

Brussels, 1 December 2009

## **Explaining the Treaty of Lisbon**

The following memo gives an overview of the main innovations in the Treaty of Lisbon that enters into force on 1 December 2009. It is not exhaustive, and should not be seen as a legal analysis. It is meant only as a guide for journalists.

In short

### **Why does Europe need the Lisbon Treaty?**

The European Union (EU) of 27 members has been operating with rules designed for an EU of 15 Member States. To realise its full potential, the European Union needs to modernise and reform.

At the same time, there is increasing support for the EU to work together on issues that affect us all, such as climate change, energy security and international terrorism. As the EU has grown and its responsibilities have changed, it makes sense to adapt the framework it operates in so that the EU has the means to tackle today's challenges and tomorrow's.

In particular, the Lisbon Treaty will lead to greater efficiency in the decision making process, increased democratic accountability by associating the European Parliament and national parliaments and increased coherence externally. All of these improvements will equip the EU better to defend the interests of its citizens on a day-to-day basis.

### **10 examples of benefits for European citizens**

- A right for citizens to make a request to the Commission for it to propose a new initiative ("European citizens initiative")
- Better protection for citizens through the new status given to the Charter of fundamental rights
- Diplomatic and consular protection for all EU citizens when travelling and living abroad
- Mutual assistance against natural or man-made catastrophes inside the Union, such as flooding and forest fires
- New possibilities to deal with cross border effects of energy policy, civil protection and combating serious cross border threats to health
- Common action on dealing with criminal gangs who smuggle people across frontiers
- Common rules to avoid asylum shopping where multiple applications are made to different member countries
- Tackling terrorism through the freezing of assets, while full judicial review is guaranteed by the European Court of Justice

- More democratic approach to EU decision-making (strengthened role of European Parliament and national Parliaments)
- An ability to provide urgent financial aid to third countries

**For more information:**

The European Commission's Guide to the Lisbon treaty:

[http://ec.europa.eu/publications/booklets/others/84/index\\_en.htm](http://ec.europa.eu/publications/booklets/others/84/index_en.htm)

European Commission website on the Lisbon Treaty:

[http://europa.eu/lisbon\\_treaty/index\\_en.htm](http://europa.eu/lisbon_treaty/index_en.htm)

A copy of the Treaty of Lisbon can be found at:

[http://europa.eu/lisbon\\_treaty](http://europa.eu/lisbon_treaty)

## **Key innovations in the Lisbon Treaty**

This overview is structured in three parts:

- key internal policy changes
- key external policy changes
- institutional and legal changes

### **1. Key 'internal' policy changes – area by area**

Broadly, the Lisbon Treaty does not change policies, or only slightly, in a number of areas including: enlargement policy, regional affairs, competition, environment, education and culture (although there is a substantial change on sport policy), transport, industrial policy, taxation, health (although there is greater emphasis on coordination and cooperation), and consumer policy.

#### **a) the economy, employment and social Europe**

##### **How will the Treaty help tackle the economic crisis and build sustainable growth?**

The economies of all Member States are interdependent. Prosperity in each depends partly on demand from the others for its exports and unsustainable government deficits in some Member States can undermine confidence in others and in the euro. So better economic policy coordination is in everyone's interest, in good economic times and bad. Such policy coordination is even more important in the euro area. By improving the scope for effective coordination, the Lisbon Treaty can contribute to economic performance.

##### **How does the Lisbon Treaty change the Commission's role in economic and financial policy?**

The Lisbon Treaty strengthens the Commission's role as independent "referee" in economic governance. For instance, the Commission will have the possibility to issue direct warnings to Member States whose economic policies are either inconsistent with the broad economic policy guidelines agreed by the Council or risk jeopardising the proper functioning of the Economic and Monetary Union (EMU).

Moreover, the Commission will now be able to directly address an opinion to the country concerned when it considers that an excessive deficit in a Member State exists or may occur. Currently it must submit such an opinion to the Council.

##### **Are there any improvements in the Treaty on economic governance?**

The Treaty will not revolutionise the functioning of the EMU, but it will bring some concrete, positive and useful improvements. It reinforces the euro area's visibility and its capacity to decide and act autonomously.

##### **What are the specific changes for the euro area?**

The Treaty extends the list of topics - all directly affecting only the euro area - in which non-euro area Member States have no voting rights in the Council.

This will now be the case in all measures relating to the multilateral surveillance and excessive deficit procedure as it applies to euro area Member States.

The Lisbon Treaty also introduces an article which explicitly gives the Council the possibility to adopt measures specific to the Member States of the euro area. The intention is to strengthen the coordination and surveillance of their budgetary policy and help avoid damaging imbalances arising within the euro area.

The Treaty also clearly states for the first time the idea of establishing a unified representation of the euro area in international financial institutions, such as the International Monetary Fund and Financial Stability Board.

### **Will the status of the Eurogroup change?**

Yes. The important role of the Eurogroup in the euro area's decision-making process is recognised in a separate Protocol annexed to the Lisbon Treaty. The Protocol confirms the current practice of informal meetings of the euro area ministers in which the Commission participates and to which the ECB is invited. It specifies that the Eurogroup will elect a President for two and a half years.

### **How will the Lisbon Treaty facilitate the decision making process with respect to economic issues?**

It will extend the scope of qualified majority voting (QMV) to new areas (e.g., the appointment of the ECB executive board members) and will bring some improvements to the voting process. If, for example in the context of an excessive deficit procedure, the Commission proposes a Council recommendation or decision addressed to a specific Member State, the Member State concerned will, for instance, no longer be allowed to vote on it and thus contribute to blocking it.

### **What changes for employment and social affairs?**

Changes are not dramatic but should contribute to better decision making. Decision-making in the area of free movement of workers, which now includes self-employed workers, should be faster and more efficient as it moves from unanimity to qualified majority.

Actions to combat discrimination such as the proposal currently under discussion in the Council will continue to require unanimity in the Council. But the role of the European Parliament (EP) is strengthened as consent rather than consultation is required (these terms are explained in section 3 of the memo). Similarly, the EP will take on a greater role as the Lisbon Treaty introduces obligations to inform the EP, for example on agreements reached by Social Partners and in the Open Method of Coordination (establishment of guidelines and indicators, organisation of exchange of best practice, periodic monitoring and evaluation). It is also worth noting that promoting social dialogue becomes an objective of the EU, and not just the Commission – underlining the crucial role that employers and trade unions have to play in devising employment policies.

### **How will the Charter improve the rights of European workers? Which countries have special arrangements?**

The Lisbon Treaty introduces the Charter of Fundamental Rights into European primary law. The six chapters of the Charter cover the following aspects: individual rights related to dignity, freedoms, equality, solidarity, rights linked to citizenship status and justice. The institutions of the Union must respect the rights written into the Charter. The same obligations are incumbent upon the Member States when they implement the Union's legislation. The European Court of Justice (ECJ) will ensure that the Charter is applied correctly. The incorporation of the Charter does

not alter the Union's powers, but offers strengthened rights and greater freedom for citizens.

The recognition of rights under the solidarity title (e.g. workers' rights to information and consultation, right of collective bargaining, fair and just working conditions) is an important step towards a better protection of workers. For instance, the ECJ may, when interpreting EU law, refer to the Charter or find laws inconsistent with the fundamental rights.

The UK, Poland and the Czech Republic have been given special arrangements regarding their application of the Charter.

The European Union will also accede to the European Convention on Human Rights in its own right.

