

The Impact of the Treaty of Lisbon on Nation States and Future Models of European Integration

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1. Induction and general background of the Treaty of Lisbon

European history is to a large extent a struggle between different models of society, capitalism and communism, freedom and control, free trade and protectionism. Different understandings of competition are at the core of this struggle.

The official goal of the Treaty of Lisbon (European Union Reform Treaty) was laid down already during debates on the future of Europe at the beginning of the present century. There was a need to design a simpler, more democratic and competitive, better understood and closer to its citizens legal document for cooperation in Europe.

However, these goals were declared, but never seriously pursued by its main authors and due to that never achieved. Leaders of the Future of Europe Convention had the pretension of imitating the Philadelphia Meeting which adopted the Constitution for the United States of America. The President of the Convention Valéry Giscard d'Estaing even expressed clear sympathy to use the experience of the Founding Fathers in making the constitution for Europe. But the members of the Giscard Convention had never a chance to start from scratch, from new key objectives and modern institutions.

On the contrary, they tried to put together existing treaties for European integration using for that old, not enough democratic methods of constitution building. The draft EU constitution was never drafted through democratic methods, which are similar in every single EU member state.

The members of the Constitutional Convention have not been directly elected by peoples of member States. The new member states (at that time applicant countries) were treated as observers in the presidium and had no real say in fact. The members of the Convention were refused to have their amendments translated, distributed, discussed and voted. The main document was prepared mostly by powerful but politically narrowly represented presidium. The number of Convention delegates made up the minority group known as the Democracy Forum, which proposed to the Convention an Alternative Report - "The Europe of Democracies". It was presented to the EU Thessalonica summit as an official Minority Report. A viable Plan B was prepared for the continent (Rotherham 2005).

Moreover, the whole draft constitutional treaty was adopted only by the Presidium of the Convention without voting in the General Assembly of the Convention. Alternative reports, letters to the President and Presidium of the Convention have never been seriously taken into consideration.

As a result, the Treaty Establishing A Constitution for Europe (A Constitutional Treaty) was made a very long document, too much a political and not enough legal document, which left too many issues open and was not clearly understood by people. This made the division between the European elites and ordinary people even more visible. The proposed concept of a Federal State Constitution was not properly explained and that is why the Constitutional Treaty was not widely accepted in many countries and finally was rejected by the peoples of France and the Netherlands in public referendums in 2005.

Allowing for the special features in each case, all the classical Federal States which have been formed on the basis of power being surrendered by lower constituent states to a higher Federal authority have

developed in a gradual way, just as has happened in the case of the European Union. The nineteenth century Germany, the USA, Canada and Australia are classical examples. Indeed the EU has accumulated its powers much more rapidly than some of these Federal States - in the short historical time-span of some fifty five years.

The key difference between these classical Federations and the new European Union is that the former, once their people had settled, shared a common language, history, culture and national solidarity that gave them a democratic basis and made their State authority popularly legitimate and acceptable. All stable Federal States are founded on such communities where people speak a common language and mutually identify with one another as one people - a "We". **In the EU, however, there are no European people or "demos"**. The Treaty of Lisbon is an attempt to construct a highly centralised European Federation artificially, from the top down, out of Europe's many nations, peoples and States, without their free consent and knowledge.

If there were to be a European Federation that is democratic and acceptable, the minimum constitutional requirement for it would be that its laws would be initiated and approved by the directly elected representatives of the people either in the European Parliament or by the National Parliaments of the Member States. Unfortunately, neither the EU Reform Treaty nor the EU Constitutional Treaty was made with the help of any such proposal.

The Reform Treaty was designed with using the argument, that closer political and economic cooperation is needed to increase the competitiveness of Europe in the World economy and politics, that deeper political and economic integration will accelerate growth and welfare effects in Europe.

But these old ideas might not work any more in a globalizing world, where Europe is becoming smaller in terms of its demographic, economic and political importance. The modern world is flat, where states cooperate with each other through numerous voluntary and democratic networks.

