levels, and if the process itself is transparent, understandable and therefore susceptible to citizen influence and if citizens' votes can threaten decision-makers with dismissal.³⁰ To determine this, Crombez identifies two requirements: there must be a maximum of information and transparency, and a minimum of delegation.³¹ More precisely, the German Constitutional Court establishes two corresponding conditions: the existence of a *public opinion* and *subsidiarity*, respectively.³²

Is there a democratic deficit in the European Union? Academic literature seems to be fluctuating in the evaluation of the democratic deficit in the Union.³³ Comparative politics are a useful tool in providing some elements of an answer: Crombez, for instance, establishes a model in order to emphasize the essential characteristics of EU democracy in comparison to the United States, with a focus on the output of the political process. His conclusion is that the EU is not 'fundamentally undemocratic' as the 'basic institutional setup and the legislative

²⁶ Indeed, saying the EU is a 'democracy' could have implications on its nature and lead to comparing it with a state; is the EU a democracy or is it a democratic system. See Chrysochoou, D. N. (2000), *Democracy in the European Union* (I.B. Tauris, London, New York) p. 22-44

²⁷ We shall follow the distinction as described in Powell, G. Bingam Jr (2000) *Elections as Instruments of Democracy: Majoritarian and Proportional Visions*, New Haven, Yale University Press, p. 47-68; 159-174.

²⁸ We may also reason in terms of input and output legitimacy or representativeness.

²⁹ Powell uses the notion of 'median voter' in order to spatially calculate the distance between the political outcomes and the citizens' expectations.

³⁰ Zweifel, T. D. (2002) *Democratic Deficit? The European Union, Switzerland and the United States in Comparative perspective*, Lexington Books.

³¹ Crombez, C. (2003) *The Democratic Deficit in the European Union, Much Ado about Nothing?* European Union Politics 2003; 4; 101, <http://eup.sagepub.com/cgi/content/abstract/4/1/101>

³² Quoted in Crombez (2003), *ibid*.

³³ Further literature on this question: Chrysochoou, D. N. (2000), *Democracy in the European Union* (I.B. Tauris, London, New York); Hix, S., Noury, A. G., Roland, G. (2007) *Democratic Politics in the European Parliament*, Cambridge University Press; Milev, M. (2004) *A Democratic Deficit in the European Union?*, M.A. Thesis, Centre International de Formation Européenne, Institut Européen des Hautes Études Internationales; Tsebelis, George (1997) 'Maastricht and the Democratic Deficit', *Aussenwirtschaft*, 52: 29-56; Bowman, J. (2006) *The European Union Democratic Deficit: Federalists, Skeptics and Revisionists*, European Journal of Political Theory, 2006; 5; 191 <http://ept.sagepub.com/cgi/content/abstract/5/2/191>; Scharpf, F. (1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

procedure are democratic'. Efforts could however be undertaken to reduce input democratic deficit, by making the Council meetings more transparent and by electing the Commission democratically instead of having it appointed by governments. Zweifel, too, in a comparison with the United States and Switzerland, reaches the same conclusion and expresses concerns on the bureaucratic character of the Commission.³⁴

It seems that a democratic deficit may be highlighted at different levels of the political process.

Political considerations are quite strong, as both intergovernmentalists and federalists use the alleged democratic deficit to back their arguments in favor of a reinforcement of the Council (and indirectly the nation-state) or the European Parliament.

Subjective considerations such as legitimacy in the eyes of the citizens can play an important role as well. Chryssochoou and Scharpf,³⁵ for instance, believe that without the existence of a proper European *demos*, democracy will never truly be achieved in the Union. Indeed, Chryssochoou adds to the question 'How do we govern' that of 'Who do we govern', which we can extend to the following problem: 'does the *demos* have a self-awareness, a political culture and an autonomous conscience?'³⁶ Another question in the same sphere may be raised: who is allowed inside the *demos* and what are the boundaries of the Union? Bowman considers indeed that the "first condition for legitimate self-legislation would be met if the EU were defined by fixed territorial boundaries".³⁷ As long as this territorial boundary issue is not resolved, a democratic deficit will exist.