### **Does the Charter of Fundamental Rights extend the legislative powers of the EU or encourage "judicial activism" by the European Court of Justice?**

The Charter of Fundamental Rights is primarily aimed at limiting the exercise of the powers of the EU institutions, in the same way that guarantees on national rights limit the power of the national institutions. It only binds Member States insofar as they execute EU law. It does not extend the scope of EU law beyond the competencies of the Union or create new competencies or tasks. More generally Member States can only be taken to the ECJ if a case is made that they do not properly implement EU laws. There have been relatively few cases against the Member States. While the ECJ does and will continue to rule on EU law, including employment and social policy under the existing treaties where covered, the legislative powers in these areas will be left unchanged by the Lisbon Treaty.

### **Will the Treaty affect national employment laws such as the right to strike?**

No. The legislative powers under the Treaty do not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

### **Does the Lisbon Treaty weaken the EU's social achievements?**

Not at all. The Lisbon Treaty will allow the EU to maintain and develop further the social achievements in full respect of national prerogatives.

The Lisbon Treaty introduces a horizontal social clause. The Union has to take into account social issues (such as the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion) in defining and implementing its policies and activities.

### **Does the Treaty put public services at risk?**

No. The Treaty recognises public services as an indispensable instrument of social and regional cohesion.

A special interpretative Protocol has been included in the Treaty. It emphasises the important role of public services in promoting social cohesion and the diversity of these services that may result from different geographical, social or cultural situations. Therefore, there is a wide discretion of national, regional and local authorities in providing and commissioning and organising services of general interest.

## **b) Climate change and energy**

### **Does the Treaty maintain the environmental achievements? What about climate change?**

Yes, entirely. The Treaty states that one of the Union's objectives is to work for the sustainable development of Europe based, in particular, on a high level of protection and improvement of the quality of the environment. Although the idea of sustainable development was not absent from the existing treaties, the Lisbon Treaty reinforces and better defines this objective. Sustainable development is also affirmed as one of the fundamental objectives of the Union in its relations with the wider world.

The environment is one of the spheres of competence shared between the Union and the Member States (the concept of shared competence is explained in section 3). When the Union intervenes in this area, it must contribute to the pursuit of clear objectives: preserving, protecting and improving the quality of the environment; protecting human health; promoting prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems.

A reference to the need to combat climate change in measures at international level has also been added. This is the first time that climate change is explicitly referred to in the treaties.

### **What changes for energy?**

Energy is now an EU policy area in the treaties in its own right. The new energy policy aims to ensure the functioning of the energy market, security of supply, the promotion of energy efficiency and energy saving, the promotion of the development of new and renewable forms of energy and the promotion of the interconnection of energy networks.

The new Treaty article does not affect Member States' choices between different energy sources and the general structure of their energy supply. Measures to achieve these aims can be agreed through usual co-decision procedure, except when measures are of a primarily fiscal nature, in which case a different procedure applies which requires unanimity in the Council and consultation only of the EP.

## **c) Justice, freedom and security**

### **What improvements will be made in the area of justice and home affairs?**

There are substantial changes in this area which should make it easier and quicker for actions to be taken at European level. The so-called "pillar" structure disappears, and with that its legal instruments (framework decisions). This means that now, in almost all circumstances, the Community method will apply instead, i.e. qualified majority decision-making based on proposals from the Commission, and co-decision with the European Parliament which becomes the rule for all legal acts, including those which used in the "third pillar" and legal migration. Special arrangements are extended for Denmark, Ireland and the United Kingdom.

Certain exceptions remain, where unanimity remains the rule and consultation only of the EP:

- family law – area which already existed in the first pillar – and the possible creation, on the basis of Eurojust, of a public prosecutor
- operational police cooperation

- administrative cooperation between Member States

### **Who can put forward proposals?**

In the areas of judicial and police cooperation in criminal matters, the right of initiative continues to be shared between Member States and the Commission, but a threshold of at least a quarter of Member States is introduced (i.e. 7 in an EU of 27).

### **How will the emergency brake and enhanced cooperation work in practice?**

To balance the introduction of QMV in the area of judicial cooperation in criminal matters, the Treaty introduces a procedure called the “emergency brake” to protect the interests of Member States. It allows Member States to block the adoption of a legislative proposal and to send it to the European Council, if they feel that the proposal has an impact on fundamental aspects of their criminal law system. In such a case, co-decision procedure is suspended. After discussion, and if there is a consensus, the European Council, within 4 months of the date procedures were suspended, sends back the proposal to the Council, which then ends the suspension of the normal legislative procedure or co-decision. If there is no consensus, within the same timeframe, a minimum of 9 Member States can proceed with enhanced cooperation on the basis of the original proposal.

### **So does the European Court of Justice now have a role in justice, freedom and security issues?**

Yes. The Third pillar limited the competence of the Court. But as it no longer exists, the Court is fully competent for acts adopted in the areas of police cooperation and judicial cooperation for criminal matters (except for operational cooperation). This means it is now also possible for the Commission to launch infringement proceedings and for national courts to refer cases to the ECJ.

Concerning the acquis from the third pillar already in force, the powers of the Commission in the area of infringements, and the full competence of the ECJ are constrained by a transitional period of 5 years from 1<sup>st</sup> December 2009.

According to the Treaties, any Member State can – at any time – via a Declaration accept the competence of the ECJ when it comes to third pillar acts. This has allowed the formation of a body of jurisprudence which codifies the interpretation of instruments such as the European arrest warrant. At present, 10 Member States have not requested such a declaration (UE-15: DK, IE, UK, UE-10: BG, CY, EE, MT, PL, RO, SK)

### **What exceptions and opt-in / opt-outs are there?**

The opt-out / opt-in system – which the UK and Ireland use – is widened under the Treaty of Lisbon so that it includes judicial cooperation in criminal matters and police cooperation.

The measures relating to passports, ID cards, permits or all other similar documents now belong to Title V (and no longer « citizenship ») which means that measures in these areas will also be included the opt out / opt in system.

The Danish opt-out is widened to police cooperation and judicial cooperation for criminal matters. However, Denmark can – at any time – abandon this system and choose an opt-in system on a case by case system (i.e. like UK and Ireland benefit from) or completely abandon any opt-ins / opt-outs and choose the same approach as all other 24 Member States.

## **d) The budget**

### **How will the introduction of the Lisbon Treaty affect the EU Budget?**

The Treaty simplifies the budgetary procedure, which will make a real difference, clarifying roles and procedures. It is now subject to a type of codecision procedure with a single reading plus conciliation. Furthermore, the difference between compulsory and non-compulsory expenditure and the annual setting of a maximum rate of increase for non-compulsory expenditure has been dispensed with. The multi-annual financial framework has been made part of the Treaty and the rules on own resources remain essentially unchanged.

For the first time, the system of "financial perspectives" has been incorporated in primary legislation. The multi-annual financial framework is intended to ensure that expenditure develops in an orderly fashion, always remaining within the limits of the Union's own resources and giving spending programmes a firm long-term foundation. It therefore places a ceiling on annual expenditure in the Union's major spheres of activity for a period of at least five years. The multi-annual financial framework is adopted by unanimity after the consent of the European Parliament and the annual budget must remain within these limits.

### **Will the Lisbon Treaty change the way the EU budget is decided?**

The Union's annual budget covers the period between 1 January and 31 December. The Treaty establishes a budgetary procedure which is akin to the ordinary legislative procedure (current co-decision procedure) with a single reading plus conciliation, with very strict deadlines and an obligation upon the Commission to present a new proposal in the event of any irreconcilable disagreement between the Council and the EP at the end of the procedure.

The Treaty has simplified the previous arrangements, as the Commission will now present a draft budget and not an initial draft. Moreover, the Treaty does away with the current distinction between compulsory expenditure and non-compulsory expenditure. This has two consequences: the Parliament's influence now extends to the whole of the budget but it loses its right to the "final say" with regard to non-compulsory expenditure which, in the previous budgetary procedure, enabled it to impose its will on the Council on this part of the budget. In short, both arms of the budgetary authority are now on equal footing for all expenditure.

