

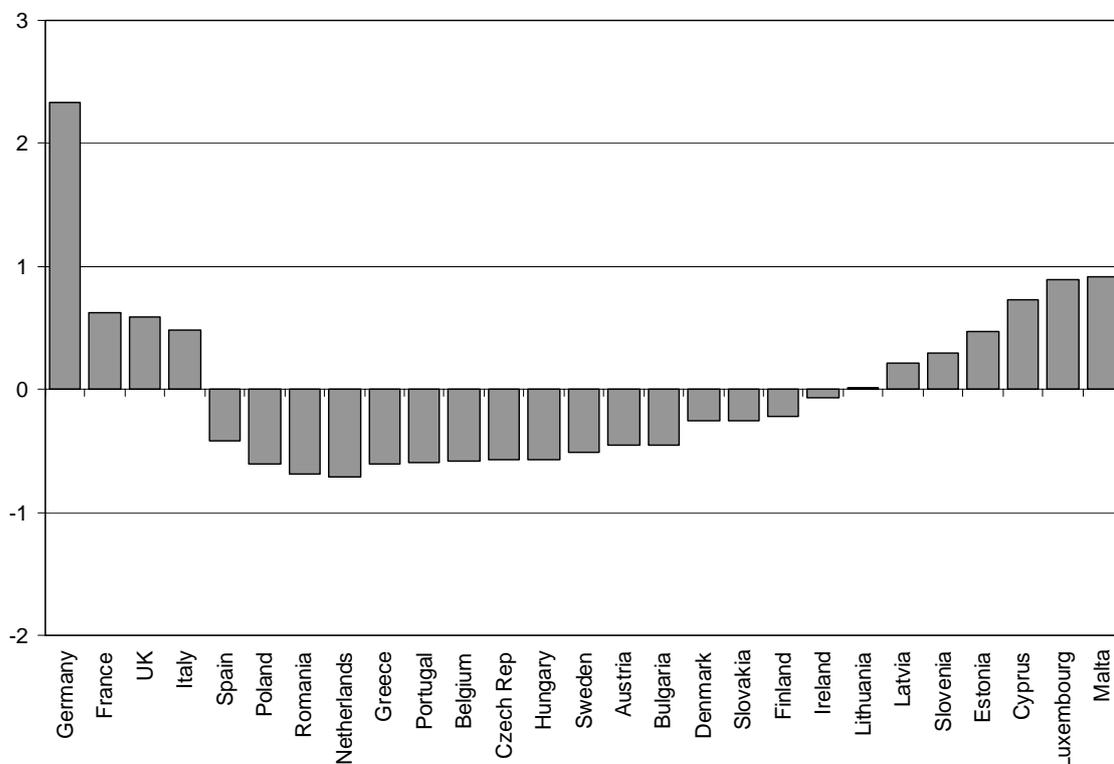
Written Evidence by Professor Simon Hix to the European Union Committee of the House of Lords on the Impact of the Reform Treaty on the Institutions of the EU.
27 November 2007

1. This note looks at the following issues in relation to the Reform Treaty:
 - the role and impact of the President of the European Council;
 - the role and impact of the new system of qualified majority voting;
 - the impact of the extension of the co-decision procedure;
 - the impact of the proposed changes in the selection of the Commission;
 - the overall impact of the Reform Treaty relative to previous EU treaty reforms.
2. The proposed President of the European Council, elected by a qualified majority vote for a two and a half year period renewable once, may improve the efficiency of decision-making in this particular institution, and may establish more identifiable leadership at the European level.
3. However, I see several significant problems with this post. First, the President of the European Council would not have the same authority as any of the sitting heads of government, such as a Prime Minister of the member state holding the Council Presidency under the current rotating system, and so is likely to be beholden to the governments of the larger member states or a particular coalition of governments.
4. Second, and potentially of more concern, the new post may undermine the authority of, and most likely conflict with, the Commission President. The European Council President may have higher prestige than the Commission President, however the Commission President will have considerably more formal policy-making power than the Council President, in terms of the right to initiate legislation and generally influence the policy agenda of the EU. Given the relative powers of the two posts, in a situation of conflict, for example on a major piece of legislation, the Commission President will invariably win out. Any conflict between the two posts will be exacerbated by the fact that the European Council President will be accountable to the governments while the Commission President will increasingly be accountable to the European Parliament.
5. For example, comparing the envisaged dual-presidency of the EU to the French dual-executive system, unlike the French President, the European Council President will not be able to hire and fire the Commission President, and due to the competing sources of authority of the two posts the EU will be in a situation of permanent 'co-habitation'.
6. A potential solution, in the medium-term, would be to fuse the office of the Commission President and the European Council President.
7. At a superficial level the new qualified majority voting rules in the Reform Treaty look simpler than the rules in the Nice Treaty, as the current triple majority (of 255 votes out of 345 plus 50 percent of member states plus 62 percent of the population) would be replaced by a new double majority (of 55 percent of member states plus 65 percent of population). In reality, however, the difference between the two sets of rules is relatively minor because over 90 percent of coalitions that commanded a majority under the Nice rules would also command a majority under the Reform Treaty rules.

