

The Lisbon Treaty: The problem of democratic legitimacy

By Henrik Clausen

Introduction

The process surrounding the EU Constitutional Treaty, now the Lisbon Treaty, has been subject of significant debate. The referendums in 2005 focused more on the contents of the treaty than the process, as the outline for the process was clear: It was to be adopted after consent of each single member nation (then 25) of the European Union. Lack of consent by even a single nation would cause the Treaty to be abandoned, but that was not expected to happen, and a public affirmation of the treaty, as well as the politicians behind it, was seen as desirable.

Spain was the first country to hold a referendum, and it passed with a large majority.

France was next, and the initial polls showed a significant majority in favor of the Constitution. However, the lead narrowed during the campaign, and the referendum itself came out with a remarkable 55 % No vote, which was expected to kill the Treaty solid:

http://en.wikipedia.org/wiki/French_referendum_on_the_European_Constitution

Three days later the Dutch referendum rejected the Treaty with an even larger 61.5 % majority:

http://en.wikipedia.org/wiki/Dutch_European_Constitution_referendum%2C_2005

The two results caused the ratification process to be halted in the remaining countries. There was no doubt that the results were legitimate, and the voters had debated the substance of the Treaty with politicians who were alarmingly unprepared and unable to answer real questions on the treaty they advocated.

It was debated what the cause was for the rejection. The issue of the Turkish accession process, which was initiated in spite of public opinion, probably played a role, as did the recently introduced Euro, generic unhappiness with the incumbent government etc.

But while these issues probably contributed, as voters would protest their lack of influence on them, there was little doubt that the content of the Treaty was the most important reason for the result, as also indicated by the swing from positive to negative attitude in the polls leading up to the referendums. There is no doubt that the rejections were solid.

After these remarkable results, the remaining referendums were 'postponed' or canceled, and the politicians declared a "period of reflection" to consider their next steps. For a while, the project seemed at a complete standstill. It had been an exhausting process to negotiate intricate voting rules and the other details of the Constitution Treaty, and few seemed interesting in starting the process over, even at the risk of having the result rejected yet again by the voters. It was contemplated what kind of treaty the citizens actually desired, but it was

National referendums on the European Constitution	
Czech Republic	Cancelled
Denmark	Postponed
France	✗ No (42% of 69%)
Ireland	Cancelled
Luxembourg	✓ Yes (57% of 88%)
Netherlands	✗ No (39% of 63%)
Poland	Postponed
Portugal	Postponed
Spain	✓ Yes (77% of 42%)
United Kingdom	Postponed
Parliamentary approvals	

no easy task to figure it out. A general consensus, though, was that a less extensive and less 'constitutional' treaty would be the way to go.

The lady who got the project back on track was the German Chancellor Angela Merkel, who laid out a plan for a modified treaty, the "Reform Treaty", as well as a time line for acceptance and ratification of it. The project, which had laid still for over 1½ year, resumed with surprising speed, and the signing of the new treaty by the European heads of state was determined to take place at the end of the following Portuguese presidency, on December 13th in Lisbon, thus giving rise to the name "The Lisbon Treaty".

Angela Merkel is exemplary in her efficiency. She called upon the various governments to identify exactly what clauses would cause the treaty to be set up for referendum, and made sure to change or remove those clauses, thus removing the formal need for holding referendums, except Ireland, where the constitution clearly would demand one, no matter how extensively the treaty would be modified. This referendum is to take place in June 2008.

But why avoid these referendums at all? French president Sarkozy explained that succinctly:

France was just ahead of all the other countries in voting No. It would happen in all Member States if they have a referendum. There is a cleavage between people and governments... A referendum now would bring Europe into danger. There will be no Treaty if we had a referendum in France, which would again be followed by a referendum in the UK. (EUobserver, 14 November 2007)

There we have it: Referendums would kill the treaty. But this creates a problem of democratic legitimacy. How can a significant international treaty, which even its creators assumed would be killed by a public vote, be assumed to be democratically legitimate?

What is 'legitimacy'?

In order to discuss the legitimacy of the Lisbon Treaty, we need a workable definition of 'legitimacy'.

