



## Strategic EU Affairs: Lisbon Treaty Enters into Force

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**Summary:** The Treaty of Lisbon entered into force on 1 December, thus concluding almost nine years of internal debate and introducing new provisions that seek to streamline the EU's institutions and decision-making processes, increase democratic accountability and strengthen the Union's global presence. While the new Treaty leaves the EU's core provisions on environmental policy substantively unchanged, it introduces a number of changes in related areas which are likely to have an impact on the environment.

The Treaty of Lisbon<sup>1</sup> entered into force in 1 December 2009, almost nine years after EU leaders adopted a 'Declaration on the Future of the European Union' (known as the Laeken Declaration) which committed the EU to becoming more democratic, transparent and effective. The new Treaty amends the Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC) (renamed the Treaty on the Functioning of the European Union (TFEU))<sup>2</sup> without replacing them and establishes a single institutional framework by merging the European Community and the European Union. The Treaty consists of seven articles (Article 1 contains amendments to the TEU, Article 2 contains amendments to the TEC, Articles 3-7 sets out final provisions), and a number of legally binding protocols and non binding declarations.

The Treaty contains new language on sustainable development in its article on the Union's objectives which provides that the EU shall *inter alia* 'work for the sustainable development of Europe...and a high level of protection and improvement of the quality of the environment'; 'promote... solidarity between generations'; and 'economic, social and territorial cohesion'. The Treaty also grants the EU a mandate to pursue the objective of sustainable development in its relations with the wider world and 'contribute to...the sustainable development of the Earth' (Article 2 TEU).

### **Key provisions of the new Treaty**

- A full-time **President of the European Council** will be appointed for a two and a half year renewable term. On 19 November, EU leaders appointed Herman Van Rompuy to this position (see IEEP Analysis Briefing: 24 November 2009).
- The six-month rotating **Presidency of the Council of Ministers** will continue, but will be limited to chairing ministerial meetings apart from those of foreign ministers. The Council is also obliged to meet in public when it deliberates and votes on European legislation<sup>3</sup>.

- The Treaty introduces a **double majority voting system** for the Council requiring the assent of 55 per cent of Member States (ie 15 Member States in a Union of 27) and 65 per cent of the EU population. A blocking minority must include at least four Member States. Double majority voting will only be applied from 2014, with a transition period from 2014 to 2017 during which a Member State is able to ask for the old weighted voting system to be used. A special clause will also make it easier to build a blocking minority during the transition period.
- The Treaty creates a stronger foreign policy representative, the **High Representative for Foreign Policy and Security** by merging the roles of the Council High Representative for Common Foreign and Security Policy, the President of the Foreign Affairs Council and the Commissioner for external action. Lady Catherine Ashton was appointed to this post on 19 November by the European Council with the agreement of the Commission President (see IEEP Analysis Briefing: 24 November 2009).
- The **Commission** appointed between the date the Lisbon Treaty enters into force and 31 October 2014 will comprise of one national of each Member State, including its President and the High Representative. From 1 November 2014 the Commission is to consist of a number of members corresponding to two thirds of the number of Member States, unless the European Council acting unanimously amends this number.
- The **European Citizen's Initiative** grants citizens the right to call on the Commission to put forward a legislative proposal in a particular area. In November the Commission launched a consultation on the practical implementation of this new initiative (see IEEP Analysis Briefing: 13 November 2009).
- The overall **size of the European Parliament** is not to exceed 751 (including the President). The number of MEPs representing individual Member States is to be determined by a degressively proportional system, with a minimum threshold of six members per Member State and a maximum of 96.
- **National Parliaments** will have eight weeks to examine draft EU legislative proposals. If a third of all national parliaments oppose a draft, the Commission must review the legislative proposal and decide whether to maintain, amend or withdraw it. If over half of all national parliaments oppose a proposal subject to codecision, a majority of the European Parliament or 55 per cent of the votes in the Council must decide whether or not to proceed with the legislative process. National parliaments may also bring a case to the European Court of Justice if they consider a legislative act contrary to the subsidiarity principle.
- The **ordinary legislative procedure** is based on the existing co-decision procedure; no substantive changes are made to the current system besides some editorial changes (the European Parliament's opinion is known as the European Parliament's position and the Council's common position is known as the Council's position at first reading). The Lisbon Treaty extends the application of the ordinary legislative procedure to some forty fields and hence enhances the Parliament's powers in the decision-making process.
- The Treaty establishes a **budgetary procedure** which is similar to the ordinary legislative procedure with a single reading plus conciliation to decide the EU's annual budget. Deadlines and an obligation on the Commission to present a new proposal in the event of any irreconcilable disagreement between the Council and the European Parliament at the end of the procedure are also introduced. The Treaty eliminates the distinction between compulsory expenditure (including Common Agricultural Policy expenditure on which the Council has the final say) and non-compulsory expenditure (on which the European Parliament has the final say); thus extending the Parliament's

influence to the whole budget for the first time. With the upcoming review of the EU budget, the influence of the Parliament is expected to become more apparent.

