

Open Europe parliamentary briefing #4

The Single Market: what are the implications of the new treaty?

Key points

- The EU's so-called deregulation drive is nothing more than empty rhetoric - the burden of EU regulation is increasing. According to the British Chambers of Commerce, EU regulation introduced since 1997 has cost UK firms (£40bn) - this equates to 72% of costs of all regulation introduced since that date. The growing body of EU laws is inflicting massive damage on Europe's economy, and Treaty does nothing to address this issue.
- In fact, the treaty will make matters worse, meaning 30% less power for the UK to block EU laws. Everyone - including the Government - admits that the UK's blocking power will be cut. The Treaty lowers the threshold for passing EU law, meaning legislation can be passed more easily - thereby increasing the flow of damaging EU regulations. This is what supporters of the Treaty mean when they speak of 'streamlining EU decision-making'.
- One of the key arguments of supporters of the Treaty is that unless the rules are changed to make it easier to pass legislation, the EU will "grind to a halt." However, there is absolutely no evidence to support this argument. In fact, academic studies show the EU of 27 member states has been legislating even faster than the EU of 15 ever did.
- The UK will have less power to block damaging EU measures already in the pipeline. The UK's opt-out from the Working Time Directive is worth £9 billion a year - the treaty will weaken Britain's ability to defend its opt-out. Similarly, the Temporary Agency Workers Directive - vigorously opposed by the UK - would have a clearer path to becoming binding law. The measure could cost Britain 250,000 jobs. The EU's persistence in pressing these issues clearly demonstrates that, despite its rhetoric, Europe is simply not taking the objective of liberalisation seriously. In fact, the EU is moving in the opposite direction, still failing to face up the realities of chronically declining competitiveness, economic stagnation and diminishing global power.
- The Treaty means it will become easier for the EU to pass law. But most people in business believe that the EU is already producing too much regulation. An ICM poll of 1,000 UK Chief Executives at the end of 2006 found that 59% thought that the burden of EU regulation was rising, and 54% now think the benefits of the Single Market are outweighed by the costs of EU regulation. EU regulation is already hitting business hard. **Making it easier to pass regulation means more regulation and more cost.**
- Changes to voting systems will not only increase the quantity, but also reduce the quality of EU legislation, making it harder for the UK and other liberal member states to block harmful or protectionist laws. Under the new system, the UK would have less weight to amend legislation it is unhappy with.

- The Treaty would abolish the veto on employment law relating to self-employed workers. This covers everything from whether plumbers, electricians and other self-employed service providers have their qualifications recognised in other countries, health and safety questions and their rights at work. It will also give the EU more power to coordinate employment policy more generally.
- The Government has continually claimed that the Treaty will assist liberalisation in energy markets. This is untrue, as the Commission has already proposed legislation - subject to majority voting under current Single Market rules - to break up energy monopolies. The UK originally tried to have the entire article on energy deleted, but has tried to cover up its failure in this area by advancing a false argument in favour of the Treaty. Lisbon does not assist energy liberalisation - the changes in this area have more to do with extending EU power over national energy resources.
- The Treaty will allow the EU to accelerate its plans for extending the Single Market into healthcare. This is particularly controversial in the UK, given the unique nature of the NHS in Europe. As a result of the extension of majority voting in healthcare, the enlarged 'legal toolbox' created by the Charter of Fundamental Rights, and the changes in EU competences, the capacity for building the pan-European Single Market into healthcare is radically strengthened under Lisbon.
- The Treaty expands the rules of the Single Market into new areas. Trade in services, intellectual property rights, and foreign direct investment are brought under the umbrella of the "uniform principles" on which the Common Commercial Policy is based, for the first time. The EU would acquire the same powers over these issues that it has over trade in goods. This means that it would be able to develop policy in this area by majority voting. The new powers could provide a stronger basis for EU-level legislation on Sovereign Wealth Funds decided by majority voting. Because of the particular importance of the City of London as a conduit for these funds, the UK is opposed to EU regulations in this area.

