The Reform of the European Union Constitutional Framework

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Both the European Union institutions and Member States agree on the necessity to reform once again the institutional architecture and the decision-making procedures of the enlarged European Union. Indeed, the last reforms introduced by the Treaty of Nice have been insufficient in guaranteeing an efficient and democratic operation of the EU institutions after five enlargements and the accession of 21 new Member States since the Treaty of Rome in 1957. In fact, these successive reforms prove that the European Union integration is a continuous process (I). In this perspective, the implementation of the Treaty of Lisbon will drastically strengthen the present EU constitutional framework (II).

A Coninuous Reform Process

Actually, the first institutional reforms undertaken have indisputably reinforced the democratic character of the Union. Amongst a plethora of examples are the elections of the European Parliament held by direct universal suffrage and the strengthening of its legislative role and budgetary powers; the integration of the Court of Auditors within the institutional structure; or the recognition of the political responsibility of the European Commission. However, these reforms have proven insufficient as the challenges of enlargement are always pending and the European Union will still widen, around 2011, after the accession of the Croatia and the Former Yugoslavian Republic of Macedonia. The Member States have been fully conscious of their stakes for several years, and the reform of the institutions has appeared amongst the principal objectives at the Intergovernmental Conferences which have prepared, for almost fifteen years, the Treaties of Amsterdam, of Nice and of Lisbon. As an extension to the conclusions of the Councils of Brussels, Lisbon and Copenhagen, the European Council, which met in Cannes on June 26th and 27th, 1995, has already stressed that due to the perspective of enlargement, the following institutional questions should be resolved: “the voting

weight, the extension of the scope of decisions adopted by a qualified majority, the number of commissioners appointed by all Member States, and all other measures judged necessary to ease the tasks of the institutions and to guarantee their efficiency in the perspective of enlargement."

The Treaty of Amsterdam and the Prospect of the Enlargement

But for lack of a sufficient political agreement between negotiators, the Treaty of Amsterdam was not able to respond to these demands. However, its Protocol n° 7 on the institutions with the prospect of enlargement of the European Union imposed several legal obligations. Thus in accordance with article 1, "At the date of entry into force of the first enlargement, the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by re-weighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission." What's more, article 2 specifies that: "At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions."

The Necessary but Limited Results of the Treaty of Nice

According to the Protocol n° 7, a new Intergovernmental Conference (ICG) concluded its work on December 11th, 2000 in Nice with an agreement on the institutional issues which had not been settled in Amsterdam. On January 2001, this political agreement was legally translated with the signature of the Nice Treaty. It concerned: the distribution of seats in the European Parliament, the composition of the Commission and the definition of the qualified majority within the Council. Lastly, the principles and methods for the enlargement were listed in the protocol n° 1 on enlargement and attached declarations, particularly the declaration n° 23 on the enlargement of the European Union[1].

Of course, the declaration n°23 underlines “that, with ratification of the Treaty of Nice, the European Union will have completed the institutional changes necessary for the accession of new Member States” but it also calls “for a deeper and wider debate about the future of the

[1] Declaration n°23 on the future of the Union:

1. Important reforms have been decided in Nice. The Conference welcomes the successful conclusion of the Conference of Representatives of the Governments of the Member States and commits the Member States to pursue the early ratification of the Treaty of Nice.
2. It agrees that the conclusion of the Conference of Representatives of the Governments of the Member States opens the way for enlargement of the European Union and underlines that, with ratification of the Treaty of Nice, the European Union will have completed the institutional changes necessary for the accession of new Member States.
3. Having thus opened the way to enlargement, the Conference calls for a deeper and wider debate about the future of the European Union. In 2001, the Swedish and Belgian Presidencies, in cooperation with the Commission and involving the European Parliament, will encourage wide-ranging discussions with all interested parties: representatives of national parliaments and all those reflecting public opinion, namely political, economic and university circles, representatives of civil society, etc. The candidate States will be associated with this process in ways to be defined.
4. Following a report to be drawn up for the European Council in Göteborg in June 2001, the European Council, at its meeting in Laeken/Brussels in December 2001, will agree on a declaration containing appropriate initiatives for the continuation of this process.
5. The process should address, inter alia, the following questions:
   − how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
   − the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;
   − a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
   − the role of national parliaments in the European architecture.
6. Addressing the abovementioned issues, the Conference recognises the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States.
7. After these preparatory steps, the Conference agrees that a new Conference of the Representatives of the Governments of the Member States will be convened in 2004, to address the abovementioned items with a view to making corresponding changes to the Treaties.
8. The Conference of Member States shall not constitute any form of obstacle or pre-condition to the enlargement process. Moreover, those candidate States which have concluded accession negotiations with the Union will be invited to participate in the Conference. Those candidate States which have not concluded their accession negotiations will be invited as observers.