The budget should be adopted in one reading between the Council and European Parliament. In case of disagreement after their reading, the European Parliament and Council, assisted by the Commission, meet in a conciliation committee with the aim to agree on a joint text to be approved afterward by both institutions. If the Council does not approve the joint text, the European Parliament can go ahead and adopt the budget definitively (Article 314 of Lisbon Treaty).

The "provisional twelfths system", in cases where the Council and the Parliament do not come to an agreement on the budget by the deadline, is confirmed by the Treaty.

### **Will the Lisbon Treaty change the way the EU budget is financed?**

The Treaty states that the Union's budget is funded totally by own resources, notwithstanding other revenue. Like before, the own resources system will be governed by a European law enacted by the Council by a unanimous decision after consultation of the European Parliament, which must be ratified by all the Member States. Qualified majority voting applies solely to the adoption of laws establishing the implementing measures for the system, and only insofar as the law adopted previously makes explicit provision for this. Under the Lisbon Treaty, the adoption of

such implementing rules is now subject to the consent of the European Parliament. This option constitutes the only difference from the current budgetary provisions as far as own resources are concerned.

## **e) Other important policy developments**

### **Research and space:**

The most far reaching provision is the introduction of the concept of a European research area (ERA). The ERA is aimed at strengthening the scientific and technological bases of the Union. Free circulation of researchers, scientific knowledge and technology are key characteristics. The EU will now be able to adopt legislative measures to reach those objectives.

The promotion of scientific and technological advance in its own right has become a specific objective of the Union for the first time. Previously, the Community aimed to promote research activities deemed necessary to support the competitiveness of industry and/or by virtue of other chapters of the Treaty. For the first time, the Lisbon Treaty defines the distribution of competences between the EU and the Member States in the areas of research, technological development and space as a shared competence.

A new legal basis is created, allowing the adoption of laws or framework laws establishing measures for a European space policy, including a European space programme. The Union is also required to establish any appropriate relations with the European Space Agency.

### **Education, culture and sport:**

The Lisbon Treaty introduces a new competence on sport which allows EU action to 'develop the EU dimension in sport'. The new legal basis is about supporting, coordinating or complementary action with the Member States in the area of sport; the harmonisation of national laws and regulations is not allowed. Possibilities include a new EU funding programme for sports, and a more solid basis for political exchanges, such as the establishment of a Council of Sport Ministers, whose first meeting is expected during the first half of 2010.

For culture, the decision making moves from unanimity in Council (plus co-decision) to qualified majority voting.

### **Agriculture:**

The main change brought in by the Lisbon Treaty is the introduction of co-decision as the ordinary legislative procedure – which means the European Parliament will now be playing an equal role with the Council in all legislative policy decisions in the area of agriculture, for example the next reform of the CAP. Furthermore, the power of the European Parliament will significantly increase in international affairs as its consent will now be required for the approval of international trade agreements (for example: future agricultural trade agreements).

### **Fisheries:**

The main change is that co-decision will become the ordinary legislative procedure rather than the consultation procedure. This means that the Council and the European Parliament will be co-legislators with equal entitlements in the definition of basic principles of the Common Fisheries Policy. However, for some important

aspects of fisheries policies, co-decision will not apply. The Council will continue to be able to enact regulations, following a proposal by the Commission and without involvement of the European Parliament, on – among other things – the yearly fixing of catch limits and quotas. Furthermore, the powers of the European Parliament will increase in international affairs as its consent will now be required for the approval of bilateral and multilateral international fisheries agreements.

### **Telecoms:**

The new Article 118 of the Treaty on the Functioning of the European Union will allow for the creation of European Intellectual Property Rights titles, by co-decision with qualified majority in the Council. This is a new provision and it means that if the EU legislator decides to make use of this, it could allow overcoming the present fragmentation of the EU in 27 national copyright regimes, which has negative consequences both for the competitiveness of Europe's media and content sector and for European consumers (who, for example, often cannot download content from a website located in another Member States because of copyright divergences).

### **Regional issues:**

The main direct change which would be introduced by the Lisbon Treaty in the field of cohesion policy is the addition of 'territorial cohesion' to the objectives already mentioned which are 'economic and social cohesion' and solidarity between Member States. In terms of areas facing specific difficulties, the scope of this definition would be broadened beyond island and rural areas as currently stands.

Changes to EU Regulations affecting the Structural and Cohesion Funds will now be subject to the co-decision procedure.

### **Animal health and welfare, plant health and food safety**

No major changes are expected. Nevertheless, there is a change in the procedure to adopt legislation in the fields of animal health, plant health, zootechnics and, in part, animal welfare. Legislation in these areas moves from the consultation procedure to ordinary legislative procedure (co-decision).

For plant variety rights, before Lisbon, legislation was adopted unanimously. Under the Lisbon Treaty, there is a new legal basis for intellectual property. This means that amendments to the legislation on plant variety rights will be carried out through co-decision.

### **Public health policy**

The Treaty of Lisbon continues the present situation where the Union's action in the field of Health is largely of a coordinating, complementary and supporting nature. The Treaty also maintains the shared competence between Member States and the EU with regards to those public health matters for which there is actual legislative competence (organs, substance of human origin, blood and veterinary and phytosanitary fields), with the inclusion in this category of a public health objective to set high standards of quality and safety for medicinal products and medical devices. Furthermore, under the Lisbon Treaty, mental health is specifically mentioned, cooperation between Member States on health services is encouraged in cross border areas, coordination on health issues among Member States is strengthened, including the possibility of establishing guidelines and indicators, organising exchange of best practice, and preparation of periodic monitoring and evaluation, whereas actions to improve monitoring, early warning of and combating serious

cross border threats to health and policies in the fields of tobacco and abuse of alcohol ('incentive measures') are also specifically mentioned.

### **Taxation and customs:**

For taxation, overall, the decision-making procedure remains unchanged: the voting requirement for unanimity at the Council is retained in both direct and indirect taxation. The only significant change is greater EP involvement as proposals in the tax area move from consultation to consent for enhanced cooperation. It is also worth noting that a legally binding Decision annexed to the Conclusions of the European Council of June 2009 contains the guarantees given to Ireland and stipulates that nothing changes in the EU's competence in taxation.

For customs policy, there are a number of areas which move to co-decision, in particular Common Customs Tariff conventional duties (i.e. customs duties on imports), intellectual property rights protection, control of drug precursors (i.e. substances going into the making of drugs), export of cultural goods, as components of the common commercial policy. And changes in some other areas (for example judicial cooperation in criminal matters) may also have consequences for taxation and customs policies.

### **The internal market:**

The chapter on the internal market contains seven sections (establishment of the internal market, free movement of persons and services, free movement of goods, capital and payments, rules on competition, fiscal provisions and common provisions). Although almost all the provisions of this chapter already feature in the EC Treaty, it should be noted that these articles have been reorganised in a single chapter.

Two specific policy areas move from unanimity to QMV: Intellectual property rights (but note that unanimity will continue to apply to the issue of linguistic regimes) and mutual recognition of professional qualifications.

### **Industry**

In the provision requiring the Commission to encourage cooperation between Member States in the field of industry, it has been added that the Commission's action may take the form of initiatives particular to the Open Method of Coordination (establishment of guidelines and indicators, organisation of exchange of best practice, periodic monitoring and evaluation). The European Parliament must also be kept informed.

### **Tourism**

Tourism is included in the Union's coordinating, complementary and supporting competences. The EC Treaty merely mentions tourism, but does not contain any specific provisions in this field. There is now a new legal basis which lays down the objectives of this policy and establishes the means of action.