In detail

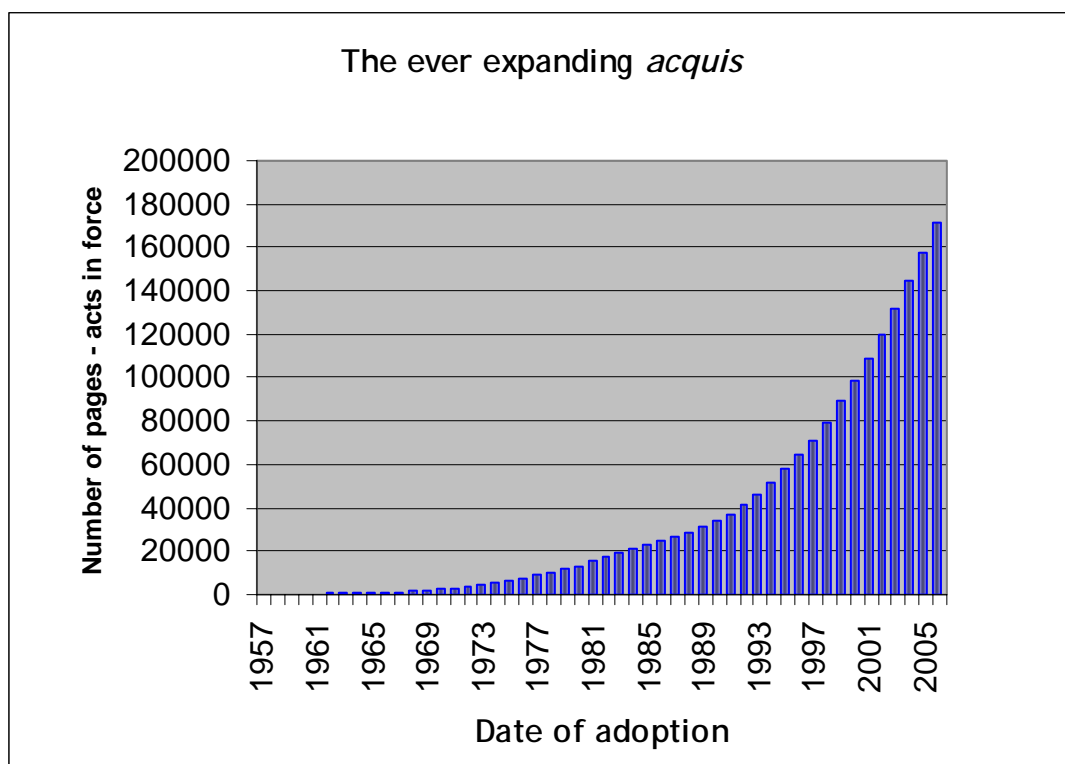
The EU deregulation agenda is failing;

The Treaty ducks the big issue in relation to the single market - deregulation

- The EU has had a deregulation agenda for years, but it has come to nothing. The new treaty does not create any new powers to assist liberalisation or slash regulation. As argued in the following sections, the Treaty in fact makes it easier for the EU to legislate - meaning more regulation and more cost.
- At the Lisbon Council in March 2000 it was agreed that the Commission would try to simplify and improve the EU's regulatory environment in line with the aim of making the EU the most competitive economy in the world

by 2010. In July 2001, the White Paper on European Governance was adopted, including a section on improving the quality of legislation, and in June 2002, the Commission presented an Action Plan on “Simplifying and improving the regulatory environment” with a series of measures in the field of better regulation.

- Despite all these papers and plans, there has actually been a huge increase in the burden of EU regulation over the last ten years. This is now visible in the physical volume of EU legislation. The EU’s *acquis communautaire*, the body of EU legislation which European companies, charities and individuals have to comply, has grown over the last ten years from 70,000 to 170,000 pages. This rapid expansion shows no sign of abating.