European Union." Thus, "the process should address, *inter alia*, the following questions: how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity; the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice (…); a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning; the role of national parliaments in the European architecture. Moreover, "the Conference recognises the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States". Finally, "the Conference agrees that a new Conference of the Representatives of the Governments of the Member States will be convened in 2004, to address the abovementioned items with a view to making corresponding changes to the Treaties."

According to point 8 of the declaration n° 23, the candidate States which have concluded accession negotiations with the Union have been invited to participate in the new Conference and the other candidate States, such as Turkey, have been invited as observers. On the basis of the works of the "Convention for Europe", chaired by M. Valery Giscard d'Estaing, the Treaty establishing a Constitution for Europe was signed in Rome on October 29th 2004 but, because of the French and the Dutch refusals, it has never been implemented.

The Modifications introduced by the Treaty of Lisbon

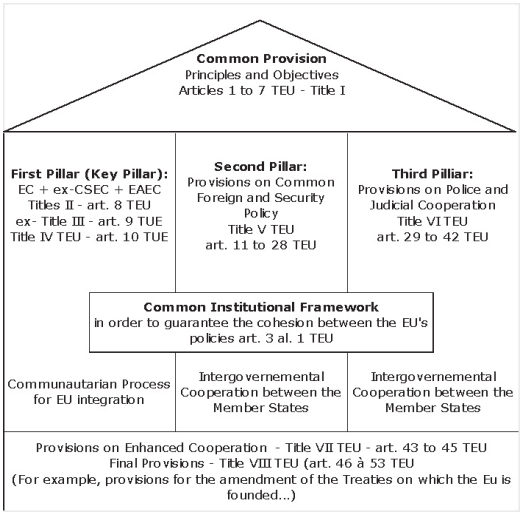
After the rejection of the Constitutional Treaty by the French and the Dutch people, the Lisbon Treaty constitutes a compromise which all Heads of State or Government agreed to in the Portuguese capital on October 18th and 19th, 2007. The last "European Constitution" suggested the repeal of all of the present treaties to replace them by one text only but the Lisbon Treaty has been limited to the modification of the existing treaties.

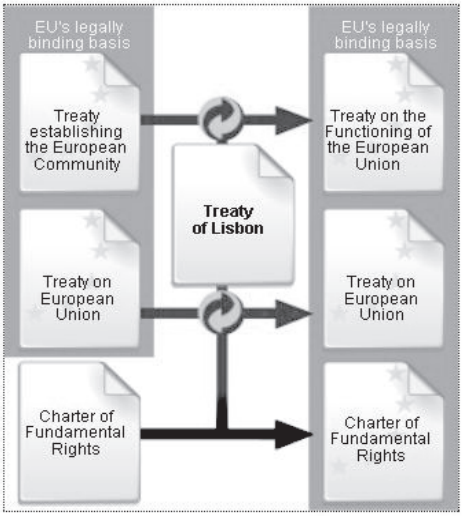
Thus, the Lisbon Treaty bears the key following clauses:

- the Union becomes a legal entity. This implies notably to be part of an international convention or be a member of an international organisation;
- the three pillars are merged together;
- the Charter of Fundamental Rights will be legally binding and the EU will accede to the

