

The European Union in 2009

February 2009 | 1st edition | € 10

POLITICAL PRIORITIES?

HIGH REPRESENTATIVE OF
THE UNION FOR
FOREIGN AFFAIRS?

NEW COMMISSION?

THE LISBON TREATY?

ELECTION OF THE EUROPEAN PARLIAMENT?

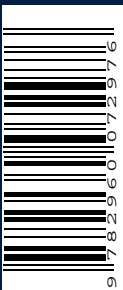
PRESIDENT OF THE EUROPEAN
COUNCIL?

NEW LOBBYING
TECHNIQUES?

COMMISSION PRESIDENT?

COMITOLOGY REFORM?

ISBN: 978-2-9600729-7-6



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Table of contents – the European Union in 2009

State of play... a few certainties in an ocean of uncertainty	4
The adoption of the Lisbon Treaty by Ireland	6
The Lisbon Treaty Puzzle: the double ratification of Lisbon I and Lisbon II	7
The Lisbon Treaty: a change in the balance of powers. Yes, but how?	9
The Lisbon Treaty: new competences and new powers. Globally positive	13
Which majority for the Parliament? Which Presidents for the three Institutions?	19
The Lisbon Treaty introduces a third Comitology reform!	23
The rules of influence in 2009 will be ever more technical	26
Ten challenges for the Union in 2009	27



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2009: a pivotal year

A new Commission, a new Parliament, and a new Treaty (maybe). In ordinary times 2009 would have been an important year. But with the financial crisis, turning into an economic crisis and potentially a monetary crisis, the challenges facing the Union have moved from a magnitude of ten to a magnitude of 100!

Better still, whether managed with voluntarism and concern for the European general interest, or – inversely – marked by the end of our illusions and a return towards national capitals, the year 2009 is key for the future of the Union looking on to 2015.

As we enter this year, few calls for optimism: the absence of a genuine European economic recovery plan, a drain into even further enlargements, a tendency in the Union to stay at a standstill.

Surrounding all this is the increasing complexity of the European decision making process that few master nowadays. Reminding the stakes, explaining – with pedagogy – who will decide what and how. And above all, prompt debate to try to breach with the “pensée unique” which has been smiting the European Union for the past ten years.

Such is the ambition of this file, which was conceived, drafted and published by the teams of CLAN Public Affairs – ESL & Network Group. The following have intervened in this project: **Daniel Guéguen** (final text), **Yves de Lespinay** (dossier structure, text validation), **Vicky Marissen** (chapter on Comitology), **Jacques Lovell** (project manager) and **Audrey Bartouel** (Lisbon Treaty synthesis). Documentary research contributions by : **Stevi Iosif**, **Ana González-Páramo**, **Elisa Gerouki**, **Pearl Michalski**, **Barbara Boczkowska**. Graphics and layout by **Lino Hernandez**.



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State of play... a few certainties in an ocean of uncertainty!

A few certainties:

1. A Second Irish referendum before the end of October 2009

The European Council of Heads of State and Governments- gathered in Brussels on 11 and 12 December 2008, acknowledges that “the Irish Government is committed to look for the ratification of the Lisbon Treaty by the end of the mandate of the current Commission”. To put it clearly, Ireland is committed to organise a second referendum before 31 October 2009.

2. Rotating semestrial presidencies are maintained (Czech Republic and Sweden)

The Nice Treaty fully applies in 2009: the Czech Republic ensures the Presidency during the first semester, and Sweden during the second. One notes that that the President of France remains co-president of the Union for the Mediterranean in 2009, jointly with the Egyptian President M. Hosni Mubarak (neither the Czech Republic, nor Sweden have Mediterranean borders).

3. A newly elected European Parliament in June 2009

By February 2009, the European Parliament will be slowing down its activities in order to allow the European deputies to focus on their electoral campaigns.

An informal agreement between the Parliament and the Council foresees a standstill for legislative dossiers under co-decision procedures, from spring 2009. The last session of the elected European Parliament for the 2004-2009 period will be held from 4 to 7 May 2009.

The Parliamentary elections will take place in the 27 member states of the European Union from 4 to 7 June 2009, in line with Nice Treaty rules. The electoral system will vary from one member state to the other (see box). The 736 newly elected or re-elected deputies will gather for the first time in Strasbourg from 14 to 16 June.

The European elections of 2009 or the absence of a harmonised electoral procedure

The European elections are governed by national rules defined by member states, reflecting their political traditions.

1. Two systems of constituency cutting.

- **The unique constituency system:** The national territory is a single constituency in 18 member states (Austria, Cyprus, Denmark, Spain, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Czech Republic, Sweden, Malta, Slovakia, Bulgaria, and Romania).
- **The multiple constituency system:** This is the case in Ireland with 4 regions, the United Kingdom 11, Italy 5, Greece 56, Belgium has 4 constituencies, Poland has 13. France has an original system of 8 interregional sections.

2. The diversity of electoral systems

Every member state has been applying, since 1999, a proportional representation system, alongside an electoral threshold ranging from 3 to 5%. The enlargement of 2004 emphasizes the disparities between the electoral systems: 26 in 2004 against 16 in 1999. With a unanimous decision by the member states required, a harmonized electoral procedure is not on the cards for the time being.

An ocean of uncertainty:

1. Adoption of the Lisbon Treaty by Ireland?
2. Ratification of the Lisbon Treaty?
3. Ratification of the adjustments brought by the European Council of 11-12 December?
4. Composition of the next Commission?
5. Date of entry into office of the next Commission?
6. Result of the next European election?
7. Nomination of the next Commission President?
8. “Night of the long knives”: portfolio repartition between Commissioners?
9. Audition of Commissioner designates – and possible rejection?
10. Defining the mission and means of the future President of the Union?
11. Designating the future President of the Union?
12. Defining the mission and means of the future High Representative?
13. Designating the High Representative for Foreign Affairs?
14. Good cooperation or battle of the egos between the three Presidents?
15. Coexistence between the permanent Presidency of the Union and the semestrial rotating Presidency?
16. Generalisation of interinstitutional trilogues to avoid second readings?
17. Towards a Commission acting as the Council’s secretariat?
18. How many MEPs in 2010?
19. Another new Comitology reform?
20. Candidacy of Iceland and Albania?
21. Will the economic crisis dilute or reinforce the Union?

Libertas: a new eurosceptic wave in Brussels?

Established by wealthy Irish businessman Declan Ganley, Libertas was at the forefront of the “No” campaign during the 2008 Lisbon Treaty referendum in Ireland. With a personal fortune said to be close to €300 million, Ganley is CEO of US-based Riverda Networks, which supplies equipment and services to the Pentagon.

Building on its success of the Lisbon referendum, this lobby-come-political group recently opened its offices in Brussels in view of presenting candidates in every EU Member State during the forthcoming European elections. Calling for a “more democratic and answerable EU” for the citizen, this organisation will be looking for the eurosceptic vote, but also seek to convince pro-Europeans about the need to profoundly review the role of the EU. And, of course, pursue its campaign against the Lisbon Treaty when Ireland goes back to vote in October 2009. But apart from being anti-Lisbon Treaty, little more is known about Libertas’ views.

With support ranging from former Independence/Democracy Chairman Jens-Peter Bonde, French eurosceptic leader Philippe de Villiers and key UEN MEPs, Libertas aims to federate all eurosceptics into a single group, and would without doubt wish to add to its ranks British conservatives, who often feel out of sorts in the pro-Europe EPP-ED.

However, despite calling for a more “accountable” EU, Libertas’ funding and close ties to the US, including far-right groups, are the object of questions in the European Parliament. Leading our own investigation, Libertas refused to communicate its budget and staff list because they are “new in Brussels”. Now that’s transparency...