Thus, there are a multiplicity of hypotheses on the question of a democratic deficit. Objective criteria would be the following: the input of the political process (transparency, decision-making rules), accountability (capacity of decision-makers to answer for their actions through elections or dismissal) or the output (are citizens' expectations met?). Subjective criteria would be those related to political values (intergovernmental or federal Europe), legitimacy or the existence of a European *demos*.

(C) Solutions at various levels

In this short paragraph, we shall adopt a classification of governance concepts in order to determine *at which level* of the political system there must be 'democratization'. This will then allow us to narrow down the approach of our work strictly on the study of Parliamentary Democracy in the European Union.

³⁴ Zweifel (2002) *ibid*, Chapter 3.

³⁵ Chryssochoou, D. N. (2000), *ibid*; Scharpf, F. (1999), *ibid*.

³⁶ It is important to note that determining the existence or non-existence of a European *demos* must take into account subjective elements based on the perception Europeans have of themselves. Self-awareness is no scientific equation which can be demonstrated by means of objective data. The debates on European identity organized in Nice since 2006 are an example of the efforts to understand this subjective self-perception :

http://www.iehei.org/Identite_europeenne/2006/accueil.htm

³⁷ Bowman, J. (2006), *ibid*, p.198.

During the Constitutional Debate and the convening of the Convention, Andreas Maurer proposed four approaches to ‘democratize’ the EU.³⁸ First, by reforming the decision-making procedures at different levels of the political process, the most important ones being the extension of co-decision and of qualified majority voting. Secondly, by increasing the accountability of the EU’s executive towards the European Parliament. Thirdly, by democratizing or ‘communitizing’ the intergovernmental pillars of the Union. Finally, by giving national Parliaments an active role in decision-making procedures.

To support and better analyze these categories, Maurer establishes a classification of the various methods of ‘democratization’ according to the variable ‘mode of governance’.³⁹ The various levels where it is possible to ‘inject’ more democracy in the European Union and thus reduce the democratic deficit are thereby underlined.

In our work, we shall concentrate on Maurer’s ‘Governance of the people’, and the means to render the Union more democratic from the point of view of *Parliamentary Democracy*. The Lisbon Treaty introduces an important specification on the founding principles of the Union. Article 10(1) of Title II (TEU) explicitly provides that “the functioning of the Union shall be founded on representative democracy”. This is a symbolic step, as the former treaty merely declared at Article 6(1) of Title I (TEU) that the Union is founded on the principle of democracy, without any precision. Representative democracy being thus a fundamental principle of the EU, we may suppose that it constitutes a strong indicator of the type of regime the Union as a whole may be developing into.

Our approach for the democratization of the EU will therefore be narrowed down to Parliamentary Democracy. In other terms, ‘more democratic’ will be understood in our work as meaning ‘more democratic accountability to Parliament’, i.e. the representative of the citizens. Regarding its meaning, we can broadly define Parliamentary Democracy as a system of government characterized by three main elements: (a) duality of the executive; (b) Parliament is a central and essential component; (c) flexible separation of powers between executive and legislative.⁴⁰ A more detailed discussion thereof will be the subject of the third part of our study.

3. A more efficient EU and approaches of European integration

The 2004 and 2007 ‘eastward’ enlargements to almost double the number of Member States have raised the question of the efficient functioning of the institutions. The Amsterdam Treaty was meant to prepare for the necessary

³⁸ Maurer, A. (2003), *The Convention, the IGC 2004 and European System Development: a Challenge for Parliamentary Democracy*, Project Paper, March 2003, SWP-Berlin, http://www.swp-berlin.org/common/get_document.php?asset_id=689

³⁹ Cf. Annex 1.