European Convention for the Protection of the Human Rights,

Legal Framework of the Current Treaty on the EU with the 3 Pillars and of the Modified Treaty on the EU





- the sharing of competences between the EU and the Member State is specified

Exclusive competence	Shared competence	Supporting competence
The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act.	Member States cannot exercise competence in areas where the Union has done so.	The Union can carry out actions to support, coordinate or supplement Member States' actions.
■ the customs union ■ the establishing of the competition rules necessary for the functioning of the internal market ■ monetary policy for the Member States whose currency is the euro ■ the conservation of marine biological resources under the common fisheries policy ■ common commercial (trade) policy	■ the internal market ■ social policy, for the aspects defined in this Treaty ■ economic, social and territorial cohesion ■ agriculture and fisheries, excluding the conservation of marine biological resources ■ environment ■ consumer protection ■ transport ■ trans-European networks ■ energy ■ the area of freedom, security and justice ■ common safety concerns in public health matters, for the aspects defined in this Treaty	■ the protection and improvement of human health ■ industry ■ culture ■ tourism ■ education, youth, sport and vocational training ■ civil protection (disaster prevention) ■ administrative cooperation

- a stable presidency of the European Council, for a duration of 2 and a half years, renewable once;
- affirmation of the co-decision rule between the European Parliament and the Council of Ministers as the ordinary legislative procedure;
- a new rule of double majority is introduced;
- creation of the “High Representative of the Union for Foreign Affairs and Security Policy”;

- reduction of the size of the European Commission to less than one commissioner per Member State with a rotation system;
- engagement of the National Parliaments by expanding scrutiny-time of EU legislation and by enabling them to jointly compel the Commission to review or withdrawn legislative acts;
- right of citizens' initiative to be considered by the European Commission if signed by 1 million citizens;
- creation of an EU public prosecutor;
- common defence foreseen;
- Membership withdrawal clause;
- combating climate change explicitly stated as an objective;
- further enlargements are enabled by removing the Nice treaty limitation to 27 Member States…

For political reasons, in order to limited new ratification procedures by referenda, the Lisbon treaty is no longer called the "European constitution" but "Reform" or "Modifying treaty". This change, which essentially appears to be a formal one, also provides a response to requests made by certain countries such as the Netherlands, the Czech Republic and the UK, who believed, during negotiations, that the constitutional symbols should be abandoned, that is to say the terms "Constitution", "European Foreign Affairs Minister" "laws" and "framework laws" as well as the references to the Union symbols: flag, anthem, motto… Nevertheless, the High Representative for Foreign affairs keeps the same competences as the Foreign Affairs Minister, the European laws and the European frameworks laws are called legislative acts and the European flag, anthem and motto will still exist!

Thus, if the Reform Treaty is no longer called the "constitution" of the EU, it still emerges from the "*Les Verts*" judgement taken April 23rd 1986 that "the European Economic Community is a Community based on the **rule of law**, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the **basic constitutional charter**, the Treaty"[2]. Legally speaking, the

