



# THE TREATY OF LISBON FROM A GENDER PERSPECTIVE: CHANGES AND CHALLENGES

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## ABBREVIATIONS

CFSP	Common Foreign and Security Policy
EEAS	European External Action Service
EEB	European Environmental Bureau
EUCETSA	European Committee of Environmental Technology Suppliers Associations
ETUC	European Trade Unions Confederation
EWL	European Women's Lobby
GDP	Gross Domestic Product
HRFASP	High Representative of the Union for Foreign Affairs and Security Policy
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

### **The Treaty of Lisbon from a gender perspective: Changes and challenges**

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# EXECUTIVE SUMMARY

This briefing paper aims to present the main innovations in terms of institutional changes, policy perspectives and priorities that the Treaty of Lisbon is going to introduce if it is ratified by the Member States of the European Union (EU). The analysis focuses in particular on how the Treaty affects the dimension of citizenship, human rights and gender mainstreaming.

The paper is organized into four chapters and final recommendations. Chapter 1 deals with the institutional changes that the Lisbon Treaty introduces, such as: the empowerment of the European Parliament, the reform of the Commission, the introduction of the High Representative of the Union for Foreign Affairs and Security Policy, and slight changes to the functioning of the European Council and the Council. It describes also the changes that occur in the division of competence between the national Parliaments and the Union. It is argued that, even if a more democratic framework could be perceived, there is still much to be done, since the EU decision-making process is not fully ruled by eligible institutions.

In Chapter 2 the priorities of the Treaty in terms of values and rights are presented – especially those that are of interest to WIDE for lobbying activity. The analysis shows that gender equality, development, human rights and citizenship rights are issues which the Treaty takes into account, but, nevertheless, their actual implementation may be weak, since their related provisions are often vague or incoherent within the neoliberal setting of the Treaty.

Chapter 3 addresses the foreign and trade policy, external relations and humanitarian activity of the EU as set by the Treaty. It describes the Union's market-oriented and liberalist trade activity, the military reinforcement the Treaty provides, and the Union's commitment to humanitarian activities. As noted in Chapter 2, here the contrast between liberalism and pro-development policies is evident.

Chapter 4 deals with past and present debate on the Treaty. It considers the controversies about the rejection of the EU Constitution and the ongoing ratification process of the Lisbon Treaty, and analyses the improvements the Treaty proposes compared to the Constitution. It describes the debate about the European economic strategies that arose with the Constitution, and how the Treaty deals with them, and it presents an overview of other important and widely discussed themes, such as militarization, public services and gender perspectives.

The final section provides recommendations and suggestions about areas of potential intervention for WIDE.

# INTRODUCTION

The Treaty of Lisbon, signed by the heads of the 27 European Union (EU) Member States in Lisbon on 13 December 2007, is the result of a long process of reform of previous treaties. More precisely, it amends the Treaty of European Union (the Maastricht Treaty, 1992) and the treaty which established the European Community (the Treaty of Rome, 1957), which has been renamed 'Treaty on the Functioning of the European Union'.

Actually, the Treaty of Lisbon appears as an attempt to recover from the substantial failure which the ratification process of the EU Constitution encountered in 2005. While most of the Members followed a successful parliamentary way of ratification, French and Dutch voters rejected the Constitution in national referenda and, therefore, made it impossible to come into force.

The so-called 'reflection period' that followed culminated in the signing of the 'Reform Treaty' in December 2007, which, nevertheless, seems not to have fundamentally affected the more controversial points which caused the opposition to the Constitution. On the contrary, criticism is largely based on the content of the Treaty remaining basically the same as the Constitution's and the main changes seeming more cosmetic than substantial.

The main meaningful changes that matter from our perspective can be briefly summarized as follows:

- the introduction of a 'Foreign Affairs Minister' – the High Representative of the Union for Foreign Affairs and Security Policy (HRFASP) – who is at the same time the Vice-President of the Commission;
- the presence of a clause on withdrawal from the EU;
- the attribution of full legal personality to the EU (currently held by the European Community only), allowing it to sign international agreements; and
- the reinforcement of the power of the European Parliament (EP) by the enlargement of the areas which fall under the joint decision-making procedure.

The main criticisms that can be addressed to the Treaty concern different aspects: the ratification process, which is exclusively parliamentary<sup>1</sup>, represents a backward step in terms of democracy; the substantial decision-making powers dealing with the matters of external relations remain in the hands of the 'less representative' institutions, such as the Commission and the Council; basically neoliberal principles substantially drive the external and internal economic strategy of the Union, with particular attention to the competitive aspects; the social and solidarity issues, even if claimed throughout the Treaty, are not provided with concrete tools and are in contrast with the liberalizing principles that inspire European economics; the military

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<sup>1</sup> Except in Ireland, where a referendum will be held.

capability of the Union has been highlighted more than ever before through the introduction of the issue of 'Permanent Structured Co-operation'.

This WIDE briefing paper constitutes an initial deciphering of the Treaty: it tries to analyse the most important innovations in relation to external relations, including development and trade, and gender equality. (They are identified and commented upon, with their legal references).

It represents a contribution to the public debate on the EU Treaty which is actually still scarce and weak except for some cases such as the Irish movements against the ratification – which is reasonable since Ireland is the only Member State that used a popular referendum as the procedure for ratification of the Treaty.

Moreover, the present paper represents an occasion to reflect on the future of the EU in the light of the changes that the Treaty is going to make and of the opportunities that the Treaty missed. It aims to raise the following questions:

- what kind of Europe do we want to live in? and
- what role do we want the EU to play in the world?

## ANALYSIS OF THE INSTITUTIONAL CHANGES

The EU structure is based on four main institutions: the European Council, the Council (now distinctly indicated), the European Parliament and the European Commission. In addition, the EU also has three other institutions: the European Court of Justice, the European Central Bank (elevated by the new Treaty to the rank of institution) and the European Court of Auditors (Art. 9 TEU).

Even if it does not change the existing architecture, the new Treaty enforces the EU institutional decision-making role and ability to act. The main innovation introduced concerns the enlargement of power of the European Parliament, the only institution democratically elected by citizens, and the redefinition of the international policy strategy and decision-making process. This change has been established to create a more democratic structure for action and a more coherent and cohesive foreign policy. To what extent that end is going to be attained is analysed in the following pages.

### THE EUROPEAN PARLIAMENT

One of the most significant innovations introduced by the Treaty of Lisbon relates to the European Parliament. Its power is considerably boosted and its legislative competence extended, since it now has concrete decision-making power on subjects about which (before the Treaty) it only used to be consulted. For example, in the area of the enforcement of citizenship rights or combating discrimination, the Council shall act not only “after consulting” the Parliament, as stated in the previous provisions, but after “obtaining the consent” of the Parliament (Art. 16.e TFEU).

In fact, the fields of joint decision-making between the Parliament and the Council are considerably enlarged: “the European Parliament shall, jointly with The Council, exercise legislative and budgetary functions” (Art. 9.a TEU). This means that now the joint decision-making procedure becomes an ordinary legislative procedure (Art. 249 a TFEU). Subjects such as freedom of establishment of nationals of a Member State in a territory of another Member State, including freedom to pursue economic activities (Art. 44 TFEU), freedom to provide services such as industrial, commercial or professional activities (Art. 50 TFEU), free movements of capital, penal judicial co-operation, agriculture, and approval of the EU expenditure budget are now directly subjected to the Parliament for co-legislation.