(from [http://en.wikipedia.org/wiki/Legitimacy_\(political_science\)](http://en.wikipedia.org/wiki/Legitimacy_(political_science)))

Legitimacy in political science, is the popular acceptance of a governing regime or law as an authority. Whereas authority refers to a specific position in an established government, the term legitimacy is used when describing a system of government itself—where "government may be generalized to mean the wider "sphere of influence." According to Robert Dahl, legitimacy is considered a basic condition for rule: without at least a minimal amount of legitimacy, a government will lead to frequent deadlocks or collapse in the long run.

Max Weber defines three kinds of legitimacy, of which only the third kind is of relevance here:

Rational/legal authority. Legitimacy based on the perception that a government's powers are derived from set procedures, principles, and laws which are often complex and are written down as part of the constitution. Example: representative democracy or bureaucrats.

Legitimacy is a very abstract concept, not easily pinned down by rules, details and

technicalities. Yet, the perception of legitimacy is what makes or breaks regimes. The Soviet Union, for example, was in the Helsinki agreements of 1975 granted legitimacy in its rule over Eastern Europe, at the seemingly token prize of having to respect human rights. Unexpectedly, human rights issues turned into a nightmare for the Soviet leaders, who saw their legitimacy increasingly undermined on this issue, seeing its rule over Eastern Europe evaporate 14 years later, and itself dissolved in 1991. Apart from the ethical problems of extensively violating the human rights, the Soviet Union also bled legitimacy in a different way:

It broke the rules it had signed up to, systematically. That erodes confidence in the ability of the system to keep its promises. The failure to live up to given promises creates serious problems with legitimacy.

The Lisbon Treaty asserts to have democratic legitimacy and points towards details, such as the "Citizens' Initiative" to justify that. This initiative, which will be examined in detail later, is created to grant citizens influence on the EU system apart from the elections to the European Parliament.

The keyword here is 'grants'.

How can a system such as the European Union, which was created as a Community between independent nation-states, now see itself as the institutions 'granting' permission to the citizens to have some influence? 'Democracy' means 'rule by the people', and as such, it should be the people that grants the European Union the right to direct certain matters. Granting this right usually takes the form of referendums, which, if giving its approval, endows the system with legitimacy.

Holding referendums grants legitimacy to the system. But promising to hold referendums, then going back on that promise, is harmful to legitimacy. Worse yet is going back on granted promises for reasons that turn out to be false. This constitutes a breach of confidence that can be difficult or even impossible to heal. This paper will examine some of the aspects of the Lisbon Treaty and the evaporated referendums.

Worse yet is disregarding the rules of elections. The rule given in advance of the referendums on the Constitutional Treaty was that it would be abolished if even a single EU country rejected it. Two did so, with solid results in fair referendums, yet the Treaty is being adopted anyway.

Why do we need a new treaty?

President of the European Commission José Manuel Durão Barroso explains the reasons for the treaty:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/204&format=HTML&aged=0&language=EN&guiLanguage=en>

- * efficiency, making the EU work better
- * accountability, giving people a greater say over what "Brussels" can and can't do
- * giving Europe a stronger voice in the wider world.

Simple, actually. Nice and workable. Innocent bordering on benign.

Actually, there's one additional reason Barroso doesn't mention: The voting structure of the current Nice Treaty accommodates only 27 countries. Thus for future expansion of the European Union (Croatia is to become EU member number 28), either serious rule-bending is needed, or a formal revision of the Nice Treaty. This is the technical reason for the urgency of the process. It's a shame Barroso fails to mention it, as it clearly is the most urgent of all reasons, as failure to address this problem would stall enlargements.

What does the Treaty accomplish?

An analysis by Prof. Anthony Coughlan (published at <http://www.brusselsjournal.com/node/2773>) goes into detail of what the Lisbon Treaty actually does.

Today the European Union leaders signed the Lisbon Treaty. This treaty gives the EU the constitutional form of a state. These are the ten most important things the Lisbon Treaty does:

1. It establishes a legally new European Union in the constitutional form of a supranational European State.
2. It empowers this new European Union to act as a State vis-a-vis other States and its own citizens.
3. It makes us all citizens of this new European Union.
4. To hide the enormity of the change, the same name – European Union – will be kept while the Lisbon Treaty changes fundamentally the legal and constitutional nature of the Union.
5. It creates a Union Parliament for the Union's new citizens.
6. It creates a Cabinet Government of the new Union.
7. It creates a new Union political President.
8. It creates a civil rights code for the new Union's citizens.
9. It makes national Parliaments subordinate to the new Union.
10. It gives the new Union self-empowerment powers.

