



The European Union After Lisbon

On December 1, 2009, after a long and protracted ratification process, the European Union’s new Lisbon Treaty finally entered into force. This brought to an end the EU’s drawn-out reform process that started in the early 2000s and aimed at preparing the European institutions for Enlargement. With the debate on constitutional reforms finally settled, the EU has moved into the implementation stage and is adapting to its new institutional reality. This paper reviews the EU’s constitutional reform process over the last few years and highlights the main changes brought about by the Lisbon Treaty.

The Long Road to Lisbon

The starting point on the EU’s long and twisted road to Lisbon has been the EU’s need to adapt its complex institutional set-up to the challenges of Eastern Enlargement. In 2004, with one big sweep, EU membership expanded from 15 to 25 countries, irrevocably changing the focus and dynamic of European integration. In 2007, a further two countries – Rumania and Bulgaria – joined the EU, raising its membership to 27. Unsurprisingly, this near doubling in membership stretched the EU institutions – originally designed for a much smaller group of countries – to breaking-point and has tested European cohesion. In anticipation of these changes, EU Head of States and Government convened the “Convention on the Future of Europe” in 2002 to provide the EU with a Constitution that would ensure the effectiveness of its institutions following Eastern Enlargement.

Taking its cues from the 2001 Laeken Declaration, in which EU Heads of State and Government set out their ambitions for creating a more democratic and transparent European Union able to take on a greater global role, the European Convention merged the EU’s existing treaties into one consolidated document and proposed a number of institutional reforms. The European Convention, presided over by former French President Valéry Giscard d’Estaing, did so with unprecedented transparency and involving a variety of stakeholders and civil society organizations. The resulting Constitutional Treaty was approved with some changes by the 25 EU governments that were part of the EU at the time and signed during an official ceremony in Rome in October 2004.

To ratify the new Constitution, several European countries organized public referendums throughout 2005. But although a Spanish referendum approved the Constitution with a comfortable majority and the treaty was ratified by a number of national Parliaments, the Constitution was rejected first in France (55% to 45%) and later in the Netherlands (61% to 39%) in May-June 2005. While the ratification process continued in some countries, EU governments ultimately decided to call a “reflection period” in order to weigh their

reform options. Following the recommendations of a group of high-level European politicians, EU governments decided to aim for a less ambitious treaty that abandoned the constitutional nature of the reforms, but preserved a good deal of its institutional changes. Germany's 2007 EU Presidency declared the reflection period to be over and negotiations on the text of the treaty restarted. A final version of the new treaty was at last agreed upon in October 2007 and signed by the EU governments in December 2007 in Lisbon.

The new Lisbon Treaty consists of a shorter version of the former EU Constitution that dropped much of its ambitious exterior – such as a formally sanctioned EU anthem and flag – but for the rest preserved some 90% of the Constitution's provisions. While the original schedule foresaw the ratification of the treaty by the end of 2008, its rejection by Ireland – the only EU country to hold a public referendum on the treaty – in June 2008 once again put a stop to the ratification process. After receiving special guarantees on a number of sensitive issues – namely abortion, taxation and military neutrality, and following a crippling financial crisis, the Treaty was once more put to a referendum in Ireland in October 2009. This time, the Lisbon Treaty received a slim majority that opened the way for its final ratification by a number of European countries that had delayed their endorsement.

The President of the Czech Republic was the last to sign the treaty in November 2009, after obtaining an additional opt-out of the EU Charter of Fundamental Rights, enabling the treaty to enter into force on December 1, 2009. But before this could happen, the ratification was almost derailed by a ruling of the German Constitutional Court, which affirmed the primacy of domestic law and requested a new law strengthening parliamentary oversight over EU legislation. The long-term legal implications of this ruling still remain amorphous and might lead to an erosion of the legal powers of the European Court of Justice (ECJ) – previously the EU's highest legal authority.

