

# The Lisbon Treaty

EU In Transition

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Towards a Federal Order?

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## [Abstract]

The EU is changing. Why do we care? Because it is us, the citizens, that make up the Union. This essay attempts to answer questions on how the Lisbon treaty will affect important institutions when it comes to decision-making, namely the European Parliament (EP), the Council of Ministers and National Parliaments, in terms of democracy and legitimacy. The authors use a case study in order to describe and explain what changes the Lisbon treaty brings. The essay is based on democratic theories originating from Robert A. Dahl as well as the federalist and constitutional theories described by Karvonen. The latter theories are used to give an explanation as to where the EU is heading – will it eventually become a federation?

The results show that the Lisbon treaty will have positive effects on democratically elected institutions such as the EP and national parliaments, as the treaty enhances their power of decision. Results also prove that the EU show more and more traits of a federal state, as attempts to finalize a constitutional document which would make the Union more “glued” together have been made. These attempts are visible in the Lisbon treaty and their implications facilitate the Union becoming a federation. The authors draw some important conclusions from these results. They find that a strengthened European Parliament as well as strengthened National Parliaments will increase democracy within, as well as the legitimacy of, the Union. They also find important aspects in the new treaty pointing towards a development into a federal state. There seem to be a will amongst politicians to strengthen the unification and as the Lisbon treaty started out being a constitutional document, the authors conclude that the EU leans toward a federal order, however, not in the near future.

## List of Terms and Abbreviations

COREPER	Committee of Permanent Representatives
CT	Constitutional Treaty
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
Eurojust	A judicial cooperation body created to help provide safety within an area of freedom, security and justice <sup>1</sup> .
Europol	The European Police Office; Law enforcement agency which aims at improving the effectiveness and co-operation between member states in preventing and combating serious forms of organised crime. <sup>2</sup>
IGC	intergovernmental conference
MEP	member of the European Parliament
NP	national parliaments
QMV	qualified majority voting
SEA	Single European Act
The Council	the Council of Ministers

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<sup>1</sup> EUROJUST, [[www.eurojust.europa.eu](http://www.eurojust.europa.eu)], Accessed 2010-01-06

<sup>2</sup> European Law Enforcement Agency, [[www.europol.europa.eu](http://www.europol.europa.eu)], Accessed 2010-01-06

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# 1 Introduction

Starting as an economic community between a few European national states, the European Union has over the years developed into something far beyond an internal market. However, the aim of the community seems to have been ambitious even from the beginning, which was shown when one of the founders declared:

“We are not forming coalitions between states, but union among people”<sup>3</sup>.

With its 27 member states, the EU today constitutes a unique structure and is one of the most influential political institutions in the world. Since it is a unique structure, unlike any political model, one may wonder what it really is and what kind of capacity it may hold. It is similar to many models and holds features of various structures; both constitutional and federal features could be traced in the EU. The distribution of powers stretches over many spheres; not only the supranational and national levels of power, but being a *democratic* union, the distribution of power also stretches to and from the citizens of the EU.

The treaties are the documents that shape the way EU functions, and they are of great importance. Work to enhance the EU’s functionality is in many aspects never-ending and comes to light in amendments to existing treaties. The Lisbon treaty amends the treaty on the European Union and the treaty establishing the European Community. It is intended to advance the democratic aspects of the Union. With the amendments implied in the treaty, the citizens are supposed to be more included in the activities of the EU, for example with the introduction of the right for citizens’ initiative<sup>4</sup>.

One change which illustrates this is the opportunity given to citizens to voice their opinions by gathering one million votes or signatures from a significant number of EU member states. Another amendment which the treaty brings is the increased influence given to national parliaments. The treaty stipulates that the power balance will change by, for example, giving the national parliaments more information, in

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<sup>3</sup> J Rifkin, *The European Dream*, Polity Press, Cambridge, 2004, p. 203.

<sup>4</sup> European Parliament

[<http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&id=66>], Access: 2010-01-05

other words, the same information given to the European Parliament is to be given to national parliaments and governments as well. This in turn will facilitate as well as increase the national participation. The treaty also stresses, in a clearer way than before, how the subsidiary principle is to be acknowledged and guarded by the EU institutions. We intend to look at the changes concerning the processes of decision making and the effects these will have on our institutions studied. The reason for this is that we believe decision making to be a key aspect in democratic systems.

The treaty of Lisbon is thus intended to give more power to national parliaments, but also to the European parliament. Through these changes, there seems to be a will to reduce the democratic deficit of which the EU frequently has been criticized. At a glance, these changes seem bring the Union closer to the citizens and it is supposed to make it easier for them to grasp and to make voices heard. However, the treaty of Lisbon raises a few questions: Will the changes promote an increase in citizen participation, thus increasing the level of democracy within the Union? How will the distribution of power affect the EU as a whole? Our assumption is that increasing the power of the European parliament as well as of National parliaments must result in decreased power in another area of the EU. In what way will this affect the EU in terms of legitimacy along with its democratic conduct?

The changes brought by the Lisbon treaty all seem to be strengthening the EU and bringing the citizens closer to the core of the union. Looking at this in a broader perspective, we can't help but wonder where the EU is heading in the long run, in terms of EU as a political structure. Would the increase in the democratic aspects mean a decrease of authority of National parliaments? In other words, what aspects, in terms of political structure will become strengthened by the Lisbon treaty? The EU has been subject to discussions of a possible federation, highlighting the difference between federalism and the current confederation. There is also a question that seems to be reappearing in EU literature: what is the EU? As mentioned, the EU is a unique structure of its own with features of different political models. Our aim is not to attempt to answer the question reappearing in the texts on EU, but rather bring our train of thought one step further into a discussion about where the democracy in the EU is heading. What do the changes brought by the Lisbon treaty implicate in a futuristic perspective; do they support strengthening of certain features? We find the

federalistic features of the EU interesting, and will therefore focus our discussion to this: with the strengthening of the democratic aspects, the Lisbon treaty implies, will this, in a broader perspective, bring the EU closer towards a federation of states? In other words, is the EU in transition towards a federation?

### **1.1 Objective**

With the *Lisbon treaty* as our context our aim is to track the changes that can be expected with the new treaty concerning the influence on *decision making*. Furthermore we are to explore whether or not these changes are leading the EU towards becoming a *federation* of states rather than a *confederation*.

### **1.2 Research question**

How will the Council of Ministers, the European Parliament as well as national parliaments of the member states, be affected by the Lisbon treaty concerning their influence on decision making?

### **1.3 Limitations**

The Lisbon treaty is an extended document; specifically it includes 274 pages. Our intention is not to study the whole content, but rather selected parts of the document (see chapter 2, section 5). We have limited ourselves to the parts which we find relative to our aim and we have looked at information which will help us further answer our question and test our hypothesis. Our limitations are thus related to the parts that concern changes linked to the influence on decision making as well as any change in decision making powers concerning the Council of Ministers, the European Parliament and national parliaments of the member states. We will also look at any part that concerns the subsidiary principle, since this in turn concerns decision making and influence of the parliaments and local governments of the member states. The reason for these limitations is that we believe that it will enable us to answer our research question without losing focus.

## 2 Method

For our research essay we have chosen to do a *case study* of the Lisbon treaty. A case study can be defined as “an intense and holistic description and analysis of a limited problem...”<sup>5</sup> We have therefore chosen a *deductive* approach. Contrary to an inductive approach, where a hypothesis is generated from and tested against the empirics<sup>6</sup>, a deductive approach has its starting point in theories and hypothesis which are then tested against and applied to the empirical data collected.<sup>7</sup> We have our starting point in democratic theories, which we have selected according to our topic of research. We will then apply these theories to our research findings and analyze and interpret the outcome. Since we are studying the Lisbon treaty our method of research and data collecting is *literary* or *document* based. Below we will describe each of our methods in more detail.

### 2.1 Case study

The prime feature of a case study is that the case being studied is *pre-theoretical*. This means that it is a case with no previous theories and has never before been studied. This is what makes the case unique and theories made around it are made from the complexity of the case. This is why we chose to make our essay a case study, since the EU in its structure is *sui generis*, unique; it also has a unique place in the context of society. However, the EU is not pre-theoretical in the sense of its democratic system, what could be considered pre-theoretical in this case is the development of the political system of the EU as a whole.

There are different types of case study methods. There is the *traditional* case study where only one context is studied. However, these kinds of case studies are rare, since a comparison usually is needed in order to create new theories or reach a conclusion about different variables. Therefore, the second type of case study is the *comparative* case study, which can be conducted in two ways. In the first one *two* contexts are studied at the same point in time. In the second only *one* context is studied, but at

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<sup>5</sup> S B Merriam, *Fallstudien som forskningsmetod*, Studentlitteratur, Lund, 1994, p. 117-118.

<sup>6</sup> J Backman, *Rapporter och uppsatser*, Studentlitteratur, Lund, 1998, p.48.

<sup>7</sup> T May, *Samhällsvetenskaplig forskning*, Studentlitteratur, Lund, 2001, p. 47-49.

different points in time.<sup>8</sup> In this essay the Lisbon treaty is the context which we are studying, where we are tracking the changes introduced in the new treaty and how these will affect the balance of power within the EU.

Case studies can also be divided into a simple case study or a multiple case study, where in the latter a research question is answered by studying different cases. The former implicates that a research question is answered by studying an isolated case.<sup>9</sup> Since we are studying a single context, this is a simple case study. There is also a difference between the intentions of case studies, where *descriptive* has the intention of describing a case and *exploratory* has the intention of explaining or investigating a case.<sup>10</sup> In our essay we have the intention of investigating the change in influence over decision making, which makes our case study an exploratory one. Thus our method is a comparative case study with one context at two different points in time: EU before and after the Lisbon treaty.