As sociological surveys show, the peoples of Europe do not want to live in a highly centralized Federal European Union whose most striking feature is that it is run virtually entirely by committees of politicians, bureaucrats and judges, none of whom are directly elected by the people.

But nevertheless there was a continuous need for a renewed basic document for European integration due to the enlargement pressure, the growing necessity to raise economic competitiveness, modernize economic policies and solve common foreign and security policy problems. After a few years of the so-called reflection time, Intergovernmental Conference (IGC) called by EU Portuguese Presidency produced a much shorter constitutional text for the European integration, which was named the **Treaty of Lisbon amending the Treaty on European Union and the Treaty on establishing the European Community** (shortly as the Treaty of Lisbon or the Reform Treaty). This treaty was signed on behalf of the Member States on December 13, 2007.

As French President Nicolas Sarkozy has admitted, the Prime Ministers and Presidents have agreed among themselves on no account to have referendums on the Renamed Constitutional Treaty, for that would be rejected everywhere again. When asked: "Why not adopt it by referendum?" Sarkozy responded: "It is demagoguery to suggest such a thing! The first referendum caused Europe to stall. The second would destroy it." Bill Cash, British MP and Chairman of the European Foundation, commented, that "If Sarkozy fails to establish a radical reform of the country's relationship with the EU, this stateless institution will prevent France managing her own affairs. It would be better to renegotiate the position of Member States, to co-ordinate, as de Gaulle had argued, for a free association of European nation-states, than to have suffered a terrifying collapse of EU institutions, then to look back in anger having done nothing but acquiesce" (Cash 2007).

2. The general impact of the Treaty of Lisbon on Nation States

The impact of the Treaty of Lisbon consists primarily of strengthening the EU institutions and reducing the role of single Nation States in policy making on European level. The Reform Treaty would reduce the status of the independent sovereign member countries to the status of provinces or counties of the federal European Union.

Officially the Treaty of Lisbon amends the current European Union (EU) and European Communities (EC) treaties without replacing them. But actually it provides the new Union with the legal framework and tools, which are principally different from the previous basic documents of European integration.

The Treaty of Lisbon would establish a **legally new** European Union. The Treaty would give this new Union a new legal establishment that would be nearly identical in its legal effects to the EU Constitutional Treaty that French and Dutch voters rejected in their 2005 referendums. The Lisbon Treaty would establish a union, which is quite different from what we call now the European Union of Nation States. The Lisbon Treaty presents in substance the renamed EU Constitutional Treaty, which was made to constitute a supranational Federal State of Europe or United States of Europe, separate and superior to its Member States (Coughlan 2007).

The provision of the article 1 of the Treaty of Lisbon, *"The Union shall be founded on the present Treaty and the Treaty on the Functioning of the European Union (hereinafter) referred to as "the Treaties". Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community"* makes it absolutely clear that the post-Lisbon Union would be quite a new entity, as the European Community of which nation states are currently members. Not only the name of the Treaty establishing the European Community shall be replaced by "Treaty on the Functioning of the European Union" and the words "Community" and "European Community" shall be replaced by "Union" and "European Union" (see article 2 of the Treaty of Lisbon), but also additional steps toward establishing the Federal State have been written in the new treaty.

The Treaty would empower this new European Union to act as a State with other States. The present European Union is not a State. It is not even a legal or corporate entity in its own right, for it does not have legal personality. The name "European Union" at present is a descriptive term for all the relations between its 27 Member States.

At present these relations cover both the "European Community" area where supranational European law is operative, and the "intergovernmental" areas of foreign policy and justice and home affairs where Member States cooperate with each other on the basis of keeping their sovereignty and where European laws do not apply.

The Treaty of Lisbon would abolish the distinction between supranational and intergovernmental "pillars" of common policy and law making of the existing European Union. The Treaty would create a constitutionally and legally new EU, while retaining the same name. Unlike the present European Union, this legally new EU would be separate from and superior to its Member States. The Reform Treaty will establish a European Union with its own legal personality and distinct corporate existence for the first time.

