

EU LAW UPDATE

EU leaders sign the “Reform Treaty” in Lisbon

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I. INTRODUCTION

On December 13, 2007, the EU leaders gathered in Lisbon to sign the new Reform Treaty, to be known as the Treaty of Lisbon. This Treaty is intended to replace the defunct European Constitution, which was signed by the EU Member States in 2004 but was rejected by French and Dutch voters in national referenda in 2005. If successfully ratified by all Member States, the Treaty of Lisbon will enter into force on January 1, 2009 ahead of the next elections for the European Parliament.

Unlike the draft European Constitution -- which was meant to replace the existing treaties and start afresh --, the Lisbon Treaty is designed to amend the *Treaty on the European Union* (TEU) and the *Treaty establishing the European Community* (TEC). It also drops the term "constitution" and any other reference to EU symbols - the flag, the anthem and the motto – though these will continue to exist. Any mention of European “laws” and “framework laws” is also removed, referring instead to the existing denominations : “directives”, “regulations” and “decisions”.

II. KEY FEATURES

Although EU leaders insist that the two texts are in no way equivalent, the Lisbon Treaty incorporates most of the European Constitution’s key reforms, such as a permanent EU president, a European foreign minister (renamed “High Representative of the Union for Foreign Affairs and Security Policy”), a new distribution of parliamentary seats, a reduced number of commissioners, a clause on withdrawal from the EU and full legal personality for the Union (currently held only by the European Community) allowing the Union to sign international agreements. In addition, many of the political changes and substantive amendments to the existing treaties that had been provided for in the draft European Constitution have been retained.

Terminology. The Treaty of Lisbon amends the TEU, which will keep its present name, and the TEC, which will be called the *Treaty on the Functioning of the European Union (TFEU)*. The two Treaties will constitute the treaties on which the Union is founded and the European Union replaces and succeeds the European Community. References to the “common market” will be replaced by references to the “internal market”.

In addition, the new Treaty introduces a number of changes to the institutions of the Union: the European Council (composed of the Heads of State or Government) and the European Central Bank will both become formal institutions of the Union; the Council of the European Union (composed of Member State representatives at ministerial level) will be known as “the Council” and the Court of First Instance will be renamed “General Court”.

The End of the Pillars. The Lisbon Treaty abolishes the EU’s so-called three-pillar structure. The TFEU will as a result contain a new Title: “Area of Freedom, Security and Justice”, comprising five chapters and grouping the currently dispersed Justice and Home Affairs policies under one heading. The direct consequence of this restructuring will be the expansion of what is - at present - called the ‘Community method’ to Police and Judicial Cooperation in Criminal Matters and the end of the third pillar as an intergovernmental phenomenon.

Charter of Fundamental Rights. The Lisbon Treaty provides that the EU Charter of Fundamental Rights has the “same legal value as the Treaties”. However, a Protocol annexed to the Treaty specifies that this does not enable the Court of Justice or a U.K. or Polish court to find that laws or practices in the U.K. or Poland are inconsistent with the Charter.

Foreign relations. The Lisbon Treaty creates a new head of foreign affairs called the “High Representative of the Union for Foreign Affairs and Security Policy” who will be a Vice-President of the Commission as well as being Chair of the Council of Foreign Affairs Ministers.

A permanent European Council president. A European Council President will be appointed to chair EU summits for a two-and-a-half year term, to replace the current six-month rotating presidency. The European Council president will not chair the sectoral councils, for which the rotation on a six-months basis among Member States will continue.

A New System of Majority Voting. The Lisbon Treaty provides for more qualified majority voting by Member States in the Council. As from November 1, 2014,

qualified majority will require at least 55% of the Member States, comprising at least 15 of them and representing at least 65% of the EU's total population. To block legislation, at least four countries must oppose the proposal. When the Council is not acting on a proposal of the Commission, the required majority is increased to 72% while the population requirement remains the same. (Until March 31, 2017, a Member State may, however, request that the old rules on qualified majority voting apply to a particular proposal.)

A smaller Commission. From 2014, there will no longer be a Commissioner from each Member State. The Lisbon Treaty caps the number of Commissioners at two-thirds of the number of Member States, with equal rotation of Commissioners between all countries. Each Member State will nominate a Commissioner for two out of every three five-year terms.

The principles of "conferral", "subsidiarity" and "proportionality". Under the principle of conferral, the Union may only act within the limits of the competences conferred upon it in the Treaties.

In areas where the Union is not given exclusive competence (but competences are shared with the Member States, *e.g.*, the internal market, consumer protection, environment and energy), the Union may act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. Member States (or their national parliaments) may challenge Union legislative acts before the Court of Justice on grounds of infringement of the subsidiarity rule.

Finally, pursuant to the proportionality principle, the content and form of Union action may not exceed what is necessary to achieve the objectives of the Treaties.

The European Parliament and National Parliaments. The co-decision procedure with the European Parliament will be extended to almost all areas of EU policy, with the exception of sensitive areas such as tax, foreign policy, defense, social security and culture.

The Lisbon Treaty gives national parliaments the right to question proposed European legislation as being incompatible with the principle of subsidiarity. Every national parliament will receive proposals for new European legislation directly. If a third of them objects, the proposal will be sent back for review by the Commission. If half of national parliaments oppose a Commission proposal, a majority of Member States or MEPs can decide that the proposal will be dropped from consideration.

Treaty renumbering. As a result of the new Treaty, the former EC Treaty articles will be renumbered. For instance, the competition provisions (Articles 81-82) will become Articles 101-102.

III. COMPETITION LAW AND UNDISTORTED COMPETITION

At the request of France, the reference to the internal market in the list of aims of the Union no longer mentions “*free and undistorted competition*”. The impact of this removal on EC competition law is not yet clear, as the substantive competition provisions of the existing EC Treaty, which have served as the basis for policy in the competition field, remain unchanged. Moreover, there will be a new protocol stating that “the internal market ... includes a system ensuring that competition is not distorted”. European Commissioner for Competition Policy Neelie Kroes has issued a statement confirming that the Commission will continue its existing competition policies.

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