⁴⁰ A more detailed definition of Parliamentary democracy and its essential characteristics is given by Bergman, Müller and Strøm : Bergman, T., Müller, W. C., Strøm, K. (2003), *Parliamentary democracy: promises and problems*, Delegation and Accountability in Parliamentary Democracies, November 2003 , p. 3-33(31), Oxford Scholarship Online Monographs, <http://www.oup.co.uk/pdf/0-19-829784-X.pdf> (accessed March 2008). Cf. *infra*, Part 3.

institutional changes and the Nice Treaty was supposed to make them happen before the enlargement actually took place. Is the EU going to be more efficient with the Lisbon treaty? This is a secondary question of our work, which we have chosen to analyze in the light of the Union's democratization.

Is more efficiency a synonym of more integration? In the present section, we shall briefly discuss this question and present the main theories on European integration.⁴¹ This will serve as a 'compass' for the rest of our work.

The first 'grand' theory of European integration is neo-functionalism, as developed by Ernst Haas.⁴² Derived from the more global theory of functionalism, neo-functionalism describes an independent dynamic of concentration of authority based on functions and needs. Evolving independently from the states (which are considered to be obsolete) and triggered by non-state actors in order to create supranational authorities, neo-functionalism is a linear process based on integration in specific and technical fields, which subsequently spreads to other areas (the 'spill-over' effect).

As a linear process, neo-functionalism was not able to provide explanations for any setbacks. With the crises in the 1960's and the deceleration of the integration process, another grand theory was thus put forward: intergovernmentalism. Derived from the realist school of international relations, developed by Hoffman then refined by Taylor and Moravcsik, intergovernmentalism places the state at the centre of the system. Integration is a zero-sum game: unanimity is the rule for major decisions, and supranational authorities have mere consultative or secondary powers.

Following these two grand theories, more specific and scope-limited approaches (re)emerged to provide partial explanations of European integration.⁴³ These are the 'supranational governance' theory, liberal intergovernmentalism, and neo-institutionalism (with rational-choice, historical and sociological institutionalism sub-variants).⁴⁴

The latter is the one that will interest us most. Indeed, in the 1950s and early 1960s the behavioralist approach criticized the importance given to institutions and centered the focus on the behavior of actors. Neo-institutionalism marks the return of the attention on institutions in the 1980s. The main assumption is that political behavior is strongly influenced by the institutional setting, its rules and procedures. Institutions thus come to develop interests and policies of their own, as a direct consequence of their environment and often independently from the human factor. Thus, Member States definitely are important actors, but they are

⁴¹ It is not the purpose of our study to give an overview of *all* theories, as this would take too long. We shall mainly stress the two grand theories and the neo-institutionalist approach, the latter being at the basis of our reasoning.

⁴² See Haas, E.B. (1968) *The Uniting of Europe: Political, Social and economic forces 1950-1957*, Stanford University Press.

⁴³ For more details on integration theories, see, *inter alia*: Diez, T., Wiener, A. (2003) *European Integration Theory*, Oxford University Press; Hix, S. (2005) *The Political System of the European Union*, 2nd edition, London: Palgrave, p. 14 *et seq.*; Corbett, R. (1998) *The European Parliament's role in closer EU integration*, (London: Palgrave), Chapter 1; Peterson, J., Shackleton, M. (2002) (eds.) *The institutions of the European Union*, Oxford: Oxford University Press, Chapter 1.

⁴⁴ It is not our purpose to go into the details of these variants. For in-depth analyses, see references given in footnote 43, *supra*.

certainly not the only ones affecting policy- and decision-making in the European Union. Inter-institutional competition is essential to the EU, and according to Peterson and Shackleton, inter-institutional cleavages are as important as intergovernmental ones.⁴⁵

We have thus given a brief overview of integration theories. The question of whether more integration implies more efficiency is still open to debate, however. For the sake of simplicity, we will assume that efficiency is a means to achieving better integration.

Let us now put together the criteria for a more 'democratic' and a more 'efficient' Union.

4. A Visual Model of Analysis of Lisbon Treaty Changes

In this section we shall try to set up a visual model of analysis with the purpose of better understanding the implications of the Lisbon Treaty's changes. Not all innovations or modifications introduced by the Treaty will be represented; as has been said in Section 2 of the present part, our focus is on Parliamentary Democracy.