The adoption of the Lisbon Treaty by Ireland

The conclusions of the European Summit of 11-12 December 2008

The European Summit held on 11 and 12 December unanimously approves 4 concessions to prompt Irish citizens into reconsidering their initial negative vote and to vote YES:



- the competences of the Union in fiscal affairs are frozen. This means that the tax system remains national and that no European fiscal measures could be imposed on Ireland (which allows Ireland to practice fiscal dumping. Rather curious for a member of the Eurozone!);
- the traditional Irish neutrality policy is guaranteed;
- as well as the provisions of the Irish Constitution on the Right to Life, Education, and Family;
- finally, the 27 Heads of States and Governments agreed for the European Commission to comprise a representative from each member state. In reality, this “pseudo-concession” to Ireland satisfies each one of the 27 member states who would have had to reduce the number of Commissioners, either in 2009 (Nice Treaty), or in 2014 (Lisbon Treaty). This concession paves the way for a “strong” Commission composed of 33 or 34 members by 2015! This is what we can call the “European Union moving one step backwards”.

A “YES” or a “new NO”.

Logic would consist of thinking that Ireland will vote “YES”. Haven’t the Irish obtained what they were demanding?

In practice, the dies are far from having been cast:

- reluctance of voters to reverse their decision a second time after the Irish NO on 12 June 2008;
- persistence of Irish fears on the detrimental effects of free trade (Brazilian beef imports competing with Irish farmers and God knows that Irish cattle breeders are masters of lobbying!);
- a more complicated treaty than ever, and quite simply unreadable,
- a deeply unpopular Irish Government in office which backed a YES during the previous referendum, and which a part of the electorate might want to sanction;
- the rise of a very strong anti-treaty campaign: Libertas, whose aim is to enter the European Parliament after the forthcoming elections (see box).

Ratification of the Lisbon Treaty following the Irish referendum	
NO – Probability: 50% 	YES - Probability: 50% 
The Nice Treaty is applied in 2009	The Lisbon Treaty is applied in 2010

The Lisbon Treaty puzzle: The double ratification of Lisbon I and Lisbon II

The ratification of Lisbon I

To this day 4 countries still have to complete the ratification procedure for the original version of the Lisbon Treaty (Lisbon I):

- Ireland,
- The Czech Republic: only the indispensable signature of the President Vaclav Klaus is missing. He will not oppose the ratification of the Lisbon Treaty by his country, but he will not sign before a favourable vote from Ireland,
- Poland: The President Lech Kaczynski is waiting for the ratification of the Treaty by Ireland before signing the Polish act of ratification.
- Germany: The Federal President is waiting for the Federal Constitutional Council's green light to submit the German act of ratification. The Federal Constitutional Council was seized in June 2008 by a member of the Bundestag to provide a ruling on the compatibility of the Lisbon Treaty with the German Constitution.

Once a positive vote from Ireland is obtained, it is probable that the Czech Republic and Poland will affix their signatures, as the Germans will have most certainly done already. It can thus be considered that if the Irish vote "YES", the "Lisbon Treaty I" will come into force on 1 November 2009, to be applied on 1 January 2010.

The application of Lisbon I will notably allow the EU to:

- enlarge its competences to dossiers dealt with under codecision procedures,
- designate the Permanent President of the Union,
- choose the High Representative for Foreign Affairs,
- maintain one Commissioner per country for the 2009-2014 mandate.

The necessity to complete Lisbon I with a 'Lisbon II'

For convenience, we will take the liberty to use the name "Lisbon II" to designate the ratification of the agreement that occurred between the Heads of State and Governments, after the Summit of 11 and 12 December 2008. This agreement concerns:

- One Commissioner per member state, which will be maintained beyond 2014 (this agreement derogates from the Lisbon Treaty according to which the number of Commissioners should be reduced by 1/3 in 2014),
- An increase in the number of members of the European Parliament from 751 to 754 (for the Germans not to have to send back home 3 of their deputies elected in 2009),
- the attribution of seats for Croatian Members of the European Parliament,
- the integration of the political guarantees given to Ireland in the Treaties.

The ratification of “Lisbon II’ inserted in the Croatian Accession Treaty to the EU

During the December 2008 European Summit, Council President Nicolas Sarkozy – in agreement with the Irish Prime Minister – proposes to insert the guarantees given to Ireland in the Treaty (and by extension the modifications brought to Lisbon I) by means of...a Protocol on the Croatian Accession to the EU.

This protocol could be finalized in 2010 or in 2011, and immediately ratified by the EU 27 via a parliamentary procedure. It is hard to imagine a procedure that is more opaque and distant from citizens! But this bogus good idea already faces multiple obstacles:

No legal precedent:

For the 2004 enlargement, a protocol on enlargement was annexed to the EU Treaty. This protocol modified the distribution of seats in the European Parliament per member state, the voting weights in Council and the number of European Commissioners, but it did not entail any changes to the Treaty on the policies and objectives of the Union. The absence of a real legal precedent brings some member states, notably the United Kingdom, to question the legality of the procedure chosen to ratify Lisbon II.

The Croatian accession: postponed?

The solution that was kept after the 11-12 December summit presupposes that the Croatian EU accession negotiations will be over in 2010. But this is no certainty as negotiations are polluted by a border dispute between Croatia and Slovenia. The latter threatens to organize a referendum on Croatian accession whose result will probably be negative.

A ratification procedure vulnerable to eurosceptic attacks and new demands from member states.

By linking Croatia’s accession to the EU to the ratification of Lisbon II, a new opportunity will be given to eurosceptics to relaunch many a debate on the global future of the EU.

With parliamentary or presidential elections scheduled over the 2009-2010 period in Germany, Bulgaria, Portugal, Romania, Slovakia, Luxembourg, and above all, in the United Kingdom (where the Conservative and eurosceptic Chief David Cameron is given as favourite), it shall not be excluded that a newly elected government could reconsider supposedly acquired positions, or that it would intend to make a higher bid by requesting – like Ireland - specific derogations.

Ideally, the calendar below will be followed:



The Lisbon Treaty:

A change in the balance of powers.

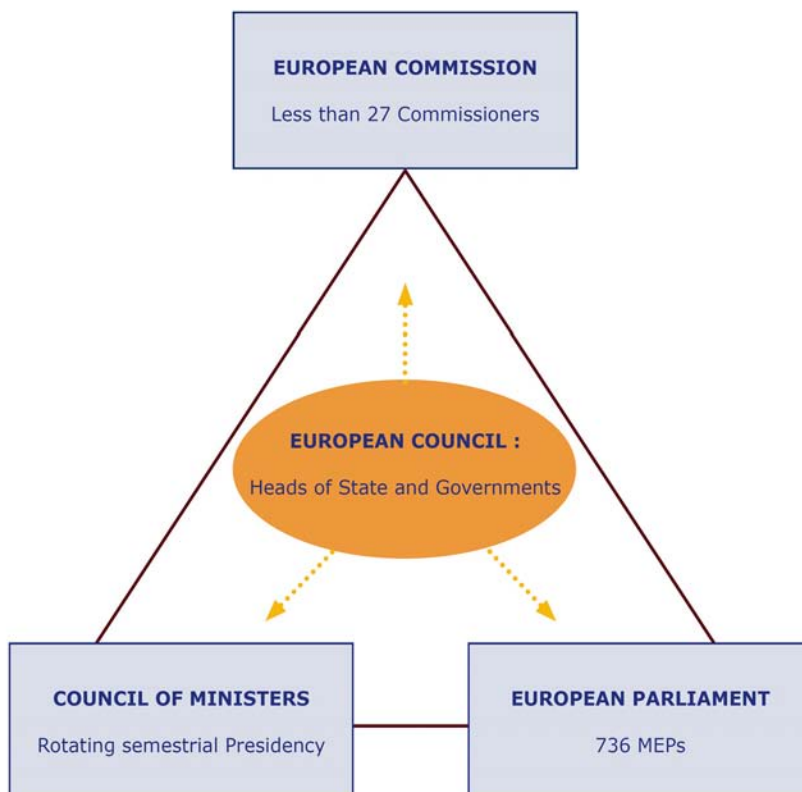
Yes, but how?