In the area of foreign policy the role of the Parliament is also boosted, since not only has it to be consulted regularly, as was already stated in the previous treaties, but more importantly, the views of the European Parliament have to be “duly taken into consideration” by the new High Representative of the Union for Foreign Affairs and Security Policy (Art. 21.a TEU), even though it might be possible to wonder to what

extent the Parliament's views would be considered, since this provision seems to be quite vague. Nevertheless, the Parliament has the new power to implement the common commercial policy (consisting of decisions about trade agreements, foreign direct investment, liberalization and export policy) jointly with the Council and in accordance with the ordinary legislative procedure (Art. 188.c TFEU). However, in the area of international agreements, even if the involvement of the Parliament is enlarged, the main power still rests in the hands of the Commission and the Council. In fact, the signing of international agreements concluded by the Commission and which are "*binding upon the institutions of the Union and on its Member States*" (Art. 188.l TFEU) is decided by the Council. It must obtain the consent of the Parliament only in some specific cases (Art. 188.n TFEU), such as international agreements related to areas with significant budgetary involvement, establishing a particular institutional framework or where the ordinary legislature applies (for example, measures on the movement of capital to and from third countries involving direct investment, measures concerning a common immigration policy, measures concerning the creation of European intellectual property rights, measures necessary for the implementation of development co-operation policy).

A further slight change the Treaty establishes is that the Parliament has to be composed of the Union's citizens. Its composition shall not exceed 750 in number, plus the President, which is elected from among the Members of Parliament (Art. 9 a TEU). In addition, the Parliament "*shall elect the President of the Commission*" (Art. 9.a TEU). The Parliament elects the President of the Commission on the proposal of the European Council, "*taking the European Parliament elections into account*". This fact could be viewed as a signal of a higher degree of democratic legitimacy of the President of the Commission, which is an institution often seen as being 'disconnected' from its citizens. However, even though the presence of this enhancement can be considered a significant improvement, the Commission still lacks complete democratic legitimacy, since the other members of the Commission are appointed by the Council in accordance with the President elected and are subjected only to the Parliament's vote of consent (Art. 9.d TEU). Moreover, it should be noted that the Parliament does not have the right to dismiss individual members of the Commission.

Finally, it is important to underline and to remember that the EP is the only European institution directly elected by its citizens. In fact, as already stated above, the European Parliament has obtained a role of co-legislator with the Council, and some important decisions which were previously undertaken by the Council only are now subject to Parliament approval. The strengthening of its power provided for in the Treaty of Lisbon can be seen as a way to increase democratic participation in the EU, although, as the European Parliament notes, it might have been possible to do more.

## **THE EUROPEAN COMMISSION**

The Commission, according to the Treaty, promotes the general interest of the Union (Art. 9.d TEU). It mainly has a co-ordinating and management role; it shall ensure the Union's external representation, and its mandate lasts five years. It should be completely independent. It has often been seen as the 'government' of the EU, since it has executive as well as legislative initiative power over the Union (a situation which seems to contradict the division of power).

The Commission has been widely affected by the reform introduced with the Treaty of Lisbon, which has defined two important changes. Firstly, the size of the Commission will be reduced: in fact, while between 2009 and 2014 the Commission will be composed of one national of each Member State, including the President and Vice-President represented by the High Representative of the Union for Foreign Affairs and Security Policy, after 2014 the number of Commissioners will be reduced, and the Commission will be composed of its President, the High Representative of the Union for Foreign Affairs and Security Policy and two-thirds of the number of Member States on a rotating basis, unless the Council decides otherwise. This is a delicate issue actually: on the one hand, the reduction in the number of Commissioners is being introduced because it is feared that the process of enlargement would lead to a loss of cohesion and collective responsibility, but, on the other hand, it is also feared that the reduction in the number of Commissioners would lead to an under-representation of smaller states. Further, it is not yet clear which states will have the right to have a Commissioner. Secondly, the Commission President, as proposed by the European Council, will be chosen by the European Parliament, and the members of the Commission, including the Vice-President, shall be subject to approval by the Parliament.

In the international area, the competence of the Commission will be concentrated into the figure of the High Representative for Foreign Affairs and Security Policy, as discussed below.

## **HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY**

International actions are mainly proposed and implemented by the High Representative for Foreign Affairs and Security Policy, who will chair the Council for Foreign Affairs and represent the Union on the international scene. He/she has a double role since he/she is also the Vice-President of the Commission. The High Representative is chosen from among the members of the Commission and appointed by the President of the Commission and the Council (Art. 9.e TEU). The creation of this post is an attempt to merge in a single body the role of the Common Foreign and Security Policy (CFSP) High Representative and the External Relations Commissioner, both having an important role on the international scene and whose cohesion in their activities has been often doubted. In fact, originally, the Maastricht Treaty referred to two different types of international actions. The first were the Community actions (called the 'first pillar'), binding to Member States and referring to the Directorates-

General External Relations (DG RELEX) of the Commission, articulated in DG Trade, DG Development, the Europe Aid Co-operation Office and the European Commission's Humanitarian Aid Office (ECHO). The second types of actions (called the 'second pillar') were intergovernmental actions in the field of Common Foreign and Security Policy. They are binding unless a Member State exercises the right of veto, according to the provisions (Art. 23 TEU). The Treaty of Lisbon creates a sort of compromise by considering both as 'external actions'. The dispositions governing the second pillar are mostly kept in the TEU, while the dispositions on the first pillar remain in the TFEU, but, at the same time, provisions governing international agreements and enhanced co-operation, which were contained in the TEU and were hence subjected to 'intergovernmentalism', are now allocated to the TFEU and are thus subjective to the 'Community' method. This change is often interpreted as a way to dismantle and reduce the second pillar, merging it into the first pillar. In addition, the proposed reform introduces to the TEU a chapter on "General provisions on the Union's external action" which shall apply to all the external actions (Art. 10a and 10b TEU).

The High Representative would be assisted by a new office, the European External Action Service (EEAS). This will be under the authority of the High Representative and will be composed of officials from the Council, the Commission and the diplomatic services of the Member States, whose combination is intended to avoid duplication and to create a more efficient structure of intervention in the international area. In fact, the concentration of competence is meant to create great cohesion among the different areas of international intervention such as international trade and development policy. However, how the EEAS will function is not clear, since its structure and its role have not been shaped yet and have been left to a future decision of the Council. It could be important, for example, that its different constituents are well balanced, also in terms of numbers.

The High Representative, who shall regularly consult the European Parliament and inform it of his/her decisions, plays a fundamental role in the area of foreign security and defence policy, which is receiving great attention and has been promoted significantly.

The Common Defense policy is an integral part of the foreign and security policies, on which actions are taken by the Council on the suggestion of the High Representative (Art. 28.a TEU)<sup>2</sup>. In this area, the power of the High Minister for Foreign Affairs is actually quite limited, since actions required to implement the Common Defence Policy are taken by the Council, with the High Minister only having the power of proposing decisions.

In conclusion, it could be important to highlight the double role the High Representative has, since, as stated previously, he/she also represents the Vice-

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2 See paragraph "Foreign Policies" on page 21 for a more detailed analysis of this article.