In Sections 2 and 3 we discussed what is to be meant by 'more democratic' and by 'more efficient'. In the present section these two criteria will be compared in a model. The latter is simply a means to visualize and compare the different provisions of the Lisbon Treaty in the light of these criteria. It is by no means a mathematical model designed to give a precise account of the way the EU is reformed.

By comparing *democratic accountability* and *efficiency*, the model will help understand whether a measure is more democracy- or more efficiency-oriented. In order to do so, democratic accountability will be represented by the ordinate (vertical scale), and efficiency by the abscissa (horizontal scale). The crossing point of the two (point 0) represents the status quo. Any direction away from that point will indicate the degree of change according to these two criteria (see Figure 0.1).

Beforehand, one must discuss the relation between efficiency and democracy. Are these notions opposed, complementary or similar?

If they are opposed, the model would correspond to line A in Figure 0.1. This would mean that more democracy mechanically implies less efficiency and vice versa. By contrast, if they are similar, then more democracy would imply more efficiency, and vice versa, as depicted by line B in Figure 0.1. These lines would thus represent the intangible relation between efficiency and democracy.

According to Scharpf,⁴⁶ there is an inevitable 'trade-off' between efficiency of EU decision-making and parliamentary involvement. In other words, too much democracy leads to an inevitable decrease of efficiency, because, by rendering it more democratic, the procedure would become 'even more cumbersome' than it

⁴⁵ Peterson, J., Shackleton, M. (2002) *ibid.*

⁴⁶ Scharpf, F. W. (1994) 'Community and Autonomy: Multi-level Policy-Making in the European Union', *Journal of European Public Policy*, Vol. 1 No.1, p.220.

already is. Chopin and Macek claim the opposite: the EU will never be efficient enough if it is not democratic in the first place. To them, democratic legitimacy is a prerequisite for efficiency.⁴⁷ For our part, we shall adopt a flexible approach and consider that, according to the measure discussed, there can be an increase in democracy and a decrease in efficiency, the opposite, an increase in both or a decrease in both; and this can happen with varying intensity, as shown by the arrows on Figure 0.1. For example, Arrow 1 shows a strong increase of democratic accountability and a modest increase in efficiency; Arrow 2 depicts a strong increase in efficiency but slight advances in terms of democratic accountability; Arrow 3 indicates no change in efficiency but a strong decrease of democratic accountability; Arrow 4 indicates a decrease of both and Arrow 5 a relatively significant increase of democratic accountability but a slight decrease in efficiency.

The ideal course of any treaty reform in this model should therefore imply both an increase of democratic accountability *and* increased efficiency. The balance between the two is the best scenario, and would thus be depicted by an arrow in the middle between Arrows 1 and 2. The worse scenario would be a decrease of both, in the same direction indicated by Arrow 4.

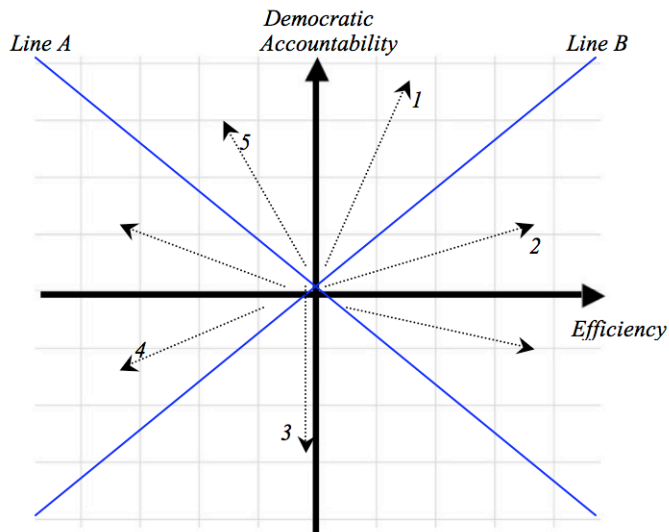


Figure 0.1

We shall thus reason throughout our study by using this visual model.

