The Lisbon Treaty – brief overview of the key changes

Following ratification of the Lisbon Treaty by the Czech Republic on 3 November 2009, the Lisbon Treaty (the Treaty) has now been ratified by all EU Member States and will come into force on 1 December 2009, although some provisions will not take effect until a later date. The Lisbon Treaty amends the existing Treaties in order to make the necessary changes to allow an enlarged EU with 27 Member States to work more effectively. It also makes changes to the way in which EU legislation is proposed and adopted. The aim of this briefing is to give a brief overview of some of the main changes introduced by the Treaty.

Structure of the Treaties: TEU and TFEU

Two Treaties, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) will form the foundation of the EU and both Treaties, as well as all Protocols, will have the same legal value. The TEU sets out the objectives and principles of the EU and the TFEU provides the organisational and functional details. The TEU is the current Treaty on the European Union (the Maastricht Treaty), with amendments, and the TFEU is basically the EC Treaty, also with a number of amendments. The European Union (EU) will have a single legal personality and will replace and succeed the European Community (EC). All references to ‘Community’ are replaced by the word ‘Union’.

Institutions

The Lisbon Treaty creates the role of permanent President of the European Council, replacing the current system under which the President of the European Council rotates every six months. The President will be appointed by the Governments of the Member States.

The role of the High Representative of the Union for Foreign Affairs and Security Policy has been bolstered in order to strengthen the EU’s voice on the world stage. He will preside over the Foreign Affairs Council and will also be Vice-President of the Commission. A new European External Action Service will support the High Representative.

The President of the Commission will be elected by the European Parliament. The candidate will be proposed by the European Council, nominated by qualified majority. The European Parliament will also invest the whole Commission.

The Treaty currently provides for a reduction in the number of Commissioners.
from 1 November 2014, when their number is to be reduced to two-thirds of the number of Member States and a rotation system will operate to determine which Member State will send a Commissioner for any given term. This will now not happen, because in order to pave the way for the second Irish referendum the Council undertook (in December 2008) that once the Treaty comes into force, a decision will be made to maintain the number of European Commissioners at one for each Member State.

The European Court of Justice (ECJ) becomes the Court of Justice of the EU, and the CFI becomes the General Court. The jurisdiction of the Court of Justice is expanded to all the activities of the EU, with the exception of the common foreign and security policy. The Treaty also improves access to the European Courts for private individuals, by removing the requirement of ‘individual concern’ where a natural or legal person challenges ‘a regulatory act which does not entail implementing measures’ (this can cover certain Regulations which were previously almost impossible to challenge).

**Legislative process**

The co-decision procedure, under which the Council and the Parliament must agree on the proposed legislation and legislation cannot be adopted if opposed by the Parliament, is extended to a large number of new areas. It becomes the norm and is therefore renamed the ‘ordinary legislative procedure’.

The Treaty introduces a new system of qualified majority voting which will take effect from November 2004 and is aimed at achieving a balance between large and small Member States. Under the new system a measure will be approved if it is supported by 55% of the Member States (15 out of 27), provided they represent 65% of the EU population.

Only the most sensitive areas, such as tax, social security, citizens’ rights, languages, seats of the institutions and common foreign, security and defence policies, remain subject to unanimity voting.

The involvement of national Parliaments in the legislative process is increased and formalised. The adoption of EU legislation will be subject to prior scrutiny by national Parliaments who will be given the opportunity to challenge proposed legislation if it does not conform to the principle of subsidiarity. Each national Parliament is granted two votes, shared out on the basis of the national Parliamentary system. Where one third of the votes of the national Parliaments object to a proposal, the proposal is sent back to the Commission for review. If a majority of national Parliaments oppose a Commission proposal, and they have the backing of the European Parliament and the Council, the proposal must be abandoned.

**Charter of Fundamental Rights and the European Convention on Human Rights**

The Charter of Fundamental Rights, which was originally proclaimed by the EU institutions at the Nice Summit in December 2000, becomes binding and will have the same legal status as the Treaties. The text of the Charter has not been incorporated into the Treaties, but was published in the Official Journal. Until now the Charter has only had declaratory status.

The UK, Poland and the Czech Republic have negotiated a separate Protocol on the application of the Charter which clarifies their position. Whereas in most other Member States the Charter will apply not only to EU law but also to all national law implementing obligations under EU law, the Protocol states that the Charter does not extend the ability of the Court of Justice, or any court or tribunal of these countries, to find that the laws, regulations or administrative provisions of these countries are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

The Treaty also provides for the possibility of the EU's accession to the European
Convention on Human Rights (ECHR), which will make the EU and its institutions accountable to the European Court of Human Rights for issues concerning the ECHR. It also means that EU law will have to be interpreted in the light of the ECHR, not only as a general principle of EU law but as a Convention directly applicable to the EU and to which the EU adheres. The Treaty and its Protocols nevertheless state that accession to the ECHR will not affect the EU's competences and that provision will be made for preserving the specific characteristics of the EU and EU law.

**Competition law**

The predecessor of the Lisbon Treaty, the draft Constitutional Treaty, had listed competition policy as one of the EU's objectives. Under pressure from the French President, Mr Sarkozy, this objective was removed from the text of the Lisbon Treaty and instead placed in the text of a Protocol on the Internal Market and Competition, which states that "the internal market as set out in Article 3 of the TEU includes a system ensuring that competition is not distorted". Under the current EC Treaty, competition is also not one of the Community objectives, but one of the means to achieve the objectives, and it has therefore been argued that the change should have no real impact on the application of competition policy. Not everyone agrees with this interpretation and some critics have argued that it raises questions as to whether the European Courts will consider the structural link between the Protocol and the competition law provisions in the same way as they currently make the connection between those provisions and the general EC Treaty provisions on objectives and policies.

**Renumbering of the Treaty provisions**

The substantive content of the competition provisions remains unaltered, but the new Treaty will result in a renumbering of most provisions. The table below sets out the new references for a number of selected EC Treaty provisions:

<table>
<thead>
<tr>
<th>Current numbering of the EC Treaty</th>
<th>New numbering under the Lisbon Treaty</th>
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<tbody>
<tr>
<td>Article 81 EC Treaty (anti-competitive agreements)</td>
<td>Article 101 TFEU</td>
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<td>Article 82 EC Treaty (abuse of dominance)</td>
<td>Article 102 TFEU</td>
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<td>Article 86 EC Treaty (public undertakings)</td>
<td>Article 106 TFEU</td>
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<td>Article 87 EC Treaty (State aid)</td>
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<td>Article 88 EC Treaty (State aid)</td>
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<td>Article 230 EC Treaty (legality of acts of an EU institution)</td>
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<td>Article 232 EC Treaty (failure to act)</td>
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