President of the Commission. In this sense, the attempt to establish a more co-ordinated external policy may be weak: there are critics that fear the unification of posts would just lead to a future permanent lack of coherence of political external actions and relations run by a 'double-hatted' figure. In particular, many European NGOs claim that the risk the structure created and the compromise realized would cause tension and confusion in the implementation of external actions and especially a fragmentation of EU commitment in tackling poverty and promoting development. The difference in the two posts maintained until now has represented the two different aspects of EU foreign policy activity discussed above: the Commission's actions and the intergovernmentalism. So, on the one hand, mixing these two aspects together may create imbalance between the two elements, while, on the other hand, trying to solve the problem of cohesion by just combining the two roles may not be helpful either.

Further, there might appear a contradiction or at least a doubtful coherence between the purpose of promoting trade liberalization and competition and, at the same time, trying to boost a pro-development international policy. In fact, on the one hand, the Treaty of Lisbon states that one of the EU's main commitments is the abolition of restrictions on international trade (Art. 10.a TEU) and on foreign direct investment, and the lowering of barriers (Art. 188.b TFEU); on the other hand, it refers to the concept of sustainable development, fair trade and eradication of poverty (Art. 2 TEU), especially in developing countries (Art. 10.a TEU). One may wonder how these two goals will be achieved together, since it seems that the object of boosting competition, enlarging the free market and liberalization is sometimes in conflict with the aim of encouraging sustainable development and fair trade. The concept of a competitive market, uniform liberalization and non-distorted competition is significantly underlined through the Treaty (Art. 188.c TFEU), so it might not be clear which objective is the EU's main priority: either boosting competition or promoting social development worldwide. This concern about the main priority of European policy is also increased by the possibility that, when the number of Commissioners is reduced in 2014 from 27 to 18, there will no longer be a Development Commissioner.

## **THE EUROPEAN COUNCIL**

The European Council is the institution composed of Member States' heads of government or state, its President and the President of the European Commission. It defines the general political direction of the Union both internally and externally. In fact, it proposes the President of the Commission, who shall be elected by the European Parliament (Art. 9.d TEU), and appoints the members of the Commission and the High Representative for the Union for Foreign Affairs and Security Policy (Art. 9.e TEU). For foreign policy, the European Council lays down the strategic guidelines, on the basis of which the Council and each Member State shall act (Art. 9.c TEU). It does not have legislative power.

The European Council's role has been partially affected by the Treaty of Lisbon. In

fact, the new reform requires that the European Council elects its President, whose mandate lasts two and a half years – and not just six months, as it has been until now. The President represents the Union internationally, “*without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy*” (Art. 9.b TEU). Actually, it is not clear which of the two will have more power, and it leaves an incomplete description of the role the two bodies will have in international affairs. This might create confusion, since it is not clear which competences the President of the European Council would have and how he/she would co-operate with the High Representative.

## THE COUNCIL

The Council is the body of ministers from Member States, who meet in different groups depending on the subject. As previously stated, the Council shares the legislative power with the European Parliament and has significant power in the foreign arena. It determines the common foreign and security policy and authorizes the Commission to open and conduct negotiations of international agreements, which shall be approved by the Council acting by qualified majority, except in the field of foreign direct investment, commercial aspects of intellectual property, and trade in social, education and health services, where unanimity is expressly required (Art. 188.c TFEU). This means that the main power in defining and carrying out external agreements lies with the Commission. In this sense one may observe that the proper division of competence for international affairs between the High Representative, the European Council and the Commission is somehow unclear.

One of the main innovations introduced by the Treaty of Lisbon concerns the way the Council operates and makes its decisions. From November 2014 the areas subjected to unanimous decision will be significantly reduced, and the ordinary decision-making rule becomes the qualified majority of at least 55% of the members of the Council and representing at least 65% of the population of the Union (Art. 9.c TEU), in accordance with the Protocol on Provision Concerning the Qualified Majority which establishes transitional rule from 2007 to 2014. Areas such as social security and protection, family law, the common foreign and security policy, membership of the Union, citizenship, certain institutional issues such as the electoral system and the revision of the Treaty<sup>3</sup> remain subject to a unanimous decision.

Subjects such as the election of the President of the European Council by the European Council; the appointment of the High Representative by the European Council; the withdrawal agreement of a Member State; procedures and conditions required for a citizens initiative; co-operation within the area of freedom, security and justice; the common European asylum system; actions of Member States promoting the integration of third-country nationals residing legally in their territories; and the

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3 Source: official EU website ([http://europa.eu/scadplus/constitution/majority\\_en.htm#UNANIMITY](http://europa.eu/scadplus/constitution/majority_en.htm#UNANIMITY)).

creation of European intellectual property rights fall under Qualified Majority Voting.

In addition, the Council is authorized to take unanimous action in areas where the Treaty does not directly contain provisions, if these actions are considered necessary to pursue certain objects of the Treaty (Art. 308 TFEU). Nevertheless, it is also stated that this disposition does not apply to foreign and security policy.

## **NATIONAL PARLIAMENTS AND GOVERNMENTS**

As an attempt to establish and pursue a more direct connection and a deeper dialogue and consultation between the EU, the Member States and their citizens – as often demanded by different civil society actors – the Treaty of Lisbon formalizes a partial effort to strengthen the participation of national parliaments and governments in the Union’s political and legislative actions. To this end, many provisions are intended to enhance the involvement of Member States’ governments in the decision-making process. For example, it states that the government of any Member State can take part in the amendment procedure of the treaties and can oppose initiatives of the European Council within a period of six months of the date of notification (Art. 48 TEU). The provisions regarding national parliaments are contained in the Protocol on the Role of National Parliaments and are mostly the same as in the previous treaties. Draft legislative acts must be forward to national parliaments and must contain any implications for the laws of Member States, who can examine them within a period of six weeks, which the Treaty of Lisbon now extends to eight weeks. The power of national parliaments to express their positions on areas subject to the legislative authority of the EU is made clear, since Member States, giving “reasoned opinions”, have the right to contest and to subject to a voting procedure any EU legislative acts which they may find disrespectful of the principle of subsidiarity. In fact, it is established that the legislative draft shall be reviewed if at least one-third of the vote of the Parliament decide so, as deemed in the Protocol on the Application of the Principle of Subsidiarity and Proportionality annexed to the Treaty.

## **DIVISION OF COMPETENCE BETWEEN UNION AND MEMBER STATES**

The Treaty of Lisbon defines precisely the area of competence of the Union. It is stated that the Union’s actions shall respect the principles of conferral, subsidiarity and proportionality:

- principle of conferral – “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties”
- principle of subsidiarity – the Union’s actions shall take place only when the object of the action cannot be directly achieved by the Member State
- principle of proportionality – the Union shall do only what is strictly necessary to pursue the final end (Art. 3.b TEU).

In addition, the Treaty distinguishes between exclusive, shared and supporting com-

petences (Art. 2.a TFEU). Areas of exclusive competence are areas where only the Union can legislate, unless the Member State is expressly given the right to do so by the Union itself. Competition rules, monetary policies, common commercial and trading policy and the conclusion of international agreements are of exclusive competence of the Union (Art. 2.b TFEU). Areas of shared competence, on which the Union and the Member State can both legislate, are expressly defined (Art. 2.c TFEU) and include internal market, social policy, freedom and justice, consumer protection, the environment, development co-operation and humanitarian aid. There are also areas where Member States have exclusive competence, but where their action can be supported, co-ordinated and harmonized with European law. These areas include health care, industry, culture, tourism, education, professional training, youth and sport, and civil protection (Art. 2.e TFEU). Furthermore, a protocol on the exercise of shared competence and on the application of subsidiarity and proportionality has been added with a declaration concerning the purpose of the Union's actions, to reinforce the idea that "decisions are taken as closely as possible to the citizens of the Union". To that end, the protocol deems that, before proposing any legislative act, the Commission shall consult widely to analyse the local and regional impact of each draft act. However, in urgent cases the Commission can decree that no consultation will take place.