What seemed natural and benign when explained by Barroso, is much more extensive when viewed by an independent analyst, of which we unfortunately have precious few. But Coughlan is sharp, and at the article in Brussels Journal he argues each of the above ten points directly on the basis of the treaty text.

It is an extensive reformation of the European Union, transferring a larger number of competences and capabilities to the Union than any treaty before it, including the Nice Treaty.

The purpose of this paper is not to go into the contents of the Lisbon Treaty as such, but the reader is encouraged to do so himself. Some highlights are in order, though. First, let us return to the points of Barroso:

- 1) Efficiency

The EU system is large, and decisions can be hard to create consensus about. The Turkish accession process was an example. Larger member states had decided that it was a Good and Proper Idea, and put pressure on other smaller member states to have the same opinion. This created some very painful and embarrassing situations, as some states, like Austria, Greece and Cyprus, genuinely were against the project. After a painful series of delays and technical fixes to salvage the process, 'unity' was achieved.

But the stubbornness of some member states was a problem and an embarrassment, and for the sake of efficiency, to avoid such painful situations, the decision process has to be streamlined. 'Unity' is the code word for that, and the new decision-making rules makes it easier for the Union to achieve Unity on various issues, reducing significantly the time and effort needed to overcome objects by minorities among the member states.

Or, in the words of Barroso:

"We will have more qualified majority voting, which should help to speed up decisionmaking."

2) Accountability

Barroso on the superstate:

"I reject the idea that "Brussels" is some kind of superstate, taking decisions behind closed doors, very far away from "the people"."

This is an interesting wording. Superficially read, it is a rejection of the notion of EU being a superstate, but the next part of that sentence qualifies that significantly, he merely rejects the notion that it works far away from "the people".

Accountability is a big issue.

Even though some 80 % of our legislation comes out of Brussels, it is hardly given any mention in the press, and our governments simply approve what is given them and moves on. There is hardly any opening for citizens to be part of this decision-making process. Influencing decisions the European Union is a complex task best left to professional lobbyists, who know how to do it and have time to invest in doing it in the proper way. The usual instruments of democratic influence have little effect towards a system of this complexity, with such an array of civil servants to take care of the formal correctness of every possible detail in any piece of legislation.

In a way, it is also a vicious circle of declining influence. The media perceives little interest in EU matters, and the citizens perceive little opportunity for taking influence. This drives media interest down even further, and thus reduces the natural open debate that influences politicians in democratic systems.

3) Giving the EU a stronger voice in the wider world

On surface, it sounds attractive to give EU 'a stronger voice', and it is an obvious reference to the quest for 'Unity' in EU decisions, related to the 'Efficiency' mentioned above. Curiously, it seems that suppressing dissenting views among the member states is seen as a source of strength, not a democratic problem.

But another problem of this approach is that it voids the need for member states to act on an international level. It simply takes over significant parts of the purpose of a normal nation-state, under the assumption that it will work better with 500 million citizens behind any foreign policy effort than having 27+ member states each working things their way. An unmentioned problem with this is "What about mistakes?" If the European Union makes foreign policy mistakes, they will be on a much grander scale than if some individual state makes a stupid move.

But a central problem, however, really is that the Union takes over responsibilities that until now were solidly with the member states. The foreign policy record of the Union, as we have seen in the Balkans and in the conflict over the Muhammad cartoons, is far from impressive. We really need to involve the European citizens in a discussion and a vote over this issue. Without widespread public understanding and approval of the implications of this, there is a 'legitimacy gap' between EU and its citizens here.

Related, the classical constitutions were designed to protect citizens against abuse of power by the institutions of power. Centuries ago, when kings and warlords would routinely violate the rights of the citizens in hours of 'need', constitutions were a collective defense against such abuses. The rejected European Constitution, now the Lisbon Treaty, is not any such defense.

The Muhammad crisis deserves a special mention. It is stated in the current EU treaties that solidarity between member countries is 'automatic' and need not even be requested. Yet, when Denmark found itself in the worst foreign policy crisis since WWII, the matter was initially dismissed as 'a national matter', neglecting the stated obligation for solidarity, and at the same time demonstrate a disappointing lack of interest in defending the civil liberties of the EU citizens.

