

## Introduction

Following the drafting of a series of European constitutional treaties to consolidate all previous EU agreements and treaties, the Treaty of Lisbon was signed in 2007. Supporters argued that it clarified the functioning and direction of the EU, and made its goals and limitations easier to understand.

The Lisbon Treaty confirmed the power of the EU to act in areas such as human rights, judicial and foreign policy, and re-emphasised the idea that every citizen of a member state is also an EU citizen. It also strengthened the EU's independence by giving it **legal personality**. These changes led critics to suggest that rather than simply clarifying the position of the EU, constitutional treaties lay the foundations for faster future integration. As a result, the content and constitutional nature of the Lisbon Treaty – and thus the need for referenda before its ratification – was the subject of fierce debate.

## History

The Treaty for the Establishment of a Constitution in Europe (commonly referred to as the EU Constitution) was written by a Convention that met from 2002. On 29 October 2004, the heads of the EU's then 25 member states signed the Constitutional Treaty and started the **ratification** process.

The EU Constitution would have shifted the European power balance and changed its decision-making process. It was emphasised that the Constitution was intended to represent a treaty between co-operating states, not the formation of a 'super-state' – but this remained the primary concern of the text's critics. In June 2005, the French and Dutch electorates rejected the Constitution, causing the project to stall.

Following the rejection of the 2004 draft Constitution, EU leaders supportive of a European Constitution (notably the German Chancellor Angela Merkel and French President Nicolas Sarkozy) explored other means of introducing constitutional provisions. Developments culminated at the EU summit of June 2007 under the German Presidency of the European Council; constitutional issues were brought back onto the agenda and all 27 EU states agreed on a mandate for an **Intergovernmental Conference (IGC)** to draft a new 'Reform Treaty'. A new Treaty was drafted and subsequently signed in Lisbon in December 2007 (therefore it is known as the **Lisbon Treaty**). With its aims to draw together resources and to harmonise policies, critics were concerned that the new Lisbon Treaty was simply a reformulation of the original, rejected, EU constitution. However, the 'constitutional project' faced further problems. To come into force, the Treaty needed to be ratified by all EU member states, so when Ireland rejected the Lisbon Treaty in a referendum in June 2008 there was intense debate and speculation about the future of the Lisbon Treaty. The EU decided to take measures to encourage Ireland to ratify the Treaty: it promised Ireland that a number of **protocols** would be added to the Treaty. Ireland then successfully ratified the Treaty following a second referendum in October 2009.

Before Germany ratified the Lisbon Treaty, the German Parliament passed new legislation to strengthen its role in implementing EU legislation to ensure that the EU could not 'exceed the powers given to it'. The EU-sceptic President of the Czech Republic, Vaclav Klaus used delaying tactics as he vehemently opposed the Treaty. Nevertheless, the Czech Republic became the last member state to ratify the Treaty when President Klaus finally signed it on 3 November 2009. The Lisbon Treaty came into force in December 2009.

## What did the Treaty of Lisbon do?

The majority of innovations proposed in the original EU Constitution were carried over to the Lisbon Treaty. Some of the most significant included:

### Voting system

When membership of the EU rose to 27 nation states, it became impractical that the majority of decisions were made through **unanimity**. New methods of decision-making were needed, and the Lisbon Treaty changed voting in the Council of Ministers so that more decisions are now made by **Qualified Majority Voting (QMV)**, rather than using unanimous voting. Decisions made through QMV must be approved by a 'double majority' - 55% EU member states (15 states), representing at least 65% of the EU's population. Also, all decisions made using QMV are now subject to the co-decision procedure, so that Parliament and the Council of the EU must both vote. Majority voting was extended into over 40 new areas, controversially including certain external affairs (however Britain, Ireland and Denmark have **opt-outs** in the areas of justice and home affairs). The new voting system will be implemented from 2014. Theoretically, the EU now functions with greater efficiency, by passing legislation more easily. However, the ability for individual nation states to prevent contentious legislation being passed and implemented has been reduced. It has been calculated that the extension of QMV cut Britain's ability to prevent legislation that it opposes from being passed by 30%.