## CHAPTER 2 :

# ANALYSIS OF CHANGES IN RELATION TO VALUES/RIGHTS

### **GENDER EQUALITY**

The Treaty of Lisbon has introduced some new elements to enforce human rights and mainstream gender compared to what was contained in the previous treaties. In fact, it opens with an explicit declaration of the principal values that the Union aims to respect, pursue and promote: “the Union is founded on the value of respect of human dignity, freedom, democracy, equality, the rule of law and respect for human rights” (Art. 1.a TEU). The same article clarifies that fundamental values of the Union are “non-discrimination, (...) and equality between women and men”. These values, and especially the principles of non-discrimination and gender equality, are significantly underlined throughout the text. Moreover, the Union aims to fight social exclusion and discrimination as well as to boost “equality between men and women” (Art. 2 TEU).

These principles are strengthened, because they are made more visible than in the previous treaties. The new disposition does not change the provisions determined in the previous treaties, such as those meant to combat discrimination in the social or working life; for example, the principle of equality between man and woman with regard to labour market opportunities and treatment are maintained (Art. 137 TFEU). Further, the Treaty of Lisbon gives the Union a direct involvement in combating inequalities between man and woman and fighting different type of discrimination or violence against women; in particular, it contains an explicit reference to domestic violence against women. To this end, it is stipulated that the Union will act to support the victims of domestic violence and to punish whoever commits such a terrible crime (Declaration 19). It is stated that the Union shall prevent and combat all kind of trafficking and sexual abuse of women (Art. 69 TFEU).

### **HUMAN RIGHTS**

The Treaty of Lisbon expresses a greater commitment by the Union to combat “discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (Art. 5.b TFEU). The worldwide protections of human rights become an explicit commitment of the Union (Art. 2 TEU), which “recognises the principles set in the Charter of Fundamental Rights of the European Union” that becomes a “general principle of the Union law” (Art. 6 TEU). Freedom, security and justice must be pursued respecting those fundamental values (Art. 61 TFEU). Further, the Charter of Fundamental Rights of the European Union becomes legally binding, as stated in Declaration 1 annexed to the Treaty and concerning the Charter of Fundamental Rights. In addition, the Treaty contains provisions concerning the accession of the Union to the European Convention for the Protection of Human Rights and

Fundamental Freedom, which will be implemented according to Union law, and provisions developing a deep co-operation with the Court of Justice and the European Court of Human Rights (Declaration 2 and the Protocol on the accession to the European Convention on the Protection of Human Rights and Fundamental Freedom).

Nevertheless, it is important to highlight that, even if the Charter of Fundamental Rights “gains the same legal values as the Treaties” (Art. 6 TEU), it is not included in the text of the Treaty but in the annex. Further, it is worth noting that the rights declared in the Charter are quite vague and sometimes weak: in fact, the right to a decent employment does not exist, and some rights referring especially to women, such as the right to contraception and or legal abortion, are not mentioned at all. The real effectiveness of the Charter is also doubtful, since it is stated that it does not “establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties” (Declaration concerning the Charter of Fundamental Rights). An ultimate reason of concern about the real value of the Charter is that Member States such as the United Kingdom and Poland have gained the right to opt out from the provisions it contains, thus possibly causing an element of weakness of the ‘legal value’ of the Charter.

## **DEMOCRACY**

As stated in the preamble and in Article 1 of the TEU, democracy is one of the values on which the Union is built and that the Union aims to promote worldwide (Art. 10.a TEU). The Treaty of Lisbon is intended to boost and underline the principle of democratic functioning of the Union, trying to create a wider representation of European citizens and national parliaments in EU policy and reinforcing the idea of equality among people. The introduction of a new heading of Title 2 to the TEU, named Provision on Democratic Principles, shows this intent, and the statements contained therein deem that the Institutions of the Union shall treat and consider the citizens of the EU equally. In fact, it is clearly stated that “the functioning of the Union shall be founded on representative democracy” (Art. 8.a TEU).

To this end, the Treaty of Lisbon introduces some innovations that aim to promote participation in EU political and economic actions and decision-making processes: first, the initiative of citizens is recognized, a new form of participation by citizens in the political life of the Union, as they may ask the Commission to propose “draft law” (see below – Citizenship); second, it establishes the greater power and a wider area of intervention of national parliaments in the functioning of the Union; third, it increases the power of the European Parliament, the only institution directly elected by the citizens of Member States.

However, even if the general improvement of the democratic structure of the Union is relevant, many weaknesses in the democratic framework created can be highlighted. In fact, it seems that the main power still lies with non-elected representatives since, even though the political activity of the democratically legitimated European

Parliament has been boosted, the core of the decision-making process still remains in the other institution: the Commission, the Council and the European Council. Even if the Parliament can elect the President of the Commission, it does not have much influence over the choice of the Commissioners, who are appointed by the European Council and the Council. In addition, the Parliament cannot dismiss individual members of the Commission. Especially as far as international policy is concerned, the principal actors are the Council and the High Representative, neither of which acts on the basis of a democratic mandate. Finally, the mechanism of ratifying the Treaty of Lisbon does not appear very democratic, since, as covered further in Chapter 4, it is not going to be subject to national referenda. Even public information and debate on the Treaty seems extremely scarce or, worse, completely non-existent.

## **CITIZENSHIP**

The concept of citizenship of the Union as a means to defend the rights of the nationals of the Member States was established in the previous treaties, and the Treaty of Lisbon maintains this notion. In the second part of the TFEU, whose heading has been renamed “Non-Discrimination and Citizenship” it is stated that European citizenship is additional to national citizenship and gives people the opportunity “to enjoy the rights and be subjected to the duties of the Union” (Art. 17 TFEU). The rights the citizens can enjoy remain basically the same in the Treaty of Lisbon: to vote and stand as candidates in European Parliament elections; to move freely; to enjoy the protection of diplomatic authorities; to petition the European Parliament. Article 20 introduces a new procedure to implement the diplomatic protection of European citizens, stating that “The Council (...) may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection” (Art.20 TFEU).

The main innovation introduced by the Treaty of Lisbon refers to the “citizens’ initiative” (Art. 21 TFEU) and is creating on a legal basis a sort of involvement by people and civil society in the construction of the EU institutional and legislative architecture. Thus citizens can “submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties” (Art. 8.b TEU). The ‘initiative’, to be effective, must be submitted to the European Commission, must be supported by one million citizens and must be intended (only) to better realize and make effective the provisions already contained in the Treaties (Art. 8.b TEU).

In addition, the Treaty maintains the principle that the Council, after the approval of the European Parliament, can enlarge the list of rights citizens can enjoy and which are stated in Part 2 of the TFEU.

Despite this new empowerment of citizens to be involved in the political life of the Union, some elements still compromise the real effectiveness of citizens’ participation. One of these elements is surely neoliberalism. The impact of the neoliberal basis of the Treaty on the internal affairs and, consequently, on the civil dimension of the

European citizens can be gathered from the general provisions, such as those found in Art. 105 (TFEU), according to which “the internal market includes a system ensuring that competition is not distorted”, or furthermore from Art. 188c, which provides the “achievement of uniformity in measure of liberalization” and Art. 10a, which, among other targets, encourages the “integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade”. These provisions are matched by the European Commission’s aim to open “a market” in all public services – including public health and education – to multinational companies on the basis of the General Agreement on Trade Services (GATS).

