

Understanding the European Council in Lisbon and the Reform Treaty

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Summary:

The European Council that met on 18th and 19th October in Lisbon, adopted the draft reform treaty modifying the Treaty on European Union and the Treaty establishing the European Community. The following text presents the content of the new Treaty: the Lisbon Treaty.

Introduction:

The Intergovernmental Conference opened on 23rd July to write a new treaty to replace the draft Treaty establishing a Constitution for Europe.

Since this was not ratified by all EU Member States the Heads of State and Government of the 27 Member States met for the European Council in Brussels. Under the presidency of Germany that had received a mandate a year previously, they decided to write a Reform Treaty by the end of the year to modify the previous European treaties in replacement of the Constitution. This treaty has to be submitted for ratification by each of the Member States by 2009.

The European Council came to an agreement on the text of a mandate for an Intergovernmental Conference (IGC), with a view to formalising the political agreement which it had found.

The Intergovernmental Conference has provided a legal framework to a treaty to reform the Treaty on European Union and the Treaty establishing the European Community (TEC), the latter now having been replaced by the Treaty on the Functioning of the Union (TFU). This text substitutes the Constitutional text now called the "IGC 2004." Protocols will be annexed to the Reform Treaty.

1 - A modest treaty but one which makes it possible to break the institutional stalemate.

In order to take into account the ratification of the Constitution by 18 Member States representing 54% of the European population and its non-ratification by 7 others an agreement had to be reached on the main institutional changes that it implied and to show that the Council had taken on board the concerns expressed by the two negative referenda (France, Netherlands) and three governments (UK, Poland and the Czech Republic).

The negotiation mandate set for the Intergovernmental Conference is the result of a laborious, political compromise.

The new treaty is typified by the adoption of the core of the institutional reforms contained within the Constitution, and as far as the other measures are concerned, and by reticence and caution, which indicate a certain waning in Euro-enthusiasm, although this should not have any real legal consequences. The UK has taken advantage of this

opportunity to withdraw from some common policies, both present and future. The Poles and the Czechs achieved the withdrawal of the Union's symbols (the flag, the anthem, the motto) which in their opinion meant that the constitution would, long term, lead to a European State and with others (Lithuania), they also pushed for the inclusion of a solidarity clause in the energy sector "in the case of serious supply problems". France succeeded in eliminating, amongst the Union's objectives (article 1-3 of the Constitution), the creation of a "market where competition is free and undistorted," even though the competition policy remains a means to achieve a true internal market; a protocol on public services will be annexed in the future treaty.

Not all of the Constitution's innovations were taken up in the Reform Treaty but the main institutional reforms remain:

- A President of the Council appointed for two and a half years, renewable once,
- A High Representative for Foreign Affairs and Security Policy who will have the same prerogatives as the Union's Foreign Minister and will be Vice-President of the European Commission,
- The double majority for decisions taken by the Council of Ministers as of 2014,
- The reduction from 27 to 18 of the number of European Commissioners as of 2014,
- An increase in the powers enjoyed by the European Parliament thanks to the introduction of a general co-decision procedure in the legislative area,
- Enhanced control of subsidiarity by national parliaments which will take part in the European legislative procedures,
- The obligatory nature of the Charter of Fundamental Rights in all Member States except in the UK and Poland
- Popular initiative by means of the right to petition

The policy to fight global warming linked to the energy policy has been included in the European treaties for the very first time.

This agreement was concluded after granting major concessions to the UK and to the most Euro-sceptic governments. The first of these emerge as opting-out clauses with regard to co-operation in the police and legal areas and the application of articles in the Charter of Fundamental Rights. They then involve the application of a new weighting of votes in the Council for the application of the qualified majority (2014 with a possibility of extending this date to 2017) and the elimination of the symbols of the Union (anthem, flag, motto).

General guarantees were given to the Euro-sceptic governments throughout the mandate's text in the shape of restrictive interpretations, and even via precise details designed to prevent any 'incursion' by Union competences into the domain of State prerogatives.

In addition to this, there have been modifications made to the form but which are without any real legal consequence; this was done on the initiative of the two States that rejected the Constitution. Apart from the introduction of a declaration recalling the need for the Union to protect its citizens, the deletion of the objective "to form an internal market in which competition is free and undistorted" led to a number of comments notably from the UK. Ms Neelie Kroes, the Competition Commissioner believes that this modification will not have any legal effects. However, it shows a political will to have influence over the Commission in order to make its competition policy more flexible.

Generally, this agreement enables a solution to the crisis caused by the negative vote on the part of the French and the Dutch in the referenda in the spring of 2005 by offering guarantees to those States who had wanted to withdraw the signature they had given in Rome on 29th October 2004. It is therefore less ambitious in terms of content and form. It is just a modification of the existing treaties. It does not signify a breaking away from the previous treaties but rather heralds their completion.

It is now possible to present the content.

2 - Nature and Content of the Reform Treaty.