### **Civil protection**

A new legal basis has been created, allowing the adoption of laws or framework laws establishing measures aimed at supporting Member States' action in this field and promoting operational cooperation. This would allow for a new phase in the EU's work to assist Member States when flooding or forest fires arise. As this is an area of

coordinating, complementary and supporting competences, the harmonisation of national laws and regulations is not allowed.

### **Administrative cooperation**

A new legal basis has been created, allowing the adoption of laws to improve Member States' administrative capacity to implement Union law. As this is an area of coordinating, complementary and supporting competences, the harmonisation of national laws and regulations is not allowed. This cooperation is without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission (for example in the context of infringement proceedings).

### **Protection of personal data**

The arrangements in the Treaty are amended and now make special provision for data relating to the common foreign and security policy.

## **2. Key 'external' policy changes: Europe as an actor on the global stage**

The specific provisions on the Union's external action are split between the EU Treaty and the FEU (Functioning of the European Union) Treaty as follows:

The EU Treaty contains a new chapter with general provisions on the Union's external action and on the role of the European Council. A key innovation is the creation of the post of High-Representative / Vice-President (HR /VP) of the Commission who will have a new service, the European external action service, at his/her disposal.

A specific part of the FEU Treaty covers the Union's external action, incorporating all the relevant provisions apart from those relating to the Common Foreign and Security Policy (CFSP). The Union's action on the international scene will be conducted in accordance with the general provisions laid down in the EU Treaty. The *acquis communautaire* relating to the Union's external relations has been consolidated (especially by extending the scope of commercial policy). The EP has been given a bigger say in commercial policy and international agreements through an extension of the codecision procedure. A new legal basis has been added for humanitarian aid. The same applies to the solidarity clause in the event of a terrorist attack or a natural or man-made disaster.

### **a) a stronger voice in the world**

#### **Will Europe's voice in the world be stronger with the Lisbon Treaty?**

Yes, this will be one of its major achievements. The Treaty brings clarity to the EU's objectives, and provides new tools to deliver change.

The Treaty sets out common principles and objectives for the Union's external action: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity.

Most of the external relations provisions of the existing treaties will be regrouped in a single Title. This will improve their readability and promotes the coherence of the Union's action. The provisions on CFSP will remain in the Treaty on European Union.

The former functions of the High Representative for CFSP have been combined with those of a Vice President of the Commission, creating a new institutional player with "two hats". This will strengthen coherence in external action and raise the EU's profile in the world, "putting a face" on the Union and bringing together Europe's external policy tools, both in policy development and policy delivery.

## **b) What is the role of the new High Representative / Vice President of the Commission,**

### **What will the High Representative for Foreign Affairs and Security Policy / Vice President of the European Commission do?**

Baroness Catherine Ashton was chosen as the first High Representative / Vice-President at the informal European Council on 19 November 2009. She will take office on 1 December 2009.

The High Representative is also the Vice-President of the Commission, and will chair the Foreign Affairs Council. S/he is appointed by the European Council, acting by a qualified majority, and with the agreement of the President of the Commission.

The objective is to ensure the consistency of the Union's external action. It should give the EU a clear voice in its relations with partners worldwide. The HR/VP will be responsible for external relations in the Commission and be mandated by the Council to conduct the CFSP.

As HR, he/she will chair the Foreign Affairs Council. He/she will also, at ministerial level, represent the Union for matters relating to the CFSP. He/she will conduct political dialogue with third parties on the EU's behalf and express the Union's position in international *fora*. At the same time, the external representation of the EU on specific external policy issues beyond the CFSP/ESDP and on monetary matters will be continue to be ensured by the Commission and thus by the competent Commissioner.

The post of HR/VP does not create new powers but streamlines the work by merging three previous roles, avoiding duplication and confusion. The jobs of the Council foreign policy representative (previously Javier Solana), the Commission's external relations Commissioner (previously Benita Ferrero-Waldner) and that of chairperson of External Affairs Council (currently 6 months rotation) will be combined. This will allow greater consistency between the work of the Commission and the Member States in developing and presenting agreed foreign policy and external actions.

### **Do these changes weaken Member States ability to have an independent foreign policy?**

No. The European Union is asked to act when a coherent voice is needed on the international stage. A range of foreign policy issues are best addressed by the Member States of the European Union acting together. However, the HR / VP will act in foreign policy matters on the basis of decisions taken unanimously by the EU 27 – as today. S/he will complement not replace the foreign policy or diplomatic efforts of Member States which will continue to operate in parallel as long as they respect action commonly agreed at EU level.

### **Will the UK and France lose their seat as a permanent member of the UN Security Council if the amending Treaty goes through?**

No. The European Union is not a party to the UN Charter and the Treaty does not change that in any way. Hence, the UK and France will continue to be Permanent Members of the Security Council and all Member States maintain their current status at the UN.

When the Union has defined a position on a specific subject, Member States that are also members of the UN Security Council shall request that the HR/VP be asked to present this position in the Security Council.

## **What about representation at the level of Head of State and government?**

Representation of the EU's external policies at the level of Heads of State and Government will be shared between the President of the European Council (covering common foreign and security policy) and the President of the European Commission (covering the rest of external policy, including development, trade and the external dimension of external policies like energy, climate change and visa policy). This division of tasks is much clearer than today.

## **What about European neighbourhood policy?**

The Treaty will include a new provision for the Union to develop a special relationship with its neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

For this purpose, the Union may conclude and implement specific agreements, which do not necessarily need to contain all the elements of a full-fledged association agreement.

## **c) How will the European external action service (EEAS) work?**

The purpose of the EEAS is to assist the HR/VP in fulfilling his/her mandate, developing and coordinating EU foreign policy, coherently and effectively projecting European values and interests worldwide.

It will be composed of officials from the Secretariat of the Council, the Commission and the diplomatic services of the Member States, as well as local and contract staff. The October European Council agreed that when the EEAS reaches full capacity, staff from Member States' diplomatic services should add up to at least one third at policy desk level and above.

Commission delegations will become EU delegations on 1<sup>st</sup> December 2009 and will work under the authority of the HR/VP and come within the structure of the EEAS, once this is up and running.

The organisation and working arrangements of the EEAS are to be established by a decision of the Council, acting on a proposal from the HR/VP after consulting the European Parliament and after obtaining the consent of the Commission. The EEAS will be separate from but closely related to the Commission and the Council, and will need to work in harness with the rest of the EU system, in particular the European Parliament. It will take some time before it is fully up and running.

The October 2009 European Council endorsed the "Presidency report on the European External Action Service" (Council document 14930/09). The European Council has invited the HR/VP to present a proposal for the organisation and functioning of the EEAS as soon as possible with a view to its adoption by the Council at the latest by the end of April 2010

## **d) Defence issues**

### **Does anything change on defence issues?**

All Member States can individually choose how far they want to get involved in defence issues. The Treaty will enable those Member States whose military capabilities fulfill higher criteria and which have made more binding commitments to one another to establish "permanent structured cooperation" within the Union framework. The prospect of a common defence is given more tangible shape by formally enshrining the obligation to provide mutual aid and assistance in the event of armed aggression and establishing an agency for armaments, research and military capabilities.

### **What about financing of defence actions?**

The Treaty maintains the prohibition on charging to the Union budget expenditure arising from operations having military or defence implications. This expenditure will continue to be charged to the Member States in accordance with the gross national product scale. However, the Treaty provides for the Council to adopt a European decision guaranteeing rapid access to appropriations for the urgent financing of preparatory activities for the Petersberg tasks (peacekeeping, humanitarian aid and crisis management).