In practice, the Lisbon Treaty, equally known as the “simplified Treaty” proves to be a monster of complexity. The introduction of new actors (the permanent President of the Union, and the High Representative for Foreign Affairs who is also the Vice President of the Commission) creates an even more complicated decision making process, and generates fears of battles of the egos that would prevent the Union from functioning well.

The major institutional reforms that were introduced by the Lisbon Treaty also lead us to question the balance of powers between the Commission, the Council, and the Parliament. Who wins? Who loses? Nothing is clear so far.

In an attempt to understand the mechanisms and the stakes, let’s examine in a simplified manner the functioning of the Union under Nice, and then under Lisbon I and II.

The functioning of the EU under the Nice Treaty



Statistics demonstrate it: the community decision making process works efficiently under the Nice Treaty.

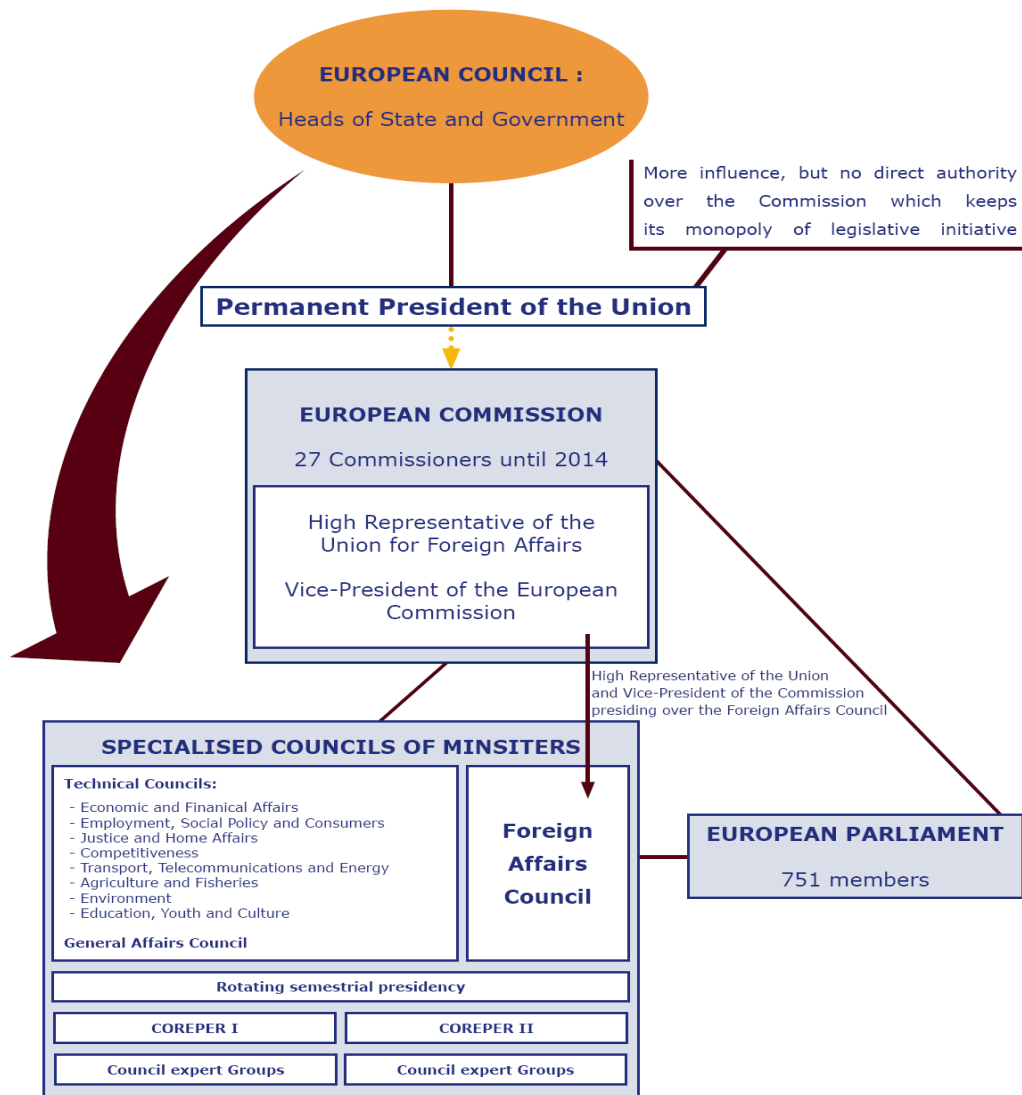
A few exceptions aside, the directives proposed are adopted, often in first reading. The only setback: the enlargement of the Union to 27 member states dilutes the political union, transforming directives into simple framework agreements whose technical terms are delegated to the Commission through Comitology.

Under Nice, the Summit of Heads of States and Governments (European Council) is not an institution, but an authority ensuring coordination and dialogue, without decision making power. Concretely, the European Council cannot impose anything neither on the Commission, nor on the Council, nor on the Parliament.

More generally, Nice is the expression of a balance of powers between the three great institutions.

Out of the 250 Directives which followed the complete Codicision procedure between 1999 and 2009, 249 were adopted by Council and Parliament: 25% in first reading, 50% in second reading and 25% in Conciliation.

The functioning of the EU under the Lisbon Treaty I

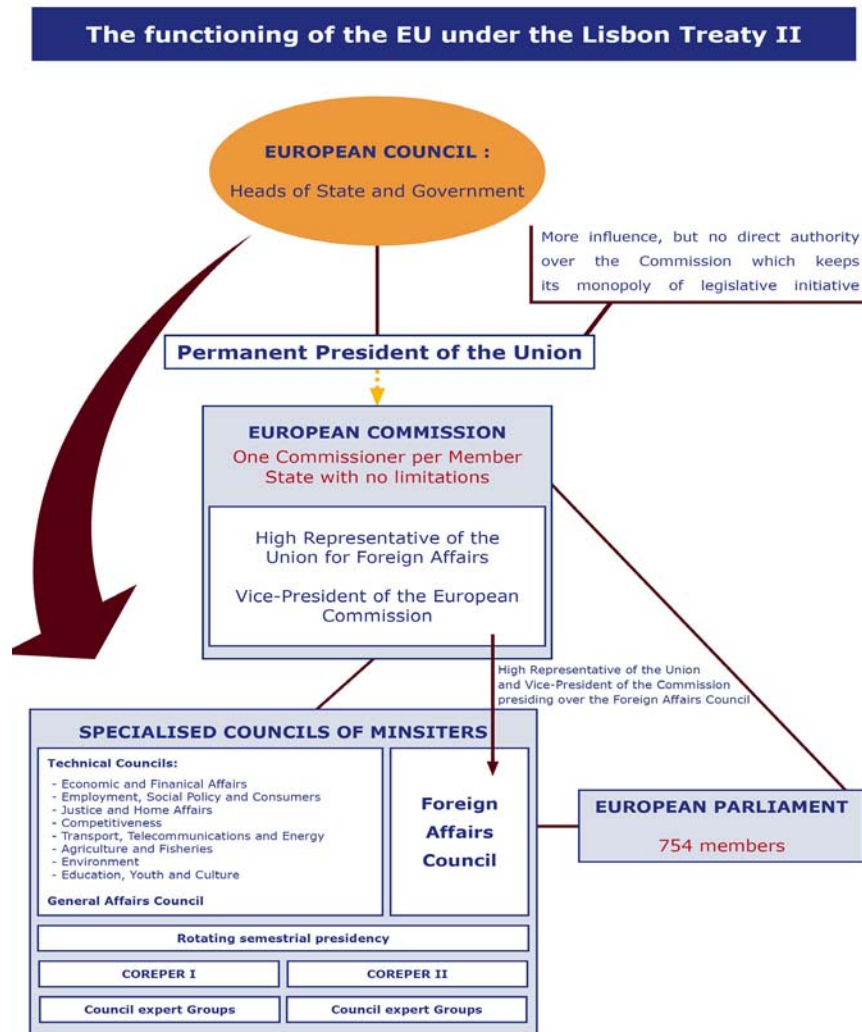


This chart perfectly illustrates the fact that the simplified Treaty ...is not simplified. The Lisbon Treaty reveals a series of major institutional transformations whose concrete effects have – astonishingly – not been evaluated.