Before concluding this part, however, we may also propose a similar model for understanding the evolution of the political regime of the European Union, by keeping the variable ‘*democratic accountability*’ and comparing it to the intergovernmental or the federal nature of the Union (see Figure 0.2).

⁴⁷ Chopin, T., Macek, L. (2007) *Le Traité réformateur : vers une Union européenne politique ?*, http://www.robert-schuman.eu/doc/questions_europe/qe-78-fr.pdf (downloaded January 2008)

It is worthwhile to note here that the concepts of ‘intergovernmentalism’ and ‘federalism’ are not to be understood under their academic or scientific significance. Rather, these correspond to the *political visions* that officials defend in the endless debate of the finality of the Union. Intergovernmentalism implies a central role to Member States⁴⁸ whereas Federalism defends a strong position for the European Parliament and the preeminence of the Community Method and of co-decision.⁴⁹

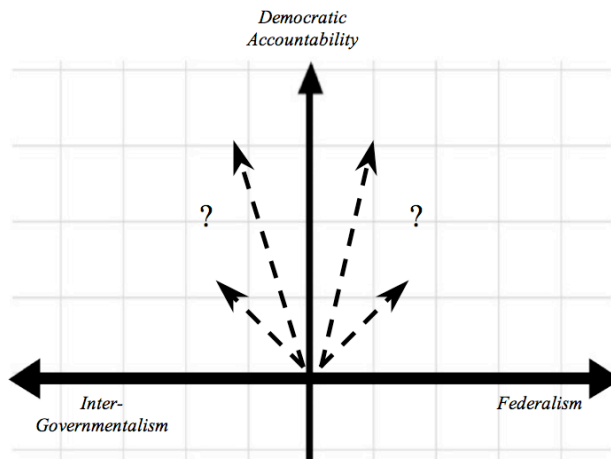


Figure 0.2

Thus, if we conclude indeed that the EU is becoming more democratic (in the sense of Parliamentary Democracy), does that tend to reinforce the intergovernmental or the federal dimension of the Union?

Indeed, we shall come to see that ‘more democratic accountability’ may imply more intergovernmentalism as well, which may have political implications, especially on the inter-institutional balance.

In this preliminary part, we have tried to give an overview of the EU as a political system. We then outlined the scope of our work and how the Union is to become ‘more democratic’ and ‘more efficient’. Indeed, we studied the characteristics of democracy, and determined how the democratic deficit may be reduced in the Union, thus adopting the approach of representative democracy. An overview of theories of integration allowed us to have some elements of orientation in the discussion that shall follow. Finally, we established two visual models which will help us understand to what extent the EU will be more democratic and efficient, and what kind of political regime the Union is developing into.

⁴⁸ Cf. Annex 2.

⁴⁹ Cf. Annex 3.

PART I – Parliamentary Democracy at the Supranational Level: the European Parliament in the Institutional Triangle

As numerous official⁵⁰ and unofficial⁵¹ documents tend to illustrate that the Lisbon Treaty presents remarkable steps forward in terms of democratic accountability and efficiency in decision-making, it appears as imperative to verify such an allegation at the highest echelon of the European political system, namely the supranational level. We shall therefore take a close look at the implications of the treaty for the European Parliament (EP) within the broader system of institutions.

Using a ‘before and after’ approach, we shall first examine the impacts of the Treaty on Parliament’s powers in the light of its historical evolution from its creation onwards (Section 1). Then, we will try to comprehend the actual reasons for the Parliament’s creation and empowerment (Section 2).