The ten points by Coughland show a similar trend that warrants debate and decisions empowered by the European public. There is a systematic tendency, as exemplified by the "stronger voice" point above, for all of the changes in the Lisbon Treaty to take over responsibility from the nation-state and place it with the European Union instead. Some of these are subtle, like making the 'Union Parliament' direct representatives of the citizens (instead of their nation-states), some are less so like making the Union a legal entity or establishing citizenship directly under the union.

We are reaching a point where the individual member states of the European Union are only nominally independent. Should any of the member states have the audacity to actually use this independence, the EU system is sure to take note and interfere. The recent crisis in Belgium, which went without government for over ½ year, shows how this can take place.

The Citizens' Initiative

The treaty does concern itself explicitly with improving democratic legitimacy on one point, the 'Citizens Initiative'. As formulated by an Irish MEP:

"Participative democracy is acknowledged through social dialogue and the new 'Citizens' Initiative' which obliges the Commission to consider citizens' proposals." Proinsias De Rossa (Labour, Dublin)

Or, taken directly from the treaty text:

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

This is interesting. The EU system acknowledges that some sort of citizen influence should be possible. Actually, that's quite polite, as they did not need to create it this way. But playing the Devil's advocate, I'll present some objections:

- 1) Since when was influence on our rulers a right bestowed upon us from said rulers? It seems the assumption is that politicians and civil servants in EU, once in office, have the right to do whatever they find opportune. The right of the citizens to have a say has become an explicit exception, not a basic democratic feature, in the treaty.
- 2) Any citizens' initiative outside the scope of this clause, such as special interest groups, can be dismissed offhand for not using the required framework for requesting a say on matters.
- 3) Any citizens' initiative carrying less than a million signatures can be dismissed offhand. This makes the clause difficult to use in complex issues, where collecting a million signatures is no trivial matter. This will help avert citizens' objections in complex matters.
- 4) Even if a million signatures are collected, what is possible is merely an 'invitation' to the Commission to submit a proposal on the issue at hand. The Commission has the right to deny such an invitation.
- 5) Even if the Commission accepts the invitation, it still has the practical possibility of creating a proposal so awkward it will be destroyed during processing in the EU system.
- 6) By way of example, the first such initiative that reached million signatures was the OneSeat Campaign, seeking the fairly simple objective of canceling the dual-seat system of the European Parliament, a system that wastes €200 million a year. At 600,000 signatures the initiative was dismissed at the EU summit of June 2006. And in spite of reaching a million signatures well in time for being considered in the Lisbon Treaty, it wasn't. Instead, it will remain an example of EU disrespect for its citizens.

Summing up, the "Citizens initiative" in the Lisbon treaty pays only lip service to the concept of democratic legitimacy. By concept, wording and example, it is unworkable. It even aggravates matters by barring citizens from using other approaches to bring their influence to the system.

One could say that the "Citizens initiative" is a superficial attempt to fix a fundamental problem:

The European Union was never designed to be a democratic system. This is not as bad as it may seem, but warrants some discussion.

The European Union was never designed to be a democratic system.

It wasn't. It was designed to be a community between democratic systems, not to be one itself. Thus the original name "European Community". At the Danish referendum in 1986, concerns were raised that the Community might at some point evolve into a Union. Danish prime minister Poul Schlüter utterly rejected the notion by the statement "Unionen er stendød". (the Union is stone dead). Unfortunately, he lied. He might not have known better at that point, but what he said was, as we all know by now, not true.

Comparing the European Union to the United States of America bears relevance. The United States has a federal system, which might have its flaws, but at least was designed from the ground up with the intent and purpose of being a transparent, democratic system with due legitimacy bestowed upon it for this purpose.

The European Union, while taking on a similar appearance, has grown from a different kind of system into the current political union. Its institutions do not operate under the 'Separation of powers' paradigm. Its institutions were designed for different purposes and with a different structure, but has the appearance, not least by the use of the word 'parliament', to look like the governmental bodies of nation-states.