### Presidential and Foreign Policy Posts

The Lisbon Treaty created the two new posts suggested in the original Constitutional Treaty. It created a permanent Presidency of the European Council. The President has a mandate of two and a half years, and the occupant can't be a serving Head of State. The first President, Belgium's Herman Van Rompuy, was appointed in December 2009. There are fears that the President of the European Council could eventually be merged with the President of the Commission, creating a very powerful position.

The Lisbon Treaty also created a single foreign policy post by merging the external relations commissioner and the high representative for foreign affairs posts into a single High Representative of the Union for Foreign Affairs and Security Policy. This post is currently held by Britain's Baroness Catherine Ashton. She conducts foreign policy on behalf of the European Council, such as representing all member states at the UN. The High Representative for Foreign Affairs automatically gains membership to the European Commission as a Vice President, but does not have the power to independently generate policy.

The failed Constitution's contentious use of the term 'Foreign Minister' was abandoned in the Lisbon Treaty, in addition to symbols such as the flag and a national anthem that implied a supranational state.

### Legal Personality

Under the Lisbon Treaty, the EU gained a *legal personality*. The Charter of Fundamental Rights (CFR) was given full legal status and accepted by most member states as legally binding, although the UK and Poland have been granted '**opt-outs**' from its implications (and the Czech Republic with also gain an opt-out at the next EU treaty change). It is argued that the inclusion of the Charter helps develop the concept of EU citizenship. The UK in particular has its own legal traditions that might be undermined by the CFR under the Lisbon Treaty, notably its Common Law system that differs from the Civil Law systems found across Europe.

### Structural changes and new powers

The European Parliament has more rights under the Lisbon Treaty, placing it at an even level with the Council of Ministers regarding legislation. Furthermore, when the European Council nominates the President of the Commission, it must take consideration of the EU Parliament election results and the nomination must then be confirmed by an absolute majority vote in the Parliament.

The Lisbon Treaty had originally been intended to reduce the size of the Commission so that only two-thirds of EU members (18 states) would be represented by a Commissioner at any one time from 2014. However, negotiations following Ireland's rejection of the Treaty in 2008 confirmed that all member states will keep their Commissioner unless National Leaders vote unanimously to not have one Commissioner per state.

The ECJ's scope for activity was extended into new areas, allowing it full jurisdiction over Justice and Home Affairs for the first time. However, the UK secured an ability to **opt-out** of police cooperation and the option to **opt-in** to legislation relating to judicial issues, although it has been suggested that these opt-outs could be undermined by the extended jurisdiction of the ECJ.

The Lisbon Treaty abolished the EU's pillar structure, which was introduced under the Maastricht Treaty. As a result, decisions on Justice and Home Affairs policy are now subject to the co-decision procedure and QMV. Foreign policy decisions, however, are decided unanimously. Member states lost the right to veto in a number of policy areas. However, national parliaments were given the opportunity to raise a 'yellow card' or 'orange card' when they think that the principle of **subsidiarity** is not being respected.

The Lisbon Treaty defined the distribution of competences between the EU and the member states, stating in which areas the EU is solely responsible and in which areas competences are shared with member states. Competences that were not explicitly given to the EU remain with the member states.

Additionally, for the first time, the Lisbon Treaty set out an exit clause allowing member states to withdraw from the EU.

In December 2010, member states voted for a narrow revision to the Lisbon Treaty. This will allow the EU to create a new permanent crisis mechanism for the eurozone, the European Stability Mechanism (ESM), which will succeed the temporary European Financial Stability Facility (EFSF) in 2013.