1. Powers of Parliament: historical evolution and changes with the Lisbon Treaty

As it has often been portrayed, the European Parliament (EP) is a most fascinating and peculiar political animal. Initially meant to be a mere consultative ‘assembly’ at the side of the six founding States and a controlling body of the somewhat mistrusted High Authority,⁵² it became the only institution directly elected by the citizens of the Union in 1979 and from then onwards grew into a major player in EU affairs and one of the world’s most powerful legislatures in terms of lawmaking and oversight prerogatives, to the point that it is currently viewed as being the institution which has the greatest decision making power compared to Commission and Council.⁵³

In this section, we shall give a particular importance to the history of the EP and its progress in fighting for more powers and eventually obtaining them, from its creation up until the Lisbon Treaty (A). Afterwards, within each sub-section we will proceed following a ‘before and after’ logic, in order to stress the

⁵⁰ Corbett-Mendez de Vigo report, adopted by the European Parliament on January 29, 2008. <http://www.europarl.europa.eu/activities/committees/reportsCom.do?language=EN&body=AFCD> # (downloaded February 2008) ; IGC 2007 mandate, 11177/1/07, REV 1, CONCL 2, Annex 1, point 1.1.

⁵¹ Duff, A., *True Guide to the Treaty of Lisbon*, <http://www.alde.eu/fileadmin/files/Download/True-Guide-NEW.pdf> (downloaded March 2008) ; Leinen, J. (2008), *The Winners of the New European Treaty*, Friedrich Ebert Stiftung, International Policy Analysis, April 2008; *inter alia*.

⁵² See Griffiths (1990), *ibid*.

⁵³ Result of Eurobarometer Opinion Poll on the Parliament published on March 5, 2008. http://ec.europa.eu/public_opinion/archives/ebs/ebs_288_en.pdf (downloaded March 6, 2008)

importance of recent achievements. We shall start by examining Parliament's powers in the field of budget voting and control (B), then proceed to the legislative procedure at large (C) and Comitology (D); this will allow us to have a first discussion about the EP's relations with the Commission and the major changes they are about to undergo with the Lisbon Treaty (E). Finally, we shall examine Parliament's role in treaty reform (F). We will then be able to draw a first conclusion on the direct consequences of the treaty's impacts (G).

(A) Historical account

The European Parliament first convened on September 10, 1952 as Common Assembly for the Economic Coal and Steel Community (ECSC). The theoretical precursors of the Assembly were twofold. First, the post-war federalist movement pressured for the creation of a constituent assembly whose task should be to draft a constitution for Europe based on the model of the Philadelphia Convention. Secondly, the Council of Europe had already set a precedent with its parliamentary assembly.⁵⁴ The first element contributed to put pressure for the creation of an Assembly for the ECSC, even though its role would be totally different from a constituent assembly. The second element was a precedent for the internal functioning of the Common Assembly. Indeed, the groups would not form following national blocs but rather political affinities. In his inaugural speech as first President of the High Authority, Jean Monnet already spoke of the latter, together with the Assembly and the Court as being 'federal institutions'.⁵⁵ Adenauer, Council President at the time compared Council and Assembly as being 'two chambers in the constitutional life of a state'.

Before 1979, however the European Parliament was no more than a consultative assembly composed of national parliamentarians and endowed with the right to dismiss the Commission at a 2/3 majority. According to Richard Corbett, Francis Jacobs and Michael Shackleton,⁵⁶ Parliament never considered itself as part of a 'finished institutional system' but as of one 'requiring evolution or even transformation into something different, based on more parliamentary principles'. This explains why the EP has always strived to further the integration process since its early beginnings: indeed, Adenauer had assigned to Parliament the task of drafting the treaty for a political union by 1956. Although the project failed in 1954 after rejection by the French Assemblée Nationale, many elements of the work were used in the Treaties of 1957.

We can distinguish eight phases in the institution's evolution.⁵⁷ A concise description follows, as it is not our purpose to go into the details of these periods.

⁵⁴ Corbett, R. (1999) 'The European Parliament and the idea of European representative government' in Pinder, J. (ed) *Foundations of democracy in the European Union : from the genesis of parliamentary democracy to the European Parliament* (Macmillan).

⁵⁵ Monnet, J. (1955), *Les Etats-Unis d'Europe ont commencé : la communauté de Charbon et de l'Acier – discours et allocutions* (Paris, Robert Laffont,) p57-8.

⁵⁶ Corbett, R., Jacobs, F., Shackleton, M. (2003) *The European Parliament*, 5th edn (London: Catermill), p. 294-307.

