

Copenhagen the 7th of february 2012

To

The EU Presidency, the Governments of the EU member states, and the EU populations

The first of January 2012 Denmark took on the role as President of the EU with responsibility for the political process in the EU until the first of July 2012.

With this letter we want to draw the attention of the EU Presidency, the governments of the EU member states and the EU populations to a problem, which has so far been suppressed, a problem that might complicate the Presidency for the Danish government as for the current serious problems in the EU.

The problem we are hinting at is the fact that legitimate doubt has been raised whether the Danish accession to the Lisbon Treaty, which happened by law of the 30<sup>th</sup> of April 2008, is in agreement with the Danish Constitution or the law has been passed in contravention of article 20 in the Constitution. This article prescribes a referendum on every law that is implying surrender of Danish right of self-determination – a so-called surrender of sovereignty to the EU. A referendum can only be omitted if 150 members of the Parliament's 179 members are voting for the law, which will be considered as unthinkable for the time being.

If the law of accession is unconstitutional it means that Denmark has not validly acceded to the Lisbon Treaty.

In the light of this, 34 plaintiffs summoned the Danish Government in June 2008 with the claim that the Government shall be convicted for having decided to accede to the Lisbon Treaty in defiance of the Danish Constitution for which reason the law of accession is also void. The plaintiffs are a series of citizens from committed segments of the Danish society – i.a. economists, lawyers, jurists, painters, writers, people from the trade unions and folk high schools, ministers and journalists.

During the hearing in the High Court the Danish Government attempted to preclude a legal showdown about the meaning of the Constitution by claiming that individual persons do not have the right to start proceedings cases connected to article 20.

However the Government was overruled! The 11<sup>th</sup> of January 2011 the Supreme Court agreed with us that the plaintiffs have the right to get the meaning of the Constitution tried at the courts of law. For the time being the lawsuit is considered in the High Court in Copenhagen.

The most important questions which are considered by the High Court, and which are all – in agreement with the plaintiffs' claims demanding a referendum – are all about curtailment of Danish right of self-determination. Our business does not require a detailed and exhaustive mentioning of the reasons of the plaintiffs, only some points, which could be of interest for all the inhabitants of the Member States who – like the Danish citizens – have no influence since all the governments have decided that the Lisbon Treaty should be binding without a referendum.

For the Danish population it is especially problematic:

- (1) – **that** the Lisbon Treaty implies thorough changes in the functions of the EU institutions

and procedures, not least a massive change from unanimity to majority votes. Regardless of the fact that the Treaty describes a majority as a “qualified majority”, the Treaty means that the possibility of saying no up to now by virtue of the hitherto existing treaties’ claim of unanimity a real surrender of sovereignty. The fact that this is a central theme is a key point in the Supreme Court’s judgment on getting the meaning of the Constitution tried at the courts of law.

- (2) – **that** the hitherto access for EU to pass “appropriate rules” provided that “it seems necessary in order to reach one of the goals” of unspecified fields of responsibility (*the decision on flexibility*) the article 352 of the Lisbon Treaty is extended as a result of the Treaty’s considerable enlargements of the purposes of the EU. About the identical provision in the Treaty of the Constitution the Ministry of Justice stated in report of November 22 2004 that it requires adoption according to article 20 in the Constitution because it is not “possible to exactly to indicate in which concrete incident there will turn out to be basis for using the rule”. This obvious reason for demanding article 20 brought into play has been ‘forgotten’ by the Ministry of Justice compared to the identical – in some aspects more extensive – regulation in the Lisbon Treaty.
- (3) – **that** the Lisbon Treaty (article 216) ascribes EU power to contract international treaties with other countries and international organizations. This EU power is most extensive. Article 216 decides that EU can contract international treaties with other countries and international organizations. This EU power is highly extensive. Article 216 decides that EU can contract binding agreements wherever EU agencies find it necessary in order “to reach one of the goals which are defined in the treaties.” According to the Lisbon Treaty the international agreements of the EU are binding for member states and their populations. In the Danish accession law it has been disregarded that according to the Danish Constitution it rests with the Government – and only the Government – to bind us to international agreements according to article 19 in the Constitution.
- (4) – **that** accession to the EU Charter and the European Human Rights Convention and the accession to the case law of the EU court of law as parts of the Treaty holds considerable expansions of the EU power.

The pending case against the Government will be verbally negotiated at the end of March and the beginning of April. The passing of the conviction is suspected in May. Whatever the outcome of the conviction is, it is suspected that it will be appealed to the Supreme Court and that the case will at the earliest be determined in 2013.

This means that EU in this half year is headed by a member state with a questioned and unclarified relationship to the treaty basis of the EU.

The Board of the Referendum Committee 2010 ([www.lissabonsagen.dk](http://www.lissabonsagen.dk))

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