

The new deal, a good deal?

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pubbl. in www.voxeu.com , 25 June 2007

Much of the substance of the Constitutional Treaty has been preserved, but since this is clear only to the initiated, it comes at a cost of considerably reduced transparency. And this is not complete; expect more Treaty revisions before all of the provisions of this one have been implemented.

The heads of states and government laboured into the early hours of Saturday morning until they found an agreement on how to reform the EU. Was this a good deal, or a badly thought-through compromise? Our judgment on balance is positive.

Although they may not specifically be mentioned in the Council Conclusions of the Brussels meeting of the European Council, most of the key innovations contained in the Constitutional Treaty (CT) have been maintained in the agreement reached over the weekend. Much of the substance of the CT has thus been preserved, but since this is clear only to the initiated, it comes at a cost of considerably reduced transparency.

What has been preserved from the CT? The most important elements are:

- The provisions on democratic principles, including the citizens initiative, now supplemented by a stronger role for national parliaments.
- The entire package on the institutions, including a permanent Presidency for the EU, with a proper secretariat; election of the Commission President by the EP, etc.
- A single legal personality for the EU, and, implicitly, the supremacy of EU law.
- The incorporation of the third pillar (Justice and Home Affairs) into the 'normal' EU business (i.e. the so-called 'first pillar'). The opt-out clauses for the UK will make this area more difficult to manage, but they will also constitute a useful test: if the area of justice, freedom and security works well, the UK will sooner or later have to reconsider its position.

Taken together, these elements represent an important step forward, probably amounting to more progress than achieved in the last two treaty changes. Moreover, measured against the baseline of no treaty change at all, a lot has been achieved.

Compared to what might have been with the Constitutional Treaty, any assessment must be more qualified, but ours remains moderately positive, as two important 'losses' have to be set against one, potentially important gain. Let's start with the negative elements:

1. The present voting system in the Council 'à la Nicoise' will be maintained for another 5 years at least (and the new system will not be fully operational until 2017). Academic research suggests that this will make it harder to take decisions by a qualified majority, although actual experience in the Council suggests that most decisions will continue to be taken without resorting to a formal vote.

2. The second pillar, i.e. intergovernmental cooperation in foreign and security policy, is maintained. The formal role of the high representative (instead of the foreign minister) is thus somewhat diminished. But in this area, formal rules are in any event less important than the political will to work together on the solution of the external challenges facing the EU.

The potentially important gain derives from the fact that there will be two treaties: one Treaty on the EU, which contains most (but, unfortunately, not all) of the institutional provisions and a second treaty 'on the functioning of the Union'. The first is close in character to a 'fundamental law' or constitution at the national level, whereas the second is closer to implementing legislation. It is thus fitting that certain provisions of the second treaty (for example, passage by qualified majority voting in new areas) can be modified by a simplified procedure. Herein lies the germ of an idea for an important improvement: a true two-treaty structure based on a fundamental law on which everybody has to agree, and containing provisions on specific policies, on which dissent is normal and which can thus be modified more easily. This important element was foreshadowed in a recent [CEPS Policy Brief](#) by Sebastian Kurpas and Stefano Micossi.

Finally, it is clear that this is not the last word on the structure of the EU. Eliminating all references to a constitution has one advantage: nobody can be surprised when new treaty revisions will be proposed even before all of the provisions of this one have been implemented.