### 2.1.1 Critique

There are downsides to using case studies as a method, the main reason being that it in fact is pre-theoretical. Ours is a qualitative case study which implicates that no measurements can be made.<sup>11</sup> There is a risk that everything studied in the case explains everything. In other words, since there are no previous theories, the starting point in the survey must be that all variables can be a causing factor, i.e. a *holistic* approach. This means that the case is seen as a 'whole' and that it is more than its specific components, in other words, structural patterns generate the individual rather than the other way around.<sup>12</sup> Another critique of the case study as a method is that it is not possible to make general conclusions. This is because the case is specific to its context, making it one of a kind, which in turn means that general theories are not applicable, nor are they generated from the case. Nevertheless, we still find this method to be the most suitable for our case. Our argument for this is, as mentioned,

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<sup>8</sup> P Esaiasson et. Al., *Metodpraktikan: Konsten att studera samhälle, individ och marknad*, Norstedts Juridik AB, Stockholm, 2007, p.121.

<sup>9</sup> R K, Yin, *Case Study Research – design and methods*, Sage Publications, USA, 2003, p.39.

<sup>10</sup> Backman, p. 49.

<sup>11</sup> Backman, p. 31.

<sup>12</sup> Ö Österud, *Statsvetenskap. Introduktion i politisk analys*, Universitetsförlaget, Stockholm, 2002, p. 22.

the uniqueness of the political structure of the EU. It is not similar to any other structure and the EU as a political system does not fit in the existing, traditional political models. Therefore, our method is pre-theoretical in the sense that we apply existing theories on democracy and constitutionalism on new developments of the political system of the EU. Specifically we want to explore the structure of decision making as an influence and a power. This will allow us to fully and thoroughly explore the complexity of our case.

## **2.2 Literary/document based study**

In order to collect our empirical data we have studied a central document as well as literature. This is thus a *literary* or a *document* based study. We have not conducted any interviews, empirical observations or surveys, since we have found the relevant data in published documents. This essay is a study of certain parts of the Lisbon treaty, which is our main document of study. Document based studies are based on existing and available information. This information can be of different forms, such as articles, descriptions or interviews. Other material can also, in some cases, be of interest, such as protocols and statistics of various kinds.<sup>13</sup>

## **2.3 Sources**

Empirical material can be categorized into *primary* and *secondary* sources. The primary source has been documented by the person who has witnessed or experienced the case in question. Secondary sources are not documented right away, which is why they are sometimes perceived as less reliable. Examples of secondary sources are non-fiction or reference material.<sup>14</sup>

We consider the Lisbon treaty to be a primary source, since it is documented directly by the EU as an institution. Our secondary sources have been chosen according to what we have found relevant for the understanding of the treaty. More specifically, our secondary sources are primarily works of experts on the EU. We have chosen literature and documents we consider to be unbiased. Specifically we have used literature which explains the phenomena of the EU, for example Tallberg, Nugent and

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<sup>13</sup> May, p. 200ff.

<sup>14</sup> Ibid., p. 217.

Kurpas, rather than researchers that openly support or reject the EU. These are referenced throughout the essay.

## **2.4 Validity and reliability**

In order to ensure that the research conducted and the results generated from it are accurate and of good quality, there needs to be a certain level of *validity* and *reliability* to it. That is, how well the empirics have been operationalised and random errors prevented.<sup>15</sup>

Validity can be defined as the “*compliance between theoretical definition and the operational indicator (...)*”<sup>16</sup>. It is divided into two categories, *internal* and *external* validity. Internal validity refers to how well the results comply with reality. External validity refers to the feasibility to generalize the results to other cases.<sup>17</sup>

Our main document, the Lisbon treaty, being a primary source, gives the empirics in this essay a relatively good validity. However, the text is studied by us, meaning that the researcher should always be kept in mind since a text can be interpreted in different ways. Beckman describes this as the ‘glasses’ of the observer, or reader. The conclusions in a study is always affected by the researcher, the question is how the results are affected.<sup>18</sup> We have also used secondary sources to a certain extent, which means that the information not only has been processed through our own ‘glasses’, but also through the ‘glasses’ of the writer of the secondary source.

Reliability is the potential to replicate the results generated in a study. High reliability indicates the absence of random and systematic errors with the assumption that the ‘glasses’ of the researcher always need to be taken into account. We believe that the exact same results never can be achieved by different researchers. There will always be slight alterations when the exact same study is carried out by another researcher. However, the fact that the Lisbon treaty is a document which does not allow for much interpretation, we argue this particular study is relatively replicable.

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<sup>15</sup> Essaiason, p. 63.

<sup>16</sup> Ibid, p. 63.

<sup>17</sup> Ibid, p. 64.

<sup>18</sup> L Beckman, *Grundbok i déanalys*, Santérus Förlag, Stockholm, 2005, p. 22.

### **2.4.1 Disadvantages**

The main disadvantage of the method is the limited reliability of the secondary sources. There is always a risk that the text, or the document, is biased, since it has been processed by a second writer or researcher. It is always up to the writer what to include in the text, which gives the text potential for being selective. Some parts may be left out which takes away from the context, be it political or economical, in which the text was written.<sup>19</sup>

What is said about secondary sources may also be applied to primary sources. The difference here is that it is us that run the risk of being biased or selective. We study the Lisbon treaty from the perspective we find most fitting to our topic, meaning that we are selective. In this essay we are not to analyze all the text in the document, which makes us prone to losing some of the context in which it was written. However, when conducting research one is bound to make selection in order to *narrow* the research.

### **2.4.2 Advantages**

One of the advantages of studying documents is it is not as time consuming as first hand observations or interviews. Documents are also more reliable sources compared to example respondents who might not be able to make an interview.<sup>20</sup> The advantage of a primary source is that it has not been processed by second hands. The information given in such a document is relatively accurate, since not much time has passed between the occurrence of the event and the documentation of it.<sup>21</sup>

## **2.5 Our procedure**

In this essay our intention has been to study the Lisbon treaty from the point of the decision making process and the effects and implications the treaty will have on certain institution within the EU. In order to do so we studied, by us chosen parts of the treaty. In other words, we have not studied all of the treaty, since it is an extended document of 274 pages. Thus, we have gone through the document and picked the parts we found relevant to our topic. These primarily consist of articles from the new

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<sup>19</sup> May, p. 236.

<sup>20</sup> Yin, p. 73.

<sup>21</sup> May, p. 217.

title 2, which constitutes the democratic principles of the EU. The Lisbon treaty has been our main document of study; however, in order to grasp the system of the EU we have found it necessary to study specialist literature on the EU as well. The reason for this was, not only for ourselves to attain a more thorough understanding of the EU, but also to give the reader a broader picture of our case.

The EU is a complex system not similar to any other, making it hard to grasp at a glance. The EU also holds a wide vocabulary of its own with many concepts only relevant to the EU. This is why we chose to give a brief overview of the political process, or system, where we also introduce certain concepts and abbreviations relevant to our topic. This is also the reason we include a list of EU related abbreviations used in this essay. We then wanted to give a brief summary of the process that brought the EU to the final document: the Lisbon treaty. Again, our reason was to let our reader come into the context of our research.

In order to fulfill our aim of pointing to the changes made, or more specifically, the changes the Lisbon treaty will bring to the EU, we found it necessary to specify the functions of the institutions we have selected. In other words, we specified these institutions prior to the new treaty, which enabled us and our reader to track the changes the new treaty brings. This is also our reason for the organization of chapter 4. Firstly, we present the institutions prior to the Lisbon treaty; secondly we present the changes the Lisbon treaty brings to these institutions. However, not only did we want our readers to be able to track changes, we also felt it was necessary to specify the functions of the institutions in order to wholly understand the changes. Therefore, the ‘before the Lisbon treaty’ sections are more extended than the ‘after the Lisbon treaty’ sections.

Our organization of the chapter continues in the next chapter, the analysis (chapter 5). Since we are tracking changes, and thus analyzing them, we found it logical to organize the chapters in similar ways. We have analyzed our results in two steps: firstly, we analyze the changes, following the same organization as our empirics; secondly, we analyze the changes in a constitutional perspective. This is also where we link the theories to the empirics, both Dahl’s and Karvonen’s theories. Finally, we

include a normative discussion where we discuss our results along with our own thoughts on the future of the EU, which represents our conclusion.

We realize that our empirics constitute a large part of the essay, but we argue that the grounds for this are good. In order to fully comprehend the changes brought by the Lisbon treaty, we find it necessary to thoroughly describe the functions of the institutions and the political system.

### 3 Theory

In order to evaluate the effects that the Lisbon treaty will have on the Council of Ministers, the European Parliament and national parliaments, we are bound to have some theoretical points of origin. Our starting point will be within democratic theory, namely the one reflected in Robert A. Dahl's work. The specific strands where we will lay our focus concerns thoughts on the separation of powers and especially the distribution of the power of decision.

Our second theoretical starting point will be constitutionalism, as depicted by Lauri Karvonen. Our aim with describing this theory is to bring light to the changes in what is often called the new "constitution" of EU, the Lisbon treaty, and what the changes will mean in constitutional terms.