- ➔ **First important change:** The European Council becomes an institution empowered with the role of: “defining the orientations and general political priorities of the Union”. The European Council elects a President for a period of two and a half years, renewable once.
- ➔ **The orientations taken by the European Council, are imposed on the specialised Council of Ministers.** The Commission keeps its monopoly over legislative initiatives, and the Parliament keeps its right of amendment, - but these two institutions are clearly pressured by the Heads of States and Governments.
- ➔ **The second major change:** a triple function is given to the High Representative for Foreign Affairs and Security (whose mandate is still being debated). He is a member of the European Council as well as the Vice President of the Commission, and the President of the Council of Foreign Ministers! In other words, it is the exact negation of the principle of separation of powers.

→ **The third change is related to the Presidency.** For most observers, the corollary of the election of a permanent President of the Union was the suppression of inefficient semestrial presidencies. Nothing is more wrong! Semestrial presidencies are kept for specialised Councils of ministers, for Permanent Representation Committees I & II, and for Council working groups. On top of this, a third type of Presidency is created for the External Affairs Council which is piloted by the High Representative, as said above.

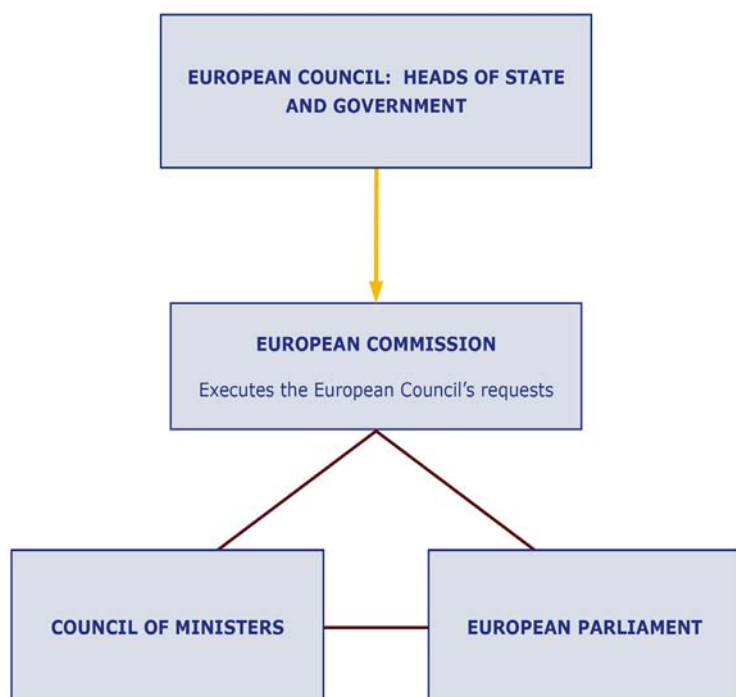
How can such a system function? Who is the chief of whom? And how to achieve the cohabitation of powerful egos, in duties that do not have full descriptions yet, and in a European Union deprived of any type of common political project!



This system is very close to the “Lisbon I” system. The main difference: the Union is even more intergovernmental, as the principle “One member state = One Commissioner” is maintained after 2014, opening the door to a College of 33 commissioners by 2015! One can fear that these Commissioners will be looking towards their national capital rather than towards Schuman’s roundabout!

A decision making role for the European Council, in addition with Commissioners that are more subdued to national wishes; the architecture of Lisbon bears the seeds of a weakening of the Commission, which was already anticipated by the French Presidency as the following outline shows.

The functioning of the EU under the French Presidency



The French Presidency of the European Union took place in a context of worldwide crisis, which clearly boosted President Nicolas Sarkozy's propensity to rewrite or reinterpret the Community decision making process as he did with the French.

According to the French interpretation of the European Institutions, the Commission abandons its central role to the benefit of the Heads of State and Governments. The executive Commission acts as the Secretary of the European Council.

Such a pattern could be conceived in a federal Europe equipped with a common political project; such a project decided by the member states and executed by the Commission as a simple administration.

The diminished role played by Barroso under the French Presidency is, in our view, a very bad sign. In the European triangle, the Commission is the propeller engine of the European integration: the more powers the Commission has, the more integrated the Union, the less powers it has, the more the Union tends towards renationalisation. Yet the current crisis requires more Europe, certainly not less Europe.

The Sarkozian interpretation of the Union has found its best illustration in the energy-climate package unanimously adopted by the European Council, imposed on the specialized Council of Ministers and on the Parliament in first reading without amendment rights.

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COMITOLGY REFORM
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What is comitology?

- The 1 central administrative committee, independent, regulatory
- Comitology members
- Comitology members are experts, often from national governments
- Regulating the implementation of new EU laws by the EU Commission or the EU Parliament
- Regulating the implementation of new EU laws by the EU Commission or the EU Parliament
- Regulating the implementation of new EU laws by the EU Commission or the EU Parliament

Why is it a crisis?

- The Commission, the European Parliament, is accused that it is not working properly
- It is not working properly
- It is not working properly
- It is not working properly

What is the solution?

- The Commission, the European Parliament, is accused that it is not working properly
- It is not working properly
- It is not working properly
- It is not working properly

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The Lisbon Treaty: new competences and new powers. Globally positive

CHANGES INTRODUCED BY THE LISBON TREATY

INSTITUTIONS

- Establishment of a **Permanent Presidency of the European Council** (two and a half year mandate renewable once).
- The **composition of the European Parliament** is reduced to 751 members.
- From 2014, the number of Commissioners is equal to 2/3 of the member states of the Union. The reduction of the Commission can be cancelled by a unanimous vote in the European Council. We are in this scenario.
- **Simplified Council voting modalities:** in order to be adopted, a text must be approved by 55% of the member states representing 65% of the population of the Union. Applies from 2014 .
- **Extension of qualified majority voting to 33 new domains.**
- **Council of Ministers deliberations** on all legislative proposals become public.
- **Establishment of the function of High Representative of the Union for Foreign Affairs and Security Policy**, which fuses the functions of the current High Representative for the Common Foreign and Security Policy, and of the European Commissioner for External Relations. Commission Vice-president, he is President of the Foreign Affairs Council.
- The **semestrial rotating presidency is maintained for all specialised Councils of Ministers**, except for the Foreign Affairs Council.
- **Reinforced role for national parliaments** : legislative proposals by the Commission are transmitted to national parliaments at the same time as to the European Parliament and to the Council. National Parliaments can give an assenting opinion on a legislative proposal's conformity with the principle of subsidiarity.
- **Introduction of Citizens' Initiative:** one million citizens can invite the Commission to present a legislative proposal. More theoretical than real given that the Commission is free to follow up or not.
- **Recognition of the Charter of Fundamental Rights**, which is binding for the member states, except for the United Kingdom and Poland.
- **Useful: introduction of an exit clause from the Union**, allowing member states to leave it.