The European Commission, in particular, has extensive legislative and executive power which is not easily regulated. The Parliament has in recent years exercised increasing power towards the Commission, but the Commission remains the undisputed power hub of the European Union, and holds more power than an average government would in a country. The Commission has a staff of roughly 25,000 civil servants to support its work.

The Commission, currently having a Commissioner from each country, has the appearance of being a composite body with a representative from each member state. However, the Commissioners pledge loyalty to the Union, not to the state he or she is appointed by.

It is not trivial to oust a Commission or individual members, in the way a parliament would get rid of a government it has lost confidence in. The Commission is appointed for a five year period and in practice only outright corruption, crime etc. Only one Commission (Santer) has resigned before the expiration of its period. Citizens of the European Union are not able to formally hold the Commission responsible for any perceived failures of its work.

The European Court of Justice is known to pass some curious judgments, which quite systematically expand the scope of the European Union. Technically, it has as its purpose to ensure proper implementation of the directives of the Union, but in practice it tends to interpret this as widely as possible. One basic function of the European Community is to remove technical barriers to trade. A nice and noble purpose we can generally agree on. Note

Separation of powers, a term coined by French political Enlightenment thinker Baron de Montesquieu, is a model for the governance of democratic states. The model is also known as Trias Politica.

The model was first developed by the ancient Greeks in the constitutions that governed their city-states; however, it first came into widespread use by the Roman Republic. It was outlined in the Constitution of the Roman Republic.

Under this model, the state is divided into branches or estates, and each estate of the state has separate and independent powers and areas of responsibility. The normal division of estates is into the Executive, the Legislative, and the Judicial.

the word 'technical', however. This would limit the scope to that of removing only barriers to trade that have as their main purpose that of keeping competition from other countries out.

In the interpretation of the European Court of Justice, any regulation that causes any hindrance to free trade of any kind, including barriers that constitute genuine differences in the way individual countries prefer to be organized. Lately, the Danish system for regulating wages on the labor market has come under attack from the Court, disregarding the fact that the system was never, ever, intended to be a technical barrier against competition from other countries.

While the above might sound problematic, it poses only a problem with regards to democratic legitimacy if the workings of the system have not been properly explained to or approved by, the European citizens. That 'explanation and approving' takes place in the process surrounding a referendum. The lack of referendums, even disregarding the way the referendums were canceled, by itself constitutes a problem of legitimacy of the European Union.

An interpretation of this is that the original European Community, understood as an organization for cooperation between nation-states, does not have a problem with democratic legitimacy. The basic structure has been approved by European governments and the citizens, and there is no need for this system to be democratic per se. The problem arises when the Community evolves into a Union, where the rules for transparency and democratic nature of its institutions become much stricter. For obvious reasons, for an unchecked governmental system runs a serious risk of evolving into a despotic direction.

From the rejection of the Constitution to the ratification of Lisbon

The rejection of the Constitution caused a remarkably long period of inactivity, roughly 1½ year. Opponents of the Treaty considered it to be rejected, proponents looked for ways to preserve the core of it, while 'cherry-picking' and 'mini-treaties' were mentioned as other possible approaches.

The exact approach of Angela Merkel was not made quite clear to the public, except that the goal was a 'mini-treaty'. The method was to rephrase the Constitution Treaty into a 'Reform Treaty', thus implying that:

- 1) It was a different treaty.
- 2) It was to reform the system.
- 3) It was no longer a constitution.

While the Constitution Treaty was written as a self-containing document, the Reform Treaty was a voluminous collection of corrections to the preceding two treaties still in force. This was intentional, but any tool employed knowingly to hinder public debate is a violation of good democratic style. It is not technically illegal, of course, and

"Public opinion will be led to adopt, without knowing it, the proposals that we dare not present to them directly ... All the earlier proposals will be in the new text, but will be hidden and disguised in some way."
- V. Giscard D'Estaing, Le Monde, 14 June 2007, Sunday Telegraph, 1 July 2007

"The aim of the Constitutional Treaty was to be more readable; the aim of this treaty is to be unreadable ... The Constitution aimed to be clear, whereas this treaty had to be unclear. It is a success."
- Karel de Gucht, Belgian Foreign Minister, Flandreinfo, 23 June 2007

the process went unchallenged. Surprisingly fast, too, but it turned out that this had a good reason:

The work was merely technical, not of substance, as the Constitution Treaty was being rewritten, not substantially modified, except in specific and limited areas. The changes were of two classes: Technical changes to avoid triggering referendums, and symbolic changes to avoid the perception that it was a constitution for a super-state. Items such as making the 12-star blue flag the official flag of the union, or making the “Ode to Joy” the official hymn of the Union, were removed. These changes were obviously 'symbolic' in more than one sense of the word.