This new European Union would sign treaties with other States in all areas of its competence and conduct itself as a State in the international community of States. It would speak at the United Nations on agreed foreign policy positions of its Member States; just as in the days of the Soviet Union the USSR had a UN seat while Russia, Ukraine and Byelorussia had UN seats also.

The Lisbon Treaty would create a Cabinet Government of the new Union. It would turn the European Council, the quarterly "summit" meetings of Member State Heads of State or Government, into an institution of the new Union, so that its acts and failures to act would, like all other Union institutions, are subject to legal review by the EU Court of Justice.

The Council meeting in the composition of the Heads of State or Government and acting by unanimity shall be replaced by the European Council acting by unanimity. So present "intergovernmental" gathering of Prime Ministers and Presidents outside supranational European structures will disappear. As part of the new European Union's institutional framework, "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political direction and priorities thereof" (Art.9b), instead of to *"promote the Union's values, advance its objectives, serve its interests"* and *"ensure the consistency, effectiveness and continuity of its policies and actions."* (Art. 9 amended TEU).

The European Council would thus become in effect the Cabinet Government of the new Federal EU, and its individual members would be primarily obliged to represent the Union to their Member States rather than their Member States to the Union.

The federalist character of the European Council "summit" meetings in the proposed new Union structure is further underlined by the provision that would give the European Council a permanent political President. "The European Council shall elect its President by qualified majority, for a term of two and a half of years, renewable once (Art. 9 b, p.5).

There is no gathering of Heads of State or Government in any other international context that maintains the same chairman or president for several years while individual national prime ministers come and go. The federal character of the new President is emphasised also by the Treaty provision that forbids that person from holding any national office and which lays down that the President shall "*ensure the external representation of the Union*" (Art. 9b, p. 6).

The Treaty of Lisbon would also give the EU a Foreign Minister - to be called a "High Representative of the Union for Foreign Affairs and Security Policy", who will be also elected by the European Council, acting by qualified majority, but with agreement of the President of the Commission (Art. 9E). A new European External Action Service - international diplomatic corps will provide back-up and support to the High Representative.

The EU Reform Treaty would give **the EU institutions more power to make laws and take decisions on 68 policy areas or matters**, where the national veto would be abolished. Of these 49 would give the EU new legal rights for making common laws or taking decisions, while 19 would shift existing law-making or decision-taking from unanimity to majority voting. (Coughlan 2007).

The new areas of EU law-making would be civil and criminal law, justice and policing, immigration, public service, energy, transport, tourism, space, sport, civil protection, public health and the EU budget. Majority voting will be implemented beside economic and justice matters also in some areas of foreign policy and institutional matters.

The Treaty of Lisbon would give **more voting power to the big countries**. The designed double majority voting system for adopting new EU laws in the Council of Ministers would make population size the key criterion of influence and put the big states in a much stronger position, as for adoption needed support of at least 15 member states representing 65% of the total EU population. So only three big countries, because of their population size over 180 million, would be able to block any EU law proposed by all small countries. Instead of that the smaller countries hopefully will have a greater relative benefit from economic integration, because the economic benefit largely depends on how integration broadens the opportunities of consumers and producers to organize their economies in more effective ways through four freedoms of common market, specialization and economics of scale.

The Treaty of Lisbon **would remove each country's right to a permanent EU Commissioner**. It would remove the right of each Member State to have an EU Commissioner for two out of every three Commission terms that is for five years out of every 15. Big States would lose their right to a permanent Commissioner too, but they have other means of exerting their influence on this body that proposes all EU laws. Having a permanent EU Commissioner has always been recognized as especially important for smaller Member States.

Governments of member states would lose the right to decide who represents their country in the Commission. The new Treaty establishes the selection of the Commission Members with a special majority vote of 20 out of 27 Prime Ministers/Presidents, representing 65% of EU population on the basis of "suggestions" rather than "proposals" of candidates from the Member States

The Treaty of Lisbon is advocated as **more democratic and transparent**, with a strengthened role for the European Parliament and national parliaments, more opportunities for citizens to have their voices heard and a clearer sense of who does what at the European and national level. A really new treaty shall give some more roles for the European Parliament, especially in law making. In particular, the increase of co-decision procedure in policy-making will ensure the European Parliament is placed on an equal footing with the Council, representing Member States, for the vast bulk of EU legislation.

