



WHAT THE  
**LISBON TREATY**  
MEANS

THE EUROPEAN UNION HAS UNDERGONE MANY CHANGES OVER THE LAST FIFTY YEARS THROUGH A SERIES OF TREATIES AND AMENDING TREATIES, OF WHICH THE LISBON TREATY IS THE LATEST. THE AIM OF THE LISBON TREATY IS TO SIMPLIFY THE WAY IN WHICH THE EU WORKS BY REFORMING THE INSTITUTIONAL STRUCTURE OF THE UNION AND THE WAY IN WHICH DECISIONS ARE TAKEN.

THESE EXPLANATORY FACT SHEETS ON THE LISBON TREATY ARE THE LATEST IN THE SERIES OF INFORMATION PUBLICATIONS THAT THE IIEA HAS PRODUCED ON THE EUROPEAN TREATIES SINCE THE INSTITUTE'S ESTABLISHMENT. THE FACT SHEETS ARE DESIGNED WITH THE GENERAL PUBLIC IN MIND, WITH A PARTICULAR EMPHASIS ON WOMEN AND YOUNG PEOPLE. IN KEEPING WITH THE INSTITUTE'S ROLE AS AN INDEPENDENT FORUM PROVIDING IN-DEPTH ANALYSIS OF EU POLICY DEVELOPMENTS AND THEIR IMPLICATIONS FOR IRELAND AND EUROPE, THESE FACT SHEETS CONTRIBUTE TO INFORMED PUBLIC DEBATE ON THE LISBON TREATY IN IRELAND BY PROVIDING THE FACTS IN A BALANCED AND CONCISE MANNER.

THIS FOLDER CONSISTS OF SIX FACT SHEETS ADDRESSING IMPORTANT AREAS OF EUROPEAN POLICY AND THE MEANING AND IMPLICATIONS OF THE LISBON TREATY PROVISIONS FOR THESE POLICY AREAS. THE CURRENT TREATY PROVISIONS IN THE AREAS OF; EUROPEAN SECURITY & DEFENCE POLICY, JUSTICE AND HOME AFFAIRS (JHA) POLICY, ENERGY & CLIMATE CHANGE POLICY, EUROPEAN SOCIAL POLICY, THE EU INSTITUTIONS AND BUSINESS AND THE SINGLE MARKET ARE DETAILED, AND IN TURN, THE PROVISIONS PROPOSED BY THE LISBON TREATY ARE PROVIDED, WITH REFERENCED TREATY ARTICLES, IN ORDER TO FACILITATE FURTHER RESEARCH ON THE PART OF THE READER.

THESE FACT SHEETS HAVE BEEN PRODUCED AS PART OF THE IIEA'S YEAR-LONG EUROPE 2.0 PROJECT. EUROPE 2.0 EXAMINED 50 YEARS OF EUROPE AND LOOKED AHEAD TO THE FUTURE OF EUROPE, THROUGH A NUMBER OF HIGH-PROFILE EVENTS AT THE IIEA, THE USE OF INTERACTIVE MEDIA AND A SERIES OF PUBLICATIONS. THIS PROJECT WAS FUNDED BY THE EUROPEAN COMMISSION.

## STYLE GUIDE:

THE LISBON TREATY IS AN AMENDING TREATY, MEANING THAT IT REFORMS THE EU'S CURRENT RULEBOOK, WHICH IS CONTAINED IN THE TWO FOUNDING TREATIES OF THE EUROPEAN UNION. THESE LATTER TWO TREATIES ARE (1) THE TREATY ON EUROPEAN UNION (TEU), WHICH CONTAINS THE RULES ON THE INSTITUTIONS AND ON THE EU'S FOREIGN AND SECURITY POLICY; AND (2) THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, WHICH THE LISBON TREATY WILL RENAME THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU). THIS TREATY IS THE LARGER OF THE TWO, AS IT CONTAINS THE RULES ON THE MAJORITY OF EU POLICIES.

THERE ARE TWO SETS OF NUMBERING USED IN RELATION TO THE AMENDMENTS CONTAINED IN THE LISBON TREATY:

1. TEMPORARY NUMBERING, WHICH IS ONLY USED IN THE LISBON TREATY ITSELF; AND
2. FINAL NUMBERING, WHICH WILL OCCUR IF THE LISBON TREATY ENTERS INTO FORCE.

FOR EXAMPLE:

| TEMPORARY NUMBERING | FINAL NUMBERING |
|---------------------|-----------------|
| ARTICLE 1 TEU       | ARTICLE 1 TEU   |
| ARTICLE 1A TEU      | ARTICLE 2 TEU   |
| ARTICLE 2 TEU       | ARTICLE 3 TEU   |
| ARTICLE 3A TEU      | ARTICLE 4 TEU   |
| ARTICLE 3B TEU      | ARTICLE 5 TEU   |

ETC.

IN THESE FACTSHEETS, THE FINAL NUMBERING IS USED. REFERENCES TO ARTICLES ARE AS FOLLOWS:

- ARTICLES TO BE INSERTED INTO THE TREATY ON EUROPEAN UNION (TEU) WILL BE WRITTEN AS: ARTICLE X TEU, SO THE SECOND PARAGRAPH OF ARTICLE 5 OF THE TREATY ON EUROPEAN UNION WOULD APPEAR AS ARTICLE 5(2) TEU.
- ARTICLES TO BE INSERTED INTO THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU) WILL BE WRITTEN AS: ARTICLE X TFEU, SO ARTICLE 69 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION WOULD APPEAR AS ARTICLE 69 TFEU.