Institutional Changes

The Lisbon Treaty introduced a number of significant changes to the institutional set-up of the European Union. The most important of which included the following:

Legal Personality: The Lisbon Treaty introduces a single legal personality for the European Union, abolishing the EU's previous pillar system. As a result, the EU is now able to sign international treaties in its own name and to accede to international organizations, leading to the EU's accession to the WTO after the ratification of Lisbon.

Council Voting Rules: The new treaty amends the way the Council makes decisions. It replaces current voting procedures in those areas where qualified majority voting (QMV) applies with a new “double-majority” voting system. This means that in the future, decisions in these areas will be adopted when they are supported by at least 55% of the countries (at least 15) and represent 65% of the EU's population. The transition to this new voting system will begin in 2014 and will be completed in 2017; until then, the more stringent voting procedures agreed under the Nice treaty will continue to apply. During

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the transition period a member state will be able to ask for the former QMV rules to apply to certain decisions and will be able to suspend decisions using the “Ioannina mechanism.”¹ In those cases when the Council acts neither on a proposal of the Commission nor of the High Representative, decisions will have to be adopted by 72% of member states, while the population requirement remains the same. In order to block any legislation, at least 4 countries (representing 35% of the population) have to vote against a proposal. In addition, the Lisbon Treaty also expands majority voting into a large number of new areas, most importantly police and judicial cooperation (with the UK being granted an opt-out). National vetoes will be maintained in a number of areas, including taxation and foreign affairs. Henceforth all legislative procedural meetings (including voting) will be public.

President of the European Council: The treaty creates the new position of a President of the European Council ([see brief on this issue](#)). The President is to chair meetings of the EU Heads of State and Government and facilitate consensus between them, as well as give strategic direction to EU policies. He reports to the European Parliament after Council meetings and is also responsible for representing the EU abroad “on his level.” The President is appointed by the European Council acting on QMV for a period of two and a half years and can be re-appointed for a second term. He can also be removed by the European Council using the same procedure. Former Belgian Prime Minister Herman van Rompuy was appointed as the first President of the European Council in November 2009. Under the treaty, the European Council also gained official recognition as an EU institution. Under the “emergency brake” procedure, member states may now refer contentious legislation from the Council of Ministers to the European Council.

High Representative for Foreign Affairs: The treaty created a new position: the EU High Representative for Foreign Affairs and Security Policy ([see brief on this issue](#)). The new High Representative will be “double-hatted” in that she will unite in one person both positions fulfilled by the former High Representative Javier Solana and the former Commissioner for External Relations, Benita Ferrero Waldner. To this purpose, the High Representative will also be a Vice-President of the European Commission, but will remain primarily accountable to the Council. In addition, the High Representative will also chair all meetings of the newly created Foreign Affairs Council, taking over this role from the Rotating EU Presidency. By uniting these different roles under one person, it was hoped that the foreign policy of the EU would attain greater coherence and consistency, and break the previous separation between economic policies and more traditional diplomacy. To support the new High Representative, the EU also set up its own diplomatic corps – the European External Action Service – in 2010. The High Representative is appointed by the European Council acting on QMV for a period of five years. In November 2009, EU leaders appointed the former British Trade Commissioner Catherine Ashton as the EU’s first High Representative post-Lisbon.

¹ In essence, the Ioannina compromise allows a delaying of a vote for a “reasonable period of time” in order to find a consensual solution all parties can agree to.

European Parliament: The treaty provides greater powers to the European Parliament by considerably expanding the application of the so-called “ordinary legislative procedure” – previously known as the co-decision procedure ([see brief on this issue](#)). Amongst the new areas to which the ordinary legislative procedure will apply are agriculture and home affairs. This procedure provides the Parliament with a considerable influence over Council legislation. In specifically sensitive areas, a “special legislative procedure” continues to apply. The treaty also changes the number of seats in the European Parliament apportioned to each member state, making the number of seats degressively proportional to population size (representatives from larger states represent more citizens than MEPs from smaller states, but states with large populations still elect more MEPs than smaller states). Lisbon further limits the total number of MEPs to 750 and reduces the maximum number of MEPs a country can have to 96 (e.g. Germany), while increasing the minimum number of MEPs to 6 (e.g. Malta).

