

Competition

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The Lisbon Treaty: a brief overview

Today, 1 December 2009, the Treaty of Lisbon (the Treaty) enters into force. The Treaty amends the Treaty on European Union and the EC Treaty.¹ The Treaty's most important changes will be discussed below.

Goodbye Greek temple

The Treaty abolishes the three "pillar" structure² introduced by the Maastricht Treaty³ with a view to achieve greater coherence within the European Union (EU). While the substantive provisions of the first pillar remain largely unchanged, the second and third pillars are restructured.

Common Foreign and Security Policy

The former second pillar is transformed into a new chapter on the EU's external action⁴, with specific provisions on the common foreign and security policy (CFSP). The EU's competence in matters of CFSP are declared to cover all areas of foreign policy and all questions relating to the EU's

security, including the progressive framing of a common defence policy that might lead to a common defence.⁵ The CFSP shall be put into effect by the High Representative⁶ and the Member States. The High Representative will be assisted by a European External Action Service⁷.

Freedom, security and justice

In regard of the former third pillar, the Treaty provides that the EU shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the member.⁸ It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control.

Hello TFEU and TEU

As of 1 December 2009, the EU replaces and succeeds the European Community.⁹ The EU will

¹ See Articles 1 and 2 of the Treaty of Lisbon.

² The first pillar represents the EC. Pillar 2 relates to foreign and security policy, while pillar 3 represents intergovernmental cooperation relating to police and judicial cooperation in criminal matters.

³ The Maastricht Treaty created the European Union with its three pillars. See also Articles 1 and 3 of the EU Treaty.

⁴ Article 1(24) of the Treaty of Lisbon.

⁵ Article 1(27) of the Treaty of Lisbon. Decisions on defence issues will continue to need unanimous approval of the 27 EU Member States.

⁶ On 19 November 2009, the EU Heads of State or Government appointed Ms Catherine Ashton as High Representative. [Press release](#) of the General Secretariat of the Council of the EU, November 2009.

⁷ The European External Action Service is to be adopted by the Council at the latest by the end of April 2010.

⁸ Article 2(64) of the Treaty of Lisbon.

⁹ All references to "Community" and "European Community" are replaced by "Union": cf. Article 2(2) of

have a single legal personality and is founded on the “*Treaty on the Functioning of the European Union*” (TFEU) and the Treaty on European Union (TEU).¹⁰ The TFEU is essentially the renamed EC Treaty.

The Treaty does not contain any major alterations to the substantive provisions in the EC Treaty. Its articles and those of the TEU are renumbered in accordance with the tables of equivalences set out in the Annex to the Treaty.¹¹ As a result, the following provisions are renumbered as follows:

New numbering of selected provisions	
Old EC numbering	New TFEU numbering
<i>Free movement of goods</i>	
Article 23 – goods	Article 28
<i>Free movement of persons, services and capital</i>	
Article 39 – workers	Article 45
Article 43 - establishment	Article 49
Article 49 - services	Article 56
Article 56 - capital	Article 63
<i>Rules on competition</i>	
Article 81 - Cartel prohibition	Article 101
Article 82 - Abuse of dominance	Article 102
Article 86 - Public undertakings / special exclusive rights	Article 106
Article 87 - State aid	Article 107
Article 88 - State aid	Article 108

The Charter of Fundamental Rights of the European Union will have the same legal value as the TEU and the TFEU.¹² The Treaty also provides for accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. As a result, the EU and its institutions will be accountable to the European Court of Human Rights for issues concerning the European Convention on Human Rights (ECHR). On the same note, the European Courts are able to directly apply the ECHR as part of EU law.¹³

Institutional changes

The Treaty introduces a number of changes to improve the effectiveness, consistency and transparency of the EU institutions and legislative process.

European Parliament

The European Parliament shall be composed of 750 members, plus the President¹⁴, and is promised to have a greater say now that the Treaty increases the number of areas where the co-decision procedure applies.¹⁵ The European Parliament will also play a bigger role in approving the EU’s budget.

In addition, national parliaments will be involved more closely: draft legislative acts will have to be sent to them in accordance with the Protocol on the role of national Parliaments in the European Union.¹⁶ National parliaments have eight weeks to argue that EU action is (not) in accordance with the principle of subsidiarity, i.e. whether EU action is appropriate or not.

European Council

The Treaty clarifies the role of the European Council¹⁷ and makes it a full EU institution. In addition, a new position of President of the European Council is created. On 19 November 2009, the EU Heads of State or Government elected Mr Herman van Rompuy as president.¹⁸

Council of the European Union

The Treaty introduces a new system of “double majority”, which will affect the EU’s decision-making institution, the Council of the European Union.¹⁹ From 2014, Council decisions will be deemed approved if supported by 55% of the Member States, representing at least 65% of the EU population.

the Treaty of Lisbon. In addition, the words “common market” are replaced by “internal market”.