Source: EU database [Eur-lex](#)

The growing *acquis* is inflicting massive damage to the EU’s economy

- The Commission’s inability to tackle the ever expanding reams of legislation is not just a technical point - it has very real implications for the EU’s economy. EU Industry Commissioner Gunter Verheugen told the FT in October 2006 that EU legislation now costs European business €600 billion (£405 billion) a year, on the basis of a new evaluation of the administrative costs of red tape. This figure is almost twice the previous estimate of €320bn, and represents 5.5% of total EU GDP. This is the equivalent of the EU losing the entire output of a medium-sized country like Holland every year.

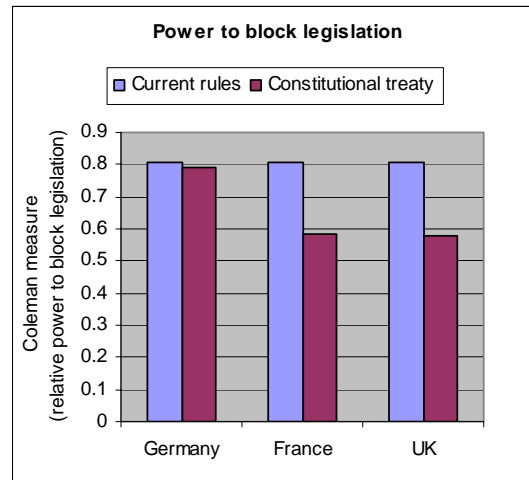
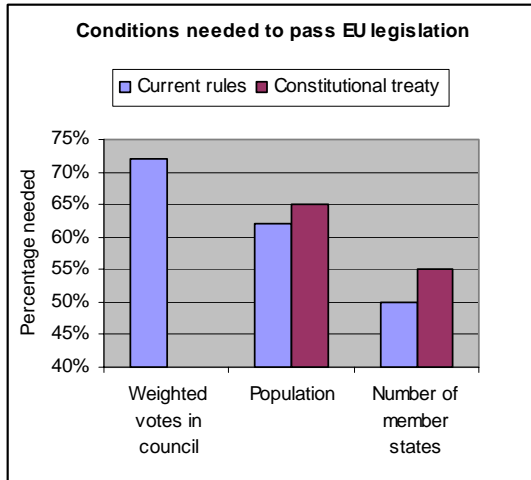
- This was seen by many as an admission from the Commission that the benefits of the Single Market are now being outweighed by the costs of the extra regulation that the EU claims is necessary to create it. The Commission's own estimate of the benefit of the single market is that between 1986 and 2002 it increased EU GDP by €165 billion. Crucially this means that the costs of EU regulation are now outweighing the benefits of the Single Market.

The enlarged EU is legislating faster than before new members joined

- Some argue that unless the rules are changed to make it easier to pass legislation then the EU will "grind to a halt." However, there is absolutely no evidence to support this assertion. In fact, the EU of 27 member states has proved to be a more nimble legislative machine than the EU of 15.
- A study of legislation by academics at Paris-based university Sciences-Po found that the EU has in fact been adopting new rules and regulations some 25% *faster* since the EU's enlargement to 10 new member states in 2004, and that "old" member states are in fact twice as likely to block measures as "new" countries. A more recent study by Professor Helen Wallace from the LSE confirmed that the notion that the EU has become "gridlocked" since enlargement and that it needs the EU Constitution to function properly again is wrong. She said, "The evidence of practice since May 2004 suggests that the EU's institutional processes and practice have stood up rather robustly to the impact of enlargement."

30% less power for the UK to block EU laws - will increase the flow of damaging EU regulations

- Changes to the system by which votes in the EU Council are taken will mean that almost all member states would find it more difficult to block legislation under the new system. This change is directly carried over from the original EU Constitution. However, (unlike in the Constitution) the new voting system will not come into effect until five years after the rest of the Treaty is intended to come into force.
- Under the proposed system, Germany is the only large member state whose power stays roughly the same. The UK stands to lose nearly 30% percent of its ability to block EU legislation in the Council.
- The Treaty makes passing legislation easier. This is what supporters of the Treaty mean when they speak of 'streamlining EU decision-making'.