When the heads of state signed the Lisbon Treaty in Lisbon (symbolically wasting a neat amount of jet fuel to get there), it was an unreadable edition. No 'consolidated' version existed, and only experts with ample time on their hands could truly read the Treaty. In practice, only civil servants employed by the Union or the governments had a genuine chance to assess the content before it was approved by the heads of state.

Those who had the opportunity to examine the contents rejoiced: Nothing of importance was gone. It was all there, somewhere. Some items had been hidden into technicalities or were to be adjusted by other means later, but everything in the original Constitution Treaty was present, in one way or another. Meaning the Treaty was exactly the one that had been rejected by the voters in 2005.

If the contents is functionally identical, what then became of the 'mini' treaty we had been lead to expect and which French president Sarkozy had explicitly demanded?

Well, including the extra technicalities and adjustments, the Lisbon Treaty ended up with 7229 more words than the rejected Constitution Treaty. In order to keep the promise of a 'mini' treaty, the font size was reduced in the final edition (not exactly an advantage for readability either), and the resulting treaty ended up with a page count 55 below the Constitution Treaty. Voilà, 'mini'! There is a less polite word for solutions like that, of course: Deceit.

What remained at this point was the feat of avoiding the dreaded referendums. This, one must say, went surprisingly smooth. Legal experts in the various countries saw that the points that would explicitly trigger referendums had been changed, as requested by Angela Merkel, and quickly absolved the various governments of their promises or duties to hold referendums. Only in Ireland, where the constitution is crystal clear, could the risk not be avoided. It will be held in June.

“The good thing about not calling it a Constitution is that no one can ask for a referendum on it.”
- Giuliano Amato, speech at London School of Economics, 21 February 2007

While much of the preparation for the resurrection of the Constitution Treaty had taken place in closed meetings coordinated by German Chancellor Angela Merkel, what remains most amazing about this process is the open audacity of circumventing given promises and obvious expectations. Mainstream politicians in all European countries supported this project, few saw reason to question the rather obvious integrity problems of the approach. And all agreed that referendums were to be avoided at any cost.

The process, while technically legal, exposed an unnerving willingness by our politicians to bend or break the rules they had said they would adhere to. What will be next – what other

rules will they consider 'too restrictive' and find a justification to circumvent? Legitimacy of our governments depends on sincere loyalty to our laws and constitution, which is exactly what we have seen being talked away in the Lisbon process.

The Danish situation

In Denmark, we were supposed to vote on the Constitutional Treaty on September 27 2005, but that was canceled after the referendums in France and Netherlands. As an aside, the canceled dates was three days before the famous Muhammad cartons were published in Jyllands-Posten. If Denmark had held a EU referendum in that period, the Muhammad cartoons might never have been created or published).. The background for this vote is article 20 of our constitution, which reads (my translation):

§ 20 Stk. 1.

Capabilities, which in accordance with this constitution are assigned to the institutions of the state, can, by law and in specific measure be transferred to institutions of international coordination, established by mutual consent with other states to further international rule of law and cooperation.

Stk. 2.

[In brief: if such laws are not passed with a majority of 5/6 or more, a referendum is needed.]

Now, who then gets to decide if the Lisbon Treaty requires a referendum according to this article? The current government does. And since the Lisbon Treaty has been changed explicitly on the 9 issues that would without doubt trigger a referendum, the government now asserts that no referendum is needed.

This is a fallacy on several points:

1) It is assumed that these nine points were the only elements of the Constitution that would require a referendum. Implicitly, it is then assumed that no other elements, nor the contents of the Constitution Treaty at large, would trigger a referendum. Focus has been only on the nine items.

2) Several of the nine items had only technical fixes, where they will be moved out of the Treaty itself and into non-treaty technical changes to be published and implemented in different ways.

3) It is assumed that the referendum was needed only for technical reasons, not to provide it with democratic legitimacy.