#### 3.1 *Democratic theory*

When discussing what democracy is, Dahl comes to the conclusion that all members of an association that is to be considered democratic need to be politically equal to one another. In order for any association to be considered as democratic and thus promote political equality, there is a need for a democratic process, which implies five requirements<sup>22</sup>:

- Effective participation – All members of the association should have equal and effective opportunities to make their voice heard before policy changes are decided upon.
- Voting equality – No one should have a vote that counts more than someone else's vote.
- Enlightened understanding – Each member should have the same opportunity to learn about relevant alternative policies and what they may bring.
- Control of the agenda – The members should have equal opportunity to choose which matters that are to be placed on the policy agenda.
- Inclusion of adults – All adult residents should have the rights implied by the first four criteria.

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<sup>22</sup> R A Dahl, *On democracy*, Yale University Press, 1998, p. 38.

It is essential to note that Dahl does not think that these criteria are to be expected to be met in full by a large entity as a state (sub sequentially neither by a union of states), but the criteria is still applicable to them. He argues that

“[The criteria] do provide standards against which to measure the performance of actual associations that claim to be democratic. They can serve as guides for shaping and reshaping concrete arrangements, constitutions, practices and political institutions.”<sup>23</sup>

Thus, our aim is not to “shoot down” the European Union with all of its democratic deficits, being a supranational institution. Rather, we will use this theory to look at specific areas within the union that may come to change as the new constitution is applied. Dahl argues that within international organizations such as the EU, “Political leaders would have to create political institutions that would provide citizens with opportunities for political participation, influence, and control roughly equivalent in efficiency to those already existing in democratic countries.”<sup>24</sup>

### **3.1.1 The power of decision – legitimacy**

In order for the democratic process to function, legitimacy is of great importance since it is a guarantee for a continuously functioning political system where democracy is sustained. When discussing the power of decision making, one unarguably comes to discuss the importance of legitimacy in authoritative decision making. Leaders of political systems are eager to get their decisions to become widely accepted among the citizens. A widespread belief that a decision, a policy or a structure is “right” will bestow a government with legitimacy. Legitimacy will in turn mean a greater possibility for a government to gain authority in the political arena.<sup>25</sup> More than in other political systems, leaders of democratic countries and institutions are all in need of legitimacy to be able to make decisions that will last. If a large minority always opposes decisions made, democracy is unlikely to survive.

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<sup>23</sup> Dahl, p.42.

<sup>24</sup> Ibid., p.115.

<sup>25</sup> R A Dahl, B Stinebrickner, *Modern Political Analysis*, Prentice Hall, 2003, p.61.

### 3.1.2 The separation of powers

In order to study decision making procedures within the EU, we find it relevant to include a theory on the separation of power in order to better grasp the political system. To fully understand the division between the executive, the legislature and the judiciary powers, we will need to trace the origins of this separation. Although the model was initially developed in ancient Greece, it was Montesquieu who in a more precise way began to discuss how an institutional innovation (and separation) was needed. He argued that a 'mixed regime' was needed in order to balance the position of the monarchy, the aristocracy and 'the people'.<sup>26</sup> If this representation and division of power did not exist, he argued that the law would always be skewed to particular interests, resulting in larger inequalities, stagnating governments and a vulnerable political order. Thus, he saw the need for an executive power (in the hands of the monarch). This executive power needed to be constrained in law by a legislative power which he argued should be divided into two chambers, one with the right to reject legislation and the other with legislative initiative. To guarantee the people's rights he also called for a separate judicial power.<sup>27</sup>

There are of course many differences to the system that Montesquieu described in comparison with the political systems of today. However, the tripartite system that he constructed and fought for bear much resemblance to the systems in today's world. The main difference being that instead of the governed being accountable to the governing, the positions have shifted in the opposite direction. This brings us to the democratic aspects within the EU today. The powers within the EU are separated and shared between different institutions, in a way similar to the one described by Montesquieu.

There is an executive power, i.e. the Commission, as well as a judicial power, the European Court of Justice. Legislative powers are separated between the executive as well as the Council of Ministers and to some extent the European Parliament.<sup>28</sup>

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<sup>26</sup> D Held, *Models of democracy*, Polity Press, 1996, p.84.

<sup>27</sup> *Ibid.*, p. 84ff.

<sup>28</sup> N Nugent, *The Government and Politics of the European Union*, Palgrave Macmillan, New York, 2003, p. 108ff.

### **3.2 Constitutionalism**

When we discuss constitutionalism, we are bound to define what a constitution is. Simply put, it's a set of rules that regulates how to divide public power, and how to limit it. Almost all countries have a constitution, although in Westminster tradition countries there is no *written* constitution. Karvonen argues that constitutionalism is expected to be weaker in the countries lacking a written constitution.<sup>29</sup>

Another central aspect of constitutionalism is whether or not it is difficult to make changes to the constitution. In a country where constitutionalism is weak, the possibilities to make changes to the constitution are higher than in one with strong constitutionalism. The third main aspect that needs to be considered when dealing with constitutionalism is - how effective is the system of judicial control, since a system cannot be democratic without a supervision of the executive. One is expected to find that in a country where constitutionalism is strong, judicial control is much more effective than in one where there is a weaker degree of constitutionalism.<sup>30</sup> By combining the two latter aspects, it is possible to construct a table which will indicate where a specific country is located on the constitutional "map".<sup>31</sup>

It is important for us to explain our case to give the reader an introduction to the fundamentals of constitutionalism, as it weaves together many aspects of our theoretical framework. The separation and distribution of power is one part, which is frequently associated with constitutionalism and vice versa. If polity is constructed in a way where power is distributed into many spheres, there is a greater need for constitutionalism than if the political power rests solely on one source of legitimacy. This is so, because the many institutions within a system that relies on separation of powers need a system of rules that defines each institution's place and areas of competence.<sup>32</sup>

When dealing with heterogenic polities, constitutionalism is generally a recurring – ism, as its construction implies the protection of minorities, whereas in homogenised

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<sup>29</sup> L Karvonen, *Statsskick – Att bygga demokrati*, SNS förlag, 2008, p.148.

<sup>30</sup> Karvonen, p.149.

<sup>31</sup> Ibid, p.157.

<sup>32</sup> Ibid. p.159.

countries constitutionalism tend to be weaker. What is commonly accepted among the scholars that study constitutionalism is that its main purpose is to reduce the reign of the majority (subsequently strengthening the role of minorities) by limiting the majority's acting space, for example by being benevolent in distributing power to the judicial system, courts of justice and so forth.

### 3.2.1 Federalism

Constitutionalism is often a requirement for federalism, as there is a need for a contract stipulating the rules and regulations which unites the members.<sup>33</sup> A federalist state, as opposed to a unitary state, delegates a lot of power to regional and local levels of governing. In a federalist system, authorities on each level have clearly defined work areas and are autonomous. Karvonen has three criteria which a state needs to fulfill in order to be called a *federal* state:

1. *The main part of a state's territory is divided into autonomous regions.* The Nordic countries are all considered unitary states, although the local autonomy is large. However, it is so because of decisions from the national parliaments. Therefore, they are not federal states.
2. *A distribution of power between national and regional level.* Although there are often more than two levels of administration, these are the two basic levels. In a federal system both of these levels ought to have considerable authority over important policy areas.
3. *National and regional levels of government should be equal in merit.* There should be guarantees that the distribution of skills does not become uneven between the two levels.<sup>34</sup>

There can be a number of reasons for federalism, besides the democratic aspects, two primary reasons are *size* and *ethnic and cultural diversity*.

The size mainly concerns two factors: Population and area. The two are often intertwined. In a country with a large population and a large territory, federalism can provide solutions to problems. By decentralizing measures, people in peripheral areas have more opportunities to achieve representation and affect politics. Federalism also

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<sup>33</sup> R Hague, M Harrop, S Breslin, *Styrelseskick och Politik*, Nya Doxa Sweden, 2000, p.339.

<sup>34</sup> Karvonen, p.31ff.

ensures that the representation is manageable. Karvonen exemplifies this by comparing the Swedish parliamentary members per capita to what the outcomes of a similar system would be in the United States. If each citizen of the U.S. would get the ‘same’ representation as those in Sweden, their legislative would consist of a staggering 9000 members; an unreasonable number which is highly unmanageable. However, this solution is not only inadequate but it also becomes irrelevant in a federal system, with its autonomous regions and regional representation.

A *federation* is thus a system that applies the ideas of federalism in society.<sup>35</sup>

### 3.2.2 Confederations

A confederation is a union of states, less unison and uniform compared to a federation. The central power has less authority than in a federation and unanimity can be a condition for collective action. The formal sovereignty in such a union lies within the separate states. For example, the United States was a confederation up until the declaration of independence in 1776.<sup>36</sup> The transition was based on the creation on a central power as well as a constitutional document stipulating the delegation of power between the different spheres of powers. Transitions between federations and confederations may overlap. Political systems where features from both systems are visible can exist.<sup>37</sup>

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<sup>35</sup> R Hague, M Harrop, S Breslin, *Styrelseskick och Politik*, Nya Doxa Sweden, 2000, p.335.

<sup>36</sup> K Goldmann, M N Pedersen, Ö Österud, *Statsvetenskapligt lexikon*, Universitetsförlaget Stockholm, 1997, p.130.

<sup>37</sup> *Ibidem*.

## 4 Empirics

### 4.1 *EU prior to the Lisbon treaty*

In this chapter we will briefly describe the main aspects of EU and its political processes, as well as the functions and responsibilities of the European Parliament and the Council of Ministers.