It must be noticed that the Treaty does not actually refer explicitly to “public services”, but to “Services of General Economic Interest” and “Services of General Interest”. Current EU case law defines economic activity as the offering of any goods or services on the market; therefore, by this definition all current public services would fit into the category of Services of General Economic Interest rather than Services of General Interest. It is interesting to note that Art. 16(b) of the Treaty of Lisbon places new “economic and financial conditions” on the provision of Services of General Economic Interest. These conditions imply that services, including health care, water, electricity supply, waste disposal, and education, for example, would be subject to the rules of competition. Since this process is likely to lead to the privatization of services, increasing the cost to the average citizen, it is highly criticized by those who expected a more socially inspired idea of European citizenship.

Concerning public spending and the Member States’ budgeting decisions, Art. 87 (TFEU), together with the provisions that rule the European Central Bank (which have “price stability” as a main objective) and the Commission’s long-term duty to strengthen the surveillance of Member States’ public deficit, imply a generalized cutting in public expenditure and a pressure to pursue a deflationary economic policy. This is clearly in contrast with a socially oriented vision of the State.

Even so, special attention to social matters comes in Art. 5a (TFEU): “In defining and implementing its policies and activities, the Union shall take into account [...] 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.” Many euro-observers, networks and trade unions claim that the reformers have missed crucial opportunities to reinforce the European social model; it has been stated that “It is now politically and legally urgent to clarify the rules applied to services of general economic interest in Europe, to guarantee that they will not be submitted to the sole logic of the internal market and competition.”<sup>4</sup> As regards the protection of workers and the safeguard of employment, the Treaty addresses the necessity of equal treatment of men and women (Art. 1a; Art. 2), but

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4 *Carola Fischbach-Pyttel, Secretary-General of the European Federation of Public Service Unions (EPSU).*

there do not seem to be decisive improvements on job opportunities from previous treaties. The real fact is that, beyond the treaties' declarations of purposes, much work still needs to be done to give women actual tools of equality. As the Commission's fifth annual report on gender equality shows, "despite their better educational attainment, women's careers are shorter, slower and less well-paid".<sup>5</sup> It seems that the female employment rate has been steadily increasing since 2000 and that the unemployment rate for women has fallen to its lowest level for ten years, but that the gender pay gap, labour market segregation, work-life balance and the unfair distribution of reproductive and care work are still major challenges.

Within a framework that boosts neoliberal values and reinforces economic competition, the provisions related to the free movements of workers and the enlargements of the Union by eastern European countries (which clearly represent a source of cheap labour for European companies), lead one to think that maybe the weakest categories of workers (such as dependent workers, young people, and women) would have deserved more explicit references.

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<sup>5</sup> *Declaration of Equal Opportunities Commissioner, Vladimír Špidla, as he presented the Commission's report on 23 January 2008.*

## ANALYSIS OF POLITICAL CHANGES

## DEVELOPMENT AND HUMANITARIAN AID

The new Chapter 1, Art. 10a (TFEU) is a very important tool in understanding the principles that inspire the “Union’s External Action”. For the purpose of this section, it is worth noting that among the general provisions Art. 10a reports, there are statements such as: “The union shall seek to develop relations and build partnerships with third countries, and international, regional or global organizations” (Art. 10a (1.2) TFEU); “The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations in order to: [...] foster sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty” (Art. 10a (d) TFEU); “... encourage the integration of all countries into the world economy” (Art. 10a (e) TFEU); “... help develop international measures to preserve and improve the quality of the environment [...] in order to ensure sustainable development” (Art. 10a (f) TFEU).

All these provisions stress the specificity of the policy and the application of the principles of international humanitarian law, in particular impartiality and non-discrimination. They, therefore, represent a strong signal of the Union’s commitment to take account of developing countries as fundamental interlocutors in the international arena in terms of economics and trade, but also in terms of developing human rights and values.

The fact that the EU’s overarching development objective – eradicating poverty – is enshrined in the new Treaty is a very important step in itself, since it means that that specific goal must be respected when the Union implements policies likely to affect developing countries. In this way, “development policy” has become a policy in its own right, and not complementary to common foreign or security policy.

An important signal is the new Part 5, named “External Action by the Union”, which shows a more radical approach to, and not only, the issues of “Development Cooperation” and “Humanitarian Aid”.

New Article 188 of the TFEU amends Article 177 of the existing Treaty; it stipulates that “Union policy in the fields of development and cooperation shall be conducted within the framework of the principles and objectives of the Union’s external action [which are defined in Title I, Part V n.d.R.]. The Union’s development cooperation policy and that of the Member States complements and reinforce each other.” The issue of poverty eradication has been formally expressed by Art. 188 of the TFEU (2nd paragraph): “Union development cooperation policy shall have its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries”.

Some organizations and EU observers have noted that, even if the EU is a major provider of aid and assistance to the developing world, since its wealthier Member States are committed to raising the percentage of GDP they spend on aid to 0.56% by 2010 and 0.7% by 2015 (0.33% for the newer Member States), it needs to improve the effectiveness of these policies. It has been argued that a single EU external relations chief might help to achieve this aim.

For humanitarian aid (Chapter 3; Title III, Part V), the new Treaty establishes specific objectives in terms of humanitarian aid and the precise means by which the Union's action must address the relief and protection of people in third countries (Art. 188j TFEU). It also states "The Union's measures and those of the Member States shall complement and reinforce each other."

The enhanced role of the European Parliament is evident in this section as well, since, together with the Council, it shall "establish the measure defining the framework within which the Union's humanitarian aid operations shall be implemented" (Art. 188j TFEU).

## **EXTERNAL ACTION AND TRADE POLICY**

The Treaty of Lisbon stresses the necessity of accelerating the process of economic liberalization in Europe by calling for "uniformity in measures of liberalization" (Art. 188c). The basically neoliberal values are highlighted also by Protocol 6 of the Treaty, which declares that "the internal market as set out in Articles 1–3 of the Treaty on European Union" must be based on a system whereby "competition is not distorted".

A further boost to the neoliberal economic bias of the document is contained in Article 188b, which states that the EU "shall contribute to the progressive abolition of restrictions on international trade and foreign direct investment, and the lowering of customs and other barriers". The pro-business orientation of the document, aimed at creating the best trading conditions mainly in favour of European transnational corporations, was summed up in a comment by the EU Observer: "The European Commission is set to reiterate its key message that in a global economy openness is not a one-way street". In other words, it seems that Europe will be very careful to ensure that European companies can compete with such low-wage rivals as India and China. This is also valuable as far as trade policy is concerned.

The general provisions on external action, discussed in Title I, Part V (TFEU), raise the role of the Union's trade policy, since it becomes an exclusive competence of the EU: "The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action" (Art. 188c TFEU). It is also provided that the EU together with the Council "shall adopt measures defining the framework for implementing the common commercial policy", following the ordinary legislative procedure.

Among other issues pertaining to this section, such as liberalization, export policies

and trade agreements (cfr. Art. 188c (1) TFEU), special attention is paid to the commercial aspects of intellectual property and of foreign direct investment: Article 188c (TFEU) stipulates, in fact, that for the negotiation and the conclusion of agreements in those fields, the Council should act unanimously when such agreements include provisions for which unanimity is required.