# 1

# THE LISBON TREATY EXPLAINED



## EU INSTITUTIONS FACT SHEET

- The European Union is an international organisation of sovereign states, which have agreed, through a series of treaties, to work together in carefully defined areas in order to pursue common objectives. These treaties form the rulebook of the EU and can only be amended by further treaties among the Member States. The Lisbon Treaty is the most recent attempt to reform the EU's rulebook.
- The EU operates a unique form of international governance, based on the principle of conferral, whereby Member States pool their national sovereignty in order to coordinate certain national policies. The EU only deals with the issues for which the Member States have given it responsibility. In the vast majority of cases, the EU only takes supporting action that supplements efforts already made by the Member States.

## THE INSTITUTIONS OF THE EU

- The European Council is comprised of the Heads of State or Government of the Member States and the President of the European Commission. Its presidency rotates among the Member States every six months. The European Council has no legislative or executive powers but instead defines the general political agenda and guidelines for the Union. Ireland is represented at the European Council by the Taoiseach.
- The European Commission consists of one national of each Member State, nominated by each national government and approved as a body by the European Parliament. At present there are 27 Commissioners, because there are 27 national governments in the EU. The President of the Commission is nominated individually by the Heads of Government of the Union, which includes the Taoiseach, and approved individually by the European Parliament. The Commission is an independent, supranational institution whose members take an oath on entering office that they will act independently of any national interests or instructions. The Commission has a five-year term of office. The Commission is the executive arm of the EU and uniquely has the sole right of initiative in proposing legislation to the Council and Parliament. It is responsible for implementation of EU laws and for carrying out important administrative tasks. The Commission is the guardian of the treaties, which means that it alone is responsible for ensuring that Member States comply with their obligations under the treaties.

- The Council of Ministers is the Union’s chief legislator and divides its work according to the different EU policy areas, such as economic affairs, agriculture or external relations. Each Member State is represented by the appropriate Minister. The presidency rotates on a six-monthly basis between each Member State. Decisions are taken by unanimity in certain cases but more often under the system of qualified majority voting, with each Member State having a weighted vote. The Council acts as joint legislator with the European Parliament in an increasing number of cases. Thus, EU decisions are taken by national ministers in the Council, who are responsible to their national parliaments, and the directly elected MEPs, giving democratic legitimacy to EU laws and regulations.
- The European Parliament is the directly elected, legislative body of the citizens of the European Union. The Parliament has 785 members, elected every five years. Ireland has 12 members as of June 2009. MEPs sit in political groups rather than as national delegations, according to their political ‘families’:

As of April 2009:

| <b>Party</b>       | <b>Political group</b>                              |
|--------------------|---|
| <i>Fianna Fáil</i> | Alliance Liberals and Democrats for Europe (ALDE)   |
| <i>Fine Gael</i>   | European People’s Party-European Democrats (EPP-ED) |
| <i>Labour</i>      | Party of European Socialists (PES)                  |
| <i>Green Party</i> | European Greens-European Free Alliance (Greens-EFA) |
| <i>Sinn Féin</i>   | United European Left/Nordic Green Left (GUE/NGL)    |

The Parliament questions the persons nominated for membership of the Commission and can refuse to approve the entire Commission if not satisfied with the candidates. The European Parliament legislates together with the Council of Ministers and has powers of control and supervision in key areas. It has a central role in approving the EU Budget and the European Commission is accountable to the Parliament throughout its lifetime.

## **DECISION-MAKING**

- The EU takes decisions by involving three key institutions, known as the institutional triangle, consisting of the Council, the Commission and the European Parliament. This triangle operates as the legislature of the European Union:
- The European Commission is the civil service of the EU, designed to be independent, impartial and to draft laws that are in the interest of all Member States. These draft laws are then submitted for approval, amendment or rejection by two institutions with legislative powers: the Council and the European Parliament.

- The Council is the institution that represents national governments. Irish ministers, who are responsible before the Oireachtas, are members of the Council and take decisions on behalf of the Irish government. In many sensitive areas where the EU has few or no powers of its own, decisions are taken by unanimity. This means that each Member State has its own veto, which it can use to block decisions from being taken. In other areas, the Council votes according to a system of qualified majority voting, whereby each Member State is attributed a weighted vote (Ireland currently has 7 votes whereas Germany has 29) and a mathematical formula is used to work out whether a majority in favour of a proposal has been reached.
- The European Parliament is directly elected by the citizens of the Member States and each Member of the European Parliament (MEP) is responsible to his or her constituents. In many areas, the European Parliament is an equal co-legislator along with the Council. It also has the ability, in this instance, to amend, reject or approve draft legislation. The European Parliament takes decisions on the basis of a simple majority of its component members.
- In this institutional process, it is important to remember that the European Union's decision-making powers are limited to the policy areas in which competence has been conferred on the Union by the Member States. The EU cannot adopt legislation in areas where it has no powers.