COMPETENCES

- **External visibility:** the European Union gains a **legal personality**, which allows it to be a member of international organisations such as the World Trade Organisation (currently, each

	<p>EU member state is a WTO contractual party).</p> <ul style="list-style-type: none"> ○ A clearer division of competences between the Union and the member states: <ol style="list-style-type: none"> 1. Exclusive competences of the Union : the Union legislates alone. 2. Shared competences between the Union and the member states: legislative power is shared between the Union and the member states according to the subsidiarity principle. 3. Support and coordination competences : member states are competent in these domains, but the Union can initiate supporting or coordination measures.
POWERS OF THE PARLIAMENT	<ul style="list-style-type: none"> ○ Reinforced powers for the European Parliament : <ol style="list-style-type: none"> 1. Political: the Parliament elects the President of the European Commission and the College of Commissioners. 2. Legislative: the ordinary legislative procedure is extended to 40 additional articles (justice and home affairs, energy, space, internal market for energy). 3. Budgetary: the European Parliament and the Council adopt the European budget on a level playing field. Moreover, the distinction between compulsory expenditure and non-compulsory expenditure is repealed.
PROCEDURES	<ul style="list-style-type: none"> ○ Legislative acts are adopted under two different procedures: <ol style="list-style-type: none"> 1. Ordinary Legislative Procedure (formerly codecision) 2. Special Legislative Procedure (consultation, cooperation and assent) ○ Delegated Acts: quasi legislative measures (application measures adopted in Comitology with a veto right for the European Parliament and Council of Ministers); ○ Implementing acts: <i>stricto sensu</i> Comitology application measures with no intervention by the European Parliament.

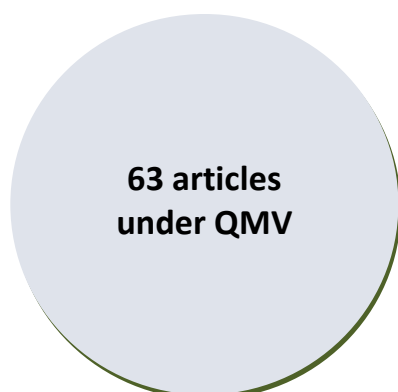
THE NEW DIVISION OF COMPETENCES UNDER THE LISBON TREATY		
EXCLUSIVE COMPETENCE	<ul style="list-style-type: none"> • Customs Union • Competition • Monetary policy for the eurozone 	<ul style="list-style-type: none"> • The conservation of marine biological resources under Common Fisheries Policy • Common Commercial Policy
SHARED COMPETENCE	<ul style="list-style-type: none"> • Internal market • Social policy • Economic, social and territorial cohesion • Agriculture and fisheries 	<ul style="list-style-type: none"> • Public health (common safety concerns) • Research • Technological development • Space* • Development cooperation and humanitarian

	<ul style="list-style-type: none"> • Consumer protection • Transport • Trans-European Networks • Energy* • Area of freedom, security and justice 	<ul style="list-style-type: none"> aid • Economic policy • Coordination of employment and social policies in member states
AREA OF SUPPORTING COMPETENCE	<ul style="list-style-type: none"> • Protection and improvement of human health • Industry • Culture • Intellectual property* • Tourism* 	<ul style="list-style-type: none"> • Education, vocational training • Youth and sport* • Civil protection* • Administrative cooperation*

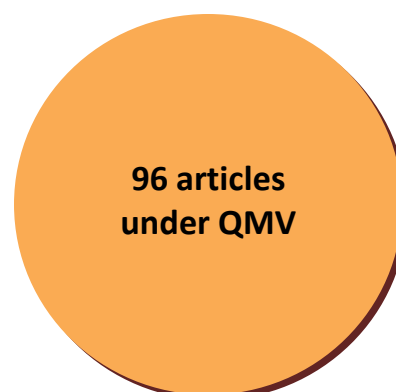
(*) The new competences of the Union are highlighted in **bold**.

QUALIFIED MAJORITY VOTING UNDER THE LISBON TREATY

NICE TREATY



LISBON TREATY

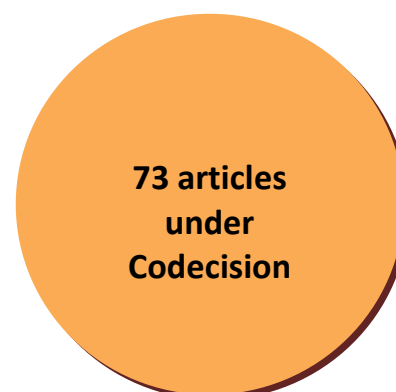


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ORDINARY PROCEDURE AND QUALIFIED MAJORITY VOTING UNDER THE LISBON TREATY

COMPETENCES	Areas	Areas moved to Codecision	Areas moved to Qualified Majority ¹
NEW COMPETENCES	Energy	Measures relating to energy (functioning of the internal market for energy, security of supply, energy efficiency and saving, new and renewable energies, energy networks)	
	Space	Measures necessary to draw up a European Space Policy	
	Intellectual property	Measures concerning the creation of European intellectual property rights for a harmonised protection of IP in the Union	
	Sport	Incentive measures in the fields of sport	
	Tourism	Specific measures supporting actions by the member states	<i>Already QMV under Nice Treaty</i>
	Civil protection	Measures necessary for the achievement of objectives relating to cooperation between member states	
EXISTING COMPETENCES	Citizenship	Procedures and conditions required for a Citizens' Initiative for a European law	
	Immigration	Immigration Border checks Asylum and protection of refugees and displaced persons	
	Judicial cooperation	Judicial cooperation in civil matters Formerly JHA (Justice and Home Affairs): Judicial cooperation in criminal matters (including Eurojust, crime prevention)	
	Police cooperation	Europol's structure, operation, field of action and tasks	
		Measures concerning the police cooperation	<i>Already QMV under Nice Treaty</i>
	Monetary policy	Statute of ESCB Use of the euro	
	Commercial policy	Measures defining the framework for implementing the common commercial policy	
	Administrative cooperation	Measures necessary to ensure administrative cooperation	<i>Already QMV under Nice Treaty</i>

¹ Until 2014, the rules of Nice Treaty will apply (255 votes out of 345, more than 50% of Member states representing 62% of the population of the Union)

From 2014, QMV will be based on the principle of double majority (55% of the Member states representing 65% of the population of the Union)

	Agriculture and Fisheries	Establishment of the common of agricultural markets and other provisions related to the Common Agricultural Policy and common fisheries policy	<i>Already QMV under Nice Treaty</i>
	Workers	Free movement of workers	<i>Already QMV under Nice Treaty</i>
	Services	Extension of the provisions relating to service to nationals of a third country	<i>Already QMV under Nice Treaty</i>
		Directives relative to the liberalisation of a specific service	
	Capital	Measures on the movement of capital to and from third countries	<i>Already QMV under Nice Treaty</i>
	Economic policy	Rules for the multilateral surveillance procedure within the Stability and Growth Pact	<i>Already QMV under Nice Treaty</i>
	Cohesion	Rules applicable to the Structural Funds	<i>Already QMV under Nice Treaty</i>
	Cooperation	Measures necessary for the implementation of economic, financial and technical cooperation measures	<i>Already QMV under Nice Treaty</i>
	Humanitarian aid	Measures defining the framework for the implementation of the EU humanitarian aid operations	<i>Already QMV under Nice Treaty</i>
	Budget	Regulations concerning the establishment and implementation of the budget	<i>Already QMV under Nice Treaty</i>
	Administration	Regulations relating to provisions regarding European administration Regulations relating to civil servants and other servants to the EU	<i>Already QMV under Nice Treaty</i>
	Transport	<i>Already under co-decision under Nice Treaty</i>	Rules concerning transports
	Culture	<i>Already under co-decision under Nice Treaty</i>	Incentives in the cultural field

Which majority for the Parliament?

Which Presidents for the three Institutions?