8. Having said that, most scholars of decision-making are extremely critical of the qualified majority voting rules in the Reform Treaty. This is because these rules are highly inequitable in terms of the relative decision-making power they would give each member state. Under a truly equitable system of voting in the Council, every citizen in every member state should have an equal chance of being on the winning side. It is an established mathematical fact that such an equitable outcome can be achieved by a simple weighted votes system (as in the Rome Treaty), where the voting weight of each member state is some proportion of the square-root of its population. Forty-eight of the world's top political, economic and natural scientists wrote a letter to the governments proposing precisely this model, yet their advice was sadly ignored.

9. To illustrate the inequity of the Reform Treaty consider Figure 1. The figure assumes that the 'power' of a member state in the Council is determined by the proportion of times that state would be on the winning side under the qualified majority rules relative to all the other member states. The population-based part of the new voting formula over-represents the four largest states relative to the power they should have in a truly equitable system, while the state-based part of the formula over-represents the six smallest states. Put another way, citizens in these ten states are far more likely to be on the winning side in the EU than citizens in any of the eighteen other states. This could have considerable long-term consequences for the legitimacy of the EU in a large number of states. In this regard, the Reform Treaty is certainly not an improvement on the flawed rules in the Nice Treaty. In my opinion, the lack of equity in the voting rules in the Council may be a sufficient reason for rejecting the Reform Treaty.

Figure 1. Relative Voting Power in the Council under the Reform Treaty Compared to 'True Equity'

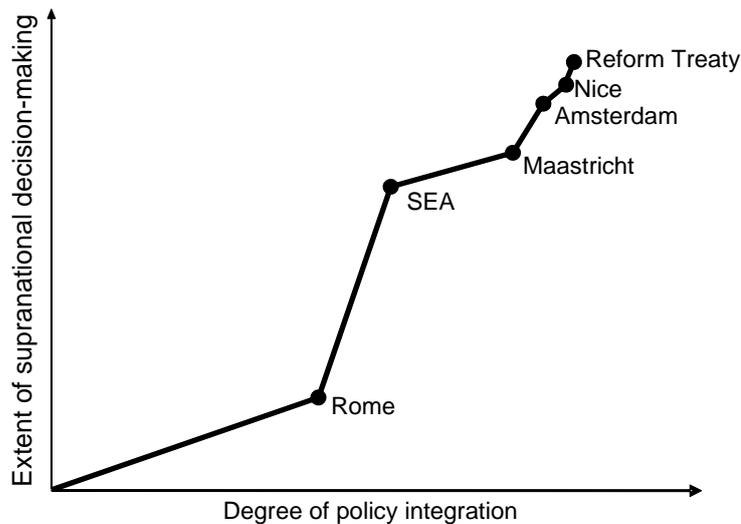


10. The Reform Treaty would extend the co-decision procedure to a limited number of areas. The changes in this regard would be a relatively minor extension of the powers of the

European Parliament compared to the reforms of the Single European Act, the Maastricht Treaty or the Amsterdam Treaty. Nonetheless, co-equal legislative power between the Council and the European Parliament in the area of agriculture may enable the common agricultural policy to be reformed via the European Parliament. Surveys of the MEPs have shown, for example, that there is an overwhelming majority in favour of reforming the common agricultural policy in the European Parliament.