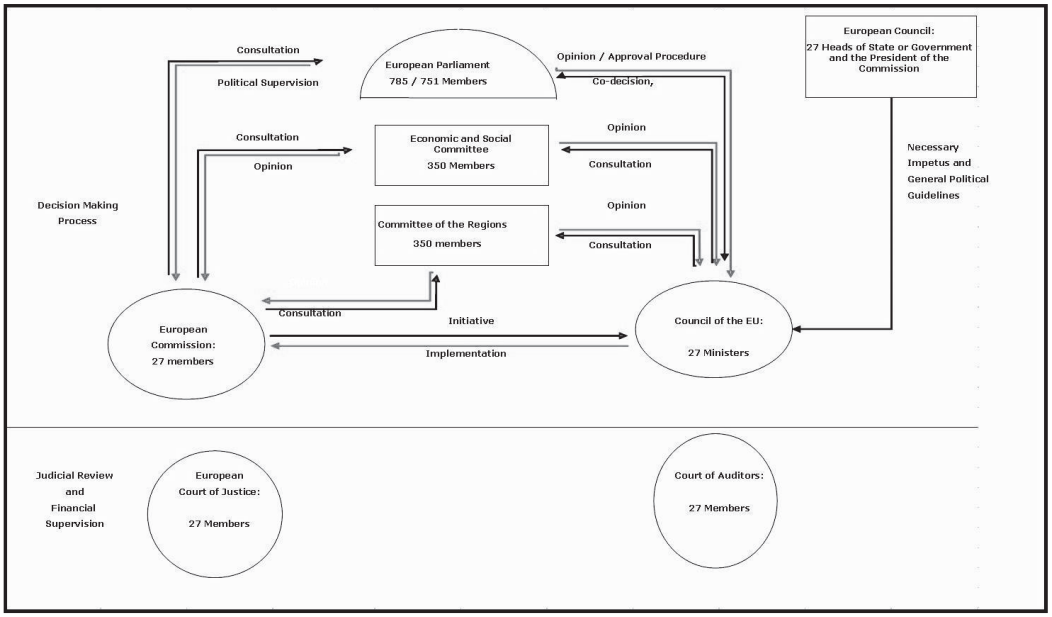
[2] CJEC, 23 April 1986, *Parti écologiste "Les Verts" v European Parliament*, Case n° 294/83, *Report* 1986, p. 1339.

EU is not a classical international organisation and its institutional framework is based on constitutional principles: it distinguishes the legislative, the executive and the judicial powers and it is based on the rule of law and the protection of the Human rights. Now, these principles are confirmed and strengthen by the modified EU Treaty.

The Strengthening of the EU Constitutional Framework

In accordance with democratic principles outlined in the initial treaties, Member States are legally equal and, as such, participate in the activities of the institutions of the Community. These principles have two structural consequences. Firstly, all the institutions have at least one citizen from each Member State. Secondly, with the exception of the European Council and of the Council, the other institutions adopt the majority of the decisions by a simple majority, the votes of each member having the same weight. To avoid misrepresentation, the implementation of these deep-rooted principles must be fundamentally redefined, not only concerning the weighting of votes in the Council's deliberations, but also the establishment of the number of Commissioners and of Members of the European Parliament（MEPs）. In accordance to the Treaty of Nice, Malta, whose number of inhabitants amounts to less than half a million, disposes of three votes for elections held in the Council adopted by a qualified majority, six Members of the European Parliament, as well as one Commissioner, one Judge at the Court of Justice and one Member at the Court of Auditors. But Germany, whose number of inhabitants amounts to eighty two million, disposes of twenty nine votes for elections held in the Council adopted by a qualified majority, ninety six Members of the European Parliament, and one Commissioner, one Judge at the Court of Justice and one Member at the Court of Auditors.

Constitutional Framework of the EU



The merit of this comparison is that it emphasizes the urgency to reform the institutions of the Community as they oppose the principles of legitimatization and representativeness and would result in their paralysis. At least, it supposes to strengthen the Parliament, to modify the qualified majority in the Council and to reduce the size of the European Commission. On December 13th 2007, the European Council signed the Treaty of Lisbon, thus bringing to an expected end several years of negotiation about institutional issues. Thus, a comparative approach will firstly try to emphasize the current limits and inadequacies of the EU institutions in order to enlighten the key reforms introduced by the Treaty of Lisbon. Concerning the decision making-process, they respectively concern the European Council in charge of the political impulse and the triangle of decision-making, that is to say: the Council of the EU, the European Parliament and the European Commission. Otherwise, the Treaty of Lisbon will particularly institute the High Representative for Foreign affairs and security policy.

The European Council and its Presidency

The European Council represents the Heads of State or Government of the Member States of the EU. Its first goal is to give the political impulse to the EU policies and to define the

major orientations. Nevertheless, each Member State chairs the EU on a **six-month rotation system** and this situation undermines the efficiency of the work undertaken by the European Council.