We know that the Lisbon Treaty gives the Parliament an essential role with regards to the designation of the Commission. The Treaty stipulates that the Parliament elects the President of the Commission with a majority of seats (369 out of 736), and approves the composition of the College. The choice of the President “takes into account the results of the European elections” (in other words, if the EPP wins, the President will emanate from this party).

The application of the “dominant party” rule - having already been applied for the nomination of M. Barroso in 2004 - will apply in 2009.

Thus, when imagining who will be chosen to be the President of the three institutions, it is important to set out two questions:

Who will win the European Parliament elections?

What is the dominant political trend in Europe?

The Candidates for the Three Presidencies					
Name	Function(s)	Country	Candidate to the Presidency of the Council	Candidate to the Presidency of the Commission	Candidate to the High Representative for Foreign Affairs post.
Bertie Ahern	Former Prime Minister	Ireland	X		
Jan-Peter Balkenende	Prime Minister	Netherlands		X	
Michel Barnier	Agriculture Minister Former Foreign Affairs Minister	France		Commissioner candidate	X
Jose Manuel Barroso	President of the European Commission Former Prime Minister	Portugal	X	X	
Carl Bildt	Foreign Affairs Minister Former Prime Minister	Sweden			X
Tony Blair	Former Prime Minister Quartet Envoy to the Near East.	United Kingdom	X		X
Jaap De Hoop Scheffer	NATO General Secretary Former Foreign Affairs Minister	Netherlands			X

Jean-Claude Juncker	Prime Minister and Finance Minister President of the Eurogroup	Luxembourg	X	X	
Aleksander Kwasniewski	Former President	Poland	X		
Anders Fogh Rasmussen	Prime Minister	Denmark	X		X
Poul Nyrup Rasmussen	Former Prime Minister President of the European Socialist Party	Denmark		X	
Olli Rehn	European Commissioner to Enlargement	Finland		Commissioner candidate	X
Wolfgang Schuessel	Former Chancellor	Austria	X		
Martin Schultz	President of the Socialist Group at the European Parliament	Germany		X	
Alexander Stubb	Foreign Affairs Minister	Finland			X
Guy Verhofstadt	Former Prime Minister	Belgium	X	X	

No questioning the leadership of the EPP

Everything indicates that the EPP will keep its status as the leading party in the European Parliament. If we anticipate on the political situation in the Union's member states at the eve of the European elections, we notice that

- There is a strong primacy of the CDU/CSU in Germany,
- The UMP in France will remain stable.
- The Right is stable in Italy, and the Left is losing ground in Spain.
- The Right is strong in several member states (Poland, Czech Republic, Slovakia, the Netherlands, Ireland, Sweden...)
- The Center-left is relatively weak throughout the EU.
- A good result for the British Conservatives.

This last point deserves further exploration, as it is uncertain whether the British Conservatives will join the EPP. Members of the EPP to avoid isolation, the Conservatives overall remain eurosceptics in a pro-European group. If their leader David Cameron decides so, they could create their own group in the European Parliament with other elected eurosceptics (notably the Irish from Libertas!).

In our view, the fact that the EPP will remain preeminent is given, and so is the fact that the President of the Commission will emanate from this party, as it was the case in 2004.

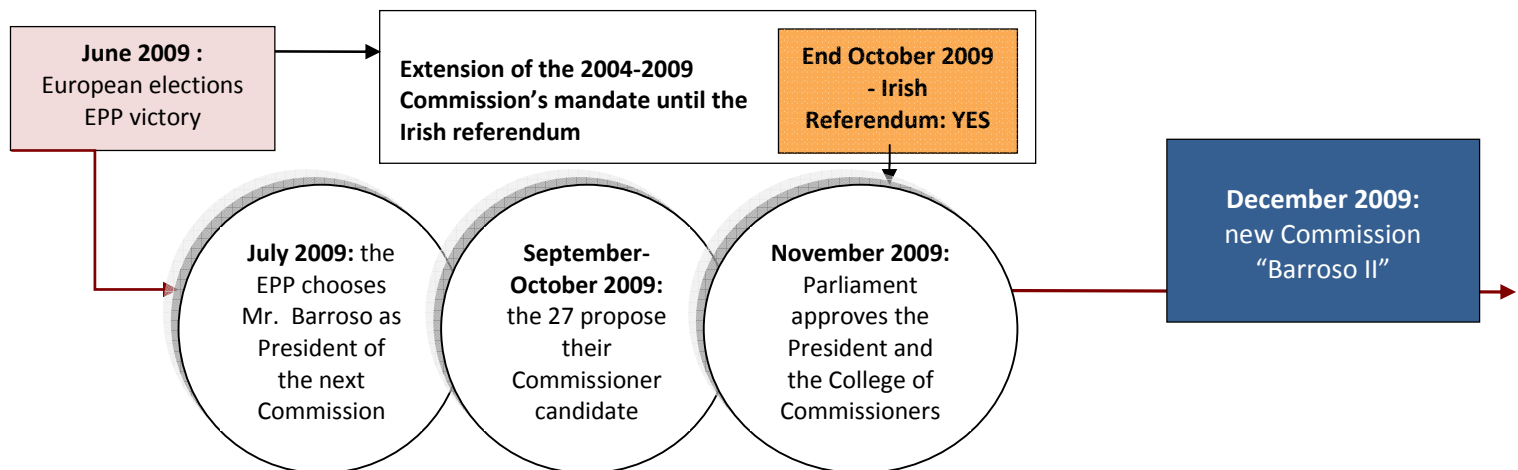
Which President for the Commission? We won't bet on M. Barroso!

What is initially striking is the great number of candidates – amongst which many aspire to two of the three titles. This may result from the lack of definition in the Lisbon Treaty for the respective profiles of the President of the European Council, and of the President of the Commission. Should the former be a leader or a diplomat? Is the latter one a boss or a follower? Nothing is precise on this subject.

The choice of these two profiles is highly important as it will impact the balance of powers. Too engaged in operational action, the Permanent President runs the risk of limiting the President of the Commission to an executive role, which would be contrary to the spirit and to the rule of the institutional triangle.

In practice, the distribution of powers between the President of the Council, and the President of the Commission seems to go without saying, and to correspond to a duo composed of a President of the Board and a Chief Executive Officer in a Limited Company: the first one deals with the shareholders and takes global strategic decisions; the second one runs the company on a daily basis. But it might be that this is too simple!

Currently, all forecasts indicate a renewal of M. Barroso's mandate according to the following pattern:



This scenario fails to convince us for several reasons:

- The ratification of Lisbon is not guaranteed and can spill over into 2010 (the extension of the Barroso Commission I can be envisaged for some weeks, but not for some months).
- Extending the Barroso Commission without being sure about the ratification is a risky manoeuvre as the member states and the Parliament become prisoners of the referendum in a particularly volatile geopolitical environment,
- The extremely diminished role played by M. Barroso under the French Presidency does not play in his favour; neither does the backing away of the College in its management of the world crisis.
- There is no doubt that the economic situation in the Union will be highly degraded by autumn 2009. A consensual and low-profile president may not correspond to the requested profile anymore.
- Finally, there are rumors that the Germans – currently rather discreet – aim to obtain the Presidency of the Commission and this last factor, if correct, would be paramount.

Which President for the European Council?

There is certainly no lack of candidates, ranging from the most media-friendly...to the least, and almost all of them have– with the exception of Jean-Claude Juncker, Anders-Fogh Rasmussen and Guy Verhofstadt - a “has been” profile.

It is to be noted that the Barroso option for the Presidency of the Council should not be excluded.

Clearly, not all the candidates have announced themselves yet -and here again, everything will depend on the economic and political climate that will prevail in the summer of 2009. The European Commission has always reflected the political vision of the majority of the member states. This is how Barroso the Liberal was chosen to carry out the Liberal policy wanted by a majority of the 25 member states.

