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The Treaty of Lisbon: An Overview

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The Lisbon Treaty: An Overview

Background

The Lisbon Treaty was signed on 13 December 2007 at a meeting of European leaders in Lisbon. Its stated *raison d'être* is to enhance "the efficiency and democratic legitimacy of the Union" and to improve its coherence - a key objective is to streamline the rules originally drawn up when the EU had fewer members.

In the UK, the EU (Amendment) Bill received Royal Assent on 19 June 2008, and the UK government ratified the Treaty on 16 July. Following the Irish voting 'yes' on Friday 2 October, the remaining hurdles of ratification by Poland and the Czech Republic are likely to be quickly overcome to allow the treaty is likely come into force in the next couple of months.

Lisbon vs. the EU Constitutional Treaty

Much of the content of the Lisbon Treaty was negotiated during discussions surrounding the EU Constitutional Treaty, which was not ultimately ratified - this is why there are so many similarities between the two texts.

The fundamental difference between Lisbon and the Constitutional Treaty is that the latter would have replaced all the existing Treaties and effectively re-founded the EU. Conversely, the Lisbon Treaty is an 'amending' Treaty - in other words, it changes the existing Treaties that govern how the EU works, rather than replacing them. It also has removed constitutional characteristics e.g. it also drops all reference to the symbols of the EU (the flag, the anthem and the motto).

Some do not see this as an issue, arguing that it was the constitutional elements which people were objecting to, and that the proposals themselves need fresh debate outside of this. However, others such as Open Europe are critical of "the new version of the Constitutional Treaty".

Key Amendments

Expansion of actors in legislative process

- Lisbon gives National Parliaments a direct input into European legislation as all proposals for EU legislation must be sent to them directly for them to judge whether the proposal conforms to the principles of 'subsidiarity'¹. Proposals can be sent back for review by the Commission (the 'yellow card') or struck down if a majority of national parliaments oppose them (the 'orange card').
- MEPs are given greater powers as the co-decision process² is extended to become the main legislative procedure. Lisbon also strengthens the European Parliament's role regarding the EU's budget and it gets the right of initiative for future Treaty revision.
- Participatory democracy is promoted through the right of Citizens' Initiative, which allows a request for specific legislation to be put to the European Commission via a petition with one million signatures collected from a 'significant number' of member states.

¹ Lisbon is clear that the EU derives its powers from member states and can only act within the limits of the responsibilities which have been set out for it in the EU treaties. The Union is also required to respect the principle of subsidiarity so decisions should only be taken at EU level where it is not possible or productive to do so at local, regional or national level.

² The co-decision process is whereby the European Parliament and the Council of Ministers have equal input into legislation, which is passed between the two institutions until they both agree. Under co-decision, neither has primacy over the other.

Changes to the EU Institutions

- Chairships in the Council of Ministers³ will continue to rotate every six months between the different member states. However, teams of three countries will work together for 18 months to provide support. The Council will have to legislate in public.
- As from 2014, the number of Commissioners will remain the same: one for every member state.

Negotiating Legislation

- In the Council of Ministers, Qualified Majority Voting (QMV) replaces unanimity voting for c.40 policy areas (see Appendix). QMV is defined as 55% of member states representing at least 65% of the EU's population (the 'double majority').
- MEPs will have the right to be involved in new areas in particular Common Agricultural Policy (CAP).
- Not all areas apply to every Member State, for example, the UK has negotiated certain opt-in and opt-out provisions in particular regarding Home Affairs and Justice policy.

Extension of EU activity into new areas

- The Treaty extends the legal basis for EU activity into new areas: energy, intellectual property, sport, humanitarian aid, civil protection, space research, tourism and administrative cooperation. The Treaty also introduces the provision for EU action to combat climate change and expands the Common Security and Defence Policy (CSDP)⁴ to include disarmament operations, military advice/assistance, post-conflict stabilisation.
- However, sensitive issues such as tax, social security, citizens' rights, languages, seats of the institutions and defence policy remain subject to unanimity. The UK has a specific protocol which will allow it to opt in or out of EU common policies concerning Justice and Home Affairs.
- There are also some 'emergency brakes', which allow states to refer issues to the European Council if they feel that their vital national interests are at stake.

Protection of citizens' rights

- The Charter of Fundamental Rights⁵ will become legally-binding on the EU's institutions and on member states when they are implementing EU law. Its aim is to ensure that EU institutions respect these fundamental rights. There is a UK-specific protocol which makes clear that the Charter will not extend the powers of any court to strike down UK legislation and it will not create any greater rights than are already provided in UK law.

³ The Council of Ministers is composed of the relevant ministers from member states for the topic under discussion, so, for example, if energy was being discussed then Edward Milliband would meet with other energy ministers, or if health was being discussed then Andy Burnham would meet with other health ministers from across the EU.

⁴ The CSDP currently allows for humanitarian and rescue activities, peace-keeping and combat forces activities in crisis management situations.