4) The wide public desire for holding the referendum, and for having the associated public discussion about the future and the goals of the European Union, is being ignored.

Further, Denmark has a tradition for holding referendums even when not technically needed. The treaty for the Inner Market was sent to a referendum in 1986 (and approved), even though it had been made clear that it was not a technical requirement under §20. Why would one undertake the quite large effort of a referendum over a treaty that could be passed without one? For two reasons, at least:

"The Treaty of Lisbon is the same as the rejected constitution. Only the format has been changed to avoid referendums."

Valéry Giscard d'Estaing,
former French President
and President of the
Constitutional Convention,
27 October 2007

1) To involve the public in the process. This is both an opportunity to relate to the public the goals of the European Union and the specifics of the treaty in question, as well as an opportunity to get feedback from public opinion about the desired future of the Union.

2) To make it clear that the treaty voted on has a solid democratic legitimacy.

Thus, failing to hold a referendum that was both promised, scheduled, technically required and a popular demand is a serious failure with regards to the democratic legitimacy of the Lisbon Treaty.

A secondary way to obtain a referendum in Denmark is to have 1/3 of the members (60 total) of parliament request one. At the recent general elections in Denmark, we came very close to this number, and if one counted the singular MP's who had spoken for a referendum, the total was 69 members, well over the 60 needed to trigger a referendum. However, the individuals who spoke against their party lines on the issue have since changed their views, and it was not possible to gather the required 60 votes in parliament. The Lisbon Treaty has recently been ratified in Denmark without referendum.

It is worth noting that article 20 permits only 'specific measures' of authority to be transferred, and only to institutions that work on an inter-national level, not a supra-national level. It is, in fact, highly dubious to assert that the Lisbon Treaty could have been legally approved according to the Danish constitution - even in case of approval by a referendum! This clause in our constitution has been bent significantly, and given the extensive transfer of power to a supra-national institution that the Lisbon Treaty constitutes, the clause has now effectively rendered void:

For future treaties, the Danish government can now, solidly, argue that the new treaty is less extensive than Lisbon, and thus not in need of a referendum. Also, the Lisbon Treaty enables the European Union to expand its areas of responsibility without changing the treaty in the first place. We should not expect any further referendums in Denmark on EU matters, ever.

Is there a public demand for referendums on new EU treaties?

	Yes for referendum	No for referendum	Don't Know
Ireland	87%	11%	1%
Greece	83%	14%	3%
United Kingdom	83%	15%	3%
Czech Rep.	82%	15%	3%
France	81%	16%	3%
Latvia	80%	11%	10%
Germany	77%	23%	1%
Malta	77%	17%	6%
Cyprus	76%	21%	3%
TOTAL	75%	20%	5%
Estonia	74%	16%	11%
Luxembourg	74%	23%	3%
Poland	74%	16%	10%
Belgium	73%	25%	2%
Denmark	73%	22%	4%
Spain	73%	24%	3%
Finland	72%	25%	3%
Bulgaria	71%	13%	16%
Austria	71%	25%	4%
Italy	70%	23%	8%
Sweden	68%	30%	2%
Lithuania	67%	15%	18%
Hungary	66%	30%	4%
Romania	66%	11%	23%
Portugal	64%	21%	15%
Slovakia	64%	20%	16%
Netherlands	62%	29%	9%
Slovenia	55%	40%	4%

Opinion polls by the British think tank Open Europe, on the question:

"If a new treaty is drawn up which gives more powers to the EU, do you think that people should be given a say on this in a referendum or citizen consultation or do you think that it should just be up to the national parliament to ratify this treaty?"

<http://www.openeurope.org.uk/media%2Dcentre/pressrelease.aspx?pressreleaseid=31>

One must say the conclusion is abundantly clear. All EU citizens in aggregate have a 75 % majority for holding referendums on such treaties, only 20 % are against. Remarkably, the large nations United Kingdom and France have an even higher ratio of citizens requesting a referendum. Yet, in both of these countries their governments have denied them holding one. The fear of another 'No' seems strong.

The question then lingers: What happens if the EU treaties are no longer sent to referendums,

in spite of a wide public desire to the opposite? The treaties are still legal, but the democratic legitimacy is set in doubt. A likely result is public apathy and indifference towards the system, as public participation in establishing and using the system is discouraged and thus becomes obviously unrewarding.

