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The new deal, a good deal ?

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The heads of state and government laboured until the early hours of Saturday morning until they found an agreement on how to reform the EU. Was this a good deal, or a badly thought through compromise? Our judgment is positive.

Although they may not specifically be mentioned in the Council Conclusions of the Brussels meeting of the European Council, most of the key innovations contained in the Constitutional Treaty (CT) have been maintained in the new agreement reached. The loss of all forms and symbols of a constitution may be regretted, but the truth is that they were not supported by public opinion in most member states.

The most important elements that have been retained and will now become part of the treaties are:

- A single legal personality for the EU, and, thank to a Declaration to be adopted by the Intergovernmental Conference, the supremacy of EU law.
- The provisions on democratic principles, including the citizens initiative, now supplemented by a stronger role for national parliaments.
- Stronger safeguards against any unwanted drift of powers to Brussels, thanks to the new Protocols on the role of national parliaments in the EU and the application of the principles of subsidiarity and proportionality. Furthermore, it is now explicitly contemplated that competences may be given back to the member states, when they have not been exercised or it is deemed by the Council that they should no longer be exercised at Union level.
- The entire package on the institutions, including a permanent Presidency for the EU, with a proper secretariat, election of the Commission President by the EP, new powers for the Commission president, the reduction of the number of Commissioners, etc.
- The incorporation of Justice and Home Affairs into the 'normal' EU business, co-decided with qualified majority voting by Council and Parliament. The opt-out clauses for the UK – i.e. the fact that other countries might also decide to request them – might create operational difficulties, but they will also constitute a useful test: if co-decision and qualified majority voting in the area of justice, freedom

and security works well, those remaining outside today might sooner or later have to re-consider their position.

Taken together all this amounts to an impressive step forward, resolving issues that had been left in limbo by the last two treaty changes. The new institutional balance between the main actors of the Union and the new rules on the functioning of institutions should now make it possible for the Union to fully resume its initiative internally and internationally, putting to rest the doubts and divisions of recent years.

Not everything is positive, of course. One setback is that – while the double majority voting system in the Council of the Union has been agreed upon – the present voting system in the Council ‘à la Nicoise’ will be maintained for another 5 years, and the new system will not be fully operational until 2017. Academic research suggests that this will slow down decisions, although actual experience in the Council suggests that most decisions will continue to be taken without resorting to a formal vote.

Another setback is the deletion of “undistorted competition” in the internal market from Union goals; and a new Protocol on services of general interest is also meant to strengthen the leeway that may be exercised in the application of competition principles. These changes appear largely symbolic, since they do not affect treaty articles on competition policy; however, some fear that they might tilt the decisions of the Court of Justice in competition cases in undesirable directions.

In foreign and security policy, the need to remove any symbol of statehood from Union institutions has led to the abandonment of the title of foreign minister and a reversion to the present title of high representative. However, the possibilities for the Union to act have been strengthened, notably as a result of the unification of this figure – which will chair the Foreign Affairs Council – with the commissioner for external relations, the creation of a common foreign service and enhanced possibilities to act in the implementation of common policies, notably in the area of defence.

One potentially important improvement derives from the fact that there will be two treaties: one Treaty on the EU, which contains most (unfortunately, not all) of the institutional provisions and a second treaty ‘on the functioning of the Union’. The first is close in character to a ‘fundamental law’ or constitution at the national level, whereas the second is closer to implementing legislation. It is thus fitting that certain provisions (for example, passage by qualified majority voting in new areas) of the second treaty can be modified by a simplified procedure. Herein lies the germ of an idea for an important improvement: a true two-treaty structure based on a fundamental law on which everybody has to agree, and provisions on specific policies, on which political dissent is normal and which can thus be modified more easily, as a result of partisan political debates. This aspect was foreshadowed in a recent CEPS Policy Brief by Sebastian Kurpas and Stefano Micossi (see http://shop.ceps.eu/BookDetail.php?item_id=1473).

Finally, it is clear that this is not the last word on the structure of the EU. Eliminating all references to a constitution has one advantage: nobody can be surprised when new Treaty revisions will be proposed even before all of the provisions of this one have been implemented.