Also national parliaments will have greater opportunities to be involved in the work of the EU, in particular thanks to a new mechanism to monitor that the Union only acts where results can be better attained at EU level (subsidiarity). It provides that if one-third of National Parliaments object to a Commission proposal for an EU law, the Commission must reconsider the draft. Supporters of the Treaty hail this as a significant new role for National Parliaments in the structure of the new Union. However, it seems a very small compensation for National Parliaments losing the power to make laws and decide things in the 68 new areas of EU law-making and decision-taking mentioned above, which the EU Reform Treaty would shift from the national to the supranational level.

New is that one million citizens from a number of Member States will have the possibility to call on the Commission to bring forward new policy proposals.

But at the same time the Treaty of Lisbon would simultaneously **increase the role of the Commission in policy and law making**. This shift of power to the EU entails a further shift of power from Parliamentary powers to the Executive power, which leads Europe even more towards democracy deficit situation than now. This will undermine European traditional governing principles of parliamentary democracy further. The non-elected Brussels Commission, has still the monopoly of proposing European laws to the Council of Ministers, and withdraws the draft law any time they seem to consider it necessary.

So the Treaty of Lisbon will bring **more control and less freedom and competition for market players**. At the EU summit in 2007, French President Sarkozy even managed to replace the draft phrase "an internal market where competition is free and undistorted" with the words "a single market". At the press conference afterwards, he asked rhetorically, "Competition as an ideology, as a dogma, what has it done for Europe?" But European history shows that competition works also for Europe, and even, and particularly, in these countries where centrally planned economy was implemented in a totalitarian form. In fact, the freedom to compete has been identified by economists the main reason why Europe was the first part of the world to become wealthy. (Munkhamer 2007.)

It is probably true, that the Treaty of Lisbon makes the relationships between the Member States and the European Union with the categorisation of competences a little bit clearer.

The Union shall have much more exclusive and also shared competences than now. The future exclusive competences are in the following areas:

- a) Customs union;
- b) The establishing of the competition rules necessary for the functioning of the internal market;
- c) Monetary policy for the Member States whose currency is the euro;
- d) The conservation of marine biological resources under the common fisheries policy;
- e) Common commerce policy.

The Treaty of Lisbon explicitly also recognises for the first time the possibility for a Member State to withdraw from the Union.

The new EU would **accede to the European Convention on Human Rights**. It would indirectly give the EU the final power to decide about human and civil rights in all Member States when implementing EU law. It would do this by making the rights set out in the EU Charter of Fundamental Rights legally binding by 27 judges of the EU Court of Justice.

If the Lisbon Treaty gives the **new Federal EU a human rights jurisdiction** it is likely that the Commission will in time propose also common laws to guarantee and implement those rights and ensure their uniform application across all EU States, as has happened in the case of all the previous Treaties. National law must be applied in a way that is consistent with EU law, for the latter has supremacy in any conflict between the two. That principle would apply also to human rights matters. This raises the possibility of clashes and misunderstandings over human rights standards in sensitive areas where there are significant differences between Member States at present, especially between old and new members. New members are not ready to follow the experience of more advanced countries, for example, in the area of the legalisation of hard drugs and prostitution, the right to life, euthanasia, succession and property, family law, labour law, the rights of children and the elderly and many other issues.

Citizenship of the European Union at present is stated to **"complement"** national citizenship, the latter being clearly primary, not least because the present EU is not a State. It is not even a corporate entity that can have individuals as members, not to mind citizens. According to the new treaty **"Citizenship of the Union shall be in addition to national citizenship."** This would give the 500 million inhabitants of the present EU Member States a real separate citizenship from the citizenship of their national States for the first time.