This attention can be justified, since the European economy is increasingly concerned about the protection of immaterial resources, such as intellectual property rights, to set a market strategy able to act in a challenging international economic scene characterized by other emerging economic actors, such as China and India. Article 97a (TFEU) states, for this purpose, that “In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.”

It must be said that the traditional European approach to intellectual property protection has been rather simple and more basic compared to other developed countries’ strategies, such as the USA’s. Therefore, the Lisbon Strategy in 2000 and the Treaty today can be viewed as two fundamental steps in terms of a progressive adaptation of the EU to ongoing, stricter international trade rules. The question is: are the concerns about the impacts of this stronger strategy on developing countries fairly taken into account? Are the reformers aware enough of the need to create chances of knowledge exchanges and innovations opportunities for those countries? The debate about the positive and negative aspects of intellectual property protection is wide and complicated, and there is no doubt that the Treaty’s provisions about it pose new questions.

For more general agreements between the EU and third countries, new Article 188n (TFEU) shall apply: the Council and the Commission (through the intervention of the High Representative of the Union for Foreign Affairs and Secure Policy) act as the lead institutions and, “except where agreements relate exclusively to the common foreign and security” (Art. 188n (6)), the consent of the European Parliament is necessary. The Council should act by a qualified majority throughout the whole procedure.

## **ENLARGEMENT**

After long discussions, the reformers decided to slightly change the formal criteria of eligibility and the procedure of accession to the Union (cfr. Art. 49 TFEU), but at the same time they decided not to tighten those criteria.

This is currently a very delicate issue, since the debate among Member States about the potential accession of Turkey to the EU is rather high pitched and raises questions

ranging from the future shape of the EU to the integration of existing immigrant communities. Thus it has been argued that different Member States' reactions depend on whether Turkish accession is perceived as a question of foreign policy (such as Spain and UK) or a matter of internal EU or national politics (such as France and Germany). In addition, there are the religious and cultural concerns which have been seriously posed by countries such as Italy and Austria. Substantially, those who are against Turkish accession are driven equally by cultural, strategic and legalistic motives, while those who see Turkey ready to be European use arguments as the opportunity for economic growth and security. The debate is still going on.

Moreover, for the first time the Treaty gives Member States the possibility to withdraw from the Union. Article 49a (TFEU) provides that the withdrawal agreement must be concluded on behalf of the Union by the Council (which acts by a qualified majority), after the consent of the European Parliament. The withdrawal clause can be considered a measure to create a more democratic environment inside the EU, since it implies the right of any Member State to withdraw from the Union if it wishes to. This provision could be seen to enhance Member States' autonomy, at least formally.

## **FOREIGN POLICY**

For the purpose of 'foreign policy' it must be acknowledged that Chapter 2, Title II of the Treaty of Lisbon specifies the provisions on the Common Foreign and Security Policy (CFSP), amending Title V of the existing Treaty. Even if defence policy has been given a prominent role, reformers had to work hard to strike a balance between the Union's common foreign policy and the will of the Member States to secure themselves a tight control over their own national foreign affairs.

The role of High Representative of the Union for Foreign Affairs and Security Policy (Art. 9a TFEU) is of fundamental importance, because he/she has been given the task of implementing the defence and common foreign policy, alongside the institutions such as the European Council, the Council and the Commission, which implement the policies, determine the objectives and define the guidelines of the external action of the Union (Art. 12 TFEU). Unanimity is required in decision-making, while the adoption of legislative acts is ruled out (Art. 12 TFEU).

New Article 28a of the TFEU states that common foreign and security policy "shall provide the Union with an operational capacity drawing on civilian and military assets" with a view to the possibility of using them in the context of peacekeeping, conflict prevention and reinforcement of international security, outside the Union. Consistent with these provisions is Article 28b (TFEU), which includes tasks such as "disarmament operation, humanitarian and rescue tasks, military advice and assis-

tance task, task of combat forces in crisis management” among the main objectives to reach through the means mentioned above.

Also explicitly mentioned is the will of the EU to contribute to the international fight against terrorism, as Article 28b (TFEU) states that all the tasks just mentioned “may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”. European commitment to this purpose is also stressed by Article 61h (TFEU), which provides that “the European Parliament and the Council [...] shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities”.

The same Article 28a (7) of the TFEU provides the so-called ‘Common Defence Clause’, which recalls Article 51 of the United Nations Charter, since it implies the mutual obligation of aid and assistance among Member States, in case of armed aggression undergone by one of them.

Another important innovation concerning foreign policy and, in particular, co-operation among Member States is assessed by Protocol 4 on “Permanent Structured Cooperation” together with Article 28a and Article 28e (TFEU). They refer to the possibility of establishing permanent structured co-operation within the Union framework for “those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area”. All decisions regarding the admission and the participation of Member States to this “permanent structured cooperation” are taken by qualified majority, as is also the decision about suspension (Art. 28e para. 2–5 TFEU). All decisions of the Council about structured co-operation, other than those mentioned, require unanimity.

For those Members who want to join the co-operation, Protocol 4 also promotes the sharing of objectives regarding the commitment of forces, and the harmonization of their defence apparatus “by specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics”. Thus the European Defence Agency is now also committed to promoting the harmonization of operational needs, as well as being responsible for the management of crises and armament. In addition, Protocol 4, Article 3 states that “it shall contribute to the regular assessment of participating Member States’ contributions with regard to capabilities”.

All these changes are extremely important to judge the position of the Union in the international arena. One undeniable result is that, through the High Representative, Europe will be able to speak more easily than before with a ‘single voice’ at international level and to put into practice a more coherent foreign policy and representation. As far as CSDP is concerned, it is evident that its new definition is oriented to the enhancement of the active role of the EU as an actor which can assist, for example,

the United Nations through international peacekeeping missions involving military forces.

Provisions like these have been interpreted by many as a step that the EU decided to take along the road to gradual independence from the US and NATO's strategy and, at the same time, raised many discussions. In fact, the relationship with NATO does not seem to have totally softened, since any commitments on foreign policy and defence should take place respecting NATO, "which remains the foundation of the collective defence" (Art. 27 TEU). The Treaty urges for the need to create a strong military structure to use "in accordance with the principles of the United Nations Charter" (Art. 28a TEU). In addition, a controversial issue is the opportunity for "permanent structured cooperation", which would allow the largest Member States (in terms of military capabilities and commitments) to move forward on security and defence matters.

## CHAPTER 4 :

# OUTLOOK

The Treaty of Lisbon has to be ratified by all 27 EU Member States to come into force. If the whole procedure of ratification is completed on time, it will become effective on 1 January 2009.

Most Member States plan to ratify the Treaty by subjecting it to the approval of national parliaments, which is less likely to cause a rejection than a public referendum. The lack of any agenda of planned referenda is one of the main criticisms of the Treaty and the way it is going to be implemented and introduced. In fact, many civil society voices, among which one of the loudest is ATTAC, urge the need for a more democratic procedure of approval and claim that it is necessary to submit the Treaty directly to the people, who have the right to express their point of view through referenda.

### **PAST AND PRESENT DEBATE ON THE REFORM TREATY**

The EU Constitution ratification process in 2005 encountered decisive obstacles, especially from France and the Netherlands. In both countries, in fact, the referenda on the EU Constitution failed. This is why EU governments are anxious now to see the Treaty of Lisbon ratified by their national parliaments.