## **KEY CHANGES UNDER LISBON**

- The Lisbon Treaty provides for the formalisation of the European Council as an official institution of the European Union, which would be chaired by an independent and impartial President of the European Council for a term of two and a half years, renewable once. The European Council provides a forum within which Member States may coordinate certain national policies. It is a counterbalance to the European Commission, which is independent in its activities, whereas the European Council is composed of elected national leaders. (Article 15 TEU.)
- The Lisbon Treaty provides that, from 2014, the European Commission would be reduced in size with membership equal to two-thirds of the number of Member States. However, following the Irish rejection of the Lisbon Treaty in the referendum of June 2008, a political decision was taken by the European Council in response to an Irish request to revisit this decision and to maintain the present position in which the Commission consists of one member appointed by each national government. While the current EU rules (based on the Treaty of Nice) do not allow for such a decision, Article 17(5) TEU of the Lisbon Treaty allows for such a decision to be taken.
- The Lisbon Treaty obliges the EU national governments to take into account the most recent elections to the European Parliament when it comes to appointing the President of the Commission (Article 17(7) TEU.)

- A new post of High Representative of the Union for Foreign Affairs and Security Policy will be created under the terms of the Lisbon Treaty. The High Representative will also be a Vice-President of the European Commission, will chair the Council of Foreign Ministers and will have responsibility for the direction and co-ordination of the Union's external relations and for representation of the EU on the international stage (Article 18 TEU).
- The Council of Ministers will have a new voting system under the terms of the Lisbon Treaty. Qualified majority voting will be replaced by a system requiring a double majority – requiring (1) at least 55% of the Member States (with a minimum of fifteen) to be in favour of a proposal; and (2) that those Member States in favour must represent at least 65% of the total population. The system is intended to give weight both to the individual sovereign states – with all 27 having an equal vote in the first element – and to their populations (Article 238 TFEU).
- The Lisbon Treaty will extend the power and influence of the directly elected European Parliament. New policy areas will come within the co-decision arrangement. The Parliament's powers on budgetary matters will be increased and the procedures for the appointment of the European Commission will enhance the role of Parliament as a co-legislator alongside the Council. The Lisbon Treaty also caps the total number of MEPs at 751, with a maximum number of 96 seats and a minimum of 6 per Member State (Article 14 TEU).
- The role of the national parliaments will be strengthened. The European Commission will be obliged to notify national parliaments of proposed legislation at the same time as the Council and European Parliament and they will have a period of eight weeks to comment before the Council commences its deliberations. National parliaments will have an opportunity to challenge proposed legislation if they feel that it conflicts with the principle of subsidiarity – which states that decisions should be made at the most appropriate level (local, regional, national or EU). If a third of national parliaments object to a proposal – in effect a 'yellow card' – the Commission will be obliged to reconsider it and to decide whether to maintain, amend or withdraw the proposal. If however, a majority of national parliaments object, the European Parliament and the Council of Ministers will be brought into the debate with a view to reaching an acceptable outcome – this is described as an 'orange card' (Article 12 TEU).
- The Lisbon Treaty makes provisions to allow the European Court of Justice to supervise policy areas where legislation is adopted both by the Council and the European Parliament, in order to provide Member States and their citizens with a forum in which to seek redress on the basis of EU laws or to challenge provisions of EU laws. The Court will continue to consist of one judge from each Member State with provision for an expert panel to scrutinise the suitability of candidates proposed by the Member States.

**1: The Institutions of the EU; 2: European Social Policy; 3: European Security and Defence Policy; 4: Energy and Climate Change Policy; 5: Justice and Home Affairs Policy; 6: Business and the Lisbon Treaty**



## EUROPEAN SOCIAL POLICY FACT SHEET

- The Treaty of Rome (1957) established the goals of promoting “improved working conditions and an improved standard of living for the workers” and setting the objective of achieving economic and social progress by common action. The social dimension of EU policy has evolved since then with achievements such as equality between the sexes and mobility and training opportunities for workers in the internal market.

## KEY CHANGES UNDER LISBON

- The Lisbon Treaty builds on the substance of all of the treaties since 1957. A new article in the Lisbon Treaty, Article 2 TEU enumerates the values on which the EU is founded: these include human dignity, freedom, equality, respect for human rights including the rights of minorities, non-discrimination, tolerance, justice, solidarity and equality between men and women. These values form the basis of European society and are reflected in Article 2 TEU as amended by the Lisbon Treaty which states the Union’s objectives of promoting economic and social progress, full employment, sustainable development, solidarity between generations and the protection of childrens’ rights.
- The Lisbon Treaty makes it clear that social policy is an area of shared competence, meaning that law-making powers in this area remain mostly with the Member States, with the EU legislative process available in areas defined in the treaties (Article 4(2)(b) TFEU).
- Competences are also shared in economic, social and territorial cohesion, consumer protection and common concerns in public health matters of a cross-border nature, i.e. where two or more Member States are involved. National competences in public health, education and vocational training are not affected and remain the sole responsibility of the Member States.
- The values and objectives set out above will also be upheld and promoted in the Union’s relations with the wider world as laid down in Article 3(5) TEU, in order to contribute to peace and security, sustainable development, free and fair trade, the protection of human rights and the development of international law. This is reiterated in Article 8 TEU, which states that the Union “shall develop a special relationship with neighbouring countries [...] founded on the values of the Union.”

