

EUROPEAN INTEGRATION AND THE RATIFICATION OF THE TREATY OF LISBON: *QUO VADIS?*

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On 2 October, 2009 the Irish electorate, in an obligatory and legally-binding referendum, approved the Treaty of Lisbon. That vote, followed by the signing of the Lisbon Treaty by the Czech President on 3 November, 2009, completed the ratification process of the Lisbon Treaty and paved the way for its entry into force (December 2009).

The Lisbon Treaty is an ambitious albeit disguised constitutional document, which provides the EU with a comprehensive and advanced constitutional, institutional, socio-economic regime, a regime designed to enhance the EU's legitimacy, cohesiveness, effectiveness and actorness, thereby enabling it to face some of its internal and external challenges.¹

For these purposes the Lisbon Treaty granted international legal personality to the EU, abolished the EU's three-pillar structure, enhanced the role of national parliaments and of EU citizens in the decision-making and legislative processes, broadened the EU's competencies in general and in the fields of Freedom, Security and Justice, in particular. In addition, it reorganized and enhanced the Foreign, Defence and Security Policy, provided the EU with a President of the European Council and a Foreign Minister (the latter titled High Representative for Foreign Affairs), accorded the Charter of Fundamental Human Rights binding legal force and the EU a mandate to accede to the European Convention on Human Rights, reformed the decision-making instruments, powers and procedures, including in particular the scope of the co-decision legislative process and Qualified Majority Voting, reduced the size of the Commission, empowered the European Parliament in the legislative, budgetary and supervisory spheres and extended the competencies of the EU's judiciary. It is indeed to be expected that the Lisbon Treaty will succeed in providing the EU with a modern quasi-constitutional formal basis, striking the right delicate equilibrium between institutional-procedural efficiency and democratic accountability and social legitimacy, between supranationalism and intergovernmentalism, between competitiveness and social cohesion.

In overcoming the numerous challenges which faced the EU during the eight-year constitutional process (2001-2009), the EU has proved to be a modern phoenix. Yet that success cannot absolve the EU from facing significant challenges that lie ahead. That success does not necessarily epitomize wide, deep-seated support in Ireland and beyond for the EU. Instead, there are widening elite v. grass-root gap and a representative democracy v. popular democracy gap, which can be linked to the democratic deficit, the legitimacy

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¹ For analysis, M. Dougan, 'The Treaty of Lisbon 2007: Winning Minds not Hearts' (2008) 45 *Common Market Law Review* 617.

deficit and the Community deficit from which the EU suffers. Moreover, the ratification process reveals that European integration is at risk of falling hostage to irrelevant considerations, petty national politics, the equivocal will of a (small) Member State or that of a national leader. The ratification process further teaches us that neither a more legitimate, transparent and inclusive reform process nor a revised Treaty that offers procedural guarantees in terms of participatory democracy would necessarily ensure European public support or strong European identity and affiliation. In future constitutional-institutional reforms, EU legal bureaucrats would thus have to be innovative and creative enough to be able to equip their leaders with the legal tools for the changing needs of the EU and its polity, while refraining from drafting grand constitutional reforms or Treaty revisions which might expose the EU to yet another ratification saga. Constitutionalism may thus prove to be "Out" while more low-key technocratism may prove to be "In".