The main objections which drove the larger part of French and Dutch citizens to vote against the ratification have been long discussed. It has been argued, for example, that both countries were experiencing a very troubled political situation because of the presence of deeply unpopular government but also that “the negative votes in the Netherlands and France were largely the result of poor economies, and concerns about immigration, EU expansion and the loss of national identity”.<sup>7</sup> In particular, the Dutch rejection was due to several questions highlighted by the “no” parties; among them: the unbalanced importance given to Member States such as France or Germany, the lack of democracy pervading the whole decision-making process, the threat to Dutch liberal values, the loss of national identity, and the ‘out of control’ speed of the enlargement process. Different sources such as poll surveys, press articles and official political opinions talk unanimously about “national motivation and urges” which led to the French referendum’s negative outcome: the main reason indicated by voters was the negative effect of the European model on French economics, in particular on unemployment and the labour market; beside this, French scepticism was also caused by a too liberal setting of the Constitution with too few references to and commitments on fundamental social issues.

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<sup>7</sup> CNN European Political Editor, Robin Oakley.

## **ECONOMICS: INTERNAL AND EXTERNAL STRATEGIES**

The way the internal market is structured and the rules established for its functioning are fundamental elements of contest in the debate about the approval of the Treaty of Lisbon. In particular, the concept of free and undistorted competition in the internal market is one aspect over which the debate and the criticism of society focus more. The idea of boosting and encouraging competition in the market was one of the main objectives the EU had to pursue according to the previous Constitution. Strong criticism by unions and different parts of civil society denounced the lack of consideration of problems related to social issues. This is why the idea of promoting free competition has been reconsidered and partially softened in the Treaty, at least formally, and accompanied with provisions on social values and social cohesion. In fact, the Treaty not only claims that “the Union shall establish an internal market (...) based on a highly competitive social market economy” (Art. 2 TEU), thus demonstrating the importance of a competitive structure to the market, but it also refers to the promotion of social progress, social justice and protection, claiming that the Union shall promote free but also fair trade.

Even though there seems to be an explicit commitment by the Union to create a sustainable way of development to preserve the environment, the Executive Committee of the European Trade Union Confederation (ETUC) expresses its disappointment, claiming that not enough has been done to fight the “dark side of globalization and financial capitalism”.

Surely, the promotion of a competitive internal market is still an important target of the Union’s policy. In fact, as stated in the Protocol on Internal Market and Competition, annexed to the Treaty, the Union has an explicit commitment to avoid the distortion of competition. Thus it is worth noting that in November 2007 the European Parliament voted a new legislative package intended to boost free competition and free trade in the goods market, and also that for the period from 2006 to 2013 the Commission has introduced the Competitiveness and Innovation Framework Programme.<sup>8</sup> Nevertheless, the introduction of this programme caused very different reactions: while the Association of European Chambers of Commerce and Industry completely praised it, some movements such as the European Environmental Bureau (EEB) and the European Committee of Environmental Technology Suppliers Associations (EUCETSA) claimed that the provisions related to eco-innovation were insufficient to ensure concrete sustainable development and denounced the reduction of the amount of funds originally devoted to it.

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<sup>8</sup> *A specific seven-year programme to increase and develop competition in the internal market, which not only includes clauses aiming at promoting competition and innovation – especially referring to small and medium enterprises – but also introduces some provisions and some economic funds, to support eco-innovation and sustainable growth.*

Actually, it is hard to admit that the internal and external economic strategy are not different parts of a larger single economic strategy, as roughly the same willingness to respect the trade strategy that the EU has been outlining during the last recent years can be easily recognized – both in the articles related to external relations and in those related to the internal market. Thus the main objectives specifically outlined by Trade Commissioner Peter Mandelson in 2006<sup>9</sup> and clearly taken into account by the Treaty reformers are:

- the conclusion of ambitious bilateral trade agreements, particularly with emerging economies;
- the improvement of the regulatory environment in third countries (particularly the USA and China);
- better access to raw materials, including energy sources;
- the opening up of public procurement markets in third countries (for example, in the provision of transport equipment, public works and local services);
- the improvement of the use of trade defence instruments; and
- enforcement of intellectual property rights.

It is clear that this kind of strategy is likely to set the competitiveness of Europe's industry and business as its primary goal, and, therefore, there seems to be a valid case for the critics who question the actual match between these kinds of targets and fairer economic provisions.

## CONSTITUTIONAL IMPROVEMENTS

A comparison between the draft of the rejected Constitution and the Treaty of Lisbon yielded contrasting opinions: institutional sources affirm that noticeable modifications have improved the Constitution draft in terms of democracy, transparency and social commitment, while NGOs, left-wing parties, and scholars reply that those tweaks are just formal changes.

The main modifications which, at least formally, answered the questions posed by Dutch and French opponents can be summarized as follows:

- Council voting rule (majority rule) has been modified: voting rules in the Council will take the respective weight of each State into account so that the "laws" approved reflect both the will of the majority of European citizens and also the reality of the weight enjoyed by Member States;
- The powers of the Parliament are strengthened in terms of legislation, budget and also political control;
- The Treaty creates the right of citizens' initiative: since European citizens may ask the Commission to propose a "draft law" if they gather at least one million signatures from a significant number of Member States;

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<sup>9</sup> See: *Global Europe: competing in the world: a strategy paper presented by the Commission on 4 October 2006.*

- The treaty acknowledges the importance of dialogue between citizens, civil society associations and the Union's institutions (particularly the Commission);
- The Charter of Fundamental Rights acquires a legal quality which affects the Union's acts;
- The Council of Ministers sits in public when it debates and votes on European legislation. The transparency and public nature of the Council's work facilitates civil society's participation;
- A "social clause" demands that social requirements are taken into account in the Union's policies;
- The Treaty of Lisbon attributes new social objectives to the European Union:
  - full employment and social progress;
  - the fight against social exclusion and discrimination;
  - the promotion of justice;
  - the eradication of poverty, etc.;
- The Treaty also confirms the role of social partners and enhances social dialogue;
- For the first time ever a withdrawal clause from the European Union is included;
- It was agreed to drop most of the state-like features such as the name "Constitution", as well as reference to EU symbols (flag, anthem, motto).

All these changes represent in some way an improvement to the Constitution rejected in 2005, and it has probably fulfilled some of the requests from milder opponents to the former constitutions. Nonetheless, dissenting voices from civil society can still be heard; but they will probably be unable to stop the ratification process, because of the parliamentary decision-making process chosen.

## **RATIFICATION PROCESS**

The main disputes coming from non-institutional sources and from women's movements concern topics such as the ratification process chosen (parliamentary), which would lower the degree of democracy of the whole decision-making process; the lack of coverage of the role of social dialogue and social partners, which the Treaty refers to only in the area of social policy; and the missed opportunity to "revive social Europe by extending qualified majority voting and by extending the competences of the Union to control the dark side of globalisation and rampant financial capitalism".<sup>10</sup> It has also been observed that even if the Charter of Fundamental Rights becomes legally binding for Member States, the UK and Polish 'opt-out clause' from it negatively affects its value. There is also a concern that the above-mentioned importance given by the Treaty to social dialogue and social partners can be easily downsized. That is why organizations such as ETUC require a declaration about the equal legal recognition of that section of the Treaty to the earlier sections and the applicability of those provisions beyond the limits of the social policy of the Union.