#### 4.1.1 EU's political process

The core of the EU lies in its treaties, which is what constitutes the rules and regulations within the union. These specify what institutions are to exist and the responsibilities and functions of these institutions. They also specify the main decision processes and the political areas in which the EU is authorized to make decisions.<sup>38</sup>

Nevertheless, EU law is an autonomous legal system limiting the sovereignty of the member states, where two main concepts are applied: *direct effect* and *primacy*. Direct effect is the principal that rights for or obligations imposed on individuals have to be recognised and enforced by national courts. Primacy states that national courts must apply EU law in the event of any conflict, even if the domestic law is part of the national constitution.<sup>39</sup>

The EU rests on three pillars which each constitutes different political areas. The first pillar is the most extensive and concerns areas such as the internal market and monetary matters. The second pillar constitutes the common foreign- and safety policies. The third pillar consists of issues concerning judicial and police cooperation in criminal matters. The pillars are based on different types of decision making where supranational procedure is found in the first pillar and intergovernmental procedure for pillar two and three.<sup>40</sup> (Note that the pillar structure no longer will exist with the ratification of the Lisbon treaty, as we will develop later on in this chapter.)

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<sup>38</sup> J Tallberg, *EU:s politiska system*, Studentlitteratur, Lund, 2007, p. 42.

<sup>39</sup> Nugent, p. 244-245.

<sup>40</sup> Europa Glossary, [[http://europa.eu/scadplus/glossary/eu\\_pillars\\_en.htm](http://europa.eu/scadplus/glossary/eu_pillars_en.htm)], Access: 2009-12-14

The EU has four legislative institutions: the Commission, the Parliament, the Council of Ministers and the Court of Justice. Out of these four, it is only the Council of Ministers that is not a supranational institution. The Commission has most of its authority within the first pillar, where it has the exclusive power to propose and initiate legislative drafts. The Commission also has these powers in pillars two and three; however, these are shared with the member states since no legislation is made under these pillars.<sup>41</sup>

When proposing legislation, the Commission has different types of legislative instruments: *regulations*, *directives*, *decisions* and *recommendations* and *opinions*. The first three of these are binding to member states, though directives “shall be binding (...) leave to the national authorities the choice of form and methods<sup>42</sup>”. Recommendations and opinions do not have binding force and do not formally constitute part of EU law.<sup>43</sup> When the Commission has initiated a legislative proposal which is considered political and significant, it is then adopted by the European Parliament (EP) and the Council or by the Council. National authorities then have the main responsibility to implement EU law, and are supervised by the Commission as well as the European Court of Justice (ECJ) which ensures the law is interpreted and applied correctly.<sup>44</sup>

When the EU adopts a legislative proposal, the key to how easy or difficult a decision is agreed upon, is the type of decision principle used. In the Council, there are two types of decision principles: *unanimity* and *qualified majority voting* (QMV). Unanimity means that each member state has a vote and a proposal cannot be adopted if one or more states vote against. In other words, the member states all have veto powers. QMV means that the voting influence of the member states is weighed according to its population. Of all the votes, complacently 70 percent is needed for a proposal to pass. Also a majority of all the member states need to be in favour of the proposal along with 62 percent of the EU population, in order for it to be adopted.<sup>45</sup>

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<sup>41</sup> Nugent, p. 126.

<sup>42</sup> EurLex, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E249:EN:HTML>], Access: 2009-12-15

<sup>43</sup> Nugent, p. 238-240.

<sup>44</sup> Ibid., p. 343.

<sup>45</sup> Tallberg, p. 45-46.

In the legislative process there are four different types of procedures: *consultation-*, *cooperation-*, *co-decision-* and *assent* procedure. These differ in how much influence is given to the EP. The consultation procedure gives the EP a restricted role; it is asked for an opinion on Commission proposals for legislation, though the Council is not obliged to take this into account.<sup>46</sup> The cooperation procedure extends the EP's influence a bit further with a second reading; after the Council has taken a common stand, the proposal is thus given back to the EP for revision. However, the Council still has the power to change the proposal before it is final. The co-decision procedure extends the EP's power even further and gives it equal legislative powers as the Council. Thus, the final decision is made by the Council and the Parliament. This is also the most common procedure in EU's legislative process and includes most of the political areas of cooperation within the union. In the assent procedure the EP consider proposals at a single reading and has no opportunity for amendment; however, it does still have veto powers. The procedure applied depends on the treaty on which the proposal is based.<sup>47</sup>

## **4.2 The Lisbon treaty – origins**

The treaties are the foundation of the union and regulate its institutions and their work. Changes and amendments to existing treaties are regularly discussed and approved in intergovernmental conferences (IGCs) where government officials from European member states are represented. The process towards this new treaty, the Lisbon treaty, has been lengthy.<sup>48</sup>

### **4.2.1 The process**

The process started in December 2000, when heads of governments agreed on the need for a broader and deeper debate concerning the future development of the European Union. In Laeken in 2001, the European council agreed on the assembling of a convention on the future of Europe that was set to prepare basic data for the next IGC. At a European Council meeting in Thessaloniki 2002, the proposition for a new

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<sup>46</sup> Tallberg, p. 46-47.

<sup>47</sup> Nugent, p. 199-200.

<sup>48</sup> Lissabonfördraget, Ds 2007:48, [<http://www.sweden.gov.se/content/1/c6/09/49/81/107aa077.pdf>], p.21, Accessed 2009-12-11.

constitutional treaty for the European Union was presented and accepted as a starting point to initiate the next government conference. Heads of governments discussed the treaty between 2003 and 2004, and the new treaty was signed in Rome on the 29<sup>th</sup> of October 2004.<sup>49</sup> The treaty was up for discussion between 2003 and 2004 which, finally, led to a signing in Rome on the 29<sup>th</sup> of October 2004.

There after followed a process of ratification in all of the member states. The treaty was ratified by parliamentary decisions in all but four countries, where referendums were held. Two of the countries, Luxembourg and Spain approved the treaty through referendums, whereas it was not approved in France and the Netherlands. Thus, these countries could not ratify the treaty which also meant that the ratification process was stopped in seven countries, as a new treaty has to be ratified by a unanimous decision. The failure in the ratification process led to new discussions, this time in Berlin 2007. The German EU presidency declared that its goal was to bring the new treaty across the 'finish line', preferably before the end of 2009. There was a will to preserve much of the proposed reforms in the failed constitutional treaty, a will that came through. Some changes were agreed upon, but the main structure of the constitutional treaty remained intact. However, instead of producing an entirely new treaty the changes were admitted into the existing treaty of the European Union. The treaty was finalized and signed at a government conference in Lisbon on the 13<sup>th</sup> of December 2007.<sup>50</sup>

The signing of the treaty led to the initiation of a ratification process. The parliament of Hungary, being the first member state to ratify the new treaty, almost immediately ratified it on December 17<sup>th</sup> 2007. However, the process was prolonged as the Irish people voted against the treaty in a referendum on the 12<sup>th</sup> of June 2008. Apart from the Irish result, the process of ratification was halted several times by the Czech Republic, but after a second referendum was held in Ireland in 2009, where the majority voted *in favour* of the treaty. The Czech Republic was the last member state to ratify, doing so after the Czech constitutional court found the treaty to be in agreement with Czech constitution. The treaty is in effect as of December 1<sup>st</sup>, 2009.

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<sup>49</sup> Lissabonfördraget, Ds 2007:48, [<http://www.sweden.gov.se/content/1/c6/09/49/81/107aa077.pdf>], p.21ff, Accessed 2009-12-11.

<sup>50</sup> Ibid., p.25ff.

The treaty of Lisbon has in many ways “sprung out” of the constitutional treaty and there are many similarities between the two. To present all the similarities and differences here would be unnecessary. The important thing to grasp is that in comparison the new treaty will ensure greater possibilities for national parliaments to interact and intervene in the policy process within the EU. Although, being an amending treaty, it will also “add another ‘layer’ of provisions to the ‘acquires’ [availability]. The legal foundations of the EU will thus become even more complex and the treaty itself is unreadable for the average citizen.”<sup>51</sup>

It is now time to look closer on the treaty and what changes it may bring to the power of decision and distribution of power for national parliaments, the Council and the European Parliament.

### **4.3 National Influences prior to the Lisbon Treaty**

A price paid for membership in the EU is the significant loss of national decision-making powers. This loss of national decision-making in favour of EU decision-making produces a democratic deficit, as citizens tend to see the EU as a complex system which is inaccessible to them, a system which they therefore have less trust in than their national political system.<sup>52</sup> The extent to which the power is lost varies between the different policy spheres. In some spheres the EU encompasses the sole decision making powers, such as agriculture, where as in others, the decision-making is shared between the EU and the member states. However, the reason why states are willing to share, or give up some of their powers, is that they find it in their national interest to become a member.<sup>53</sup>

One of the effects the EU membership has on its member states is the *Europeanization* of their political system. In other words, the political structures and policy processes are becoming more and more conversant with Europe. This is seen as a *top-down* process, however, there is a *bottom-up* process in that member states adapt to the EU in order to enhance their ability to influence decision making. There are

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<sup>51</sup>S Kurpas, *Centre for European policy studies*, [<http://ssrn.com/abstract=1334072>], Accessed 2009-12-13.

<sup>52</sup> Gateway to the European Union, [http://europa.eu/scadplus/glossary/democratic\\_deficit\\_en.htm](http://europa.eu/scadplus/glossary/democratic_deficit_en.htm), accessed 2010-01-06.

<sup>53</sup> Nugent, p. 442

different ways in which a state can influence decision making, and through which channel this influence is directed from also varies.<sup>54</sup> We will look at *governments* and *parliaments* and the ways in which these influence the EU in the decision making process.