National Parliaments: The new treaty provides national Parliaments with greater powers by enabling them to challenge EU legislation in the drafting stage. National Parliaments will now have eight weeks to review EU draft legislations and scrutinize whether they respect the principal of subsidiarity. When they think that EU legislation is incompatible with the principal of subsidiarity, they can send a reasoned opinion to the EU Commission. If one-third of national Parliaments register objections with a particular piece of legislation, the Commission will have to review its proposal or provide a reasoned opinion outlining how its proposals comply with the subsidiarity principal. For justice and home affairs, this is reduced to one-quarter of national Parliaments. In addition, national Parliaments have been granted some additional monitoring rights over Europol and Eurojust, and in the future will be notified about all accession applications.

Other Changes

In addition to these institutional and procedural changes that have considerably altered the way the EU makes and implements decisions, the Lisbon Treaty has also introduced a number of other notable policy innovations.

Solidarity and Defense Clauses: A new solidarity clause promises help and assistance to member states suffering from a terrorist attack or other disasters, while a new common defense clause states that all member states have an “obligation” to assist another member state that has been the victim of an armed aggression on its territory. The treaty specifies that these clauses do not affect the specific character of the security policies of member states (a veiled reference to the neutrality of some) or their NATO commitments. However, their introduction means that for the first time the EU provides some limited security guarantees to its member states. In case these decisions have defense implications, the Council must act unanimously and the EP must be informed.

Charter of Fundamental Rights: Under the Lisbon Treaty the EU’s Charter of Fundamental Rights proclaimed in 2000 gains full legal effect. The Charter contains a number of political, economic and social rights applying to EU citizens. While prior to

the Lisbon Treaty the legal standing of the Charter was uncertain, the treaty obliges the EU to legislate consistently with the rights enshrined in the Charter, and provides EU courts with the power to suspend any legislation that runs counter to them. During the negotiations that preceded the adoption of the Lisbon Treaty, the UK and Poland both secured opt-outs from the Charter, contained in a protocol annexed to the treaty. The Czech Republic later secured a guarantee for a similar opt-out, to be added to the existing protocol at the time of the next accession.

European Citizens Initiative: The Lisbon Treaty introduces an element of direct democracy into EU decision-making in form of the European Citizens Initiative. This initiative allows one million EU citizens from a “significant number” of EU member states to jointly petition the European Commission to bring forward a specific policy proposal. This, effectively, grants the EU “citizens” the same rights as the Council and the European Parliament in inviting the Commission to make a proposal. The concrete procedures and conditions of this initiative (such as the number of member states, etc.) will be established by a European decision on the basis of a Commission proposal.

Secession Clause: The Lisbon Treaty for the first time includes a clause regulating the conditions under which a country can withdraw from the European Union. This country would have to inform the European Council and then negotiate the details of its withdrawal. If no negotiated agreement is reached, membership will end after 2 years.

Conclusion

Overall, the Lisbon Treaty has preserved a large number of the innovations and procedural changes that had been enshrined in the EU’s original Constitutional Treaty. Together, these changes might contribute to maintaining a sense of cohesion and allow the EU institutions to function more smoothly following EU Enlargement. However, the complexity of the EU institutional machinery will be preserved, and has in some cases further increased. Whether Lisbon will therefore contribute to bringing the EU “closer to its citizens” remains to be seen. In addition, although there has been an underlying understanding that the Lisbon Treaty represents the “end point” of EU integration, the crisis over Greece and other developments have highlighted that EU integration might continue to proceed at some level in the future. Similarly, while the Treaty was meant to end a decade of internal bickering and allow the EU to focus more on doing “policy”, the implementation of the treaty is proving almost as contentious as its adoption – with different EU-level actors and member states vying for greater influence in the emerging institutional balance of power. All of this indicates that although European countries have opened a new chapter with the adoption of the Lisbon Treaty, this is unlikely to be the definitive one for the EU in the future.