With the **Treaty of Lisbon**, one of the most important innovations lies in the creation of a stable presidency. Like the European Parliament and the Commission, the European Council will have a **full - time president** who will not be able to assume a national mandate. He will be elected by a qualified majority by the European Council for **two and a half years renewable once**. The President of the European Council will give a voice and a face to the European Union, represent the Union in the international arena and chair and co-ordinate the European Council's work.

Since the Treaty of Amsterdam, pursuant to **Article 7 of the Treaty on European Union**, the European Council can declare the existence of a **serious and persistent breach of fundamental rights**. If this occurs, the Council may suspend certain of the rights of the country concerned. The Treaty of Nice has **supplemented** this procedure with a **preventive instrument**. Upon a proposal of one-third of the Member States, the Parliament or the Commission, the Council, acting by a four-fifths majority of its members and with the assent of the European Parliament, can **declare that a clear danger exists of a Member State committing a serious breach of fundamental rights** and address to this Member State appropriate **recommendation**. The Court of Justice is competent（Article 46 of the Treaty on European Union）only for disputes concerning procedural provisions under Article 7, and not for the appreciation of the justification or the appropriateness of the decisions taken pursuant to this provision. The Treaty of Lisbon globally preserves all this modification.

Weighting of Vote, Qualified Majority and debates in the Council

According to the Treaty of Nice, a qualified majority is currently obtained in the Council if:

- the decision is approved by a **majority of Member States** and
- the decision receives at least a specified number of votes so called "the **qualified majority threshold**."

This qualified majority threshold was at the centre of debates during the closing stages of the ICG. In the Union of 27 Member States, it has been fixed to 73.91% of the votes, which means 255 voices for a total of 345. Moreover, the Treaty also provides for the **possibility** for a member of the Council to **request verification that** the qualified majority represents **at least 62% of the total population** of the European Union. If this condition is not met, the decision will not be adopted.

The current system isn't really efficient because it is too complex and it leads to weaker representation of the most populated Member States in favour of States whose population figures are lower. Equality between the States, according to the size of their population, necessitates an urgent review of voter weight within the Council, without which the qualified majority vote would be unable to guarantee the efficiency and the speed of the Council's work.

Number of votes for each country in the Council	
Germany, France, Italy and the United Kingdom	29
Spain and Poland	27
Romania	14
Netherlands	13
Belgium, Czech Republic, Greece, Hungary and Portugal	12
Austria, Bulgaria and Sweden	10
Denmark, Ireland, Lithuania, Slovakia and Finland	7
Estonia, Cyprus, Latvia, Luxembourg and Slovenia	4
Malta	3
Total:	345
A minimum of 255 votes out of 345 (73.9 %) is required to reach a qualified majority. In addition: • a majority of member states (in some cases two thirds) must approve the decision, and • any member state may ask for confirmation that the votes cast in favour represent at least 62 % of the EU's total population	

With the **Lisbon Treaty**, a double majority will be calculated according to two criteria: **55% of EU States**（ie at 27, 15 Member States）and **65% of the EU's population**. A blocking minority has to include at least 4 Member States. The new double majority system will be more democratic but also more effective in comparison with the system employed in the Nice Treaty since it facilitates the creation of majorities and therefore decisions can be taken.

The enhancement of the efficiency of the decision- making process also implies the **extension of the qualified majority vote**, instead of the unanimity, to new areas such as external border control, asylum, immigration or measures relative to the reception of asylum seekers and the

processing of their case.

Furthermore, the Council of Ministers will **meet in public** when a "legislative act" will be debated and approved which heralds a move towards the democratisation of the European Union. The citizens will be informed about debates that are taking place within the Council.

Composition and Competences of the European Parliament

The treaty of Nice modified the composition of the European Parliament and enlarged its competences in order to strengthen its efficiency. The Treaty of Lisbon pursues these reforms. Looking ahead to a Union of 27 Member States, the Treaty of Nice has introduced a maximum of 736 MPs seats in the European Parliament and a new distribution per State. The **Treaty of Lisbon** imposes to reduce this number to **751** but it wasn't ratified before June 2009 and the Treaty of Nice is still implemented.