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<sup>10</sup> [www.etuc.org](http://www.etuc.org)

It has been argued that the Treaty of Lisbon has brought about just a series of modest adjustments to the EU's framework of rules, "which will have only a limited impact on the process of deepening Europe's capacity to act decisively in the world".<sup>11</sup>

## **MILITARIZATION**

Another theme that fuelled the debates among civil associations, left-wings parties, and NGOs is the stress that the Treaty seems to put on the military capabilities of the Member States in relation to the potential operations undertaken by the Union. Without doubt, according to Article 28 (TFEU) and Protocol 4 annexed (cfr. Chapter 3), the military capabilities remain in national hands, even if it is foreseen that Member States can make civilian and military resources available to the Union for the implementation of its CSDP operations and that, in any case, any Member State has the right to oppose such operations, since co-operation will always be on a voluntary basis. But, nevertheless, this renewed approach to the military cause has been harshly criticized and, furthermore, provisions like the one on the fight against terrorism and supporting third countries in combating terrorism have been interpreted as a declaration of submission to US foreign policy strategies.

## **PUBLIC SERVICES**

As already observed in the previous chapters, the neoliberal principles which inspired the EU internal and external economic strategy seem to dominate the provisions related to concrete social needs. The crucial elements which fuelled the debates over the Treaty's insufficient coverage of social questions are: the risk of some essential social services being affected by the rules of the GATS; the European Central Bank's main aim of "price stability"; the Commission's surveillance of public spending by Member States; the commitment to a free market economy; and the removal of barriers to international trade. Such elements suggest at least a sort of incoherence between the actual targets reachable by the EU as a whole and by each Member State and the purposes that the Treaty claims in terms of development, social security and social exclusion.

## **GENDER PERSPECTIVE**

The European Women's Lobby wrote a letter to the Presidency of the EU on the occasion of the Lisbon 2007 Intergovernmental Conference. It stressed its appreciation of the formal improvements reached through the Treaty of Lisbon, which inherited from the draft Constitution important provisions in terms of the prevention of gender discrimination, in particular:

- the equality between women and men as part of the Union's values and as an objective;

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<sup>11</sup> [www.etuc.org](http://www.etuc.org)

- the commitment to mainstream gender into all EU activities as a horizontal principle;
- the need to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- the fight against trafficking and sexual exploitation of women and girls;
- the provision on non-discriminatory application of humanitarian aid;
- the aim to combat all kinds of domestic violence – with the Member States taking all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

Nonetheless, the Lobby is concerned about the decision to relegate the obligation to apply equal treatment in the provision of services of public interest to a Protocol attached to the Treaty, since “services of general economic interest affect women’s lives to a great extent, and we believe that the article calling for equal treatment in this area should be placed in the main text”.<sup>12</sup> The new Treaty’s general impact on women’s organizations can be gathered from the implications that it makes in terms of democratization and of widening the involvement of civil society into the decision-making process of the Union. Anyway, it must be acknowledged that to put into practice the Treaty’s provisions, the movements/associations interested must exploit the available means as much as possible, such as: the right of citizens’ initiative; the greater importance of the European Parliament and, therefore, a much more direct relationship between European decisions and national citizens; and the legal binding of the Charter of Fundamental Rights and, consequently, the opportunity to fight important legal battles, since any European law contrary to the Charter provisions can be declared void by the Court of Justice.

From this perspective it could be convenient to pursue the implementation of the Road Map for Gender Equality which was set out in 2006 with renewed conviction, trying to improve the positive, though limited, results that have been reached so far. As far as the Union’s external policy and international role are concerned, different observers have claimed<sup>13</sup> that the aim to increase the EU’s political role in the world can be greeted positively – especially when one looks at the overall objectives for the Union’s relations with the rest of the world, which include peace, security, sustainable development, the eradication of poverty and the protection of human rights. Since gender equality is not only a goal in itself, but also a human right and a tool that contributes to eradicating poverty, from a feminist perspective one can see that it will be crucial to influence the implementation of external policies, the fund allocation process and the actual implementation of development strategies as much as possible. Thus another important aim has been identified<sup>14</sup> with the limitation of trade liberalization as the guiding principle for the Union’s common commercial policy (cfr. Art.

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<sup>12</sup> [www.womenlobby.org](http://www.womenlobby.org)

<sup>13</sup> [http://www.connect-world.net/News/Themes\\_in\\_the\\_News/Lisbon\\_Treaty.html](http://www.connect-world.net/News/Themes_in_the_News/Lisbon_Treaty.html)

<sup>14</sup> [www.tjm.org.uk](http://www.tjm.org.uk)

10a, para. 2(e); Article 188b (a) TFEU), since it could affect the 'pro-developing countries' statements of principles and the calls for an actual pro-development trade policy coherent with the EU's wider development objectives. This is, of course, another commitment which feminist movements involved in the protection of women in developing countries must consider seriously.

# RECOMMENDATIONS

Up to this point, we have presented the main innovations in terms of institutional changes, policy perspectives and priorities that the Treaty of Lisbon is going to introduce, if it is ratified. We have tried to highlight the positive aspects of the changes but also the main controversial aspects that the reform proposes and that are currently drawing criticism among civil society, representative organizations, lobbying groups, unions etc.

It seems desirable, therefore, that WIDE's intervention focuses on themes which have already been considered throughout the paper, such as: the actual improvement of democratization of the EU institutional structure and of decision-making procedures; the potential lack of coherence between the noticeably neoliberal agenda and the formal commitment in socially oriented policies; the weak presence of a gender-oriented perspective. Therefore, here are some entry points, advocacy priorities and strategies that WIDE and its partners should take into account:

## DEMOCRATIZATION

- **Institutions.** It is envisaged that, in spite of the empowerment of the European Parliament, the main decision-making power still lies in the hands of non-representative institutions such as the Commission, the Council and the European Council. Therefore, WIDE should promote the exploitation of the new democratic tools that have been introduced by the Treaty (the right of citizens' initiative; the greater importance of the Parliament) and the creation of new paths of participation for European citizens.
- **New Commission's simplified structure.** It should be ensured that the reduction in the number of Commissioners does not negatively affect the degree of representation of some Member States.
- **Promotion of the debate.** Since the Treaty of Lisbon is not going to be approved directly by the European citizenship through referenda, WIDE could produce more information to promote awareness about how the Treaty is going to reach or miss crucial points.

## NEOLIBERALISM

- **Neoliberalism vs. development.** One of the most controversial points is the contrast between the neoliberalist setting of EU economic policies and the declared aim of eradication of poverty and of promotion of social development. From this perspective it seems convenient for WIDE to monitor the actual intervention in favour of developing countries, which, indeed, may suffer greatly from the impact of profit-based economic agreements. In particular, it would be necessary to advocate for gender-oriented pro-development policy because of the crucial but

neglected role that women play, especially in developing countries.

- **General interest services.** The proposal of the privatization of the main public services sector is a very important issue, since it potentially affects the living standards of not only the average consumer but especially the weakest groups of society and women in particular.
- **Intellectual property.** The market-oriented intellectual property safeguard strategy should be balanced with the objective of promoting the exchange of knowledge with developing countries. There is an opportunity for lobbying activity to mitigate the strictness of intellectual property protectionism.

## WOMEN RIGHTS

- **Gender mainstreaming.** Except for some provisions addressed directly to safeguarding women rights, the Treaty seems to lack a true gender perspective. For example, the provisions related to gender equality in the labour market have not been improved from the previous Treaty; in addition, some issues that are fundamental for women, such as contraception and abortion, are not mentioned at all in the Chart of Fundamental Rights. These aspects should be seriously addressed, and WIDE could advocate for a proper intervention to do so. This is a fundamental point for all women, but in particular for those living in less emancipated conditions.

# WIDE

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