On a national level, governments are in the strongest position to influence or control the EU processes. However, the extent to which they are able to influence the Council depends on variables such as the size of the member state, the importance of a member state in a particular issue and the ability according to domestic rules and regulations, to play an active role.<sup>55</sup>

In all member states there are arrangements that enable governments to coordinate their policy towards the EU, and the main aspects on these arrangements are:

- Major political and constitutional EU issues are handled by the ministers in the Council, but assisted by the respective countries Foreign and Finance Ministers.
- It is the Foreign or Finance Ministry of a member state that handles the formal relations between the domestic capital and Brussels.
- Ministries in all member states have adjusted to meet the requirements of the EU, i.e. the treaties.<sup>56</sup>

Although this is true for member states in general, the management of the arrangements varies between states. There are certain factors, however, that has made it more difficult for national governments to influence decision making over the years. Firstly, the number of decisions authorized to the EU has increased and now cover many of the political spheres. Secondly, the decision making process has become more efficient since QMV is used more and more as decision principle. Finally, the extent of domestic ministries directly involved with the EU has increased over the years.<sup>57</sup>

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<sup>54</sup> Nugent, p. 442f.

<sup>55</sup> Ibid., p. 444f.

<sup>56</sup> Ibid., p. 446f.

<sup>57</sup> Ibid., p. 448f.

Parliaments have no formal EU treaty powers and it is up to the national governments to choose what to, and not to, discuss with the national parliament. This puts the national parliaments in a relatively weak position in relation to the EU. Despite this, national parliaments have established arrangements with the purpose to influence EU matters. These arrangements allow the parliaments to examine proposed EU legislation and monitor EU-related matters and developments. Parliaments have also established EU committees, which serve as forums for EU related matters.<sup>58</sup> We will use the Swedish EU committee as an example in order to describe the main structure of these committees.

The Swedish EU committee consists of seventeen members representing the seven parties that constitute the Swedish Parliament. Before a decision is made in the Council, the Swedish government consults the EU committee in order to decide the general standpoint on the issue. The government is expected to consider and act upon the opinion of the EU committee.<sup>59</sup> Though Sweden is considered one of the member states where the parliament has a relatively strong ability to influence EU decision making, there are many difficulties for parliaments in general causing them a weak position.<sup>60</sup>

The reasons for their weak position are, firstly, the inability for the parliaments to consider legislation at a significant stage. Secondly, when QMV is used in the Council, governments lose their veto powers which, if outvoted, rule out any chance for the parliament to have a say in the matter.<sup>61</sup>

### **4.3.1 National parliaments after the Lisbon Treaty**

In Title 1, article 1, a new protocol has been added, named “On the Role of National Parliaments in the European Union”, the Lisbon treaty stipulates that

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<sup>58</sup> Nugent, p 449f.

<sup>59</sup> Sveriges Riksdag, [[http://www.riksdagen.se/templates/R\\_SubStartPage\\_282.aspx](http://www.riksdagen.se/templates/R_SubStartPage_282.aspx)], Accessed 2009-12-20.

<sup>60</sup> Nugent, p. 451.

<sup>61</sup> Ibid., p. 449.

“Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to National Parliaments at the same time as to the European Parliament and the Council.”<sup>62</sup>

The same kind of process is to be carried out as far as draft legislative acts to the EP and the Council is concerned. From whichever EU institution a draft legislative act is sent from, it should be forwarded to the national parliaments.<sup>63</sup> These changes, according to Hettne, will create a more open European Union where national parliaments will have a more important role, and where the principle of subsidiarity is openly attended to.

The next change concerning National Parliaments is found in article 3 and concerns the principle of subsidiarity. It stipulates that National Parliaments may send a “reasoned opinion” regarding whether a draft legislation act is in accordance with the Lisbon treaty’s ‘Protocol on the application of the principles of subsidiarity and proportionality’.<sup>64</sup>

A third change found is the passage in Title II, article 8b particularly, concerning the openness in the Union, as it reads

“2.The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.”<sup>65</sup>

This is reflected in article 48 of the treaty on European Union, referred to in Title 1, article 6 in the Lisbon treaty:

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<sup>62</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, 2007-12-17., <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], p. 149.

<sup>63</sup> Ibidem.

<sup>64</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, 2007-12-17, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], p.9.

<sup>65</sup> Ibidem.

7. Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorizing the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defense.

Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision.<sup>66</sup>

The passage makes it clear that if the voting procedure is in question in the Council, National Parliament should have their voice heard before the procedure may be changed.

The roles of national parliaments are defined in the new Title II, articles 8-8c. Below follows exceptions from this Title II, article 8c, the most relevant article for national parliaments:

#### **Article 8 C**

*National Parliaments contribute actively to the good functioning of the Union:*

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;

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<sup>66</sup> Official journal of the European Union, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-21.

(b) By seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 61 C of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 69 G and 69 D of that Treaty;

(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;

(e) By being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;

(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.<sup>67</sup>

These changes will all mean a strengthened position for national parliaments regarding the policy process within the EU, a strengthening which in turn will lead to an increase in democratic legitimacy according to Sebastian Kurpas. However, he also stresses concern about the fact that the new structure may cause national parliaments to prolong the EU legislation process. He argues that the parliaments could start acting as an 'emergency brake', rather than being pro-active contributors in the decision-making and policy processes.<sup>68</sup>

In the Swedish government's memorandum concerning the acceptance and ratification of the Lisbon treaty, the conclusion is that it is advantageous for Sweden to ratify the treaty. The reasons for this are as follows:

- The treaty makes it possible for the EU to meet the challenges of tomorrow.

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<sup>67</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-17.

<sup>68</sup> S Kurpas, *Centre for European policy studies*, [<http://ssrn.com/abstract=1334072>], Accessed 2009-12-17.

- The Union will have better tools to meet the challenges of globalization in areas where citizens demand so, for example within transboundary criminal activity, climate change and in becoming a strong foreign political actor.
- EU will become more open and democratic. The areas of competence are described more thoroughly than before.
- EU will become more effective in its decision-making, without changing the fundamental balance between the actors in the Union.
- Every National Parliament will have veto in questions where The European Council may use the new simplified operations when it comes to changing the treaty.
- In conclusion, the new treaty will take the European collaboration a step forward in a direction that corresponds with Swedish interests.<sup>69</sup>

Overall, the Swedish government seems reassured that the new treaty will increase the openness in the EU and reduce the democratic deficit within the Union. However, the changes that the Lisbon treaty brings could also mean a weakening of the National Parliaments' position. The alteration from a unanimous voting system in the Council to QMV<sup>70</sup> as well as the strengthened position of the EU parliament will, according to Carl Fredrik Bergström, denote changes in three areas of importance:

- An expansion of the areas where the present legislation process is based on co-decision will give the EU parliament a role equal to the Council's. This postulates that the order of decision within the Council is based on QMV making it impossible for a single government to veto a decision.
- One of two simplified operations introduced when it comes to changing the treaty will mean limitation in the demand for ratification among all member states, which will weaken the national parliament's position.

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<sup>69</sup> Regeringen, [[www.regeringen.se](http://www.regeringen.se)], Ds 2007:48, p57ff, p201ff, Accessed 2009-12-18.

<sup>70</sup> This is referred to as a *passerell*; a certain arrangement that enables a transmission from a particular legislation to an ordinary one, in this case resulting in a transmission from unanimity to QMV without conforming to the normal regulations concerning changes in a treaty. C Bergström, J Hettne, & A Södersten, *Lissabonfördraget*, [<http://www.lissabonfordraget.se/docs/lfrapportfinal.pdf>], p.89, Accessed 2009-12-18.

- A strengthening of the EPs influence over the Commission's non-legislation<sup>71</sup> will decrease national parliament's control of the process to the advantage of a system based on control via the legislators of the EU.<sup>72</sup>

#### 4.3.2 The Council of Ministers prior to the Lisbon Treaty

The main meeting place of the national governments is the Council of Ministers (the Council). It is one of the institutions with executive legislative powers in the EU. The Council consists of a minister from each member state, representing the interests of their own national government. The Council consists of nine different constellations that rotate according to the area of politics that is on the agenda. Meetings are held by the member state that has the presidency at that moment and representation from the Commission is always present.<sup>73</sup>

As previously mentioned, there are two types of decision principles used in the Council: *unanimity* and *QMV*. Which one is used depends on the nature of the issue, however, within the second and third pillar, unanimity is used. Decisions in the first pillar are taken on the principle of QMV, in most cases. Over the years, there has been a transition towards a more frequent usage of QMV, which reflects the efficiency of the decision principle in comparison to unanimity.<sup>74</sup>

Throughout the history of the EU, the Council has been an institution associated with secrecy and overall closed to the public. However, in recent years, there has been a change, and in 2002 new rules came into effect. These implicate that the standard today is openness rather than secrecy concerning the availability of documents to the public. Today, when the Council makes a decision using the co-decision procedure, all the meetings are open to public, as well as all the documents and protocols.<sup>75</sup>

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<sup>71</sup> EU-Upplysningen, Om ickelagstiftning, [<http://www.eu-upplysningen.se/Lagar-och-regler/Om-rattsakterna/>], Accessed 2009-12-18.

<sup>72</sup> C Bergström, J Hettne, & A Södersten, *Lissabonfördraget*, [<http://www.lissabonfordraget.se/docs/lfrapportfinal.pdf>], p.89, Accessed 2009-12-18.

<sup>73</sup> Tallberg, p. 123-124.

<sup>74</sup> Ibid., p. 125f.

<sup>75</sup> Ibid., p. 127.

