

## Briefing Paper: EU Institutions and National Parliaments

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With reference to the European Union (Amendment) Bill Debates – House of Commons

- **EU Extension of Competences**
- **Extensions to Majority Voting**
- **Institutional Changes**
- **Increased EU powers relative to Member States**
- **Role of National Parliaments**

The Treaty of Lisbon makes numerous references to the role of national parliaments in an attempt to “encourage greater involvement of national parliaments in the activities of the European Union”.<sup>1</sup>

This high aim is, however, sadly lost and downtrodden in the actual details of the Treaty. Whilst national parliaments do gain rights to object to legislation, the Commission still retains ultimate power to overrule.

The House of Commons European Scrutiny Committee reported that if one-third of national parliaments disagreed with a piece of EU legislation, then that piece of legislation could be challenged on the grounds of subsidiarity. If the Commission still persisted in pushing for this piece of legislation against the objections, then the final decision would be made by the Council and European Parliament.<sup>2</sup> National parliaments thus have no final say over the legislation.

The European Scrutiny Committee was concerned about the lack of clarity in the process of challenging a piece of legislation, and expressed concerns over how the UK parliament might be allowed to respond on issues of subsidiarity independently from the executive department of government.

## **EU Extension of Competences**

- Rather than limiting and containing EU legislation within tight boundaries, this Treaty creates a new definition of 'shared competences' covering an extensive list of very broadly defined policy areas (Article 2C TFEU). The EU is given unlimited scope to extend its legislation and directives in each of the areas named. These shared competences cover:
  - the internal market
  - social policy (for the aspects defined in the Treaty)
  - economic, social and territorial cohesion
  - agriculture and fisheries
  - environment
  - consumer protection
  - transport
  - trans-European networks
  - energy
  - area of freedom, security and justice
  - common safety concerns in public health matters
- Furthermore the Treaty contains an explicit limitation on the powers of Member States by declaring that Member States can (only) legislate in any area of these shared competences "to the extent the EU has not exercised its competence" (Article 2A TFEU). This turns subsidiarity on its head – and any challenge to subsidiarity from national parliaments will be decided by the European Court of Justice.
- On top of that, the EU is given ill defined powers to coordinate policies and take supporting actions in a range of more sensitive areas, including industry, education, culture, human health, employment and social policy. The interaction of all these competences with the provisions of the Charter of Fundamental Rights with respect to social rights could result in a wide range of new EU and ECJ interventions.

## **Extension of Majority Voting**

- Qualified Majority Voting (QMV) is defined as the normal procedure in all areas – not just Single Market provisions – with more than 60 further national vetoes disappearing. These include important areas like energy, transport and culture as well as the areas of foreign policy and Justice and Home Affairs.
- In 2014, the blocking minority required to stop legislation under QMV will be made more difficult to achieve by a reduction in the highest hurdle for majority

voting from 74% of weighted Council votes to just 65% of votes weighted by population.

### **Institutional Changes**

- The adoption of a permanent President of the European Council (rather than a rotating national leader), is likely to significantly enhance the role and authority of the permanent EU institutions in setting the agenda and priorities for EU action relative to Member States. (Article 9b TEU)
- In addition, this European Council – which was the informal meeting of Heads of Government that sat above the EU structure – is now brought into the ambit of the EU by being defined as an EU institution, subject to the authority of the Treaty provisions and the jurisdiction of the ECJ. (Article 9 TEU)
- This shift in power from nations to EU institutions is further emphasised by the substantial increase in the role of the European Parliament, which gains co-decision power in many areas as part of the 'ordinary legislative process', including the primary role in electing the Commission President.<sup>3</sup>

### **Increased EU powers relative to Member States**

- The creation of an EU legal personality (Article 46A TEU) means that the UK can be bound by treaties on any number of areas that have been agreed by QMV and signed on our behalf, without the UK parliament ever approving them.
- The opportunity to further amend the Treaty is made easier by the new provision (Article 48 TEU) that allows the Council to agree amendments without a formal Treaty negotiation. It would then be up to the UK Government to decide how it sought to ratify these amendments, which could be through a minimal parliamentary procedure. The same Article also provides for the Council to vote for moving any areas from unanimity to QMV, although in that case any national parliament would have the power to block the move by lodging an objection.
- Finally, the introduction of an Exit Clause (Article 49A) means for the first time that any Member State that chose to withdraw is bound to follow a process that forces it to negotiate the terms with the EU Council.