Conclusion:

In abandoning the process of using referendums to approve European Union treaties, the European Union has cut itself off from a significant source of democratic legitimacy. That the treaties are still legally and technically correct does not alter the deceitful process used to adopt the Lisbon Treaty, nor does it undo the many misleading details or outright lies involved in it. In doing so, the Union has employed in a heavy process of self-justification and rejection of criticism, where the proper response would have been to use the rejections as an impetus to a radical reform of the system, a reform now unlikely to ever take place.

It remains to be seen if EU, its politicians and civil servants, will find courage to take the concerns of its citizens seriously, find ways to regain democratic legitimacy or if they will continue down the path of self-justification and defense of a system that increasingly inspires apathy instead of democratic participation.

References:

Public sources are the basis for this paper. There is no scarcity of materials available, also from independent sources. Listed below are some of the most important.

The official EU reference site for the Lisbon Treaty:

http://europa.eu/lisbon_treaty/index_en.htm

The treaty texts, in all official EU languages:

http://europa.eu/lisbon_treaty/full_text/index_en.htm

The reasons for the treaty, according to Barroso:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/204&format=HTML&aged=0&language=EN&guiLanguage=en>

European Court of Justice:

<http://curia.europa.eu/>

European Parliament:

<http://www.europarl.europa.eu/>

European Commission:

http://ec.europa.eu/index_en.htm

Jens-Peter Bonde of the Danish EU-sceptics Junibevægelsen is a prolific writer and has published many books on EU matters, which generally are available to download for free.

Consolidated, reader friendly Lisbon Treaty:

http://www.bonde.com/index.php/bonde_uk/article/reader_friendly_edition_of_the_lisbon_treaty

This little book deserves particular recommendation. It is written in a straight language for the average citizen, and it lists up the amazing stack of trickery employed to resurrect the Constitution Treaty:

From Constitution to Lisbon Treaty, an analysis of the Treaty and the process:

http://www.j.dk/exp/images/bondes/From_EU_Constitution_to_Lisbon_Treaty_april_2008.pdf

A legal analysis of the Treaty by lawyer Klaus Heeger:

http://www.j.dk/exp/images/bondes/13.03.08_COMPARISON_OF_THE_2007_LISBON_TREATY.pdf

OpenEurope has authored this guide to the consequences of the Constitution/Lisbon treaty:

<http://www.openeurope.org.uk/research/guide.pdf>

A comparison of the Constitution and the Lisbon Treaties show them to be substantially equal:

<http://www.openeurope.org.uk/research/comparative.pdf>

Opinion polls show that all citizens in all European countries desire referendums:
<http://www.openeurope.org.uk/media-centre/pressrelease.aspx?pressreleaseid=31>

Wikipedia has a very usable collection of material concerning the constitution, with an overview here:

http://en.wikipedia.org/wiki/Category:European_Constitution

While Wikipedia for several purposes is a problematic source, it is usable for factual details as these.

[http://en.wikipedia.org/wiki/Legitimacy_\(political_science\)](http://en.wikipedia.org/wiki/Legitimacy_(political_science))

http://en.wikipedia.org/wiki/Separation_of_powers

Brussels Journal published several quite sharp articles about the Treaty:

Commission Running Scared of the People: Good

<http://www.brusselsjournal.com/node/2184>

Not a Comma Has Changed!

<http://www.brusselsjournal.com/node/2700>

These Boots are Gonna Walk All Over You (An analysis by Prof. Anthony Coughlan)

<http://www.brusselsjournal.com/node/2773>

How 'Mini' is the EU's "Mini Treaty"?

<http://www.brusselsjournal.com/node/2780>

Ever Closer Union: An Introduction to European Integration:

<http://www.rienner.com/dinaneve.pdf>

There exists an Internet page for 'Citizens Initiatives':

<http://www.citizens-initiative.eu/>

Interestingly, it is empty.

Statements by Irish MEP's on the treaty:

http://www.europarl.ie/lisbontreaty_meps.html

egoeccentric's Idiots Guide To The Lisbon Treaty

<http://egoeccentric.blogspot.com/2008/04/egoeccentrics-idiots-guide-to-lisbon.html>