The principal responsibility of the Council is to take policy and legislative decisions, and the work is led by the member state that has the presidency at that time. The EU presidency changes according to a rotating schedule where each member state holds the presidency for a period of six months. The presidency embodies four main functions which are as follows:

- Arranging and coordinating most Council meetings
- Launching initiatives and present a political programme with priorities for the presidency period
- Ensuring consensus in the Council through compromises
- Representing the Council in dealings with both internal and outside bodies.<sup>76</sup>

The Council is built on a number of committees and working groups, where amongst others, diplomats from the national EU-delegations situated in Brussels are represented. The main body below the ministers is Coreper (Comité des Représentants Permanents), which is the committee for the permanent delegations. In other words, the EU ambassadors and their deputies are the ones heading the work in the permanent representations. The main assignment of Coreper is to prepare the meetings in the different constellations of the Council. Being the last place for the member states to reach consensus on an issue before it is passed upwards to the ministers, makes the Coreper a central body where most decisions in the Council are made.

In order to facilitate and streamline the workload, Coreper is divided into Coreper I and Coreper II. A substantive part of the legislative work is done in Coreper I, whereas Coreper II has the responsibility for the most of the prominent political issues. However, not all issues lie with Coreper; thus there are a number of specialized committees dealing with special issues and cases.<sup>77</sup>

Thus, the Council is the centre for decision making in the EU. The decision making categorizes the Council into *legislator* and *coordinator*. As legislator, the decisions made concerns new EU-law and are binding decisions, and are concerned with issues within the first pillar. Depending on the issue, the Council uses unanimity or QMV as

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<sup>76</sup> Nugent, p. 161f.

<sup>77</sup> Tallberg, p. 130.

decision principle and one of the decision-making instruments (introduced above). This will also have an impact on the amount of influence other parts have in the decision making. Since more and more decisions are made using the co-decision procedure, this has led to the Council having more of a supranational influence on the intergovernmental areas in the EU. This has been reinforced further by the extended use of QMV as well.<sup>78</sup>

The coordinator function serves as non-binding decision making. Partly the Council makes decisions concerning common political areas within pillars two and three. Partly it coordinates the politics of the member states within the first pillar; financial- and employment politics being the most prominent.<sup>79</sup>

### **4.3.3 The council of ministers after the Lisbon Treaty**

The increased openness was briefly mentioned earlier in this essay, as an excerpt from article 8b in the Lisbon treaty was brought to the reader's attention. When discussing The Council, openness is once again on the agenda, as it is considered to be one of the treaty's most important changes for the work of the Council.

Apart from the fact that The Council will have to co-decide with the European Parliament on an extensive number of areas, their work will be more "out in the open" as a result of the Lisbon treaty. This is regulated by the insertion of article 9c. An excerpt from the article is seen below:

#### *Article 9 C*

1. The Council shall jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.
3. The Council shall act by a qualified majority except where the Treaties provide otherwise.
4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing

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<sup>78</sup> Tallberg, p. 134f.

<sup>79</sup> Ibid., p. 135f

Member States comprising at least 65 % of the population of the Union. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

8. The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.<sup>80</sup>

Thus, public meetings will involve those issues where legislative acts are discussed and decided upon, keeping non-legislative deliberations behind closed doors.

When it comes to the voting system, the Lisbon treaty will in time adopt what is commonly referred to as a double majority voting system. It will abandon the “weighting” system that was used in the Nice treaty. Reasons for the change include greater flexibility, effectiveness and because the system “takes into account the twofold nature of the Union [...] The equality of Member States is respected as each one has one vote, whilst their different population sizes are also taken into account.”<sup>81</sup> This system will be effective as of November 1, 2014. Until then, the system formulated in the Nice treaty will stand.

#### **4.3.4 The European Parliament prior to the Lisbon Treaty**

The European Parliament is the institution with the most extended democratic ties to the people of the EU. Its members are elected by direct vote making the EP the prime representation of the people. The main functions of the EP are to participate in the legislative process, control and supervise the executive and finalize the EU budget.

Though its responsibilities are similar to that of a national parliament, the power of influence is markedly weaker due to the unique institutional structure of the EU. That

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<sup>80</sup> Official Journal of the European Union, C 306, 17.12.2007, p.20, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-20.

<sup>81</sup> Europa, [[http://europa.eu/scadplus/constitution/doublemajority\\_en.htm#NEW](http://europa.eu/scadplus/constitution/doublemajority_en.htm#NEW)], Accessed 2009-12-20.

being said, there are a number of ways in which the EP has the opportunity to influence decision making.<sup>82</sup>

The EP has 736 Members of European Parliament (MEPs) that are elected through direct elections every five years. The elections follow national customs for voting in each member state. The number of MEPs for each member state is based on population. The reason behind limiting the total number of MEPs to 736 is to prevent the EP of becoming too large an institution which would have a negative effect on its efficiency. In the EP the MEPs are not seated by nationality, but rather by political group. These groups, or European political parties, correspond to the most common political ideologies in parties existing in the member states.<sup>83</sup>

All meetings in the EP are open to the public and translated to all of EUs languages. All documents and rapports are as well translated, and the reason is to enable insight in the work of the EP to every citizen. This is considered a basic democratic right.<sup>84</sup> The work in the EP is divided in two main functions: the *standing committees* and *plenary sessions*.<sup>85</sup>

Similar to national parliamentarians, the MEPs are all part of at least one of the 20 standing committees. The responsibilities are various, but the most important task is to examine legislative proposals from the Commission. Which committee handles the issue depends on the area of expertise relevant. This committee then appoints a *rapporteur*, who then compiles the proposal and present the opinion or the stand of the EP.<sup>86</sup>

Plenary sessions are held monthly, with the exception of August, in Strasbourg. These consist of three main matters, where the voting on EPs opinion in legislative proposals are the most substantial. However, the voting is usually decided upon in advance, which is not unusual in national parliaments as well. The second matter brought up at

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<sup>82</sup> Tallberg, p. 103.

<sup>83</sup> Ibid., p. 104f.

<sup>84</sup> Ibid., p. 109.

<sup>85</sup> Ibid., p. 109f.

<sup>86</sup> Ibid., p. 111.

plenary sessions is debate concerning current topics. The third matter is the opportunity for the MEPs to pose questions to the Commission and the Council.<sup>87</sup>

The EPs role as a legislator has, with each of the treaties, been strengthened. With the cooperation and co-decision procedures being introduced in accordance with the Single European Act (1987), it has further extended the influence of the EP as a legislator. Apart from these procedures, the EP has the opportunity to influence legislation in a number of ways. The EP has the power to propose ideas for legislation, although this is not something the Commission is obliged to consider. The EP is also able to influence the formulation of the legislative programme, indicating the priorities for the coming year. The third way, in which the EP has influence, is through the legislative procedures, where the co-decision procedure opens up for the most influence.<sup>88</sup>

Formally, the EP has the power of finalizing the EU budget. The budget proposal from the Commission is dealt with in two readings by the Parliament and the Council. The EPs powers in the budget are: increase/reduce/reallocate the non-compulsory expenses; influence, with restriction, the allocation of the compulsory expenses; influence the adoption or the disapproval of the budget as a whole; and finally to influence the financial perspectives for the future. The Council has the sole responsibility over the incomes.<sup>89</sup>

The third main function of the EP is to supervise the executive, in other words, the Commission. The EU has more than one executive, but the EP has the strongest powers of supervision towards the Commission, due to the need of democratic control and legitimacy. As a supervisor, the EP has to approve the president of the Commission. It also has the right to dismiss the Commission through a vote of no confidence. Thirdly, the EP has the ability to supervise through the continuous work in the Commission, mainly through questioning.<sup>90</sup>

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<sup>87</sup> Tallberg, p. 112.

<sup>88</sup> Ibid., p 114f.

<sup>89</sup> Ibid., p. 116f.

<sup>90</sup> Ibid., p. 118f.

As mentioned, the EU has more than one executive; the Council and the European Council. The European Central Bank is also one of the executives; however, the EP does not have extended powers to supervise these institutions, as it has with the Commission.<sup>91</sup>

Nonetheless, the EP still suffer from some weaknesses, where the foremost is the inability to propose legislation of their own. Another weakness is the inability to hinder legislation, especially in the consultation and cooperation procedures, where the Council has the final say in matters. A third weakness is the fact that there are numerous areas where the opinion or consultation of the EP is not included, such as the common foreign- and security policies. Finally, the EP does not have the power to influence the administrative legislative procedures of the Commission.<sup>92</sup>

#### **4.3.5 EU Parliament after the Lisbon Treaty**

As we've previously written, the co-decision procedure is the one modus operandi where power is distributed equal between the council and the EP. This procedure, previously referred to as "procedure 251", is referred to in the Lisbon treaty as the "ordinary legislative procedure"<sup>93</sup>. This connotes an on-going transition to the co-decision procedure within the EU ever since the treaty of Amsterdam, a procedure which empowers the EU parliament in legislative questions within the union. The new treaty brings over 40 new fields within the co-decision procedure, including agriculture, energy, security, immigration, justice and home affairs, health and structural funds<sup>94</sup>. The adoption of the Lisbon treaty will also mean that EU parliament will have a final say in the entire EU budget, according to the inserted article 9a:

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<sup>91</sup> Tallberg, p. 118.

<sup>92</sup> Ibid., p. 115.

<sup>93</sup> Europa, [<http://www.consilium.europa.eu/uedocs/cmsUpload/cg00001re01en.pdf>], Accessed 2009-12-20.

<sup>94</sup> Europa, [<http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&refreshCache=yes&pageRank=1&id=66>], Accessed 2009-12-20.