- The definition and implementation of the Union’s policies reflect these values and objectives. The Lisbon Treaty adds a new Article 7 TFEU, which states “the Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.”
- Decisions in the area of social policy will be taken using a combination of qualified majority voting (QMV) and unanimity. Unanimity means that each national government may veto decisions in areas such as social security, protection of workers whose contract has been terminated, representation and collective defence of workers, combating discrimination and employment conditions for third country nationals residing in the EU.
- The Lisbon Treaty has made the use of QMV subject to an emergency brake in relation to social security for migrant workers and their dependants through Article 48 TFEU. A Minister from any Member State may request that a sensitive matter be referred to the EU leaders on particularly important matters. Article 48 TFEU reads “where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, costs or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council.”
- Finally, in the area of decision-making in social policy, the Lisbon Treaty adds a bridging clause known as the *passerelle clause*, which allows the European Council (the EU Heads of State and Government) to decide by unanimity to replace unanimous voting with QMV in areas provided for in the treaties.
- The Lisbon Treaty incorporates the Charter of Fundamental Rights into EU law (Article 6 TEU). The Union recognises the rights, freedoms and principles set out in the Charter and under the Lisbon Treaty, the Charter would have the same legal value as the treaties. Within the Charter of Fundamental Rights, Title IV on solidarity addresses social rights such as collective bargaining and action, protection in the event of unjustified dismissal, working conditions, the prohibition of child labour, social security and social assistance, health care and access to services of general economic interest.
- The Lisbon Treaty introduces a social clause to highlight the significance of social issues in the EU (Article 9 TEU). This states that “the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”



- The Union will also “encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas” (Article 168(2) TFEU). However, as stated above, competence in important areas such as health and education remains solely with the Member States.
- The Union will also have a secondary competence to support, coordinate and supplement the actions of the Member States in public health, education, vocational training, youth and sport (Article 6 TFEU).
- The Lisbon Treaty adds a new Article 5 TFEU, which states that Member States shall coordinate their economic policies within the European Union. Under this Article, the Union shall also take measures to ensure coordination of the employment policies of the Member States, and may take initiatives to ensure coordination of Member States’ social policies (Article 5(3) TFEU).
- A number of articles in the Lisbon Treaty aim to increase social dialogue and provide greater representation for civil society and the social partners. Article 10 TEU gives every citizen the right to participate in the democratic life of the Union. Article 11 TEU allows citizens and civil society bodies to make their views known and to engage in dialogue with representative associations. A ‘citizen’s initiative’ (Article 11(4) TEU) also facilitates greater interaction between the Union and the citizen. This is a new system whereby one million EU citizens from a significant number of Member States may propose that the European Commission initiate legislation in any area covered by the treaties.
- A new article (Article 152 TFEU) strengthens the position of the social partners, promoting “the role of the social partners at its level, taking into account the diversity of national systems.”
- On public services and services of general economic interest, such as transport, health and education, the Lisbon Treaty, through Article 14 TFEU provides that the Council, through regulations, shall agree the conditions and principles under which public services will be exempt from EU law.
- Member States retain the responsibility for the provision of public services. The Lisbon Treaty includes a Protocol on services of general economic interest, which recognises the values underpinning public services, the importance of universal access to such services and the competence of Member States in their provision.

**1:** The Institutions of the EU; **2:** European Social Policy; **3:** European Security and Defence Policy;  
**4:** Energy and Climate Change Policy; **5:** Justice and Home Affairs Policy; **6:** Business and the Lisbon Treaty



## EUROPEAN SECURITY & DEFENCE POLICY FACT SHEET

- European Security and Defence Policy (ESDP) is one component of the broader European Union's common foreign and security policy (CFSP).
- Under ESDP, each Member State is responsible for its own territorial defence, as the EU does not engage in territorial defence. At the EU level, tasks that are undertaken in the name of European security and defence include humanitarian and rescue tasks, peacekeeping tasks, conflict prevention and tasks of combat forces in crisis management, including peace-making. These are called the 'Petersberg tasks'.
- Missions are divided into two types, civilian and military. Military missions are those where the situation remains too unstable to commit a civilian operation.
- No Member State is obliged to participate in any operation. On fundamental decisions, each country has a veto. Since the beginning of 2003, there have been over 20 ESDP missions on three continents: 15 civilian and 6 military. The most recent missions are a civilian mission to Kosovo and a military mission to Chad in 2008, the latter of which was led by Irish officer Major-General Pat Nash. Of the 12 current missions, only two are military in nature.
- To carry out these activities, Member States contribute personnel (for example police officers) and equipment, as the EU does not have its own army. The Irish government has contributed up to 80 Gardaí as part of civilian crisis management resources and Ireland is frequently among the top EU countries for the deployment of well-trained and equipped peacekeepers.
- Following the war in the Balkans, Member States began to identify a need for the EU to have the capacity for action, backed up by force if necessary. These rapid response units are called 'battlegroups' in military terminology and consist of units of 1500 troops, contributed by various Member States. Ireland is currently part of the Nordic battlegroup, which includes Estonia, Norway, Finland and Sweden. Like Ireland, Finland and Sweden are also neutral states. No battlegroup has yet been deployed.

- The battlegroups are equipped to respond to conflicts outside the EU and Member States cooperate in equipping these forces. The European Defence Agency (EDA) has the task of identifying operational requirements for missions to maximise efficiency and reduce duplication. The EDA faces great challenges in the procurement of military equipment as well as meeting the demands for deployable soldiers to staff these missions.
- Ireland is a neutral country. Neutrality is protected by the EU Treaties since 1992 and also by the ‘triple lock’, which requires Dáil approval, a UN mandate and a government decision before Irish troops may be deployed.
- Decision making, as mentioned above, is subject to a veto by any country. Decisions in the area of the ESDP are made by the Irish Minister for Defence and his counterparts from the other EU Member States.