In addition, a start-up fund made up of Member States' contributions is to be established to finance preparatory activities for Petersberg tasks which are not charged to the Union budget. The procedures for operating this fund will be laid down by the Council of Ministers acting by qualified majority.

### **Will the Lisbon Treaty create a European army?**

No. Military capabilities remain in national hands. The Treaty clarifies existing provisions on common security and defence policy as an integral part of the common foreign and security policy. It foresees that Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy. However, it also makes clear that any decision in this area shall be adopted by unanimity; any Member State has the right to oppose such operations and all contributions to them will be on a voluntary basis.

As regards disarmament operations, humanitarian and rescue tasks, military advice, assistance tasks or peace-keeping tasks, the Council may entrust the implementation of such tasks to a group of Member States which are willing and have the necessary capability to do so. No Member State can be forced to participate in such operations.

The European Defence Agency shall be open to all Member States wishing to be part of it. Equally, the permanent structured cooperation in the area of defence is only open to Member States wishing to participate and which fulfil the criteria and have made commitments on military capabilities. Furthermore, any Member State wishing to withdraw from a permanent structured cooperation in the area of defence may do so at any time.

## **d) Trade, development and humanitarian aid**

### **What does the Lisbon Treaty mean for trade policy?**

The Treaty will extend the scope of trade policy to include all foreign direct investments and makes it clearly an exclusive competence of the Union. Transport agreements remain excluded from trade policy. Before Lisbon, investment was generally considered an area of mixed competence which meant that both the EU and the Member States could maintain and adopt instruments like international investment agreements.

As far as decision making is concerned, the Lisbon Treaty empowers the European Parliament as a co-legislator with the Council. This is a major change that improves the democratic legitimacy of the EU in a crucial policy area. Under the Lisbon Treaty:

- The EP, together with the Council, adopts framework legislation for implementing the common commercial policy; and,
- The EP's consent is required for the ratification of all trade agreements.

It puts the EP and the Council on an equal footing as regards powers over trade policy. In terms of legislation, this means, for instance, that the EP would be co-legislator for the review of the basic Anti-Dumping Regulation, or of the GSP (generalised system of preferences) Regulation.

As for voting rules, the Treaty will simplify the existing provisions in the treaties. Qualified majority voting will be the general rule but unanimity will apply when a trade agreement includes provisions for which unanimity is required for the adoption of internal rules ". Secondly, qualified majority voting will not apply to agreements in the field of trade in cultural and audiovisual services if such agreements risk prejudicing the Union's linguistic and cultural diversity and to agreements in the field of social, education and health services if such agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of the Member State to deliver them.

The Treaty will enhance parliamentary control of EU trade policy, as it substantially increases the role of the European Parliament, which until now had no role.

### **Will the European Union continue to conclude international agreements?**

The Treaty institutionalises the case law of the European Court of Justice on implied external powers. Thus, the Union may conclude agreements where the Treaty so provides or where the conclusion of an agreement is necessary in order to achieve one of the objectives referred to in the Treaty, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The same applies to the case law of the Court with regard to exclusive powers. The Treaty provides that the Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, which is necessary to enable it to exercise its internal competence, or is likely to affect common rules or alter their scope.

All international agreements concluded by the Union except agreements in the monetary field are covered by a single article in the Treaty. The Treaty sets out clearly the respective responsibilities of the Commission and of the High representative / Vice-President of the Commission with respect to the opening of negotiations. It specifies that the High Representative is responsible for negotiating agreements which exclusively or principally relate to the common foreign and

security policy. However, this article does not designate a negotiator. It leaves it up to the Council of Ministers, depending on the subject of the future agreement, to nominate the negotiator or leader of the Union's negotiating team.

The Treaty also strengthens the position of the European Parliament by extending its right to be consulted to all agreements covering fields to which the ordinary legislative procedure or special legislative procedure applies. Under the EC Treaty, the Parliament's power of assent was limited to agreements requiring an adopted act to be amended under the co-decision procedure, as well as association agreements or agreements with significant budgetary implications (Article 300(3) of the EC Treaty).

Voting within the Council of Ministers remains subject to the rule of parallelism of forms. Thus, the Council takes a decision by a qualified majority, except in cases where the agreement relates to an area in which unanimity is required for the adoption of a Union act. Otherwise, unanimity is the principle in the case of association agreements or agreements on economic, financial and technical cooperation with candidate countries.

### **Will the Lisbon Treaty mean anything for Africa or countries needing development or humanitarian aid?**

The most important policy change is that the new Treaty formally enshrines reduction and eradication of poverty as the primary objective of development cooperation. Moreover, it gives a legal base to policy coherence for development, placing the obligation on the European Union to take account of development objectives in the other policies which it implements which affect developing countries. And Member States and the European Union are obliged to coordinate their development policies to promote complementarity and efficiency.

The Treaty introduces for the first time a specific legal basis for humanitarian aid and it is to be an area of shared competence (co-decision) with Member States. This means that the Union conducts an autonomous policy, which neither prevents the Member states from exercising their competences nor makes the Union's policy merely "complementary" to those of the member states.

The provision stresses the specificity of the policy and the application of the principles of international humanitarian law, in particular impartiality and non-discrimination. It also envisages the creation of a European Voluntary Humanitarian Aid Corps which will require a proposal for a regulation from the Commission at some point in the future.

In case of urgent financial aid, the Council acts by qualified majority upon a proposal from the Commission. This should mean quicker financial aid in the future.

Finally, it is important to underline that the new Institutional structure with the HR/VP is, of course, a very important development in relations with the countries of Africa, the Caribbean and Pacific, just as elsewhere. The Treaty will no longer contain reference to the special status of ACP-EC cooperation.

### **3. How the EU will work under Lisbon**

The institutional framework under the Lisbon Treaty is significantly altered. An attempt has been made to make the Union more democratic, effective and accountable. The Lisbon Treaty merges the three pillars that have been in existence since the Maastricht Treaty (1993). Special procedures in the field of common foreign and security policy, including defence policy, have been retained.

#### **a) More democracy and transparency**

##### **Does the Lisbon Treaty make the decision-making process more democratic?**

Yes. The Treaty establishes a clearer distribution of powers between the Union and the Member States, based on three categories, which will make it easier for the citizens to understand “who does what”.

It will generalise (although with some exceptions) the “co-decision” procedure involving the directly elected European Parliament and the Council comprised of national Ministers. The Treaty strengthens the democratic control of the European Union with a stronger role for both the European Parliament and the national Parliaments.

For the first time, citizens will be able to come together to propose that the Commission take action on any issue of interest to them.

##### **Does the Lisbon Treaty create a European « Super-State »?**

No, in no way. The Treaty is an international treaty which has been agreed and ratified by each and every Member State of the EU. Member States have agreed to share some of their sovereignty but the EU’s powers come entirely from Member States.

The Union has no more and no less than the powers conferred on it. This means that the Union can only act in areas where the Lisbon Treaty, approved by all Member States, has assigned it powers to do so.

The Treaty also introduces a major innovation in terms of transparency compared with the current system, namely a classification of Union powers. So the Treaty makes clearer that the Union has exclusive responsibility in areas such as the customs union; monetary policy for the Member States whose currency is the euro and the common commercial policy. For many other important areas, such as the environment, consumer protection, transport, energy and the internal market, the Union shares responsibility with the Member States. For other areas as such education and sport, the Union can intervene to support, coordinate or complement action undertaken by the Member States.

##### **In what areas does the European Parliament take on a greater role?**

There are many areas where the European Parliament takes on a greater role in legislative matters – and where the codecision procedure (which becomes the ordinary legislative procedure) becomes the norm. The areas include budgetary matters (approval of the multiannual financial framework; codecision in setting all compulsory and non-compulsory expenditure) and international agreements since the European Parliament will have to give its assent to all agreements relating to matters covered by codecision or requiring its approval. In addition, the European

Parliament will elect the Commission President on the basis of a proposal from the European Council, which will take account of the result of the elections to the European Parliament.