- The new Treaty contains two provisions which entail substantial modifications to the **comitology procedures**. They concern quasi-legislative measures referred to as ‘delegated acts’ (Article 290 TFEU) which correspond to the Regulatory Procedure with Scrutiny (RPS) and implementing measures referred to as ‘implementing acts’ (Article 291 TFEU) which correspond to the advisory, management and regulatory procedures.
  - In relation to **delegated acts**, the Treaty states that legislative acts should define the objectives, content, scope and duration of the delegation of power and that the ‘essential elements’ of a particular area should be reserved for the legislative act and thus should not be subject to a delegation of power (Article 290 TFEU). Legislative acts are required to set out the conditions to which the delegation is subject which may be that the European Parliament or the Council can decide to revoke the delegation, or that the delegated act may only enter into force if no objection has been expressed by the European Parliament or the Council within a prescribed period. The legal regime of delegated acts will be applicable after the entry into force of the Lisbon Treaty and will be taken into account for all new and pending legislative proposals. These rules will give the European Parliament and the Council equal powers to block delegated acts.
  - Regarding **implementing acts**, the Commission is to put forward a proposal for a Regulation after the Lisbon Treaty enters into force setting out ‘rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers’ (Article 291 TFEU) where uniform conditions for implementing legally binding EU acts are needed. This Regulation will replace the Comitology Decision 1999/468/EC amended by 2006/512/EC.

### ***Implications for the environment***

The Lisbon Treaty leaves the EU’s core provisions on environmental policy substantively unchanged. A specific reference to combating climate change is included in relation to ‘promoting measures at [the] international level to deal with regional or worldwide environmental problems’ (Article 191 TFEU (ex Article 174 TEC)).

The Treaty sets out the scope of the **EU’s competence**, noting in particular that the EU has exclusive competence in the ‘conservation of marine biological resources under the common fisheries policy’ (Article 2 B TFEU) and shared competence in the areas of environment, energy, agriculture and fisheries (excluding the conservation of marine biological resources) (Article 2 C TFEU). EU competence in the area of conservation of marine biological resources appears to include measures relating to the conservation of non-commercial species and habitats. Given the 2002 reforms of the Common Fisheries Policy (CFP) and the Action Plan to integrate environmental protection requirements into the CFP, this appears to go beyond the management of commercial fish stocks to include measures relating to the conservation of non-commercial species and habitats. It remains unclear how this competence will stand up against Member State obligations in relation to the designation and management of marine SACs under the Habitats Directive.

A new **Energy Title** is introduced in the Treaty which empowers the EU to adopt legislation, not only for the sake of the internal energy market, but also to ensure security of supply and ‘promote energy efficiency and energy saving and the

development of new and renewable forms of energy' (Article 194 TFEU). These objectives are to be achieved through the ordinary legislative procedure, with the exception of measures of a fiscal nature, and on the condition that measures adopted under this Title will not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. This proviso is designed to protect national sovereignty in matters of energy policy, however many measures that would be relevant from a sustainable development perspective are bound to affect the choice between different sources of energy and this exception may limit the impact of the new Title.

Another significant development under the Lisbon Treaty is the application of the ordinary legislative procedure for measures 'necessary for the pursuit of the objectives of the **common agricultural policy and the common fisheries policy**' (Article 43 TFEU (ex Article 37 TEC). This will give MEPs an equal say with Member States over legislation relating to the CAP and CFP for the first time and is likely to have a major impact on the role and operation of the Parliament's Agriculture and Fisheries Committees respectively. The Treaty also increases the Parliament's power in relation to international affairs and its consent is now required for *inter alia* the approval of international trade agreements (eg future agricultural trade agreements) and bilateral and multilateral international fisheries agreements. While the European Parliament has traditionally been supportive of environmental policy, its views on agriculture have in the past been influenced by the farming community and lobby groups. Moreover, the Parliament's extended powers do not apply to certain measures with significant environmental impacts, eg agricultural price support, quantitative limitation and the fixing and allocation of fishing quotas. Thus the overall impact of this extension of the Parliament's powers is difficult to predict and will only become evident in time.

### **References**

1. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>
2. Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union, <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>
3. Council deliberations on legislative acts can be viewed through live web casts <http://video.consilium.europa.eu/>

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