As many States recognise that one can have only a single citizenship, henceforth it would be one's Union citizenship which would be likely to be regarded by other countries as primary and superior to one's national citizenship.

Member States would retain their national constitutions, but they would be subordinate to the new Union Constitution. As such they would no longer be constitutions of sovereign States, just as the various local states of the USA retain their constitutions although they are subordinate to the Federal US Constitution.

3. Possible impacts of the Treaty of Lisbon on Estonia's economic policy

The impact of European economic integration on Estonia has been more thoroughly studied in some economic sectors such as banking, agriculture and foreign trade (Varblane 2001) The general conclusion of these studies indicates that EU over-regulated economic policies with more than 24 thousand regulations, directives and court decisions are already harmful for Estonia's economy.

The Reform Treaty would make EU economic policy even more centralized, which **contradicts Estonia's liberal economic policy** and present economic model.

Already in 2004 Estonia joined the economic zone with less trade and other economic freedoms than Estonia had before, but nobody even ever asked for compensation of these losses.

Due to the Reform Treaty some **new areas of economic policy would fall under the jurisdiction of EU laws**. Among them the required harmonization of the indirect tax policy will be most harmful for Estonia, as this will increase many prices for consumer goods, like prices for cultural events, newspapers and other publications, tobacco, alcohol, fuel, heating services, collection of garbage and some others services. Rapid implementation of the Reform Treaty would accelerate convergence of price and tax levels between Estonia and most of other old member states, but this, however, may result in aggravation of social problems in Estonia as the harmonization of personal income levels needs much more time.

According to the Eurostat survey the at-risk-of-poverty-rate (18%) in Estonia was already one of the highest in the EU countries in 2006.

Implementation of the Reform Treaty would abolish Estonia's world famous tax policy. Estonia abolished corporate income tax for reinvested profit in 2000. As a result, direct foreign investments grew rapidly. Nearly half of these investments originated from reinvested profit during the last years. According to the accession agreement Estonia must abolish such a corporate income tax system before 2009. Estonian political parties and civil servants will most likely have serious problems with defending low corporate and personal income taxes if Estonia will ratify the Reform Treaty before that date, because a very few EU member countries yet support the idea of tax competition inside the EU and share the logic that low corporate, excise and other taxes are needed to attract foreign capital and keep economic growth rates high.

The inevitable consequence of the obligatory implementation of the EU bureaucratic economic policy already **increased the number of civil servants** in Estonia. The number of civil servants to manage agriculture nearly doubled after EU accession. Full implementation of the all existing and new EU common economic policies will furthermore increase bureaucracy and so decrease competitiveness of the Estonian economy, which would result in lower growth rates and bigger unemployment.

To avoid negative impacts of the Reform Treaty Estonia should ask to renegotiate the Accession Treaty with the aim to ask for more transition periods and derogations, which would preserve for Estonia, in some fields, a greater economic freedom or compensation for less favourable economic conditions in the reformed European Union.

Long transition periods are needed especially in taxation, agricultural and environmental policy, in order to maintain sustainable growth and attractiveness for foreign investors. The subsequent principle for economic policy might be that harmonization is carried out to the extent that is minimally required.

The Reform Treaty would open gates for further EU enlargement. But one should not forget that the EU enlargement continuously involves a big group of poorer countries, first of all Turkey and the Balkan countries, so the average level of GDP will drop, and Estonia may fall outside the support fund category more quickly.

Estonia's pre-EU model of economic development was more close to the liberal free market model of capitalism than the European social-democratic model of a welfare state. Today we see raising economic nationalism and fight between these two basic models. If Europe is not able to move towards a more liberal model of market economy, then Estonia will lose its comparative advance and economic growth will soon decrease even more.

Estonia's accession to the European Monetary Union requires, on the one hand, that Estonian prices be comparable to EU average prices. But rising to the EU average level of prices also presumes a growth in income of at least the same tempo. Price convergence would need a certain level of income convergence, but the state has no financial means to ensure this for the unemployed. Entering the EMU presumes in turn low inflation and stability of prices. Implementation of the Treaty of Lisbon in Estonia would probably accelerate price and income convergence, and accession to the EMU might happen faster than in conditions

of fast economic growth. EMU membership is necessary for Estonia to keep financial stability in the country.