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### Facts and figures

- ❖ The original Treaty Establishing a Constitution for Europe was 784 pages long and written in complex, technical legal language.
- ❖ 18 nations ratified the Constitutional Treaty before it was rejected by two electorates, terminating the ratification process.
- ❖ Under the Lisbon Treaty, the EU President has a significant power base, consisting of 3,500 civil servants in the Council Secretariat.
- ❖ Ireland rejected the Lisbon Treaty in a referendum in June 2008 with a majority of 53.4%, but accepted it in a second referendum in October 2009 by a majority of 67.1%.

## Arguments

## For

- ❖ The Lisbon Treaty clarified the power of the EU and the role of the nation state.
- ❖ Extending the use of QMV made the voting system fairer for all members and decision-making more democratic.
- ❖ The Treaty safeguards citizens' fundamental rights.
- ❖ The EU is more likely to pass legislation, even with twenty-seven or more members.
- ❖ With the permanent EU Presidency, individual states are less able to pursue specific interests as the leadership acts in the interests of the EU, giving it focus and direction.

## Against

- ❖ The Lisbon Treaty gave the unelected EU Commission greater say over Foreign Policy and Home Affairs. This challenges the principle that sovereign states should have control over these important policy areas.
- ❖ The UK is now unable to use its veto to block future changes in an increasing number of areas, potentially even those in which it had negotiated an opt-out.
- ❖ The Lisbon Treaty made the EU an international actor in its own right, separate from, and superior to, its member states. It transformed the EU from an international agreement into something more like a single state.
- ❖ Changes did not address the EU's democratic deficit – the Commission remains answerable solely to the European Council and not directly to any EU citizens, as does the new European Council President.
- ❖ The ECJ gained jurisdiction in a range of areas, including the power to dictate the fundamental rights of EU citizens, with precedence over long-established national institutions.

## Treaty of Lisbon: key facts



- ❖ Centralised EU power
- ❖ Granted the EU a *legal personality*
- ❖ Removed states' right to veto from most policy areas
- ❖ Created new President and single Foreign Policy post
- ❖ New powers for the European Parliament
- ❖ Extended ECJ powers into Home Affairs
- ❖ Made the Charter of Fundamental Rights (CFR) legally binding
- ❖ New powers to harmonise national legal systems

*“What you cannot do is have a situation where you get a rejection of the treaty and bring it back with a few amendments and say, ‘Have another go’. You cannot do that.”*

Tony Blair, British Prime Minister

*“The fundamentals of the Constitution have been maintained in large part.”*

Angela Merkel, German Chancellor

*“There is no constitutional change that would justify holding a referendum.”*

Peter Mandelson, British Trade Commissioner

*“A few million Irish cannot decide on behalf of 495 million Europeans.”*

Wolfgang Schaueble, German Interior Minister

*“The Treaty is not dead. The Treaty is alive, and we will try to work to find a solution.”*

Jose Barroso, Commission President

#### Technical Terms

- ❖ **Legal Personality:** the power to allow the EU to make international agreements by itself, on behalf of member states.
- ❖ **Unanimity:** the need for all member states to agree on a proposal before it can be adopted as legislation.
- ❖ **Veto:** the right of one country to block a proposal.
- ❖ **Ratification:** the process by which member states' parliaments confirm their country's acceptance of a treaty.
- ❖ **Intergovernmental Conference (IGC):** formal procedure for debating and deciding amendments to the EU's treaties.
- ❖ **Qualified Majority Voting:** voting system whereby 55% EU Council members (15 states), representing at least 65% of the EU's population must vote in favour of a proposal for it to pass. Votes are spread in relation to the size of a country.
- ❖ **Opt-out:** the ability to decline from signing an agreement, against a presumption to do so.
- ❖ **Opt-in:** the ability to sign-up to an agreement, against a presumption not to do so.
- ❖ **Subsidiarity:** principle that the EU should act within its specific competences, and not interfere in areas under a member state's sovereignty.
- ❖ **Protocol:** additions to a previous treaty which are not binding for all signatories.

#### Links

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