The principle of the new treaty lies in the inclusion of the innovations drawn up by the 2004 IGC into the Treaty on European Union and the Treaty establishing the European Community, (which has become the treaty on the functioning of the Union) ie the Constitutional text as it was presented during the referenda in France and the Netherlands. This inclusion presented an opportunity to make significant modifications.

We now find the following included in the reform treaty:

- A stricter definition of the respective competence of the Union and the Member States: Customs Union, trade, competition and monetary policy are still exclusive competences of the Union; social, energy, internal market, research policies are still competences shared with the States,
- The specific nature of the Common Foreign and Security Policy with notably the creation of the position of High Representative for Foreign Affairs and Security Policy and the inclusion of the CFSP's intergovernmental nature in the Treaty,
- The involvement and control of national parliaments with an extension of the deadlines for the examination of a text that has risen from six to eight weeks; along with this there is also the enhanced control of the subsidiarity principle (national parliaments will be able to request the Commission to review a proposal if they believe that it is encroaching on their areas of competence),
- Police and judicial co-operation with regard to criminal matters, will be maintained in spite of some opting-out clauses for the British,
- The treaty will make it easier for States who want to move forwards more quickly than others in areas where the unanimity rule still applies to undertake enhanced co-operation treaties – this might include in areas such as taxation and foreign policy.

The Charter of Fundamental Rights is not part of the treaties but an article provides it with an obligatory legal value by defining its range of application (British and Polish exceptions).

a– Modifications made to the Treaty on European Union (TUE):

The values on which the Union is based are included in the preambles and the first articles. The principle of the Union's competence of attribution is recalled with several details with regard to the respect of Member States' competences. A new procedure has been established to allow national parliaments to strengthen their prerogatives against the Union's institutions. The European Council will become a Union institution. Voting rules governing the qualified majority have been modified. A 55% majority of the Member States representing at least 65% of the European population is necessary for the adoption of a decision. These rules will apply as of 2014 and until 2017 a Member State may ask to vote according to the present rules. In addition to this until 2017 75% of the Member States representing 75% of the Union's population can call for the "Ioannina Compromise" ie turn to the Council "which will do everything it can (...) to answer the concerns raised(...)". After 2017, this compromise remains with lower percentages of States and populations reduced to 55%. Poland therefore succeeded in providing the "Ioannina Compromise" included in the protocol annexed to the Treaty, with greater legal weight. Enhanced co-operation rules planned for in the Constitution are included in the treaties; for these to be possible 9 Member States will have to rally together. The Common Foreign and Security Policy is the subject of specific rules and procedures. It therefore is not part of the "community".

The Union becomes a legal entity with the merger of the three pillars (community policies, CFSP, legal and police co-operation). A voluntary withdrawal procedure from the Union has been established.

The conditions required to request membership of the Union are included in the treaties and completed by criteria "established by the Council" (Modified Copenhagen).

The number of Euro MPs has finally been established at 750 instead of the previous 785. This new attribution will be the one applied in the upcoming European elections in 2009. Italy succeeded in gaining one extra seat in comparison with the proposed attribution of seats issued and adopted by the European Parliament on 11th October (report Lamassoure-Severin).

b– Modification of the Treaty establishing the European Community

It has now become the Treaty on the Functioning of the Union (TFU).

The innovations in the Constitution are included in the treaty in the form of occasional modifications: the Union's areas and types of competence (exclusive and shared competences, support, co-ordination, complement) are detailed and extended, notably to the domains of space, energy, civil protection, sport, tourism, public health, most remote regions, administrative co-operation, Euro governance, area of freedom, justice and security, own resources. The fields of application of the qualified majority and the co-decision procedure have been extended to over 40 areas. Hence, the European Parliament has gained power.

Modifications have been made to the constitutional text. These involve:

- The addition of a solidarity energy clause in the case of serious supply problems,
- The fight against climatic change,
- The Union's legal acts remain unchanged. Hence, there will be neither "European laws" nor European "framework laws."

A Protocol on public services has been added:

Protocol on services of general interest

The High Contracting Parties,
Wishing to emphasise the importance of services of general interest
Have agreed upon the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 EC Treaty include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights;

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise noneconomic services of general interest.

The protocols planned for by the Constitution will be modified (ten of them have been deleted). The one with regard to Euratom has been maintained according to the same terms.

The Intergovernmental Conference has established the Treaty checking that legal terms, cross-references and the structure of these two treaties alone link up since they will now become the main legal foundations of the Union's actions and institutions.

The final text will not be any clearer. The need to provide the Union with legal foundations that are more accessible to non-specialists remains a future requirement. It has been postponed until a much later date. Although this might be regretted, we should however be pleased that the present institutional crisis is over.

The state of play now will make it possible to foresee more long term developments for the Union and its policies.

The official signature of the Reform Treaty by the Heads of State and Government is planned for 13th December 2007 in Lisbon.

The text will then be submitted for ratification in each Member State before the European Elections in June 2009.

For technical details and the protocols:

<http://www.consilium.eu/ShowPage.asp?id=1317&lang=fr&mode=g>

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