So EU Reform Treaty might mean for Estonia **giving up a part of Estonia's present economic achievements, one of the most competitive new economies in Europe will fall apart, but this will guarantee faster political integration and Estonia's accession to the EMU.**

As Estonia's accession to the EU is in many aspects unique, international cooperation of politicians and social scientists might bring very interesting results not only for Estonia but also for the whole Europe in terms of finding new models for building up modern societies, more effective ways of integration of Central and East European countries into the Western World and increasing competitiveness of European economies.

4. Some future models of European integration

New opportunities for economic policy change and also threats to it have been opened by negative referendums on EU Constitutional Treaty. A new round of the Future of Europe debate has been initiated by the new leaders of Germany, France, Great Britain and other European political leaders. In the future Europe must be more open and cooperative, a Europe whose openness to global change and its strategic global partners is made possible by the assurance that comes from making its own policies and inspirations more open, more responsive and more credible to its own citizens.

Today all Europe's hopes for its future developments depend on recognition and positive response to the currents of global change and no European State, even the most powerful, can by itself mount an effective response to the unprecedented threats and challenges that face Europe as a whole.

The present model of the European Union is in a serious crisis. The proposed Europe as a **centralized Federal State** - the United States of Europe, proposed by Giscard Convention failed in public referendums. Also the **German-type Federal State** with bicameral parliament and relatively independent regions is not suitable for present Europe. And the French proposed old **Federation of Nation states** does not work satisfactorily due to low efficiency.

Recognition of the facts, that more than half of the growth in global economy already comes from East and South-East Asia, should be a good basis for further cooperation and harmonization of trade and economic policies between the European Union and the United States. In this context Europe's new leaders have called EU and US to work closer together to liberalize international trade and investments.

A new model for Atlantic cooperation with Great Britain to initiate this was proposed in 2005 (Raig 2005). Now it is once again time for big European nations, such as Great Britain, Germany, France and Poland together to take initiatives for closer cooperation between European and American nations with the aim of creating the **North-Atlantic Trade Area (NATA)**, where EU, NAFTA and EFTA countries should agree on free trade agreement and should afterwards work together in many other fields on the basis of intergovernmental cooperation, multilateral systems and mutual respect for creating the **North-Atlantic Security and Economic Area (NASEA)**.

But British-American cooperation should become the driving force for North-Atlantic Economic cooperation, as Franco-German reconciliation played a crucial role for European integration.

But many problems and questions are still not solved on the way to closer North-Atlantic economic cooperation. New changes in technology have occurred in America faster than in Europe and Europe needs to increase capacity to change and adapt to these new trends and put more efforts and money to research and development under Lisbon competitiveness agenda. Otherwise Europe risks being left behind. A big question is also how some European nations can overcome their traditional anti-Americanism and social-democratic welfare model? Can Europe avoid national and religious conflicts like in Bosnia and Kosovo or North-Ireland? How far to the East should the European Union enlarge? What will be the nature of cooperation with Russia, Ukraine and other nations in the former Soviet Union? What kind of role will Turkey play between Western and Eastern World, between Christian and Islamic values?

The idea of closer transatlantic cooperation is based on the concept of the "third way", where liberal market economy is somehow combined with social market economy and with the proper respect to the environment. Implementation of this idea depends on the political options of leading political parties in the EU member states and development of the whole process of globalization.

As Europe's economic reforms are still in the stage of transition, the discussions on the possible ways of development are still going on. On the one hand, some countries, especially in Central and Eastern Europe have moved towards the Anglo-American liberal free-market economy, but on the other hand, more and more of EU legislation has been produced for the overregulation of economy. At present European society can be characterized as a combination of different models of capitalism where the formation of the more permanent trends of development is still ahead. Ireland's, British, Dutch, Czech and Estonia's models of market economy might become links between European and American models of capitalism.

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