Member State	**Population (1) (in millions)**	**% of EU-27 population**	**Seats until 2009**	**"Nice" (2) 2009-2014**
Germany	82,438	16,73%	99	99
France	62,886	12,76%	78	72
United Kingdom	**60,422**	**12,26%**	**78**	**72**
Italy	58,752	11,92%	78	72
Spain	43,758	8,88%	54	50
Poland	38,157	7,74%	54	50
Romania	21,61	4,38%	35	33
Netherlands	16,334	3,31%	27	25
Greece	11,125	2,26%	24	22
Portugal	10,57	2,14%	24	22
Belgium	10,511	2,13%	24	22
Czech Rep.	10,251	2,08%	24	22
Hungary	10,077	2,04%	24	22
Sweden	9,048	1,84%	19	18
Austria	8,266	1,68%	18	17
Bulgaria	7,719	1,57%	18	17
Denmark	5,428	1,10%	14	13
Slovakia	5,389	1,09%	14	13
Finland	5,256	1,07%	14	13
Ireland	**4,209**	**0,85%**	**13**	**12**
Lithuania	3,403	0,69%	13	12
Latvia	2,295	0,47%	9	8
Slovenia	2,003	0,41%	7	7
Estonia	1,344	0,27%	6	6
Cyprus	0,766	0,16%	6	6
Luxembourg	0,46	0,09%	6	6
Malta	0,404	0,08%	5	5
EU-27	**492,881**	**100,00%**	**785**	**736**

With the **Treaty of Nice**, the article 191 of the EC Treaty has been supplemented by a legal base which allows the adoption via the co-decision procedure of a **statute of European level political parties** and particularly of rules concerning their funding. This statute was adopted in 2005 and gives a new legitimacy to the political groups represented in the European Parliament. For the European elections in June 2009, in order to stimulate the European citizens, these European political parties should have been able to propose European political programs and to specify the name of their candidate for the presidency of the European Commission. Unfortunately, they didn't do it…

The regulations and general conditions governing the performance of the duties of members of the European Parliament have also been approved by the Council by a qualified majority, with the exception of the provisions relating to taxation (Article 190 of the EC Treaty). The European Parliament is henceforth able, in the same way as the Council, the Commission and the Member States, to institute proceedings to have acts of the institutions to be **declared void** without having to demonstrate specific concern (Article 230 of the EC Treaty) and to seek a **prior opinion** from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 300.6 of the EC Treaty).

Number of seats per political group, as at 14.07.2009

Political group	Abbreviation	No. of seats
Group of the European People's Party (Christian Democrats)	EPP	265
Group of the Progressive Alliance of Socialists and Democrats in the European Parliament	S&D	184
Group of the Alliance of Liberals and Democrats for Europe	ALDE	84
Group of the Greens/European Free Alliance	Greens/EFA	55
European Conservatives and Reformists Group	ECR	55
Confederal Group of the European United Left - Nordic Green Left	GUE/ NGL	35
Europe of Freedom and Democracy Group	EFD	32
Non-attached	NA	26
TOTAL		**736**

With the Treaty of Nice, the responsibilities of the European Parliament have still been extended by expanding the **scope of the co-decision** for seven provisions which change over from unanimity to qualified majority voting: articles 13, 62, 63, 65, 157, 159 and 191 of the EC

Treaty. Moreover, the Parliament's assent is required to establish enhanced cooperation in an area covered by the codecision process. The ICG has not, however, extended the co-decision procedure to legislative measures which already come under the qualified majority rule（e.g. in agricultural policy or trade policy）. At least, the European Parliament is also called upon to state its opinion when the Council intends to declare that a clear danger exists of a serious breach of fundamental rights occurring.