(Source: Felsenthal and Machover, 2004)

Everyone admits the Treaty will weaken Britain’s blocking power

- A Foreign Office spokesman admitted to the Independent last year that under the new Treaty, "our ability to block a measure would marginally decrease".¹ Even pro-euro groups like the Centre for European Reform and "Business for New Europe" acknowledge this point: they note that "Under the new system, those opposing a law would find it slightly harder to block it." (Joint briefing paper, May 2007)

Less power to resist damaging laws the UK is currently blocking

- If the new voting system comes into play then controversial measures the UK is currently blocking would be more likely to pass:
 - 1) The Working Time Directive. It will be harder for the UK to block any proposal to scrap the UK’s opt-out from the Working Time Directive. The Department of Trade and Industry estimated the UK exemption from the Working Time Directive is worth £9 billion a year.
 - 2) The Temporary Agency Workers Directive. This would give temporary workers the same employment rights as permanent workers. The CBI has warned that the directive could cost the UK 250,000 jobs, and the UK Government has so far fought hard to stop the directive being passed. The ability of the UK to defend its position in regard to this Directive is even now very fragile - under the new voting system it would almost certainly become unsustainable.

¹ Independent (31.08.07)

More EU laws - but resentment of EU overregulation growing within business community

- The net effect of the voting system change is that it will become easier for the EU to pass law. But most people in business believe that the EU is already producing too much regulation.
 - An ICM poll of 1,000 UK Chief Executives at the end of 2006 found that 59% thought that the burden of EU regulation was rising, and 54% now think the benefits of the Single Market are outweighed by the costs of EU regulation.
 - According to the British Chambers of Commerce, EU regulation introduced since 1997 has cost UK firms (£40bn) - this equates to 72% of costs of all regulation introduced since that date. EU regulation is already hitting business hard. **Making it easier to pass regulation means more regulation and more cost.**

Lisbon means more quantity and less quality in EU legislation

- Changes to voting systems will not only increase the quantity, but also reduce the quality of EU legislation, making it harder for the UK and other liberal member states to block and amend harmful or protectionist laws.
- The UK, together with other liberal member states, has in the past been able to use its blocking weight to steer EU legislation away from harmful protectionism. Some of the more harmful proposals contained in the Markets in Financial Instruments Directive (MiFID), Prospectus Directive, Consumer Credit Directive, Transparency Directive, amongst others, were successfully removed under pressure from the UK, using blocking power to soften the blow of these regulations.
- Under the new system, the UK would have less power to amend legislation it is unhappy with. With regulations in the pipeline such as Solvency II (dealing with insurance) and possible cross-border rules for selling mortgages, this could be very significant. There is also likely to be an EU response (possibly through a new wave of regulation) to the current global financial turbulence. Any EU regulation in the area of financial services generally affects the UK proportionately more than any other EU state, given the City of London's pre-eminence in this sector.

The Single Market will expand to new areas - health services will be affected

- On the back of court judgements, the EU has already begun expanding the borders of the Single Market into the area of healthcare. This is an extremely controversial development, particularly for the UK given the unique funding structure of the NHS.

- Under Lisbon, the EU would be given more scope to push the boundaries of the Single Market into healthcare. Majority voting would be extended to legislation dealing with any “serious cross border threats to health”. The Commission already indicates that diseases such as tuberculosis, measles and influenza are such cross-border risks to human health. It is also possible that infectious agents in chronic conditions such as cancer, heart diseases or allergies could be brought within this category.² Under the new Treaty, it is easy to envisage a situation in which the Commission could propose legislation setting clinical priorities on the basis of the above criteria. The British Medical Association has noted that “the clause which empowers the EU to act on ‘serious’ threats to health, opens the way for the EU to initiate legislation on a whole range of health determinants.”
- Public health would be classified as a “shared competence” under the Treaty (a move opposed by the UK), meaning the scope for the Union to build its powers over health is again widened. The treaty affirms that in areas of shared competence, “Member States shall exercise their competence to the extent that the Union has not exercised its competence”, meaning Union competence can be extended progressively and irreversibly over these areas.
- The role of the European Court of Justice could also be strengthened through the provisions in the Charter of Fundamental Rights outlining a “right to preventative healthcare”. This will mean more scope for expanding Union power over healthcare through the judicial avenue.
- The proposed Health Services Directive is based on the precedent already set by EU case law, showing how the EU has used this method in the past to progressively bring healthcare within the ambit of the Single Market. As a result of the extension of QMV, the enlarged ‘legal toolbox’ created by the Charter, and the changes in EU competences, the capacity for building the pan-European Single Market into healthcare is radically strengthened under Lisbon.