## **KEY CHANGES UNDER LISBON**

- The Lisbon Treaty creates overarching principles and objectives that govern the EU’s common foreign and security policy. These include the rule of law, respect for human rights, respect for human dignity, equality and solidarity, and the respect for international law and the principles of the United Nations Charter (Article 21 TEU).
- Under the Lisbon Treaty, the post of EU High Representative of the Union for Foreign Affairs and Security Policy is proposed. This individual would be responsible for ensuring a common ground among the Member States in implementing the Common Foreign and Security Policy. The role of the High Representative for the Common Foreign and Security Policy merges that of the current High Representative (who is also Secretary General of the Council of Ministers) and that of the Commissioner for External Relations (who is a member of the European Commission.) The High Representative will also be a Vice-President of the Commission (Article 18 TEU).
- The Lisbon Treaty ensures that each Member State would retain its veto in decision-making in the area of security and defence; meaning decisions must be unanimous. There is no obligation to partake in operations (Article 22(1) TEU).
- The Lisbon Treaty extends the scope of the Petersberg Tasks to joint disarmament operations, military advice and assistance tasks, peace-keeping and post-conflict stabilisation, and conflict prevention. They would also contribute to combating terrorism (Article 21 TEU).

- The Maastricht Treaty was the first treaty that proposed that the EU work towards the creation of a common European defence. Although the Lisbon Treaty provides added impetus to this policy (Article 24(1) TEU and Article 42(2) TEU), Ireland is constitutionally prohibited from participating in such an initiative, because the 26th Amendment of the Constitution, passed in the referendum of 19 October 2002, provides that “[t]he State shall not adopt a decision taken by the European Council to establish a common defence [...] where that common defence would include the State.” This means that Ireland cannot at present join a common European defence. The Lisbon Treaty does not change this situation, as it maintains that “[t]he policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States” (Article 42(2) TEU).
- The European Defence Agency (EDA) would become part of the legal framework of ESDP under the Lisbon Treaty. The Treaty calls on the Member States to progressively improve military capabilities through the EDA by boosting defence research and development and creating an effective defence market (Article 42(3) TEU). This seeks to avoid duplication, reduce the cost of equipment for Member States’ defence forces and increase interoperability.
- Enhanced cooperation was a concept developed under the treaties of Amsterdam (1997) and Nice (2001). It allows one-third of Member States (i.e. nine in a Union of 27) to participate in deeper cooperation in CFSP matters. Under the Lisbon Treaty, enhanced cooperation would be allowed in defence policy in addition to foreign and security policy.
- The Lisbon Treaty allows members to engage in permanent structured cooperation in civilian and military tasks. It would allow Member States whose military capabilities are of a higher level and who have made binding commitments to each other, to cooperate more closely on military missions. The criteria for entry to this group have yet to be determined (Article 42(6) TEU and the Protocol on permanent structured cooperation).
- The mutual assistance clause in the Lisbon Treaty (Article 42(7) TEU) would ensure that all Member States provide aid and assistance (military or non-military) if another Member State was the victim of an armed aggression on its territory. This article requires that the EU respect “the specific character of the security and defence policy of certain Member States” and respect “Article 51 of the United Nations Charter”. In addition to this mutual assistance clause, the Lisbon Treaty provides for a solidarity clause, which allows the Member States to mobilise all means at their disposal if one Member State is the victim of a terrorist attack or a natural or man-made disaster (Article 222 TFEU).
- The Lisbon Treaty continues to ensure that Irish neutrality is protected when implementing the EU’s common foreign and security policy (Article 42(2) TEU, Article 42(7) TEU, preamble to the Protocol on permanent structured cooperation, preamble to the Protocol on Article 42 of the Treaty on European Union).

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# 4

# THE LISBON TREATY EXPLAINED



## EU ENERGY & CLIMATE CHANGE POLICY FACT SHEET

- EU action against climate change has three objectives:
  - Less greenhouse gases
  - More renewable energy
  - More energy efficiency

### CLIMATE CHANGE

- Climate change is one of the greatest environmental, social and economic threats facing the planet. Its effects are already being felt, through an increase in dangerous weather systems, biodiversity loss, destruction of crops and rising sea levels.
- In 1996, European leaders signed off on the overriding objective of limiting global temperatures to no more than 2°C above the mean temperature in pre-industrial times.
- The Kyoto Protocol set emissions targets for developed countries and the European Union as a whole. The EU is committed to achieving an 8% reduction compared with 1990 emissions by 2012 and is on track to meet this objective. The EU played a key leadership role in the negotiation of this agreement in 1997.
- In June 2000, the European Commission launched the first European Climate Change Project (ECCP) towards developing a EU strategy to implement the Kyoto Protocol. One of the priorities identified in the first ECCP was the development of a framework for emissions trading – a system where countries are given ‘credits’ which are used when that country pollutes the environment, through CO<sub>2</sub> gas, for example. Leftover credits can be bought by other countries that might need extra credits.
- The emissions trading scheme was launched in January 2005, allowing participating EU countries to trade their emission credits. This is the main EU policy for tackling climate change and it is the first trading scheme for CO<sub>2</sub> in the world. It regulates 40% of the EU’s greenhouse gas emissions.
- The EU is aiming for a 20% reduction in greenhouse gas emissions by 2020 and a further reduction of 30% if an international agreement is reached, again placing it in a leading position internationally.