With the **Treaty of Lisbon**, the powers of the Parliament are still strengthened in terms of **legislation, budget and also political control**. The co-decision, called the "ordinary legislative procedure" is expanded for 27 provisions such as the internal market, the commercial agreements, the agricultural policy…

The Parliament swears in the **President of the Commission** on the proposal of the European Council, "taking the European Parliament elections into account." At first, this reform lends the President of the Commission greater democratic legitimacy, which is of major importance in an institution often seen as being "disconnected" from its citizens. Secondly, it makes it possible to politicize the European elections and undoubtedly raise the interest levels of European voters whose vote will then have European political life sway over.

The size of the European Commission

In the decision-making process, the European Commission has a central role with the entire monopoly over the initiative to legislate. Thus, the reduction of its size is a major issue in order to guarantee its efficiency with an enlarged European Union.

Since **November1st 2004**, in accordance to the Nice Treaty, the Commission has comprised **one national per Member State**. The biggest Member States thus lost at that time the opportunity of proposing a second member of the Commission. From November 1st 2014, or possibly November 2017, the number of Commissioners will correspond to two-thirds of the Member States（i.e 18 in a Union comprising 27 Member States）. The Commissioners will be selected by a system of rotation that will be fair to all countries and that satisfactorily reflects the different demographic and geographic characteristics of the Member States. The

Treaty of Nice has also changed the procedure for nominating the Commission (Art. 214 of the EC Treaty). Henceforth, the **nomination of the President** is a matter for the European Council acting by a qualified majority. This appointment must be approved by the European Parliament. With the Lisbon Treaty, the choice will take "the European Parliament elections into account."

Thereafter, the Council, acting by a qualified majority and in agreement with the appointed president, adopts the list of the other people it intends to appoint as members of the Commission, drawn up in accordance with the proposals made by each Member State. Lastly, the president and the members of the Commission will be appointed by the Council acting by a qualified majority after approval of **the body of Commissioners** by the European Parliament. At least, the new wording of Article 217 of the EC Treaty increases the President's powers. He decides as to the **internal organisation** of the Commission, **allocates portfolios** to the Commissioners and, if necessary, reassigns responsibilities during his term of office; he also appoints, after the collective approval of the body, the **vice-presidents**, whose number is no longer established in the Treaty; he may demand a commissioner's resignation, subject to the Commission's approval.

Institution of the High Representative of the Union for Foreign Affairs and Security Policy

Otherwise, the Lisbon Treaty sets up a **High Representative of the Union for Foreign Affairs and Security Policy**. The present functions of the High Representative of the Union for Foreign Affairs and Security Policy, Mr Javier Solana, and of the European Commissioner for external relations, Ms. Benita Ferrero-Waldner, will be merged together. This provides greater coherence and unity to the European Union's external action. Appointed by the European Council and sworn in by the European Parliament he/she will be Vice-President of the European Commission and will chair the Foreign Affairs Council at the Council of Ministers.

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A lot of other issues are undermining the efficiency of the EU. For example, the language issue is just as sensitive. The article 21 of the EC Treaty lays out that: “Every citizen of the Union may write to any of the institutions or bodies（of the EU）in one of the（official）languages（…）and have an answer in the same language.” Thus, the Union works with twenty-three official languages! With regards to the cost of interpretation and translation of Community documents, indeed to the limited numbers of qualified staff, the institutions of the Union should come to an agreement on a political procedure in order to define a realistic linguistic system concerning the various levels of work in these areas. A pragmatic decision would be particularly adapted to political communications and the internal preparation of decisions made by the Union.

Confronted to the global economic and financial crisis and the conflictual relationships with Russia, the future of the Union, of European citizenship and of democracy on the Old Continent cannot wait for the definition of a major political project any longer or for the adoption of an adequate institutional architecture. The responsibility is huge and cannot simply be delegated to the governing class… The upcoming implementation of the Treaty of Lisbon here has an essential significance: it is a privileged opportunity to lay the foundations of a genuine European political society guaranteeing the citizenship and the protection of fundamental rights. This European political society constitutes an essential preliminary before adopting a Constitution for the European Union.