Veto is abolished on Foreign Direct Investment and trade in services. An open door to protectionism?

“The Reform Treaty will extend the scope of the trade policy to include all foreign direct investments and makes it clearly an exclusive competence of the Union.”

- European Commission, July 2007

- Under the new Article 207 [188C] (1) TFEU (the original Constitution’s Article III-315), trade in services, intellectual property rights, and foreign direct investment are brought under the umbrella of the “uniform principles” on which the Common Commercial Policy is based, for the first time. The EU would acquire the same powers over these issues that it has over trade in goods. This means that it would be able to develop policy in these areas by majority voting.

² http://ec.europa.eu/health/ph_threats/com/comm_diseases_en.htm

This could make it easier for the EU to regulate Sovereign Wealth Funds

- In theory the EU, using its existing powers relating to capital and payments, has the ability already to set policies which would allow the blocking of takeovers by Sovereign Wealth Funds. However these powers can only be exercised with the agreement of all member states. This is unchanged by Lisbon, but what would change, as noted in the section above, is that Foreign Direct Investment is brought into the Common Commercial Policy (CCP). Crucially, decisions relating to the CCP will all be made by qualified majority voting. This raises the prospect of protectionist member states in the EU using the new powers to stop Sovereign Wealth Funds from purchasing so-called “national champion” companies like banks, airlines and energy utilities.
- The Commission has already talked about clamping down on Sovereign Wealth Funds. Last November it indicated that it was considering legislation which would restrict the sectors these funds could invest in.³
- The UK is opposed to EU-level restrictions on Sovereign Wealth Funds.⁴ Indeed, such a measure could jeopardise the City of London's ability to serve as hub for the investment flows from Asia, the Middle East, and Russia.

More Union power over coordination of Employment policy

- Article 5(2) [2D] TFEU states that: “The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.”
- The UK Government tried to have this deleted several times. In an amendment issued to the European Convention, UK Government negotiator Lord Tomlinson called for this clause to be deleted. However, this objection was ignored. The Government also asked for employment policy to be moved from the list of “shared competences” into the list of “supporting competences”, so that it would not be covered by the provision that where competences are shared, member states may only act if the EU chooses not to. But this request was also ignored.

Abolition of veto on regulations for self-employed workers

- Article 53 [47] TFEU would abolish the veto on employment law relating to self employed workers. This covers everything from whether plumbers, electricians and other self-employed service providers have their qualifications recognised in other countries, health and safety questions and their rights at work.

³ <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2007/11/29/cnfunds129.xml>

⁴ <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2007/11/29/cnfunds129.xml>

- A Commission green paper in 2006 suggested that the EU should extend the same rights that full time workers have to the self-employed. In so far as the article allows for recognition of qualifications and standards it might also touch on some of the same kinds of issues as raised by the controversial Services Directive. Legislation in this area is also likely to spill over into wider employment law.
- The Charter of Fundamental Rights also contains a large number of articles which might affect employment law. For example, it states that third country nationals who are entitled to work on member states' territories "are entitled to working conditions equivalent to those of citizens of the Union."

The Treaty does nothing for energy liberalisation

- The EU Constitution will mean new EU powers over energy policy. The UK Government made a good argument against giving the EU more powers in this area when the original Constitution was being drawn up, but then later gave in. Moving to majority voting in this area could prevent the UK from blocking a costly proposal to increase oil reserves, which could cost the UK £6bn.
- The Government is now advancing a dishonest argument to cover up its failure in this area, claiming that the new power is needed to break up energy monopolies - but the EU already has power to do this, as this is covered by majority voting under the Internal Market.