## ENERGY POLICY

- The EU's energy policy has three pillars: competitiveness, sustainability and security of supply. The EU works to create a single European market for energy, as increasing competition in energy markets leads to a better deal for consumers.
- Energy security i.e., the supply of continued, reasonably priced energy supplies from outside the European Union, is negotiated through Partnership and Cooperation Agreements (which are international treaties) between the EU and non-EU countries, for example between Russia and the EU. The Russia-Ukraine gas dispute that took place during the winter of 2008, highlights the need for the EU to push for greater security of energy supplies. Russia cut gas supplies to Ukraine, adversely affecting several EU Member States, following disagreement between the two governments over the price of Russian gas, leaving thousands of homes in the EU without heat or electricity.
- Previous EU initiatives include increasing the use of renewable energy, so that eco-friendly energy makes up 12% of total energy consumption in the EU by 2010, as well as the adoption of a EU-wide target of 21% of renewables share in electricity production by 2010.
- In 2006 the European Parliament called for a legally binding 25% target for renewables in the EU's energy consumption by 2020. In 2006, European leaders also called for further renewable sources of energy in the longer term.
- In response to these calls, the European Commission published a report, 'Renewable Energy Road Map. Renewable energies in the 21st century: building a more sustainable future' in January 2007. It set out the strategic outlook for energy policy in the EU.
- Proposals debated and approved at the European Council meeting in March 2007 include a binding target to have 20% of the EU's energy coming from renewables by 2020 and a binding minimum target for each Member State to achieve at least 10% of their transport fuel consumption from biofuels. These targets fall under the sustainability pillar of EU energy policy.

## KEY CHANGES UNDER LISBON

### CLIMATE CHANGE

- The Lisbon Treaty makes it clear that the EU shares powers with the Member States when it comes to implementing environmental policy (Article 4(2)(e) TFEU).



- The Lisbon Treaty amends Article 3(3) TEU to include that “a high level of protection and improvement of the environment” is a key objective of the European Union.
- The governing principles of the EU’s common foreign and security policy are amended by the Lisbon Treaty to include a goal of fostering “environmental development of developing countries” (Article 21(2)(d) TEU) and a further goal to “improve the quality of the environment and the sustainable management of global natural resources” (Article 21(2)(f) TEU).
- The Lisbon Treaty commits the EU to “promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change” (Article 191(1) TFEU).
- National governments nominate the EU negotiator on climate change issues on the international stage (Article 216 TFEU).

## ENERGY

- The Lisbon Treaty makes it clear that the EU shares powers with the Member States when it comes to implementing energy policy (Article 4(2)(i) TFEU).
- The Lisbon Treaty commits Member States to act “in a spirit of solidarity [...] in the area of energy” should a Member State encounter difficulties in this area (Article 122(1) TFEU).
- The Lisbon Treaty creates a clear legal basis for energy policy by inserting a new energy title (Title XXI TFEU).
- Under Lisbon, the objective to “ensure security of energy supply in the Union” would be written into the Union’s rulebook for the first time (Article 194(1)(b) TFEU) along with a commitment to “promote energy efficiency and energy saving and the development of new and renewable forms of energy (Article 194(1)(c) TFEU).
- The Lisbon Treaty also identifies ensuring “the functioning of the energy market” and promoting “interconnectivity in energy markets” as key objectives (Article 194(1) TFEU).
- Member States continue to retain the right to determine their choices between different energy sources; this is called the “energy mix” (Article 194(2) TFEU).

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**4:** Energy and Climate Change Policy; **5:** Justice and Home Affairs Policy; **6:** Business and the Lisbon Treaty



## EU JUSTICE AND HOME AFFAIRS POLICY FACT SHEET

- Justice and Home Affairs (JHA) policy facilitates EU-wide cooperation on an array of issues from border control and free movement, to immigration and asylum and from joint action to prevent organised crime and terrorism, to furthering fundamental rights and fighting xenophobia and racism. It aims to ensure that the security and freedom of citizens is balanced with the guaranteed human rights and liberties of every European citizen.
- Competences in this policy area are shared between Member States and the European Union.
- The Council of the European Union, at which Justice and Interior Ministers meet is known as the Justice and Home Affairs Council. These Ministers take decisions at EU level in JHA matters.
- Traditionally, there have been two types of decision-making in JHA policy, commonly known as the first pillar, and the third pillar. In the first pillar, decisions are made by qualified majority voting (QMV) and in the third pillar, Member States each have a veto.
- The Treaty of Amsterdam moved JHA policy areas such as immigration and asylum to the first pillar, leaving only police and judicial cooperation in criminal matters under the third pillar. However, Ireland has an opt-out, which means that it may choose to opt-in to those laws it wishes to implement.
- The Treaty of Amsterdam also expressed the aim of creating an area of freedom, security and justice to guarantee free movement and strengthen external border controls in the face of threats such as transnational crime and illegal immigration.
- To achieve these goals, the European Council (i.e. the Heads of State and Government) met in Tampere, Finland, in October 1999 and adopted a programme for cooperation between the Member States in JHA policy. This was called the Tampere Programme and set out objectives for five years. During the Dutch Presidency of the EU, in 2004, the Hague Programme further extended the objectives in this area until 2010. The next programme for cooperation in JHA policy for the period 2010-2014 is due during the Swedish Presidency in the latter half of 2009.
- The enlargement of the EU makes freedom, security and justice even more vitally important to pursue. The advantages of free movement within the EU are endangered by a parallel increase in cross-border crime. Therefore, action has been advanced between Member States to combat organised crime and terrorism, trafficking of humans, arms and drugs, and racism and xenophobia.

