



## THE TREATY OF LISBON

This fact sheet presents the background and essential provisions of the Treaty of Lisbon. The objective is to provide a historical context for the emergence of this latest fundamental EU text from the ones which came before it. The specific provisions (with article references) and their effects on European Union policies are explained in more detail in the fact sheets dealing with particular policies and issues.

### LEGAL BASIS

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007); entry into force on 1 December 2009.

### HISTORY

The Lisbon Treaty started as a constitutional project at the end of 2001 (European Council declaration on the future of the European Union, or Laeken declaration), and was followed up in 2002 and 2003 by the European Convention which drafted the Treaty establishing a Constitution for Europe (Constitutional Treaty) (1.1.4). The process leading to the Lisbon Treaty is a result of the negative outcome of two referenda on the Constitutional Treaty in May and June 2005, in response to which the European Council decided to have a two-year ‘period of reflection’. Finally, on the basis of the Berlin declaration of March 2007, the European Council of 21 to 23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference (IGC), under the Portuguese presidency. The IGC concluded its work in October 2007. The Treaty was signed at the European Council of Lisbon on 13 December 2007 and has been ratified by all Member States.

### CONTENT

#### A. Objectives and legal principles

The Treaty establishing the European Community is renamed the ‘Treaty on the Functioning of the European Union’ and the term ‘Community’ is replaced by ‘Union’ throughout the text. The Union takes the place of the Community and is its legal successor. The Lisbon Treaty does not create state-like Union symbols like a flag or an anthem. Although the new text is hence no longer a constitutional treaty by name, it preserves most of the substantial achievements.

No additional exclusive competences are transferred to the Union by the Lisbon Treaty. However, it changes the way the Union exercises its existing powers and some new (shared) powers, by enhancing citizens’ participation and protection, creating a new institutional set-up and modifying the decision-making processes for increased efficiency and transparency. A higher level of parliamentary scrutiny and democratic accountability is therefore attained.

Unlike the Constitutional Treaty, the Lisbon Treaty contains no article formally enshrining the supremacy of Union law over national legislation, but a declaration was attached to the Treaty

to this effect (Declaration No 17), referring to an opinion of the Council's Legal Service which reiterates consistent case-law of the Court.

The Lisbon Treaty for the first time clarifies the powers of the Union. It distinguishes three types of competences: exclusive competence, where the Union alone can legislate, and Member States only implement; shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so; and supporting competence, where the EU adopts measures to support or complement Member States' policies. Union competences can now be handed back to the Member States in the course of a treaty revision.

The Lisbon Treaty gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or join an international organisation. Member States may only sign international agreements that are compatible with EU law.

The Treaty for the first time provides for a formal procedure to be followed by Member States wishing to withdraw from the European Union in accordance with their constitutional requirements, namely Article 50 TEU.

The Treaty of Lisbon completes the absorption of the remaining third pillar aspects of the area of freedom, security and justice (FSJ), i.e. police and judicial cooperation in criminal matters, into the first pillar. The former intergovernmental structure ceases to exist, as the acts adopted in this area are now made subject to the ordinary legislative procedure (qualified majority and codecision), using the legal instruments of the Community method (regulations, directives and decisions) unless otherwise specified.

With the Treaty of Lisbon in force, the European Parliament is able to propose amendments to the Treaties, as was already the case for the Council, a Member State government or the Commission. Normally, such an amendment would require the convocation of a Convention which would recommend amendments to an IGC (the European Council could, however, decide not to convene such a Convention, subject to Parliament's consent (Article 48(3) TEU, second paragraph)). An IGC could then be convened to determine amendments to the Treaties by common accord. It is, however, also possible to revise the Treaties without convening an IGC and through simplified revision procedures, where the revision concerns the internal policies and actions of the Union (Article 48(6) and 48(7) TEU). The revision would then be adopted as a decision of the European Council, but might remain subject to national ratification rules.

## **B. Enhanced democracy and better protection of fundamental rights**

The Treaty of Lisbon expresses the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy takes the new form of a citizens' initiative ([4.1.5](#)).

The Charter of Fundamental Rights is not incorporated directly into the Lisbon Treaty, but acquires a legally binding character through Article 6(1) TEU, which gives the Charter the same legal value as the Treaties ([4.1.2](#)).

The process of the EU's accession to the European Convention on Human Rights (ECHR) was opened when the 14th protocol to the ECHR entered into force on 1 June 2010. This allows not only states but also an international organisation, i.e. the European Union, to become signatories of the ECHR. Accession still requires ratification by all states that are parties to the ECHR, as well as by the EU itself. Negotiations between Council of Europe and EU representatives led to the finalisation of a draft agreement in April 2013, which, however, was deemed incompatible with Article 6 TEU by the Court of Justice of the European Union in its Opinion 2/2013. Further negotiations will be necessary before accession can take place.

## C. A new institutional set-up

### 1. The European Parliament

Pursuant to Article 14(2) TEU, the EP is now ‘composed of representatives of the Union’s citizens’, not of representatives of ‘the peoples of the States’ (Article 189 TEC).