*Article 9 A*

1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.<sup>95</sup>

Before the Lisbon treaty, the EU parliament had limited control over the budget, but as far as “compulsory expenditure<sup>96</sup>” was concerned, they did not have final word. The compulsory expenditure is estimated to 45% of EU’s entire budget.<sup>97</sup>

When it comes to the election of the President, one has to note the procedure for the election, stipulated in article 9d:

“Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.”<sup>98</sup>

The EU parliament, along with independent political scientists, argues that this elective procedure change will increase the power of the European parliament. Moreover, they predict that the Commission’s political ‘color’ will be more in line with majority conditions in the European Parliament because of the new procedure.<sup>99</sup>

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<sup>95</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, p.17, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-17.

<sup>96</sup> The underlying principle and the amount are legally determined by the treaties, secondary legislation, conventions, international treaties or private contracts.

<sup>97</sup> European Parliament, [<http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&refreshCache=yes&pageRank=1&id=66>], Accessed 2009-12-20.

<sup>98</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, p.22, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-20.

<sup>99</sup> C Bergström, J Hettne, & A Södersten, *Lissabonfördraget*, [<http://www.lissabonfordraget.se/docs/lfrapportfinal.pdf>], p.89, Accessed 2009-12-18.

Apart from the changes in the election process, the Commission members will continue to be independent when carrying out its responsibilities, and “shall neither seek nor take instructions from any Government or other institution, body, office or entity.”<sup>100</sup>

#### **4.4 The Lisbon treaty – How much of a constitutional document?**

In order to analyze the Lisbon treaty from a constitutional perspective, we need to see how much of a constitution that actually can be found in the document. As we’ve previously written, the Constitutional treaty that was meant to become the main legal document of the EU did not come into effect due to negative election results in France and Netherlands. However, many of the ideas proposed in the Constitutional treaty can be found in the Lisbon treaty. Sebastian Kurpas, research fellow at the centre for European Policy studies in Brussels has put together an overview of the main changes, changes we will look into in order to establish how much of the CT that can be found in the Lisbon treaty.

The failure of ratifying the Constitutional treaty (CT) put even more pressure on leaders of member states to come up with a functioning legal document that would pass the ratification process in the member states. Kurpas draws the conclusion that one of the main lessons political leaders learned from the abandoned process of the Constitutional treaty was ‘No more referenda’, which was also the case in most member states.<sup>101</sup> Overall the decision was not laid upon citizens to decide, instead the politicians of member states were set to decide upon the new treaty.

A main difference from the CT is that the Lisbon treaty is an amending treaty, thus it does not replace the previous treaties which would have been the case had the CT been ratified. According to Kurpas, this will not make the EU’s legal framework more

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<sup>100</sup> Official Journal of the European Union, C 306, ISSN 1725-2423, p.19, [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>], Accessed 2009-12-20.

<sup>101</sup> Kurpas, [<http://www.ceps.eu/>, 2007], available at [<http://ssrn.com/abstract=1334072>], Accessed 2009-12-27.

coherent and consistent (as was intended with an entirely new document that the CT would have been), rather the opposite.<sup>102</sup>

Kurpas goes on by looking at the Lisbon treaty as compared to the CT by examining the content of the six titles in the new amended treaty. In conclusion, much of the content that was introduced in the CT has been transferred to the Lisbon treaty. This includes important changes such as:

- The commission president elected by the majority of the EP
- Citizens initiative (1 million citizens can call upon the commission to submit a proposal that falls under their area of competence)
- A stronger role for National Parliaments
- Qualified majority voting and co-decision become the “ordinary legislative procedure”
- Extension of the ordinary legislative procedure to the whole annual budget, which will increase the EP’s substantially in budgetary questions<sup>103</sup>

There is also one more change that originates from the CT, which with some alterations, will be introduced in the Lisbon treaty, i.e. the abolishment of the pillar structure.

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<sup>102</sup> Kurpas, [<http://www.ceps.eu/>, 2007], available at [<http://ssrn.com/abstract=1334072>], Accessed 2009-12-27.

<sup>103</sup> Ibid.

## 5 Analysis

We will now analyze the effects the Lisbon treaty brings to each of the institutions. We will look at the changes and link the theories presented in chapter 3 to our empirical findings.

It is obvious that the will amongst politicians is to have a framework of rules which is both transparent and democratic. With the Lisbon treaty, they seem to have accomplished the latter aspect, but not the former. The changes that have been made have without doubt brought democracy within the EU to new heights. As our empirics show, the publicly elected institutions have all gained from the changes the Lisbon treaty brings. This gain has been at the cost of non-publicly elected institutions such as the Council and the Commission. At the same time, one has to bear in mind that it is *them*, the politicians that has initiated this process of change. The citizens of member states have had little to say as far as the ratification of the treaty is concerned. This may seem a bit peculiar, but the reasons for the process being carried out in this way are quite obvious. It is not the assignment of the people to make decisions concerning legislative changes, which is why this is assigned to publicly elected politicians. We find that the Lisbon treaty strengthens the responsibilities of the publicly elected institutions which in turn strengthen democracy.

### 5.1 National Parliaments

A recurring theme in the Lisbon treaty which can be seen in the document and which is also described by political analysts is the increased openness that the treaty brings. When it comes to the role of national parliaments, this is seen in the way the treaty stipulates that any legislative act is to be forwarded directly to the National Parliaments. From a democratic perspective, this will increase the inclusion of National Parliaments. According to Dahl, the democratic process needs to fulfil certain requirements, two of which this change applies to. These are *effective participation* and *enlightened understanding*. The former implies that all members of the association should have their voice heard before deciding on policy changes; whereas the latter means each member should have the same opportunity to acquire information. Linking this to the Lisbon treaty, we find that the democratic process

within the EU will gain from the changes implied. The citizens of member states thus will have greater opportunities to make their voices heard, since National parliaments are institutions close (or at least closer) to the citizens. The EU will also gain democratically in the respect that enlightened understanding is strengthened. The reason for this is that when National Parliaments attain more information so will also, indirectly, the citizens of member states.

Another change in the Lisbon treaty implicates that National Parliaments will have the right to give a reasoned opinion on whether a legislative act complies with the principle of subsidiarity. This change will increase the legitimacy in the EU. As National Parliaments will have a greater ability to state their opinion on whether decisions are made on the correct level, it will increase the probability that decisions actually will be taken as close to the citizens as possible. This will in turn mean that decisions become more widely accepted among citizens, thus increasing the legitimacy of political leaders on national level as well as EU.

The increased involvement of National Parliaments is also visible when it comes to information about changes in the procedure concerning legislative acts. They will be informed at least 6 months prior to the adoption of any legislative changes, which is referred to in article 6 of the Lisbon treaty.

The strive towards integrating National Parliaments in the political process in the EU is apparent in the Lisbon treaty, however it is hard for us to determine whether this will have any immediate effect on legitimacy issues. Nonetheless, when applying Dahl's theories we find that the Lisbon treaty will have positive effects on both legitimacy and democracy in the EU. The new treaty will mean a smaller price paid for the membership of states in the union as far as decision making is concerned.

## **5.2 *European Parliament***

It is a fact that with every new treaty, more power has been delegated to the European Parliament. It was apparent in the Maastricht treaty, Amsterdam and the Nice treaties and it is also apparent in the Lisbon treaty. We will now examine the changes increasing its influence.

As the co-decision procedure becomes the ordinary legislative procedure the decision making powers of the EP will automatically increase. This procedure equalizes the EP and the Council in their legislative matters. Applying Dahl's democratic theory, this means that the effective participation will increase. The EP is the EU institution with the closest ties to the citizens, thus increasing the EP's power indirectly increases the power of the citizens in that it facilitates them to make their voices heard through a publicly elected institution.

Another increase of power is seen as the Lisbon treaty authorizes the EP to finalize the EU budget. More specifically, the EP will have decision power concerning the compulsory expenses, which before were only authorized to the Council. This will indeed increase the legitimacy of the EU since its publicly elected officials now are included in process of the allocation of the finances. The fact that a publicly elected institution has the power over such significant resources should be considered positive from legitimacy perspective. There should be gains in legitimacy both for the EP as well as the Council, since the decisions are to be made through a co-decision procedure. There is a higher probability that a decision made by elected officials is considered "right" among citizens, than one made solely by appointed officials. We base this on Dahl's theory of the belief that when a decision is considered "right", a government will also be considered legitimate by its citizens.

The new procedure concerning the election of the Commission President could indirectly have a positive effect on the influence of the EP. Because the president now will be chosen in consideration to the outcome in the EP election, the composition of the Commission is likely to reflect the composition of the EP in terms of political stand. We argue that this new feature in the election process will increase efficiency in the EU as a whole, since consensus should be easier to attain in the decision-making process. Apart from effectiveness, a Commission that better reflects the will of citizens should also mean increased legitimacy for the institutions in question.

### **5.3 The Council**

The changes made with an effect on the Council, apart from the changes already mentioned, concern the procedure for voting on a decision. These are the alteration in the number of votes given to the member states as well as the decision principles. Measures to be taken include a further extension of the use of QMV in the council, as it becomes the ordinary legislative procedure. They also include the reduction of number of votes, from a weighting system to a system where each member state gets one vote in the council. One may argue that this system works in favour for smaller member states, for example Malta will have the same number of votes as Germany. This can be linked to Dahl's theory on voting equality, where no member should have a vote that counts more than someone else's vote, thus the change is positive from a democratic perspective. However, the double majority system introduced with the Lisbon treaty will also mean that the population of a member state will be taken into account. The next step of the voting system will mean that the rule of one citizen – one vote applies giving the larger member states an advantage. Nonetheless, the move towards a more frequent use of QMV will make the decision making process in the Council more efficient. The double majority system will also make the process more democratic in the sense that, the first step is advantageous to the smaller member states, whereas the second step benefits the larger ones. We can, therefore, also apply the theory of effective participation, since it increases the ability for all member states to state their opinions in the Council.