### **Will the number of members of the European Parliament change?**

The Treaty caps the members of the European Parliament at 751 (from 2014). The numbers for each country are fixed in the Treaty by a degressive proportional system with a maximum of 96 and a minimum of 6 for each Member State.

### **National Parliaments: Will national parliaments have a greater say in European affairs?**

Yes. National parliaments are recognised in the new Treaty as central to the democratic fabric of the Union, and involved in a number of specific new procedures.

In particular, they will act as “watchdogs” of the principle of subsidiarity which means that decisions should be taken at the most appropriate level. For the first time in the European treaties, national parliaments will be directly consulted in the European decision-making process. They will have the power to intervene at a very early stage, when a European legislative act is still a Commission proposal awaiting adoption by the European Parliament/Council of Ministers.

This subsidiarity control mechanism is an important step forward for the EU, which strengthens the role of National Parliaments. According to the Treaty of Lisbon, if one third of all National Parliaments contest within eight weeks after adoption of the proposal, the correct application of the subsidiarity principle, the Commission must review its legislative proposal (and decide to maintain, amend or withdraw it). It is also likely that Member States, acting in the Council of Ministers, would take into account views of their Parliaments.

If more than half of national parliaments challenge a legislative proposal subject to co-decision under the subsidiarity principle (orange card), and the Commission nevertheless decides to maintain its proposal, the Commission has to send an explanation of its motives with the proposal and it is up to the Council and the European Parliament to decide.

### **Does the size of the Commission change?**

It had originally been foreseen that from 2014, the Commission would be reduced in size. However, this has now changed following the commitments given to Ireland at the European Council of December 2008 which agreed that each Member State will continue to send a Commissioner to Brussels. This can only be changed by a unanimous decision of the European Council.

### **Citizens initiative: Will citizens be able to present initiatives to the Union’s institutions?**

Yes. The Treaty introduces the European Citizen’s Initiative. The new participatory democracy provision indicates that one million citizens coming from a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaty.

On 11<sup>th</sup> November, the Commission launched a consultation to see how to make the citizens initiative work in practice, for example how should signatures be collected, time limits, conditions for the Commission to endorse or reject such an initiative.

Everyone is invited to respond by mid-January 2010. Based on the outcome of the consultation, the Commission will bring forward a new regulation setting out the procedures required for the Citizens Initiative. It is hoped that the initiative will be fully up and running before the end of 2010.

### **Is civil society more involved?**

In addition to the European citizens initiative, the Treaty introduces the general principles that interested parties should be consulted and that a dialogue be maintained with civil society and representative organisations. It establishes firmly that the work of the institutions must be transparent and in particular that the activities of the two arms of the legislative authority be fully publicised.

### **How does the new legislative procedure work?**

The Treaty includes a simplification of the Union's legislative procedures.

The consultation and assent procedures, as provided for in the previous treaties, are brought together under "special legislative procedures".

The codecision procedure, as provided for in Article 251 of the EC Treaty, is retained largely unchanged, becoming the "ordinary legislative procedure".

The Treaty greatly extends application of the ordinary legislative procedure and hence enhances Parliament's powers of decision. This generalisation of the codecision procedure is also accompanied by the extension of qualified-majority voting.

### **Where will special legislative procedures apply?**

In certain cases specified in the Treaty, legislative acts may be adopted by the Council alone or, more rarely, by the European Parliament alone, rather than by the two institutions jointly. The outcome will be legislative acts of the Council adopted after consulting Parliament, and legislative acts of the Parliament adopted after consulting the Council, as the case may be.

The Treaty does not go into the details of how these special legislative procedures will operate (as it does for the ordinary legislative procedure). It is therefore necessary in each individual case to refer to the legal bases which provide for these procedures.

The special legislative procedures relate to a certain number of other legal bases and cover the equivalent of the former consultation, cooperation and assent procedures. Consequently, they apply above all in the following areas:

- justice and home affairs , e.g. any matters concerning the European public prosecutor's office, operational police cooperation, measures relating to passports, identity cards and residence permits, and family law measures with cross-border implications;
- budget (own resources, multiannual financial framework, etc.) and taxation (movement of capital to or from third countries and harmonisation of legislation on indirect taxation);
- specific aspects of certain policies, such as environmental measures of a fiscal nature, research and technological development programmes (however, the multiannual framework programme is adopted according to the ordinary legislative procedure), social security and social protection for workers.

## **What are the bridging clauses?**

The Treaty provides for so-called "bridging" provisions (or "clauses passerelles") aimed at extending the scope of qualified-majority voting and the ordinary legislative procedure.

Therefore, as regards legislative procedure, it will henceforth be possible to switch from special legislative procedures to the ordinary legislative procedure without passing through the Inter Governmental Conference mechanism requiring ratification by all Member States.

A general bridging clause allows the European Council, acting unanimously and after obtaining Parliament's approval, to authorise application of the ordinary legislative procedure for any legal basis under the Treaty covering policy areas, provided that no national parliament makes known its opposition within six months.

Specific bridging provisions are also provided for, as is already the situation in the fields of social, environmental and family law policies. In these cases the Council must act unanimously after consulting Parliament; the national parliaments have no right of opposition (but may of course control their government's position in the Council, under national law).

Bridging provisions open the door for extending not only qualified-majority voting, but also the role of Parliament in areas where it is not yet on an equal footing with the Council.

## **What are the new rules on the Commission's delegated and implementing powers (Comitology)**

The new Treaty contains two provisions which entail substantial modifications of the existing comitology procedures, which govern a wide range of day to day decisions like which products to authorise as safe or how to regulate agricultural markets. They concern on the one hand "quasi-legislative measures", which are referred to as "delegated acts" (Article 290 TFEU), and on the other hand for straight-forward implementing measures, which are referred to as "implementing acts" (Article 291 TFEU).

In relation to the implementation of Article 290 on delegated acts, the provisions need to be put into legislation case-by-case. Reference rules will be established to ensure consistency. The legal regime of delegated acts will be applicable immediately after the entry into force of the Treaty of Lisbon and shall therefore be taken into account for all the new and the pending legislative proposals. These rules will give the European Parliament and the Council of Ministers equal powers to block delegated acts.

As regards the implementation of Article 291 on implementing acts, the Commission will put forward a proposal for a Regulation of the European Parliament and to the Council as soon as possible after the entry into force of the Treaty. This proposal will contain rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. This regulation will replace the "Comitology Decision" adopted in 1999 and amended in 2006.

Transitional measures are envisaged between the time of entry into force of the Treaty and the adoption of the new "Comitology" Regulation.

## **What would the European Public Prosecutor's Office do?**

Article 86 of the TFEU provides that a European Public Prosecutor's office may be created out of the existing Eurojust. The Prosecutor's office would be responsible for investigating and prosecuting crimes affecting the financial interests of the Union and for these cases exercise the functions of prosecutor in the competent courts of the Member States.

It would be an important complement to the mandate of the European Anti-Fraud Office (OLAF). OLAF conducts administrative investigations into suspicions of serious irregularities and fraud affecting the EU budget but has no police or judicial powers. Member States judicial authorities are responsible for following up OLAF investigations at the national level, but this can be difficult and slow, owing to the often complex, multilingual and transnational nature of cases. A European Public Prosecutor's office could therefore be an important instrument to dealing more quickly and more effectively with cases of fraud and irregularities affecting the EU budget.