The EP’s legislative powers have been increased through the ‘ordinary legislative procedure’, which replaces the former codecision procedure. This procedure now applies to more than 40 new policy areas, raising the total number to 73. The assent procedure continues to exist as ‘consent’, and the consultation procedure remains unchanged. The new budgetary procedure creates full parity between Parliament and the Council for approval of the annual budget. The multiannual financial framework has to be agreed by Parliament (consent).

The EP now elects the President of the Commission by a majority of its members on a proposal from the European Council, which is obliged to select a candidate by qualified majority, taking into account the outcome of the European elections. The EP continues to approve the Commission as a college.

The maximum number of MEPs has been set at 751. The maximum number of seats per Member State is reduced to 96; the minimum number is increased to 6. Germany kept its 99 MEPs until the 2014 elections.

### 2. The European Council

The Lisbon Treaty formally recognises the European Council as an EU institution, responsible for providing the Union with the ‘impetus necessary for its development’ and for defining its ‘general political directions and priorities’. The European Council has no legislative functions. A long-term presidency replaces the previous system of six-month rotation. The President is elected by a qualified majority of the European Council for a renewable term of 30 months. This should improve the continuity and coherence of the European Council’s work. The President also represents the Union externally, without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy (see below).

### 3. The Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR)

The VP/HR is appointed by a qualified majority of the European Council with the agreement of the President of the Commission and is responsible for the EU’s common foreign and security policy, with the right to put forward proposals. Besides chairing the Foreign Affairs Council, the VP/HR also has the role of Vice-President of the Commission. The VP/HR is assisted by the European External Action Service, which comprises staff from the Council, the Commission and national diplomatic services.

### 4. The Council

Lisbon maintains the principle of double majority voting (citizens and Member States). However, the previous arrangements remained in place until November 2014; since 1 November 2014, the new rules apply. The use of previous voting weights could still be requested by any Member State until 31 March 2017.

A qualified majority is reached when 55% of members of the Council, comprising at least 65% of the population, support a proposal (Article 16(4) TEU). When the Council is not acting on a proposal from the Commission or the VP/HR, the necessary majority of Member States increases to 72% (Article 238(2) TFEU). To block legislation, at least four Member States have to vote against a proposal. A new scheme inspired by the ‘Ioannina compromise’ will allow 55%

(75% until 1 April 2017) of the Member States necessary for the blocking minority to ask for reconsideration of a proposal during a ‘reasonable time period’ (Declaration 7).

The Council meets in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting is divided into two parts, dealing respectively with legislative acts and non-legislative activities. The Council Presidency continues to rotate on a six-month basis, but there are 18-month group presidencies of three Member States in order to ensure better continuity of work. As an exception, the Foreign Affairs Council is continuously chaired by the VP/HR.

## **5. The Commission**

Since the President of the Commission is now chosen and elected taking into account the outcome of the European elections, the political legitimacy of the office is increased. The President is responsible for the internal organisation of the college (appointment of commissioners, distribution of portfolios, request to resign under particular circumstances).

## **6. The Court of Justice of the European Union**

The jurisdiction of the Court is extended to all activities of the Union with the exception of the CFSP. The number of Advocates-General can be increased from eight to eleven. Specialised courts can be set up with the consent of Parliament. Access to the Court is facilitated for individuals. A European Public Prosecutor’s Office should be set up in order to investigate, prosecute and bring to judgment offences against the Union’s financial interests.

### **D. More efficient and democratic policy-making with new policies and new competencies**

Several so-called ‘passerelle clauses’ allow a change from unanimous decision-making to qualified majority voting and from the consultation procedure to codecision (Article 31(3) TEU, Articles 81, 153, 192, 312 and 333 TFEU, plus some passerelle-type procedures concerning judicial cooperation in criminal matters) (1.2.4). In areas where the Union has no exclusive powers, at least nine Member States can establish enhanced cooperation among themselves. Authorisation for its use must be granted by the Council after obtaining the consent of the European Parliament. On CFSP matters, unanimity applies.

The Lisbon Treaty considerably strengthens the principle of subsidiarity by involving the national parliaments in the decision-making process (1.3.5). A certain number of new or extended policies have been introduced in environment policy, which now includes the fight against climate change, and energy policy, which makes new references to solidarity and the security and interconnectivity of supply. Furthermore, intellectual property rights, sport, space, tourism, civil protection and administrative cooperation are now possible subjects of EU law-making.

On the common security and defence policy (CSDP) (5.1.2), the Lisbon Treaty introduces a mutual defence clause which provides that all Member States are obliged to provide help to a Member State under attack. A solidarity clause provides that the Union and each of its Member States have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack. A ‘permanent structured cooperation’ is open to all Member States which commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action. To establish such cooperation, it is necessary to obtain a qualified majority in Council after consultation with the VP/HR.

## **ROLE OF THE EUROPEAN PARLIAMENT**

See [1.1.4](#) for Parliament's contributions to the European Convention and its implication in previous IGCs. With respect to the 2007 IGC, leading to the signature of the Treaty of Lisbon, Parliament for the first time sent three representatives to the conference under the Portuguese presidency. In February 2017, Parliament approved two major resolutions aimed at reviewing the constitutional framework set out by the Lisbon Treaty: one on improving the functioning of the European Union by building on the potential of the Lisbon Treaty, and the other on the possible evolution of and adjustments to the current institutional set-up of the European Union.

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