It will be similar for the European President, even though the extent of the economic and financial crisis could change the rules of the game. Will we predominantly want to stick to the liberal pathway or will a majority aspire to reinforce public power?

This question will be at the forefront of the European newsreel between June and September 2009.

Which President for the European Parliament? Towards an alternative to the EPP?

A alternative scenario renders plausible that the Presidency of the European Parliament will not be automatically assigned to a representative of the EPP.

During the 2004-2009 parliamentary mandate, the two main political groups – the Party of European Socialists and the European People’s Party – agreed to share the Presidency over the five year mandate, with socialist MEP Josep Borell holding it during the first half and Centre-right MEP Hans Gerd Pöttering occupying the position during the second half.

ALDE (Alliance of Liberals and Democrats for Europe) leader Graham Watson has declared he wishes to put an end to this “traditional” sharing of the EP presidency between the EPP-ED and the, with the official public launch of his candidacy for the presidency of the Parliament.

By launching, for the first time and earlier than other political groups, a public campaign on the EP presidency, the liberal hopes to stimulate the debate about candidates and issues and give a personality to the European Parliament, ultimately aiming to bridge the divide between the EU and its citizens, ending a nomination “chosen through backroom deals in smoke-filled rooms”.

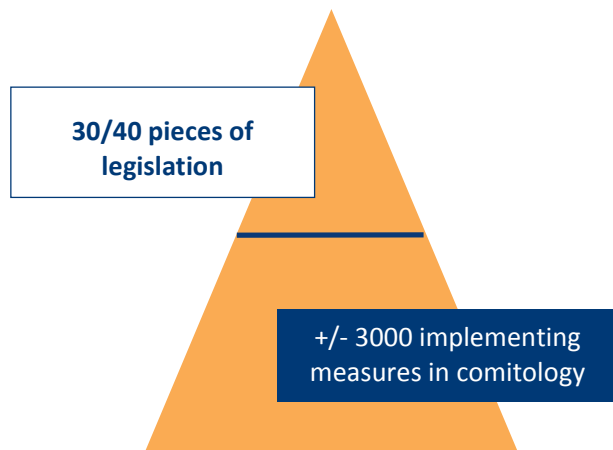
European Socialists and Centre-Right political parties are yet to have nominated any candidacies for the Presidency of the Parliament. Rumour has it though, that the “traditional” sharing of the EP Presidency between the two main groups in the EP remains on the cards: **EPP-ED MEP and former Polish Prime Minister Jerzy Buzek** would share the EP Presidency with **PES Chairman Martin Schultz**. Although both MEPs have not confirmed these rumours, Jerzy Buzek believes the next EP President should be from the new member states, whilst Martin Schulz has expressed his will to stay PES Chairman for the next term.

We now learn that 5 Commissioners of the Barroso team – Danuta Hübner (Regional Policy), Viviane Reding (Information Society), Jan Figel (education), Louis Michel (Humanitarian aid), Janez Potocnik (Research) will be candidates for the European elections and will obtain an exceptional leave of 4 to 6 weeks for their campaign.

The Lisbon Treaty introduces a third Comitology reform!

The European Union adopts approximately 30 to 40 pieces of community legislation under co-decision every year.

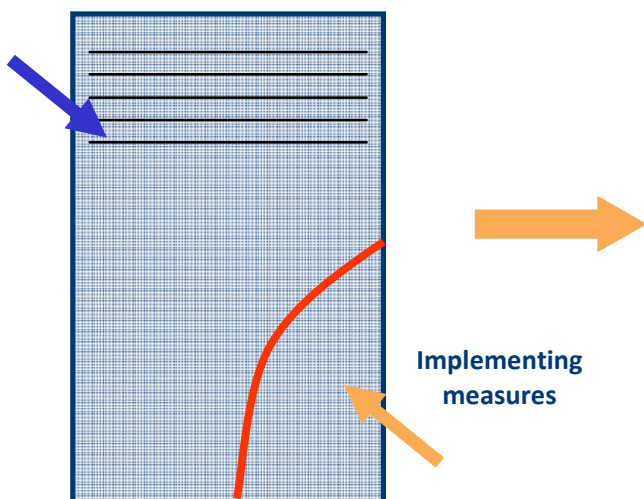
It also adopts on average per year 3000 implementing measures. This second level of EU legislation, so-called “derived” legislation or secondary legislation, takes the form of implementing measures adopted through a specific decision-making procedure called “Comitology”.



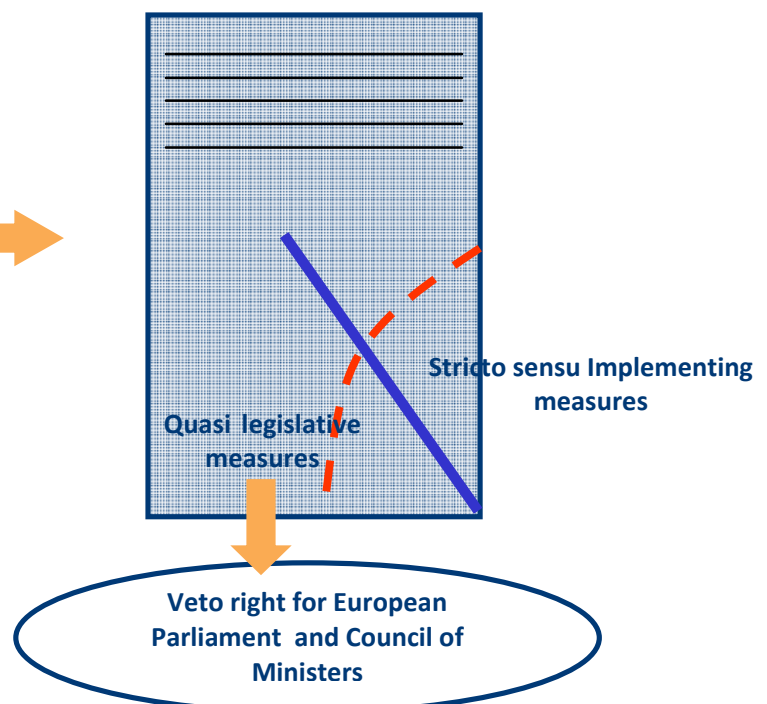
In July 2006, a major reform of the Comitology system was adopted. The essence of the reform consists in:

- the establishment of 2 separate categories of implementing measures: *stricto sensu* implementing measures (adopted by committees composed of national civil servants and chaired by the Commission) and quasi legislative measures on which the European parliament and Council are awarded a veto right;
- **Through this reform the European Parliament becomes a genuine player when it comes to implementation of EU legislation through the “regulatory procedure with scrutiny”.**

Framework Directive/Regulation



July 2006 reform



The Lisbon Treaty extends the Parliament's power in Comitology even further

The Lisbon Treaty foresees a new reform for Comitology and extends the Parliament's power even further.

The draft Constitutional Treaty (articles I-36 and I-37) foresaw a reform of Comitology already in 2004. However, it was never ratified and therefore never came into force. Without waiting for a new Treaty, the European Parliament pushed for a reform of Comitology anyhow, regardless of any new Treaty. This resulted in the July 2006 reform described above. This reform partially took on board the changes foreseen by the draft Constitutional Treaty.

When the Lisbon Treaty was adopted, new changes to Comitology were integrated, notably the ones that were stipulated in the draft Constitutional treaty but that were not taken on board by the 2006 Comitology reform.

What do these new changes consist of?

1. First of all, the Lisbon Treaty foresees a *terminological change*:

- legislation will be referred to as legislative acts (art. 249 a);
- quasi-legislative measures will be referred to as delegated acts (art. 249 b) and
- “*stricto sensu*” implementing measures will be referred to as implementing acts (art. 249 c).

Major consequence: the distinction between delegated acts and implementing acts is strengthened and is integrated in the hierarchy of Community norms.