Thus, even if the red-line opt-outs were effective, these other changes in competences amount to a further substantial strengthening of the EU's intended scope and authority.

For those who seek to impose more European level decision making, these changes achieve the intended objective of increasing the ability and simplicity of passing EU legislation, less trammelled by the need to reach a consensus amongst an increasing number of Member States. For those who believe Europe should only act where Member States agree on common action, these changes amount to a substantial further erosion of the model of Europe as an intergovernmental body under the control of nation states and their parliaments.

### **Role of National Parliaments**

- Under the pretext of enhancing the role of national parliaments, this Treaty actually institutionalises their subservience by defining a limited role for national parliaments in the EU institutional structure. They are allowed to scrutinise draft EU legislative acts, but while the Commission is required to review the legislation if a third or more of parliaments object, the Commission can then decide to continue with the legislation unamended – with their decision confirmed by the normal QMV procedures. Ultimately it is the EU itself, through the ECJ, which has final right to arbitrate on claims of subsidiarity infringement. (Article 7 of the Protocol on Subsidiarity and Proportionality)
- Commenting on the process for agreeing the IGC Mandate and Reform Treaty, the House of Commons European Scrutiny Committee said:
  - "We again recall that as recently as June of this year the European Council not only emphasized the 'crucial importance of reinforcing communications with the European citizens...and involving them in permanent dialogue' but also stated that his would be 'particularly important during the upcoming IGC and ratification processes'." (Paragraph 8)
  - "Such statements now ring hollow, and we reiterate our earlier comment that the process could not have been better designed to marginalise the role of national parliaments and to curtail public debate, until it has become too late for such debate to have any effect on the agreements which have been reached." (Paragraph 8)<sup>4</sup>

Commenting finally on whether the Reform Treaty imposes legal duties on national parliaments, the Committee said:

- "We are not persuaded that the text of the Reform Treaty has been amended so as to put beyond any doubt the principle that no obligation must be imposed on Parliament." (Paragraph 16)
- "In our view, the obvious amendment would have been to use the word 'may' instead of 'shall' in Article 8c EU as well as in Article 63 and Article 9 of the Protocol on the role of national parliaments in the Union. The statement 'National

parliaments contribute to the effective functioning of the European Union' is one from which an obligation can readily be inferred." (Paragraph 16)

- "Given its constitutional significance, we must emphasise that this is not an area in which any ambiguity is tolerable and we shall look to the Government to ensure that its original undertakings are met in any new text." (Paragraph 16)<sup>5</sup>

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<sup>1</sup> Protocol on the role of national parliaments in the European Union.

<sup>2</sup> Paragraph 38, House of Commons European Scrutiny Committee, *European Union Intergovernmental Conference*, 35<sup>th</sup> Report of the Session 2006-07, HC 1014, October 2007.

<sup>3</sup> See *A Guide to the Constitutional Treaty*, Open Europe, Annex 2, for a full list of 40 new areas where the EU Parliament is given co-decision rights.

<sup>4</sup> House of Commons European Scrutiny Committee, *European Union Intergovernmental Conference: Follow-up report*, 3<sup>rd</sup> Report of the Session 2007-08, HC 16-iii, November 2007.

<sup>5</sup> House of Commons European Scrutiny Committee, *European Union Intergovernmental Conference: Follow-up report*, 3<sup>rd</sup> Report of the Session 2007-08, HC 16-iii, November 2007.