¹⁰ See Articles 1(2) and 1(56) of the **Treaty of Lisbon**. Pursuant to Article 2 of the Treaty, the EC Treaty is renamed the “Treaty on the Functioning of the European Union” (TFEU).

¹¹ See Article 5 of the Treaty of Lisbon.

¹² Article 1(8) of the Treaty of Lisbon. The Member States signed the charter in 2000. It will now become legally binding.

¹³ The Treaty does, however, state that “such accession shall not affect the Union’s competences as defined in the Treaties”.

¹⁴ Article 1(15) of the Treaty of Lisbon.

¹⁵ The co-decision procedure is renamed the “ordinary legislative procedure” and it extends to new policy areas such as freedom, security and justice.

¹⁶ Article 1(12) of the Treaty of Lisbon.

¹⁷ The European Council consists of the presidents and prime ministers of the Member States.

¹⁸ **Press release** of the General Secretariat of the Council of the EU, November 2009.

¹⁹ The Council of the European Union is made up of the 27 government ministers representing each of the Member States.

High Representative of the Union

The Treaty creates a new position of High Representative to head the EU's common foreign and security policy.²⁰ On 19 November 2009, the EU Heads of State or Government agreed on the appointment of Ms Catherine Ashton as High Representative.²¹

European Commission

The Treaty provides that, from 1 November 2014, the number of Commissioners may be reduced to two-thirds of the number of Member States.²² At the European Council meeting in December 2008, the Heads of State or Government agreed that the Commission would continue to consist of one national from each Member State.²³

Interestingly, the Treaty "forces" the Commission to take more note of nationals. Article 1(12) of the Treaty of Lisbon introduces a possibility for nationals of a significant number of Member States to invite the Commission to submit any appropriate proposal on matters where they consider a legal act of the Union required, if they have collected one million signatures.

Court of Justice

The Treaty provides the Court of Justice to consist of (i) the European Court of Justice, (ii) the General Court (formerly the Court of First Instance) and (iii) specialised courts, attached to the General Court.²⁴

The Treaty facilitates the admissibility of actions brought by individuals against regulatory acts of the European Union by amending the condition that individuals will need to prove that the act is of direct and individual concern to them. Instead, individuals may bring proceedings against a regulatory act if it is of direct concern to them and does not entail implementing measures.²⁵

²⁰ The High Representative exercises, in foreign affairs, the functions which, so far, were exercised by the six-monthly rotating Presidency, the High Representative for CFSP and the Commissioner for External Relations.

²¹ The new Commission must gain approval from the European Parliament before it takes office.

²² Article 1(18) of the Treaty of Lisbon.

²³ See Brussels European Council, 11 and 12 December 2008, [Presidency Conclusions](#).

²⁴ Article 1(20) of the Treaty of Lisbon.

²⁵ Article 2(214) of the Treaty of Lisbon.

Competition law remains unaltered

The Treaty does not have any implications for the competition law provisions contained in the (former) EC Treaty, even though the Treaty no longer specifies 'a single market where competition is free and undistorted' as an objective for the EU. The reference to competition is now included in the legally binding Protocol on Internal Market and Competition, which is annexed to the Treaty.²⁶

The current Competition Commissioner Neelie Kroes²⁷, has confirmed that there is no change to the competition law provisions by stating that the Protocol "repeats that competition policy is fundamental to the Internal Market. It retains the existing competition rules which have served us so well for 50 years. It re-confirms the European Commission's duties as the independent competition enforcement authority for Europe".²⁸

Comment

Even though the Treaty of Lisbon promises to have quite an impact on numerous areas, it does not have any substantive consequences for the current application of competition law. However, the new name of the EC Treaty and the renumbering of its provisions will take some getting used to.

²⁶ The [Protocol](#) on the Internal Market and Competition reads: "The High Contracting Parties, considering that the internal market as set out in Article 2 of the Treaty on European Union includes a system ensuring that competition is not distorted, have agreed that, to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 of the Treaty on the Functioning of the Union".

²⁷ Mr. Joaquín Almunia will be the new commissioner for competition (pending approval by the European Parliament). See the press release of 27 November 2009, [IP/09/1837](#).

²⁸ See [MEMO/07/250](#), Statement by European Commission for Competition Neelie Kroes on results of June 21-22 European Council – Protocol on Internal Market and Competition.

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