⁵⁷ Corbett, R., Jacobs, F., Shackleton, M. (2003) *ibid.*

First, the budget treaties of 1970 and 1975, after the ‘empty chair crisis’ triggered by France under De Gaulle, gave Parliament crucial prerogatives to bargain for more. The extension of Parliament’s powers can be understood as a consequence of the creation of the ‘own resources’ system that was a necessary corollary of the common market but simultaneously reduced national parliaments’ budgetary powers. This justified the further empowerment of the EP⁵⁸, but under the condition (set by France) that a distinction would be made between compulsory and non-compulsory expenditure, which considerably reduced the sums involved⁵⁹ (Agriculture was not concerned). However, the right to reject the budget gave the EP almost equal powers to the Council.

Second, following the 1975 Treaty the conciliation procedure was introduced for legislation that would have no consequence on budget. Although the Council still had the last word, it implied the beginning of increased EP involvement in the legislative procedure.⁶⁰

The third phase started with Parliament’s direct election. This was a consequence of the Paris Summit, which established the practice of European councils between Heads of States and Governments and the need to preserve an institutional balance between the intergovernmental and the supranational dimensions of the Union. The first election took place in 1979, causing sudden public attention and mixed reactions⁶¹ towards the EP.

In 1980, in the *Isoglucose* case,⁶² the European Court of Justice struck down a Council decision where Parliament’s opinion was not asked. This granted *de facto* the Assembly a delaying power in the adoption of legislation and corresponds to the fourth period.

Then, the Single European Act (signed in 1986 and applicable in 1987) introduced two new procedures: the cooperation procedure (which added a second reading to the consultation procedure) and the assent of Parliament for the ratification of accession treaties and association agreements.

The sixth step came with the Maastricht Treaty (signed in 1992 and applicable in 1993) and the major breakthrough represented by the co-decision procedure, as well as the extension of existing procedures.

The Amsterdam Treaty (signed in 1997 and applicable in 1999) marked the seventh step as it considerably extended the co-decision procedure and made Parliament’s vote on the Commission legally binding.

The eighth phase should culminate with the Lisbon Treaty. It is characterized by the challenge of enlargement and public concerns on transparency and democratic accountability. The Lisbon Treaty is meant to tackle the problems arising from these concerns. Some authors however, such as Thierry Chopin and Lukas Macek,⁶³ consider that we are still in the post-Maastricht era,

⁵⁸ Rittberger, B., *The creation and empowerment of the European Parliament*, p. 203-227, JCMS, April 2003, Vol. 41, No. 2, Special Issue : The European Parliament at Fifty.

⁵⁹ See paragraph B of the present section.

⁶⁰ This procedure shall be discussed further in paragraph C of the present section.

⁶¹ Corbett, R., Jacobs, F., Shackleton, M., *The European Parliament at fifty : a view from the inside*, p. 355, JCMS, April 2003, Vol. 41, No. 2, Special Issue : The European Parliament at Fifty.

⁶² Case 138/79, 29 October 1980.

⁶³ Chopin, T., Macek, L. (2007) *Le Traité réformateur : vers une Union européenne politique ?*, http://www.robert-schuman.eu/doc/questions_europe/qe-78-fr.pdf (downloaded January 2008)

which is exemplified by the fact that the EU changed in nature and transformed into an authentic political union. European citizenship, Common Foreign Security Policy and the monetary union are fields of purely political nature. Thus, Maastricht justifies the need for Parliament to play a central role, on equal footing with the Council, since it is the institution in charge of political control *par excellence*.

This brief historical account will make easier the analysis of the EP's new powers.

(B) Parliament's budgetary role

Budgetary rights have always been a most powerful bargaining chip. Although the EP's powers have progressively been extended, its budgetary role has remained unchanged since the 1970 and 1975 treaties when it gained power to decide on 'non-compulsory expenditure' and to reject the budget as a whole. The Treaty of Lisbon will introduce important changes in the budgetary and financial procedures and re-establishes some institutional balance. It should be noted that it is not our purpose here to go into technical details. We shall therefore content ourselves with a broad overview of the major changes brought about by the reform treaty.