To set up the European Public Prosecutor's office, Member States would need to decide unanimously, with the consent of the European Parliament. However, if no unanimous agreement could be found, a group of at least nine Member States could proceed on their own according to enhanced cooperation rules (explained in legal issues section). The European Council could also, unanimously and with the consent of the European Parliament, extend the powers of the European Public Prosecutor's Office to cover other serious crime having a cross-border dimension.

## **b) more effectiveness**

### **Will more decisions be taken by qualified majority voting?**

The Treaty of Lisbon significantly increases (by 44) the number of cases where the Council may decide by qualified majority:

- 24 cases relate to legal bases in the EC and EU Treaties currently requiring unanimity, in particular concerning implementation of the area of freedom, security and justice (border controls, asylum, immigration, Eurojust, Europol), proposals under the CFSP made by the High Representative for Foreign and Security Policy at the request of the European Council, and the arrangements for monitoring the exercise of the Commission's executive powers ("comitology");
- 20 cases concern new legal bases, for example on the principles and conditions for operating services of general economic interest, the arrangements for protecting intellectual property, energy, humanitarian aid, civil protection, etc.

### **How will the new voting system work?**

The Treaty of Lisbon makes significant changes to the system for calculating the qualified majority within the Council and to the areas to which it applies.

The weighting system for votes laid down in the Treaty of Nice will continue to apply until 1 November 2014<sup>1</sup>. From that date, qualified-majority voting will be based on the principle of a double majority (i.e. a majority of the Member States and of the

---

<sup>1</sup> A majority will be attained if a measure is approved by a majority of Member States and obtains at least 255 votes out of a total of 345. In addition, if a Member State so requests, the measure will have to be approved by Member States representing at least 62% of the Union's population.

population), which will be attained when at least 55% of the Member States making up at least 65% of the Union's population vote in favour<sup>2</sup>. A blocking minority must comprise at least four Member States; otherwise, the qualified majority will be deemed to have been reached even if the population criterion is not met.

However, during a transitional period up to 31 March 2017, a Member State may still request application of the weighting system laid down in Article 205 of the EC Treaty. And so, if the Union takes in any new Member States between now and 2017, the weighting system will have to be adapted accordingly.

Finally, this system will be backed up by another mechanism similar to the "Ioannina compromise" that will allow a group of countries which cannot form a blocking minority to ask for continued discussion of a proposal in the Council for a "reasonable time" (such a request can be made by a group of Member States representing at least 75% of the total number of Member States or 75% of the population needed to constitute a blocking minority. From 1 April 2017, the 75% threshold will be lowered to 55%). Although the Council may amend or repeal this simple-majority system, a protocol states that consensus must first be reached in the European Council.

### **What is the role of the new President of the European Council's role?**

The Treaty of Lisbon provides for the creation of a "permanent" President of the European Council, elected by the European Council. He/she will be appointed for a renewable term of 2 ½ years. He/she will not only be responsible for the chairmanship of the European Council, but also for the external representation of the Union on issues concerning CSFP.

There are no new powers, but this will allow for greater coherence and year-on-year consistency in managing the European Council's priorities and its overall strategic approach and direction. Rotation between Member States on a 6-monthly basis will continue for the Presidency of sectoral Council formations, with the exception of the Foreign Affairs Council which will be chaired by the High Representative / Vice President of the European Commission.

The Informal European Council agreed on 19<sup>th</sup> November that Mr Herman Von Rompuy would be the first President of the European Council, starting office on 1<sup>st</sup> January 2010. The President cannot hold a national office at the same time.

### **Does the role of the Council change?**

The new Treaty changes relatively little with regard to the workings of the Council of Ministers. In particular, the current system of six-month Presidencies remains largely unchanged, although the cooperation between three successive presidencies is formalised. With the exception of the Foreign Affairs Council, which is chaired by the new High Representative of the Union for Foreign and Security Policy, the six-month Presidency of the various configurations of the Council will be held by representatives of the Member States under an equal rotation system and on the basis of a common programme drawn up with two other Member States for a period of 18 months (the "team / trio presidency" system).

---

<sup>2</sup> This double 55/65 threshold will apply when the Council acts on a proposal from the Commission. A threshold of 72% of the Member States representing 65% of the population will be required where the Council is not acting on a proposal from the Commission or from the High Representative for Foreign and Security Policy.

## **How does the role of the Commission change?**

The Commission's role will, in general, be consolidated, along with an extension of its exclusive right of initiative in some areas (except in respect of the CFSP) and its executive powers (see below). In addition, the role of the President of the Commission will be strengthened since, among other things, he/she will have the power on his/her own authority alone to dismiss a Member of the Commission.

## **What about the other institutions?**

The European Court of Justice sees its scope for action increased as certain areas, including judicial cooperation in criminal matters and police cooperation, have been brought within the Community framework.<sup>3</sup> Also, the procedure on penalties against Member States infringing the law of the Union has been reinforced.

The European Central Bank (ECB) is designated as Union institution, although it retains its legal personality and its independence vis-à-vis the other institutions and the Member States.

The Committee of the Regions will have the right to bring a case before the Court of Justice for infringement of the principle of subsidiarity, as well as for violation of its own prerogatives.

## **c) Legal issues**

### **What is the legal status of the Lisbon Treaty?**

The Lisbon Treaty incorporates into the current Treaties several innovations that came out of the work of the 2004 IGC, together with the changes decided by the European Council of 21/22 June 2007 and by the IGC of October 2007. It does not repeal or replace the texts of the current Treaties, which thus remain in force.

The Lisbon Treaty amends the existing treaties:

- a) the "Treaty on European Union" (EU Treaty), which will retain its name;
- b) the "Treaty establishing the European Community" (EC Treaty), which will be renamed the "Treaty on the Functioning of the European Union" (FEU Treaty).

The two Treaties will have the same legal value.

The structure of the EU Treaty is modified. After the Preamble, the new Treaty has six titles dealing with the general provisions (Title I), the provisions on democratic principles (Title II, new), the provisions on the institutions (Title III, new), the provisions on enhanced cooperation (Title IV), the general provisions on the Union's external action and specific provisions on the common foreign and security policy (Title V) and the final provisions (Title VI).

The structure of the FEU Treaty is, to a large extent, the same as that of the current EC Treaty but with certain innovations, mainly on the institutions and on policy areas. Lastly, the Lisbon Treaty includes a number of protocols and declarations of the IGC.

---

<sup>3</sup> There are certain limits, however: the validity and proportionality of police operations and measures taken by the Member States to maintain law and order or to safeguard internal security will remain outside the Court's jurisdiction.

## **How do I check the new numbers in the Lisbon Treaty against the Treaty of Nice numbers?**

A table of equivalence can be found at the following website to check the new numbers

<http://eur-lex.europa.eu/en/treaties/dat/12007L/htm/C2007306EN.01020201.htm>

## **How does the Lisbon treaty clarify the division of competences?**

The Treaty of Lisbon confirms the division of competences between the Union and the Member States already approved at the 2004 IGC. In particular, the FEU Treaty contains a general classification of competences into three categories: exclusive competences; shared competences; and action to support, coordinate and supplement action by Member States<sup>4</sup>. However, the Union preserves the flexibility of action it needs, in particular because the scope of these competences in each specific area is laid down by the FEU Treaty and because it is still possible to apply a clause that is similar to the current Article 308 of the EC Treaty, albeit with the approval of the European Parliament.