2. Quasi-legislative measures are extended to consultation procedures

Prior to the Lisbon Treaty, a parliamentary veto right under the new regulatory procedure with scrutiny was only possible in the context of legislation adopted under codecision. This limit disappears in the Lisbon Treaty meaning that a **veto is also possible in the context of legislation adopted under consultation**. In practice, this could mean that measures adopted in management committees on agricultural topics could also be subject to a parliamentary veto.

3. The *tools* given to the legislator (i.e. Parliament and Council) to supervise the implementing mandate given to the Commission, are reinforced.

- Besides disposing of a veto, the Parliament and Council must now define in each piece of legislation a **time limit** for the use of the implementing power.
- Furthermore, Council and Parliament also receive the **power to revoke** the delegation, i.e. recalling the implementing mandate that was given to the Commission. This is evidently more far reaching than a mere veto right.
- On top of that, the **veto right** also becomes **unconditional**, meaning that the veto must no longer be justified as was foreseen by the 2006 reform.
- The entire approach becomes **case –based** and can vary from one legal act to another.

Practical consequences of the new changes to Comitology

Once the Treaty of Lisbon is ratified and will come into force, new prerogatives are given to Parliament and Council and the way the implementation of EU legislation occurs will once again undergo significant changes.

How these changes will be integrated into the *acquis communautaire* remains to be seen. The Comitology reform of July 2006 led the Commission, the Parliament and the Council of Ministers to undertake a systematic revision (“screening”) of the 300 Directives constituting the *acquis communautaire* in order to adjust the perimeter of Comitology measures and to organise them according to the two categories introduced by the reform: *stricto sensu* Comitology and quasi-legislative measures.

One cannot exclude – as the worst to come is never far away – that the next reform generates a new “screening” of the 300 Directives. The system, already bordering the unmanageable, runs the risk of losing its sense and drowning in the meanders of bureaucracy.



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The rules of influence in 2009 will be ever more technical

The new institutional panorama of the Union will not be without consequence on lobbying techniques and influence, which are going to be deeply transformed.

The years 2006-2007 and 2008 have witnessed three major revolutions:

1. The emergence of civil society. Present for a long time in Brussels, but having often lacked expertise, NGOs have become a major vector of influence. Ignoring NGOs is a mistake. They are necessary in any lobbying alliance.
2. The second revolution is the Comitology reform of July 2006 which reinforces executive measures, making them even more complex, and associating them to the European Parliament. 30 Directives were adopted under codecision every year against 3000 decisions in Comitology. No influence is possible without a perfect mastering of the Comitology procedures.
3. Fragmentation of the actors and increased complexity of the community decision making procedure have turned institutional communication into an indispensable supplement to lobbying. Pedagogy, clarity of expression, concision of arguments, documents adapted to each institution- at each level of hierarchy and at each phase of the procedure. No successful lobbying without professional communication.

2009 will bring about its share of changes:

1. The world crisis and the European turmoil resulting from it will force professional sectors and firms to anticipate. Prospective studies, which were very fashionable 30 years ago (The Roma Club!) and turned obsolete by globalization, are necessary again.
2. The institutional changes expected for 2009 will have a winner: bureaucracy. Over the past months, everything has become complicated: screenings, informal trilogues, recasting, specialized agencies. One will have to learn in consequence and adapt lobbying techniques.
3. The dilution of the EU to 27 members reduces the position of classical lobbying structures to the smallest common denominator. This slowly spreading paralysis will generate new actors: technological platforms, project tailored analysis, transversal coalitions from producers to consumers.
4. The months to come should also go against the European “pensée unique” that has characterised the past ten years. To relaunch renewed debate, to dare exchange with NGOs, to communicate on sensitive issues, to intervene in the Media, will represent from our point of view, the strong tendencies of 2009.
5. More than ever, synergies between EU level and national level will become indispensable elements of every lobbying action under co-decision, as much as in Comitology.
6. Considering the crisis as a resource. Avoiding defensive lobbying strategies as much as possible. In the long run these are losing strategies.

Ten challenges for the Union in 2009

1. Enlargement of the EU (pursuing negotiations with Turkey, Croatia, Macedonia – Opening negotiations with Serbia, Montenegro, Albania, Iceland?)
2. Stimulation of WTO negotiations, and finalisation of the Doha Round.
3. Reestablishment of the transatlantic link EU/US
4. Energy security and conclusion of an EU/Russia partnership.
5. Midterm revision of the financial framework 2007-2013.
6. Generalisation of the principle of free circulation of workers in the EU.
7. Energy-Climate package – Copenhagen Conference – Development of renewable energies, reduction of CO2 emissions, energy efficiency.
8. Economic and financial crisis management: European recovery plan, attempt to establish a more stable financial European and global order.
9. Drawing benefit from the crisis to attempt giving an effective content to the Lisbon Process (R&D, competitiveness, structural reforms, knowledge economy,...)
10. Sustainable agriculture, consumer protection, new food technologies (biotechnologies, GMOs, nutrition, obesity, consumer information, labels and quality seals).

This brief description of European priorities is both incomplete and too complete!

- It is too complete, because it is beyond what the European Institutions can deliver. Even though the crisis is part of the priorities of the Union, the Commission's overly cautious management and the Member states' cacophony in fixing stimulus plans favor economic divergences rather than the emergence of efficient solutions.
- Too complete also because the adoption of the energy/climate package was realised *a minima*, with time gaps and numerous exceptions. All the sensitive files of the Union (GMO, Competitiveness, nuclear energy, structural reforms,...) have been running in slow motion for a year.
- Incomplete because a certain number of essential dossiers do not figure on the list of concerns of the Union: simplification of the decision making process, information of the citizens, social Europe, the neighborhood policy, Development Aid.
- In short, Europe in 2009 will be essentially bureaucratic, very much oriented towards executive measures (Comitology), and national interest will return with a backlash. A union which tries – in some ways - to go forward whilst walking backwards.

CLAN Public Affairs: The dedicated Comitology team



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As well as being an exceptional pedagogue who can make Comitology both easily understandable and interesting, Vicky Marissen is recognised as a leading expert in the procedural aspects of implementing measures.

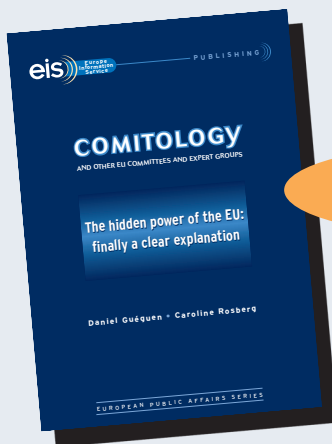


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Over 20 years in EU industrial affairs in several areas: environment, climate change, energy... His career has led him to practice 'Comitology Procedures' and develop extensive contacts. He considers the new Comitology as a great opportunity for business solutions.

TWO REFERENCE BOOKS ON COMITOTOLOGY



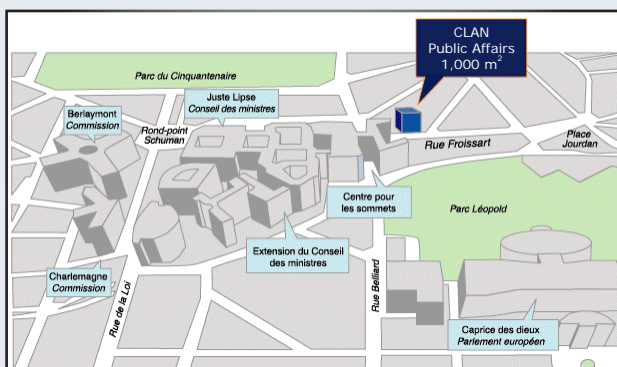
1st edition 2004

2nd edition 2009



The Comitology Reform

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