It is not only the concept of double majority that is new. The Lisbon treaty also changes the percentages used in QMV. The double majority rule means that the percentage needed in the first step of voting will decrease from circa 70% to 55%. The second step a decision has to go through takes into account the population of the member states. The condition for it to pass is that at least 65% of the EU population is behind it. This change will make it easier for decisions to be made, thus increasing the efficiency.

New criteria for blocking a decision will be inserted into the process, which will make it harder for member states with a large population to block decisions. The criteria states that, in order to block a decision, at least four member states, representing 35%

of the EU population, need to be against it. We argue that the changes will promote a more efficient Council where all member states, including the smallest ones, will have equal opportunities to make their voice heard. We find that the change is in accordance with Dahl's theory on voting equality.

#### **5.4 The EU – towards a federal order?**

Our second objective in this essay is to explore whether the changes the Lisbon treaty bring are leading the EU towards becoming a federation of states rather than a confederation. We will thus use our empirical findings and link these to our theories concerning federalism.

After having studied the EU, we have found that it has been conformed as a confederation in comparison to a federation. However, with the Lisbon treaty, we have found certain features that could be the beginning of EU in transition towards a federation of states.

As was made clear in the theoretical chapter of this essay, a federation is a system that applies the ideas of federalism and puts them to practise. In a federalist state, there are three main aspects; *the main part of a state's territory is divided into autonomous regions, a distribution of power between national and regional level and National and regional levels of government should be equal in merit.* Let us now look at how the European Union fits in these. To do this, we have chosen to interpret the different spheres from an EU perspective. Our nation level thus becomes the EU level and our regional level is the national level, i.e. the member states.

##### **5.4.1 The main part of a state's territory is divided into autonomous regions**

Here, we regard a state's territory as the entire territory of the member states in the EU, and the autonomous regions are the separate member states.

We find that this requirement is to some extent fulfilled in the EU. The autonomous regions, i.e. the states will continue to be autonomous after the implementation of the

Lisbon treaty. The power within the EU is shared between a number of institutions and spheres and a great deal of the authorities lie with the executive powers of the EU. Nonetheless, the member states do not lose their national constitution, which withholds their autonomy. However, the origins of the Lisbon treaty lie in the idea of a constitutional treaty. As mentioned earlier in this essay, this was not passed when elected upon by the citizens of France and the Netherlands. The document was thus reformulated into a non-constitutional treaty, and became what is today the treaty of Lisbon. However, according to our empirical findings many aspects of the constitutional treaty still remain in the new document. In a larger sense, we find that this development shows a will from the top to make the EU a more united union with federal features.

#### **5.4.2 A distribution of power between national and regional level**

This too, is a requirement we find is fulfilled in the EU. As the treaties stipulate, there is a clear division of power between the national, i.e. the EU, and the regional, i.e. the member states, levels. Even though the EU has the authorization to make decisions concerning domestic levels in the member states, the principle of subsidiarity hinders the EU from becoming central. In other words, though the powers and responsibilities sometimes overlap in between spheres of powers, the distribution of power between the EU and the member states is still clear. We find that the member states constitute one level of administration and the EU another. We see the two levels as the ‘basic’ ones, both with considerable authority over important policy areas. Thus, we find that the criterion is fulfilled.

#### **5.4.3 National and regional levels of government should be equal in merit.**

This we find is a requirement that does not accord with the EU. The governments of the member states do not have the same powers as the institutions of the EU. All member states have national constitutions, however in case of conflict, EU law always applies. The distribution of skills, then in a sense becomes uneven, since the EU, in a hierarchical perspective, lies above the governments of the member states. The changes implied in the Lisbon treaty will increase the involvement of member states but there is still a great difference in the distribution of skills and authority.

### **5.5 The Lisbon treaty – how much of a constitution?**

As our empirics have shown, the constitutional treaty which was abandoned has clearly had impact on the Lisbon treaty. Even though the Lisbon treaty is an amending treaty, many aspects have been kept as a result of the will of politicians. It seems as if there has been consensus among the legislators that many changes which were introduced in the CT were of great benefit for the evolution of the EU, and thus the changes have been kept in the now ratified treaty.

We find that the changes that have been made to the treaty points toward an EU where a constitutional structure is evolving. There is clearly a will amongst politicians to create a document that more efficiently unites the different member states. According to Karvonen, constitutionalism is stronger when there is a written constitution, as opposed to where it does not. This inevitably makes the constitutionalism in the EU weaker, however, since many aspects from the CT remain in the Lisbon treaty we find that that the constitutionalism in the EU has been strengthened.

Another main aspect of constitutionalism, according to Karvonen, is how easy it would be to make changes to the constitution. We interpret this as, the weaker the constitutionalism, the easier to make legislative changes. The EU over time has amended their treaties several times, however as we have seen, it is a complex system with many factors influencing these amendments. This makes the process of change a complicated one, and as the Lisbon treaty will extend the number of factors influencing legislative processes, one could argue that it will be more complex and difficult to make changes to the treaties. On the other hand, the introduction of the QMV as the ordinary legislative procedure will facilitate the decision making.

Karvonen argued how a polity where power is distributed into several spheres is in greater need of constitutionalism, as such a polity will need a system of rules that defines the institution's place and are of competence. The power within the EU, as shown in our empirics, is widely distributed and shared between many spheres. Thus, we interpret this as a feature of constitutionalism along with the fact that the institutions all have their responsibilities clearly defined in the treaties, more explicit than ever in the Lisbon treaty.

## **5.6 Conclusion**

Our aim for this essay has been to track the changes that can be expected with the Lisbon treaty concerning the influence on decision making. It has also been to explore the implications of these changes, in terms of democracy as well as political structure. More specifically, we wanted to establish whether or not the EU is gradually becoming a federation of states.

When using Dahl's theories on democracy and legitimacy and comparing them to the changes in the institutions of EU, we found that most changes are for the good. The Lisbon treaty will make the EU more democratic and more open due to these changes. The National parliaments and the EP will receive more power within both legislative and budget processes; come the new treaty. In this way, elected officials will have an important role, a *more* important role than before, in comparison to EU officials that are appointed by different institutions. We find that this change should increase the legitimacy of the EU, as decisions are brought closer to the ordinary citizens through their representatives. Meanwhile, another amended treaty means even more difficulty with interpreting the documents. Throughout the Lisbon treaty there are references hither and thither and the system of referring makes it harder to understand the content and meaning of the document. An entirely new constitutional document such as the CT would have simplified this, but as we have seen, this was not to happen. This outcome is unfortunately not advantageous for citizens, as most will not even bother to take a quick look at the new treaty. The reasons to how, why and by whom things are done in the EU will be likely to remain unclear for the citizens, an outcome that won't work in the EU's favour as far as democracy is concerned. We argue that the changes that have been made with the Lisbon treaty are good for democracy, but we question how many citizens that will actually know how good they are. We question this because of the facts that the working methods in the EU are hard to comprehend for ordinary citizens, which lessens the legitimacy for the Union as a whole. Moreover, the treaty on the European Union is no easy-read document that everyone might be able to understand; consequently many will not grasp the positive changes brought by the Lisbon treaty.

Furthermore, we have looked at how the changes in the Lisbon treaty affect the political structure of the EU as a system. Originally the idea was to create a constitutional document for the member states, however, this was voted against and the Lisbon treaty was thus created. This, nonetheless, raises the question of where the EU is heading. Had the constitution been passed, would the EU then have become a federation of states? It is clear that there was a will amongst politicians to pass the constitutional document, which we interpret as a will to create a political structure that binds the member states stronger than a treaty does. As we have explored, the EU today, with the Lisbon treaty holds features that satisfy, if not all, many of the requirements of a federation. Aspects from the constitutional treaty still remain in the amending treaty since they are considered beneficial to the development of the EU. When comparing this to Karvonen's theories on constitutionalism we found it spoke for a strengthening of constitutionalism. This in turn, we find, could be a step in the direction of a federation, since a constitution would more efficiently unite the member states.

After having looked at these aspects in the new treaty, we argue, in conclusion, that the democratic aspects indeed are enhanced and that they facilitate the inclusion of citizens in the activities of the Union. Comparing our empirical data to the democratic theories of Dahl, we interpret the changes as a positive movement in terms of democracy. The EU will be more open, more efficient and it will be easier for the citizens to make their voices heard. This we find makes the EU a stronger union, which brings us to our next aspect, that of where the EU is heading as a political structure. We find that with the Lisbon treaty, there are many aspects corresponding to the models of constitutionalism and federalism. The ambition of the EU seems to be greater than that of amending treaties, and there are many signs pointing in the direction of a federation. Moving from the CT to the Lisbon treaty is a tactical move by which the EU achieves largely the same outcomes, but without many referendums and citizen involvements. The price to pay seems to be a lack of clarity and consequently a reduced understanding among ordinary citizens.

In conclusion, the Lisbon treaty might well be another amending treaty enhancing the democratic aspects of the EU, and it seems clear that, whatever the will amongst the politicians, drastic changes still have to be passed by the citizens of the EU. This

means that even if a change of political structure were to happen, it would be a long, complex process not to be seen in the near future. Nonetheless, we still pose the question if the EU might be in transition towards a federal order? We believe the facts point towards such a solution. However, it may be many years before we see a United States of Europe.

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