11. Regarding the proposed change to the way the Commission is chosen, at face value it might appear that the Reform Treaty would introduce an 'election' of the Commission President by the European Parliament after the European elections. In practice, however, the procedure for selecting the Commission President in the Reform Treaty is exactly the same as the existing procedure. The major change in the Commission President election procedure was the introduction in the Nice Treaty of a qualified majority in the European Council for nominating the Commission President. This means that several rival candidates come forward and that there is a less than unanimous coalition of governments in favour of a nominated candidate, which then reduces the ability of the governments to impose their preferred candidate on the majority in the European Parliament. As a result, the European Council already has to 'take account' of the results of the European elections, as they did in the nomination of Barroso in July 2004. Hence, the provisions of the Reform Treaty in this area are purely symbolic and would change very little.
12. Overall, in terms of its impact on the policy competences of the EU and the balance of power between the EU institutions, the Reform Treaty is probably the least significant treaty the EU governments have ever signed. Unlike all previous treaties, there are no major new EU policy competences in the treaty. There is also no major extension of the powers of the European Parliament, the Commission or the Court of Justice, or a change in the balance of powers between the governments and these supranational institutions.
13. The Reform Treaty is the latest step in an almost continuous process of EU treaty reform since the mid 1980s. The fact that the governments have continually changed the treaties in the last two decades might suggest that reforming the treaties is an effective instrument for changing the way the EU works. The opposite is in fact the case. The governments have had to embark on a new round of reforms almost before the ink has been dry on the previous reforms because reforming the treaties is a very ineffective instrument. Despite lofty ambitions at the start of each process, each set of reforms has ended up being less significant than the previous set of reforms. The reason for this is that the basic architecture of the EU is closer and closer to what political scientists call an 'institutional equilibrium'. Some member states would like the EU to be more federal while others would like it to be more intergovernmental. Meanwhile, some states would like the EU to be more liberal while other member states would like the EU to be more social democratic. The current design of the EU is a delicate balance between all these positions.
14. As the EU has got closer and closer to this equilibrium, treaty reforms have become less and less ambitious. This is illustrated in Figure 2. The figure shows how each set of treaty reforms changed the EU architecture on two key dimensions: (1) the degree of policy integration, in terms of the extent of policy competences of the EU relative to the policy competences at the national level; and (2) the degree of supranational decision-making in the institutions at the European level, in terms of the powers of the Commission, the European Parliament and the Court of Justice, and the extent of the use of qualified majority voting in the Council.

Figure 2. Relative Significance of the EU's Treaties



15. The Treaty of Rome was less supranational than expected after the Luxembourg Compromise in 1966. The main innovation of the Single European Act was the extension of supranational decision-making to enable the internal market to be created, through greater agenda-setting power of the Commission, qualified majority voting in the Council, and the cooperation procedure. The Maastricht Treaty then added several new policy competences, such as EMU, CFSP, and JHA, but did not significantly change the balance of powers between the institutions – for example, the Commission, the European Parliament and the Court of Justice were restricted in the new policy areas. The Amsterdam Treaty added the area of freedom, security and justice, with extensive supranational decision-making in this area, and increased the power of the European Parliament by reforming and extending the co-decision procedure. The Nice Treaty then added defence cooperation and made some minor changes to the institutions in preparation for enlargement.

16. In sum, the basic ‘constitutional architecture’ of the EU – of a continental-scale market created and regulated by quasi-federal institutions in Brussels, taxing and spending policies maintained at the national level, and intergovernmental cooperation on foreign policy, macroeconomic policy and some justice and security policies – is extremely stable. This architecture was put in place by the Rome Treaty, the Single European Act and the Maastricht Treaty, and was only moderately changed by Amsterdam and Nice. The Reform Treaty would not change this basic architecture much at all. From this perspective, the debates about the Reform Treaty are a lot of fuss about very little.

17. There are, however, two changes with potentially negative consequences: (1) the European Council President, which may conflict with, and undermine the authority of, the Commission President; and (2) the new system of qualified majority voting in the Council, which is a highly inequitable system and may undermine the legitimacy of the EU in a significant number of member states.