In 1970, a question arose regarding who should be entitled to exercise control over the collection of resources, on the one hand, and who should decide their allocation, on the other. Member States were vested with the former (national Parliaments' consent was necessary), whereas the latter was to be decided jointly by Council and Parliament (the 'twin arms' of the budgetary authority). Article 272 TEC provided that Parliament would have four types of powers: the right to increase or reduce Community expenditure without approval of Council (within some limits); the opportunity to redistribute spending; the power to reject the whole annual budget; and finally the exclusive right to grant a discharge to the Commission. Some authors⁶⁴ believe that, although article 272 TEC has remained unchanged, in the institutional practice, Parliament's role actually *has* evolved in the direction of co-decision: indeed, four trilateral inter-institutional agreements have codified practices and rules that informally empower the EP.

The Treaty of Lisbon introduces important changes. Relevant articles are to be found in the Treaty on the Functioning of the European Union, Part Six, Title II, articles 310 to 325. According to a working document of the Committee on Budgets,⁶⁵ there are four main points in the new reform treaty: (1) the Member States remain in charge of budget revenue (i.e., the EU's own resources)⁶⁶; (2) Council and EP must agree within this limit of own resources, on the programming of expenditure which becomes legally binding; (3) Parliament's responsibility is increased as the financial regulation must be adopted by the EP

⁶⁴ Corbett, R., Jacobs, F., Shackleton, M. (2003) *The European Parliament*, 5th edn (London: Catermill), p. 294-307.

⁶⁵ Committee on Budgets, Working Document No. 1, March 14, 2008, DT713803EN.doc, Rapporteur : C. Guy-Quint

⁶⁶ Cf. article 311 TFEU.

and the Council under the ordinary legislative procedure, namely co-decision (article 322 TFEU); (4) the distinction between compulsory and non-compulsory expenditure is abolished and the budget, as a whole, must be adopted jointly by EP and Council (article 314 TFEU), in compliance with the multi-annual financial framework (MFF), the latter becoming, under the new treaty, legally binding.

On the last point, although no annual budget can be adopted without Parliament's consent, the EP may force the adoption of a budget against the Council's wishes.⁶⁷ This clearly strengthens Parliament's position in the institutional balance. Furthermore, two measures considerably simplify the annual budgetary procedure: (a) there is a single reading; (b) the EP-Council conciliation committee must convene to find a solution within 21 days.⁶⁸

The Lisbon Treaty preserves Parliament's most essential budgetary powers: the EP is on equal footing with Council as far as the *scope* of its powers is concerned (compulsory expenditure now falls within Parliament's competencies) and is slightly dominant in the *procedure* of agreeing on the annual budget. However, we can regret two things: (a) that the MFF must be decided by unanimity, as it gives little leeway for conciliation negotiations; and (b) the failure to extend Parliament's powers in the own resources system.

If the budget was historically the first *raison d'être* of a Parliament, voting laws has become its most important role.

(C) Legislative powers

Legislation represents by far the bulk of EU activities. The very purpose of the Union relies upon policy-making through normative processes at a supranational level in order to match the political demands arising from citizens at the basis of the system. It is therefore logical that Parliament seeks to play the role that it rightfully should as the 'lower chamber' of the legislature.

a. Overview

Although the EP started with very few powers, it constantly pressured for more integration and more democratic accountability in the Union. Both of these aims directly or indirectly served Parliament's interests, for by promoting the integration process, it ensured that its own competencies would indirectly grow. Pressure for more democratic accountability meant of course accountability to Parliament and through it to the citizens it is meant to represent.⁶⁹

In the beginning, the EEC and Euratom treaties gave Parliament a consultative role through the consultation procedure. The EP would give its opinion on a Commission proposal, then the Commission could choose to accept

⁶⁷ Cf. Annex 4.

⁶⁸ Cf. Annex 4.

⁶⁹ For a thorough analysis, see: Corbett, R. (1998) *The European Parliament's role in closer EU integration*, (London: Palgrave)