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## THE TREATY OF LISBON

This factsheet 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 those which came before it. The specific provisions (with article references) and their effects on European Union policies are explained in more detail in the factsheets 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 Treaty of Lisbon](#) 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 Treaty of Lisbon 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' (TFEU) 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 Treaty of Lisbon 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 Treaty of Lisbon. 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 Treaty of Lisbon 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 Treaty of Lisbon for the first time clarifies the powers of the Union. It distinguishes between 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 Treaty of Lisbon gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or to 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 of the Treaty on European Union (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, 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 Treaty of Lisbon, 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](#)<sup>[1]</sup>. 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, Parliament is now 'composed of representatives of the Union's citizens', not of representatives of 'the peoples of the States'.

Parliament'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.

Parliament 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. Parliament continues to approve the Commission as a college.

The maximum number of MEPs has been set at 751 with citizens' representation being degressively proportional. The maximum number of seats per Member State is reduced to 96 while the minimum number is increased to 6. On 7 February 2018, Parliament voted in favour of reducing the number of its seats from 751 to 705 after the UK's departure from the EU and re-distributing some of the seats thereby freed up among those Member States that were slightly under-represented<sup>[2]</sup> ([1.3.3](#)).

The UK left the EU on 1 February 2020. As of this date, the new composition of 705 MEPs has been applied. Of the 73 seats vacated by the UK's withdrawal, 27 seats have

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[1] Opinion 2/13 of the Court (Full Court), 18 December 2014, ECLI:EU:C:2014:2454.

[2] European Parliament resolution of 7 February 2018 on the composition of the European Parliament (OJ C 463, 21.12.2018, p. 83).



been reallocated to better reflect the principle of degressive proportionality: the 27 seats have been distributed to France (+5), Spain (+5), Italy (+3), Netherlands (+3), Ireland (+2), Sweden (+1), Austria (+1), Denmark (+1), Finland (+1), Slovakia (+1), Croatia (+1), Estonia (+1), Poland (+1) and Romania (+1). No Member State has lost any seats.

## **2. The European Council**

The Treaty of Lisbon 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**

The Treaty of 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 have applied.

A qualified majority is reached when 55% of members of the Council (in practice, 15 states out of 27), 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’ allows 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, requests 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 common foreign and security policy (CFSP). Access to the Court is facilitated for individuals.

### 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 his 2017 State of the Union speech, Commission President Juncker announced initiatives to move away from the unanimity rule in a number of areas by using the passerelle clauses. As a follow-up, the Commission has adopted four communications, proposing to enhance the use of qualified majority voting instead of unanimity in the fields of CFSP (2018)<sup>[3]</sup>, [tax policy](#) (January 2019)<sup>[4]</sup>, [energy and climate](#) (April 2019)<sup>[5]</sup> and [social policy](#) (April 2019)<sup>[6]</sup>. These communications aim at rendering decision-making more prompt, flexible and efficient where an EU competence already exists.

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 Treaty of Lisbon considerably strengthens the principle of subsidiarity by involving the national parliaments in the EU decision-making process ([1.2.2](#)) ([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 Treaty of Lisbon 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

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[3]Commission communication of 12 September 2018 entitled 'A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy' (COM(2018)0647).

[4]Commission communication of 15 January 2019 entitled 'Towards a more efficient and democratic decision making in EU tax policy' (COM(2019)0008).

[5]Commission communication of 9 April 2019 entitled 'A more efficient and democratic decision making in EU energy and climate policy' (COM(2019)0177).

[6]Commission communication of 16 April 2019 entitled 'More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting' (COM(2019)0186).



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 involvement 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.

Almost a decade after the signature of the Treaty of Lisbon, Parliament acknowledged that some of its provisions were not being exploited to the fullest. As a response thereto, on 16 February 2017 it adopted a [resolution on improving the functioning of the European Union by building on the potential of the Lisbon Treaty](#)<sup>[7]</sup>, which puts forward a number of recommendations on how to unblock this potential in order to enhance the Union's capacity to tackle current global challenges.

On the same day, Parliament also adopted a [resolution on the possible evolution of and adjustments to the current institutional set-up of the European Union](#)<sup>[8]</sup>, suggesting concrete proposals for treaty reforms.

The EU has lately faced several crises linked to, in particular, Brexit, the rule of law, the multiannual financial framework and COVID-19. The handling of these crises has again exposed shortcomings in the current system of governance, and the lack of efficient decision-making has contributed to a decrease in public support for the European project. In response to these challenges, the EU institutions have launched the Conference on the Future of Europe, which is designed to renew the EU and restart integration. As the Committee on Constitutional Affairs of the European Parliament has highlighted, the Conference can be an innovative 'process that will lead to proposals for concrete institutional and constitutional reforms to render the European Union stronger, more democratic, more efficient, more transparent, with a greater capacity to act and to serve the general interest'<sup>[9]</sup>.

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[7]European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon (OJ C 252, 18.7.2018, p. 215).

[8]European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (OJ C 252, 18.7.2018, p. 201).

[9]European Parliament Committee on Constitutional Affairs, Opinion of 10 December 2019 on the Conference on the Future of Europe, recital G.