A number of articles, protocols and/or declarations have been included in the Treaty of Lisbon to clarify the division and exercise of competences. For example:

- amendment of the article - approved in 2004 - on relations between the Union and its Member States, which states that national security remains the responsibility of the Member States;
- a declaration spelling out that the CFSP does not affect the responsibilities of the Member States for conducting their foreign policy and national representation;
- a declaration that the fact that the Union has legal personality does not authorise it to act beyond the competences conferred on it by the Treaties;
- a declaration specifically on the delimitation of competences, which stipulates that any competences not conferred on the Union in the Treaties remain with the Member States, adds further details on the exercise of shared competences and states that revision of the Treaties may lead to an increase or a reduction in the competences conferred on the Union;
- the Protocol on services of general economic interest, which states that the competence of the Member States concerning non-economic services of general interest is not affected in any way;
- amendment of Article 308 of the EC Treaty on the flexibility clause to specifically exclude the CFSP, and additional declarations to the effect that Article 308 cannot be used to increase the Union's competences. A new protocol states that the Union may take action under Article 308 to ensure free and undistorted competition in the internal market.

---

<sup>4</sup> Competences relating to the coordination of economic and social policies or to the CFSP and defence are not included in any of these categories.

## **Can some countries move forward without others – "enhanced cooperation"?**

The Treaty of Lisbon provides that enhanced cooperation (which allows a group of countries to move forward together inside the institutional framework) may apply to any area outside the exclusive competence of the Union. Regardless of the number of Member States in the Union, enhanced cooperation will be possible once at least nine Member States participate, provided that certain conditions are met. The FEU Treaty makes it simpler to authorise enhanced cooperation, and it will also be easier for other Member States to join later.

## **European Union or European Community?**

On 1<sup>st</sup> December, the term European Community will merge into the European Union. There will be no need to refer to the European Community anymore.

## **Is the Treaty superior to national law?**

A declaration in the Treaty confirms the primacy of EU law over the law of Member States. This is nothing new. It is a basic principle of European integration since its beginnings. It is clear that this only applies within the scope of the Treaty and when the institutions of the Union are exercising the competences conferred on them.

## **Why does the EU need a single legal personality?**

Giving the EU single legal personality will allow the EU to act in the international arena in a more coherent way. This will allow the EU to better pull together economic and foreign policy considerations - e.g., on trade and diplomatic relations, where at present these competences are split between the EU and the EC.

## **Doesn't the European Union already have legal personality?**

This is disputed. The European Community and Euratom have had legal personality since they were founded. The EC has already agreed numerous trade and development agreements around the world. Under Article 24 TEU the European Union has the capacity to sign and conclude international agreements but uncertainty has existed over the extent of this power.

Single legal personality will create no new powers for the European Union and will not affect the requirement that action in the common foreign and security sphere will remain generally subject to unanimity.

## **What are protocols and declarations?**

In the EU context, a protocol is a legally binding instrument annexed to the treaties, and aiming to clarify the scope and operation of the treaty provisions which it refers to. It forms an integral part of the treaties and has the same legal force.

A declaration is a formal statement made by the Member States at the time of adoption of the treaty. It acts as an aid to interpretation of the treaty. Where the declaration is made by the ICG (i.e. all Member States, not a unilateral declaration made by one State) it reflects the common understanding of the Member States as to the meaning and application of the relevant treaty provisions.

## **Can a member state withdraw from the Union?**

The Treaty includes an article on voluntary withdrawal of a member state from the Union. This is new and a clear indication that being a member of the Union is a voluntary act. Such withdrawal is not subject to any prior condition and becomes effective once agreement has been reached between the Union and the Member State concerned on the withdrawal arrangements or, in any event, two years after notification of the intention to withdraw, even where no such agreement has been reached.

## **What happens to proposals under negotiation whose legal basis changes with the introduction of the Lisbon Treaty?**

The Commission will put forward on 2 December a communication amending the legal bases and/or adoption procedures for pending proposals directly after the entry into force of the Treaty, as it has done following previous revisions of Treaties. At the time of entry into force of the Treaty, pending proposals under the current 3rd pillar will have to be considered void and must be re-adopted by the Commission.

## ***4. How did we get here and what next?***

### **a) Timeline : the road to Lisbon**

#### **2001: The Treaty of Nice and the Laeken Declaration pave the way for institutional reform**

- Declaration annexed to the Treaty of Nice (signed 26 February 2001) highlights the need to review the EU's constitutional framework, particularly in light of the accession of ten new Member States.
- The 'Declaration on the Future of the European Union' (known as the Laeken Declaration), made on 15 December 2001, commits the EU to becoming more democratic, transparent and effective - paving the way for the Convention of the Future of Europe and a new constitution.

#### **2002/3: The Convention of the Future of Europe starts work.**

- The inaugural meeting of the European Convention takes place on 28 February 2002. The Convention, presided over by Valéry Giscard d'Estaing.
- The Convention concludes its work on 10 July 2003 after reaching agreement on the proposed Constitutional Treaty.

#### **2004: The European Constitution is agreed by European Leaders**

- European leaders reach an agreement on the draft European Constitution on 18 June 2004. The text is signed at a ceremony in Rome on 29 October 2004.
- The ratification process begins.

### **2005: 'No' votes lead to a 'period of reflection'**

- 'No' votes in referenda in France (29 May 2005) & the Netherlands (1 June 2005) against the new European Constitution lead to a 'period of reflection'. The European Constitution is suspended.

### **2007: A new treaty is agreed.**

- Leaders agree on the foundation of a new treaty to replace the rejected Constitution. An IGC (InterGovernmental Conference) discusses the new treaty on 23 July 2007.
- A deal on a final text is reached at the European Council on 19 October 2007. The 'Treaty of Lisbon' is signed in the Portuguese capital on 13 December 2007.
- Ratification begins. The Hungarian legislature is the first to approve the treaty – which it does on 17 December 2007.

### **2008: No vote from the Irish electorate puts ratification process in doubt**

- 22 Member States complete the ratification process during 2008 leaving Poland, Germany, the Czech Republic and Ireland (following the 'no' vote in a referendum on the treaty) yet to ratify the Treaty.

### **2009: Treaty enters into force.**

- Irish citizens vote yes to the Treaty following a second referendum on 2 October 2009.
- The final instrument of ratification – from the Czech Republic - is deposited in Rome on 13 Nov 2009.
- The Treaty enters into force on 1 December 2009.

## **b) What next?**

### **Now what happens?**

The Lisbon Treaty enters into force on 1 December 2009

The political agreement reached on 19<sup>th</sup> November at the Informal European Council on the nominations of Herman van Rompuy and Baroness Catherine Ashton should be formalised by written procedure on 1<sup>st</sup> December.

### **Can the Lisbon Treaty ever be changed?**

As with any international treaty, the Lisbon Treaty can be changed following a specific procedure. Were there to be a decision in the future to amend the Treaty, the process would be slightly different to what it has been until now.

The Treaty of Lisbon does not fundamentally alter the procedure for the revision of the Treaties:

- Revision of the Treaties will continue to require the calling of an intergovernmental conference (IGC), which will reach decisions by common accord (and thus unanimously), followed by ratification of the agreed amendments by all Member States. A major innovation is the formal provision for a Convention to prepare proposals to be submitted to the conference. Parliament becomes entitled to submit proposals for revision of the Treaty (as Member States and the Commission already are).
- The Treaty introduces a simplified revision mechanism for provisions relating to common policies. This requires unanimous approval of amendments by the Member States followed by national ratification; the only simplification is that it dispenses with the intergovernmental conference.
- The Treaty contains a number of *passerelle* or *bridging* clauses. These allow the European Council to decide by unanimous vote that, in future, decisions in a particular area will be taken by qualified-majority vote or by the ordinary legislative procedure (codecision). But the Treaty also provides that any national parliament is entitled to block the European Council's decision and prevent the switchover.

### **Contacts:**

*Mark Gray* +32 229 886 44

*Chantal Hughes* +32 229 644 50