- In addition to internal measures to realise an area of freedom, security and justice, the external borders of the Union are protected against transnational crime and illegal immigration. FRONTEX, the EU border management agency, has responsibility for coordinating the policing of the EU's external borders.
- A number of other agencies have also been created to further aid police and judicial cooperation in criminal matters within the EU. They are EUROPOL, an agency which facilitates the cooperation of Member States' police forces; EUROJUST, which aims to improve judicial cooperation between Member States; OLAF, the anti-fraud agency and CEPOL, the police training college.

## CHANGES UNDER THE LISBON TREATY

Provisions on the Area of Freedom, Security and Justice are to be found under Title V of the Treaty on the Functioning of the European Union (TFEU) Articles 67 to 89.

### **This Title has 5 chapters:**

Chapter 1: General Provisions

Chapter 2: Policies on Border Checks, Asylum and Immigration

Chapter 3: Judicial Cooperation in Civil Matters

Chapter 4: Judicial Cooperation in Criminal Matters

Chapter 5: Police Cooperation

- Under the Lisbon Treaty, decision-making in the area of freedom, security and justice would be clearer and more efficient. A major innovation of the Lisbon Treaty would be the removal of the third pillar. All decisions would fall under the "Community method" of decision-making, which means that the Commission would propose legislation, the Parliament would participate in decision-making with the Council of Ministers and the European Court of Justice would have power to review legislation in this area, therefore increasing its role by subjecting legislation in this area to closer scrutiny by the Court.
- On account of the sensitive nature of police and judicial cooperation in criminal matters, Ireland has negotiated an opt-out in this area because it shares a common law tradition with the United Kingdom, which also expressed its intention to opt out so as to protect their shared common law traditions. The Irish government has declared that it will participate to the maximum extent possible in JHA measures and that it will opt in to police cooperation measures. It will opt in to many provisions on a case-by-case basis. It will review this arrangement after a period of three years upon the Lisbon Treaty's entry into force.
- Competences in JHA policy are shared between the Member States and the EU (Article 4(2) (j) TFEU). Member States decide those areas of responsibility for which they wish the EU to take responsibility. Under Lisbon, more responsibilities in JHA policy, in areas such as money laundering and human trafficking (Article 83(1) TFEU), are given to the EU, as these are cross-border problems, which Member States cannot solve alone.

- Most decisions would be taken by QMV, including in the field of police and judicial cooperation in criminal matters. In a number of sensitive areas however, a veto for Member States would be maintained.
- If a Member State believes a proposal will affect fundamental aspects of its criminal justice system, it can refer the proposal to the European Council under the “emergency brake” mechanism (Article 82(3) TFEU). The proposed legislation can only proceed with the European Council’s consensus. If consensus is not achieved, a group of at least nine Member States, which support the proposal may proceed to implement it in those Member States, under what is known as “enhanced cooperation”.
- Under Lisbon, a quarter of Member States can submit legislative proposals for police and judicial cooperation in criminal matters (Article 76(b) TFEU). Traditionally, the European Commission proposes legislation in most policy areas.
- Under Lisbon, national parliaments are given a role to ensure that decisions are taken as closely as possible to the citizen.
- In relation to asylum policy, the Lisbon Treaty provides a clearer legal basis for developing common policy on asylum and protection for non-EU citizens and stateless persons. Asylum seekers would be protected from being returned to countries where their lives would be under threat and Member States would have to share the burden and implement minimum standards for determining asylum applications. (Article 78 TFEU)
- The Lisbon Treaty allows the Council and European Parliament to set out the conditions under which non-EU citizens can travel within the EU for short periods (Article 77(2)c TFEU). In addition, if it proves necessary and if Member States agree, the Council of Justice Ministers can adopt provisions on passports, identity cards and residence permits (Article 77(3) TFEU). Ireland has an opt-out in this area.
- Under Lisbon, there is provision for the development of a common immigration policy to manage migration flows, to ensure fair treatment of legally resident non-EU citizens, and to prevent illegal immigration and human trafficking. Readmission agreements for the return of illegal immigrants are provided for under Lisbon. (Article 79 TFEU)
- In relation to judicial cooperation in criminal matters, the Lisbon Treaty promotes the mutual recognition of judgments in criminal matters. The European Parliament and the Council may also establish “minimum rules” for criminal offences and sanctions in areas of serious crime with a cross-border dimension such as terrorism and drug trafficking. (Article 81 TFEU)
- Under the Lisbon Treaty, a European Public Prosecutor’s Office could be created from Eurojust upon the unanimous agreement of the Member States and the European Parliament’s consent. This would be limited to offences against the EU’s financial interests. (Article 86 TFEU)

- In relation to family law, the Lisbon Treaty provides that national parliaments could veto Commission proposals to allow certain parts of family law to be adopted by QMV. If a proposal is not vetoed, it may be adopted by unanimous agreement of the Council and after consulting the European Parliament. (Article 81(3) TFEU)



## BUSINESS & THE LISBON TREATY FACT SHEET

- The European Union's internal market (which is also referred to as the 'single market' and the original term, 'common market') was created by the Treaty of Rome in 1957. It allows for the free movement of people, goods, services and capital. This means that EU citizens, money, products and services for trade can move unhindered across all internal EU borders between the Member States.
- 2.75 million extra jobs were created since the inception of the internal market as well as an increase in annual income of 480 per person (European Commission, 2007). 15 million Europeans live and work in other Member States (Eurobarometer, 2006).

