

## The Lisbon Treaty – an introduction

This briefing by Gay Moon, Special Legal Advisor at the Equality and Diversity Forum (EDF), provides an overview of the Lisbon Treaty and its relevance to the equality agenda. It is part of a series of briefings that EDF publishes to provide equality practitioners with the information they need on complex topics.

**The Lisbon Treaty's objective:** to amend the existing EC and EU Treaties in order to streamline existing European Union (EU) institutions to improve the operation of the enlarged group of 27 Member States.

**Timing:** the Treaty came into effect on 1 December 2009.

**Posts:** Herman Van Rompuy is now the first EU President – for 2½ years, Baroness Cathy Ashton takes on the role of High Representative for Foreign Affairs and Security Policy, she is also the Vice President of the Commission.

**Timing:** the Treaty came into effect on 1 December 2009.

### Key changes:

- A politician chosen to be President of the European Council for 2½ years, replacing the current system where countries take turns at holding the presidency for six months.
- A new post is created – the High Representative for Foreign Affairs and Security Policy to give the EU more influence on the world stage.
- The Charter of Fundamental Rights is given the same legal force as the other EC and EU treaties.

- A smaller European Commission, with fewer commissioners than there are member states, from 2014.
- A redistribution of voting weights between the member states, phased in between 2014 and 2017, with qualified majority voting based on a 'double majority' of 55% of member states, accounting for 65% of the EU's population.
- New powers for the European Commission, European Parliament and European Court of Justice, for example, in the field of justice and home affairs.
- The European Central Bank has the official status of being an EU institution and the Euro becomes the official currency of the EU.
- The Parliament will be on an equal footing with the Council – the grouping of member states' governments – for most legislation, including the budget and agriculture. This is called 'co-decision'.
- The removal of national vetoes in a number of areas, including climate change, energy security and emergency aid. Unanimity will still be required in the areas of tax, foreign policy, defence and social security.

The Treaty of Lisbon (officially called Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community) is an international agreement signed in Lisbon on 13 December 2007. As its official title makes clear, it amends and renames the existing two treaties and requires them to be read together: the amended treaties are now called the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

## **Different positions of individual Member States**

The UK has secured a written guarantee that the Charter of Fundamental Rights cannot be used by the European Court to alter British labour law, or other laws that deal with social rights. However, experts are divided on how effective this will be.

Poland has an opt-out from parts of the Charter covering family issues and morality, such as abortion.

The Czech Republic also has an opt-out in order to ensure that they have a guarantee that the Czech Republic will not be exposed to property claims by Germans expelled from the then Czechoslovakia after World War II.

## **Equality perspective**

Equality is one of the fundamental values of the treaty which are said to derive from 'the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law'. The section below outlines the key provisions.

### **Treaty on European Union (TEU)**

#### **Article 2**

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

#### **Article 3(3)**

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

### **Treaty of the Functioning of the European Union (TFEU)**

#### **Article 9**

In defining and implementing its policies and activities, 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.

## **Article 10**

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

## **Article 18**

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

## **Article 19**

Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

## **Article 157**

Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

These articles provide the basis for non-discrimination and equality measures to be incorporated in all European Union policies.

Article 13 EC which established the powers to make the equality directives (apart from gender where there was a pre-existing power) now becomes article 19 TFEU. The legislative procedure for introducing a new equality directive is slightly changed. Now the European Parliament will have to agree a text before the Council can adopt it. The Council still has to reach unanimity before a new equality directive can be adopted.

## The Charter of Fundamental Rights

The Charter is divided into six chapters – Dignity, Freedom, Solidarity, Equality, Citizenship and Justice. It has a much broader scope than the equality directives as it has an open ended equality guarantee: any discrimination based on any ground – such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation – shall be prohibited.

The Charter of Fundamental Rights was agreed in 2000 as a ‘solemn proclamation’ – a statement of political aspiration. In anticipation of possible incorporation into the proposed EU Constitution it was amended in 2007 to address concerns of some Member States. As the draft Constitution was rejected the Charter remained a political document. Nevertheless, the European Court of Justice has made reference to the Charter as part of its consideration of fundamental rights as part of the “general principles” of European Union law. The new Treaty on European Union now gives the Charter (in its 2007 version) the same legal value as the two Treaties. What this change will mean in practice is disputed. Some say it will open the way for the European Court of Justice to rewrite national laws in the social sphere – on strikes, collective bargaining, social security, working hours, and so on. The Open Europe think-tank quotes European Court judges, who say that this is precisely how they envisage the charter will work. But others disagree. They point to the fact that, on its face, the Charter applies to member states only when they are implementing EU law; however most social and employment law is national law.

As an extra guarantee, the UK government has negotiated for itself a legally binding protocol, which says no court can rule that the ‘laws, regulations or administrative provisions, practices or action’ of the UK are inconsistent with the principles laid down in the charter. It adds ‘for the avoidance of doubt’ that the charter creates no new rights enforceable in the UK, over and above those already provided for in national law. But again, whether this protocol will work is a matter of intense debate. Some MEPs have vowed to challenge it in the European Court of Justice, on the grounds that it violates a principle that EU law must be applied uniformly to all member states. Others have argued that, come what may, the European Court will develop

case law on the basis of the charter, which will apply to all member states. Liberal Democrat MEP Andrew Duff argues that “Regardless of the UK’s exclusion clause, the EU Courts will be bound to develop jurisprudence in fundamental rights matters which steadily evolve into general principles of EU law which all member states must respect. Moreover, the European Court of Justice will be blind to the nationality of an EU citizen who chooses to invoke the Charter under EU jurisdiction.”<sup>1</sup>

The BBC has reported that ‘British officials remain relaxed, saying that the protocol is safe from legal challenges because, as part of a treaty, it will be part of the EU’s primary law – its legal Bible. They add that the European Court has been generating case law on fundamental rights for years, and the charter only brings together rights that already exist in that case law, so its new legally binding status ought not to change the status quo.’<sup>2</sup> A judgment of the ECJ will no doubt determine this point eventually.

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<sup>1</sup> See EVRO Intelligence, Primer on the EU’s Reform Treaty, A Duff, 2.7.07, at <http://www.eurointelligence.com/Article3.1018+M501aee658f4.0.html>

<sup>2</sup> A close look at the reform treaty, BBC, see <http://news.bbc.co.uk/1/hi/world/europe/6928737.stm>



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For more information see: [http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)

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