⁵ The Charter sets out a range of rights for EU citizens, including the right to life; the prohibition of torture; the right to liberty and security; freedom of thought, conscience and religion; plus workers' rights. The Charter draws upon previous EU treaties, international human rights law and member states' constitutions.

Other Amendments To Note

- A full-time President will be appointed to chair the European Council⁶. He or she will be chosen by, and responsible to, national leaders, not the European Parliament. The President's term will last for two and a half years and can be renewed once only.
 - The main task of the President will be to prepare the Council's work and seek consensus within the Council; it is not a decision-making role.
 - At the moment, the European Council is chaired by the head of state of the current Presidency, which rotates every six months between member states.
- A new post will be created which combines the roles of the current EU High Representative for the Common Foreign and Security Policy (CFSP) and the Commissioner for External Relations. The High Representative will be appointed by the European Council with agreement of the Commission President, and will chair meetings of foreign ministers and carry out decisions made unanimously by the 27 member states.
 - The EU Presidency (currently Sweden) and the current High Representative (Javier Solana) can already address the UN Security Council where invited to do so, on an issue where the EU has an agreed policy. This is in addition to national statements made by each member and Lisbon includes a clear Declaration stating that the new Treaty does not override member states' individual foreign and defence policies.
 - As is the case now, following Lisbon, it will be the Member States who set the CFSP objectives and who will task the High Representative to take forward activity under the CFSP. No crisis management mission can be launched without the approval of all member states.

⁶ The European Council consists of the Heads of Government and their Foreign Ministers, so currently representing the UK would be Gordon Brown and David Milliband. The Council is the body through which the leaders of Member States steer the political direction of the EU.

Appendix

Movement from unanimity to QMV occurs in the policy areas listed below, although the UK has the ability to opt-in and opt-out of specific provisions for Home Affairs and Justice.

- Election of the President of the European Council (**new post**)
- Adoption of the list of configurations of the Council of Ministers by the European Council (**new possibility**)
- Appointment of the High Representative by the European Council, with the approval of the President of the Commission (**new post**)
- Role of the High Representative in CFSP implementing measures (**new – with emergency brake**)
- Aspects of CFSP financing, including some new elements
- Decision defining the European Defence Agency's statute, seat and operational rules (**new**)
- Decisions establishing permanent structured cooperation, suspending or accepting new members (**new**)
- Conclusion of a withdrawal agreement of a Union Member State after the approval of the European Parliament and on the request of the State concerned (**new**)
- Services of general economic interest (**new**)
- Diplomatic and Consular protection measures
- Regulations relating to procedures and conditions required for a citizens' initiative (**new**)
- Social security for migrant workers (**with emergency brake**)
- Provisions for self-employed persons
- Evaluation measures of the implementation of the area of freedom, security and justice after informing the European Parliament and national parliaments
- Administrative co-operation within the area of freedom, security and justice after consulting the European Parliament (**new**)
- Measures concerning border checks
- Measures concerning a common European asylum system
- Aspects of Immigration Policy
- Judicial co-operation in criminal procedural matters (**with emergency brake**)
- Minimum rules for criminal offences and sanctions (**with emergency brake**)
- Crime prevention
- Regulations concerning Eurojust's structure, operation, field of action and tasks (**aspects**)
- Police co-operation (**aspects**)
- Europol
- Establishment of rules concerning transport
- Provisions enabling repeal of this Article on transport policy as it affects areas of Germany affected by its past division
- Provisions enabling repeal of the aspects of this article related to state aids policy and the effects of the past division of Germany
- Measures concerning the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the EU (**new**)
- Certain measures relating to the Broad Economic Guidelines and excessive deficit procedure
- Amendment of some articles of the Statute of the European System of Central Banks
- Measures necessary for use of the Euro after consulting the European Central Bank (**new**)

- Procedure for entry into the Euro **(new)**
- Incentive measures in the field of sport **(new)**
- Incentive measures in the cultural field
- European Research Area **(new possibility)**
- Measures necessary to draw up a European Space Policy that may take the form of a European Space Programme **(new)**
- Measures relating to energy policy **(new)**
- Tourism **(new)**
- Civil Protection – Measures necessary for the achievement of objectives relating to cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural and manmade disasters, excluding any harmonisation measure **(new)**
- Aspects of the common commercial policy
- Urgent aid to third countries **(new)**
- Humanitarian aid operations **(new)**
- Implementation of the solidarity clause in the event of a terrorist attack or a disaster (except if the decision has defence implications) **(new)**
- Decision by the European Council on the Presidency of Council configurations (other than that of Foreign Affairs) **(new)**
- Judicial Appointments Panel **(new)**
- Establishment of specialised courts
- Amendment of aspects of the ECJ Statute
- Appointment of the president, vice-president and members of the ECB Governing Council by the European Council
- Rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (Comitology)
- Principles of European Administration **(new)**
- Changes to composition of the Committee of the Regions and Economic and Social Committee **(new possibility)**
- Implementation of own resources decisions **(new)**
- Internal Financial Regulations