### REMAINING CHALLENGES TO THE INTERNAL MARKET

- Additional costs to render products or services compatible with national specifications
- Unusual testing, certification or approval procedures
- State aids favouring competitors
- Difficulties related to the VAT system and VAT procedures
- Restrictions on market access; existence of exclusive networks
- Costly financing arrangements for cross-border transactions
- Insufficient action against piracy and counterfeiting
- Discriminatory tax treatment of your operations
- Lack of legal security of cross-border contracts/transactions
- Requirement to establish branch in another MS
- Requested rights or licences in hands of local competitors
- Other legislative or regulatory obstacles
- Discriminatory practices of awarding authorities in public procurement markets
- Double payments in social security for personnel posted abroad

- A central feature of the internal market is EU competition policy, which was created by the Treaty of Rome in 1957 and aims to ensure that the internal market is free from distortions of competition such as monopolies, cartels and abuse of dominant market position. The current treaties state that the EU shall operate “a system ensuring that competition in the internal market is not distorted.” The European Commission is responsible for ensuring that Member States meet their obligations under these provisions. Prominent cases taken by the Commission include the case against the merger of Boeing and McDonnell-Douglas and the case against Microsoft for abusing its dominant market position.
- In the area of taxation, each national government retains full sovereignty concerning direct taxation, such as corporate taxation rates. Each Member State has a veto in decisions taken at EU level relating to direct taxation. In relation to indirect taxation – which is a tax charged on a service rather than earnings – the current treaties prohibit any tax discrimination that would give an advantage to national products over imported products from other Member States. Foreign and domestic goods must therefore be treated and taxed in the same manner throughout the European Union.
- Euro notes and coins were physically introduced in twelve Member States (Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain) in January 2002. These countries are called the eurozone. Slovenia adopted the euro on 1 January 2007 and Cyprus and Malta on 1 January 2008. Slovakia became the sixteenth member of the eurozone in January 2009. 66% of Irish citizens believed the introduction of the euro was a good thing (Eurobarometer, 2002). Strict conditions (convergence criteria) imposed on Member States wishing to join the euro are contained in the Maastricht Treaty. These conditions include low and stable inflation, exchange rate stability and sound public finances. The euro is now the second most important international currency in the world after the dollar (European Commission.) In the EU, the single currency has eliminated the need for currency exchange transactions and the associated costs. Prices have also become more transparent and stable among eurozone countries, which helps citizens in familiarising themselves with the pricing of goods and services in various countries.
- The euro is a stable currency with low inflation and low interest rates. In October 1992, during the last currency crisis in Ireland, interest rates were at 13.75%. In January 2009 they were at 2%. The size of the eurozone and the increasingly close cooperation between Member States also helps to protect it from external shocks such as the current global financial crisis. In this uncertain financial climate, the size of the single currency helps to guard against speculative runs on national currencies that have occurred in crisis situations in the past.



- The European Commission, based on a report drafted by former Governor of the Bank of France, Jacques de Larosière, is moving to reinforce the regulatory and supervisory frameworks to ensure that the appropriate lessons are learnt from the current economic difficulties.

## **KEY CHANGES UNDER LISBON**

- The Lisbon Treaty amends the EU's rulebook to include aims and guiding principles in respect of the functioning of the internal market: "[the EU] shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance" (Article 3 TEU).
- The Lisbon Treaty adds reference to "free and undistorted competition" through a protocol to the treaties, which maintains competition policy as a key tool in the service of the internal market (Protocol on the Internal Market and Competition)
- The Lisbon Treaty introduces Article 13 TEU, which lists the European Central Bank (ECB) as an official EU institution. However, the Lisbon Treaty adds Article 282(3) TFEU, which states that the ECB "shall be independent in the exercise of its powers and in the management of its finances."
- The Lisbon Treaty proposes new principles to direct the EU's action on the international scene, which provides for EU international relations to "encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade" (Article 21(2)(e) TEU).
- The Lisbon Treaty commits to strengthening the European Union's research and development capabilities through supporting research and development activities as part of a European research community (Article 179(1) TFEU).
- The Lisbon Treaty reaffirms that direct taxation would remain a matter for Member States, thereby confirming the present situation. A veto remains in this area for each Member State (Article 115 TFEU – the reference to a "special legislative procedure" means that a vote must be taken by unanimity among the Member States).
- The Lisbon Treaty would ensure legal recognition and increased autonomy of action for the Euro Group (all Finance Ministers of the eurozone countries, including the Irish Finance Minister). The aim of this is increased coordination and surveillance among eurozone members (Protocol on the Euro Group).

**1:** The Institutions of the EU; **2:** European Social Policy; **3:** European Security and Defence Policy;  
**4:** Energy and Climate Change Policy; **5:** Justice and Home Affairs Policy; **6:** Business and the Lisbon Treaty

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