

Annex 6

The Lisbon Treaty's potential contribution to European strategy for globalisation

“Lisbon” is no longer just the name of a strategy, but more importantly today that of the new European treaty signed in December 2007 and ratified by 23 Member States as of July 2008. This appendix highlights the most noteworthy innovations in favour of the goals of the Lisbon strategy and a European strategy for globalisation beyond 2010.

These innovations relate to institutions (I), the breakdown of competences (II), and the Union's policies (III).

I - Institutional reforms

1. Accelerated decision-making procedure

Although the implementation of the Lisbon strategy is primarily a matter for the Member States, the community dimension is far from absent. The improvement of decision-making procedures introduced by the new treaty will thus contribute to a more efficient deployment of a European strategy for globalisation.

a) Extension of qualified majority

By repealing unanimity, European integration can progress faster by accelerating the pace of implementation of the Union's policies. As was the case for each previous treaty revision, some fifty key domains are no longer subject to unanimity but to qualified majority voting.

Sensitive areas, such as taxation, social security, foreign policy, common defence policy, operational police cooperation, linguistic regime or the headquarters of institutions remain subject to unanimous vote. On the other hand, a certain number of existing or new areas will be governed by qualified majority.

The inclusion of matters relating to the freedom of movement for workers or to economic and financial issues will facilitate the development of policies necessary to the success of a European strategy for globalisation.

The following are among the most noteworthy areas to be governed by a qualified majority vote:

In the social sphere: freedom of movement for workers; social benefits; principles and conditions of functioning of services of general economic interest.

In the economic, financial and budgetary sphere: modification to some provisions of the statute of the European system of central banks; appointment of the ECB's chairman and board members; own resources system's implementation measures (however, the provisions relating to the own resources system itself remain subject to unanimous vote); common positions and unified representation on the international Eurozone scene.

In the field of police and judicial cooperation, immigration and administrative cooperation: administrative cooperation in the area of freedom, security and justice; border controls (except

passports, identity documents and residence permits); asylum and protection of refugees and displaced persons; immigration; judicial cooperation in criminal matters; approximation of criminal norms, offences and sanctions; Eurojust; police cooperation in certain sectors (except for operational cooperation that remains subject to unanimous vote); Europol; measures that further crime prevention; civil protection; administrative cooperation.

In the sphere of foreign policy: decisions founded on a decision by the European Council or a proposal by the High Representative following a decision by the European Council; appointment of a special representative; measures that facilitate diplomatic and consular protection; appointment of a High Representative for foreign affairs and security policies; statute and headquarters of the European armaments agency; establishment of permanent structured cooperation in the area of defence; establishment of a start-up fund to finance tasks of the defence policy; humanitarian aid and the creation of a European voluntary corps.

In the framework of new competences assigned to the European Union: space policy, energy (market functioning, supplies, efficiency, renewable energy, interconnection); tourism; sport.

In the institutional sphere: list of the Council's configurations; review of rules relating to the composition of the Committee of the Regions and the Economic and Social Committee; the European citizens' initiative calling on the Commission to propose a change in European law; agreement on the withdrawal of a Member State; administration of the European Union.

Other spheres: high safety standards for medication and medical devices; measures in favour of protecting human health, in particular the fight against serious cross-border threats, tobacco and alcohol; intellectual property (creation of European titles and implementation of an authorisation regime, centralised controls at a European Union level) with the exception of the linguistic regime of titles of ownership.

b) New definition of double majority

In the framework of the mode of adoption of acts by the Council, the new definition of qualified majority voting retained by the Treaty of Lisbon will make it possible to avoid, on the occasion of future enlargements, the difficult question of the number of votes allocated to each State. As this type of negotiation is singularly time consuming, it will enable the Council to focus on more important questions regarding the European Union's future.

The new definition of qualified majority voting, according to which the Union's acts are adopted when they are voted by 55% of Member States representing at least 65% of the Union's population, should simplify the decision-making process. Its legitimacy is supported by the fact that it is based on the objective criterion of population. Negotiations on this point were particularly difficult.

The Treaty is planned to come into full application in 2017.

c) Flexibility: the "bridge" clauses

Should the Member States decide to go further in a sphere covered by unanimous voting, (concerning the European strategy for globalisation, for example, this could be in the area of social security), they could resort to a bridge clause, a classic device adopted by the Treaty of Lisbon.

The Treaty of Lisbon provides for a general bridge clause, enabling the European Council to unanimously decide to transfer matters covered by unanimous vote to a qualified majority vote. The same reserve exists as for the flexibility clause, namely that this procedure covered

by article 48 § 7 of the TEU cannot apply to decisions with military or defence implications. National parliaments must be informed of all initiatives in this area and have six months to oppose such decisions.

The Treaty of Lisbon also provides for specific “bridge clauses” in certain spheres: common foreign and security policy (article 31 of the TFEU, with the exception of decisions with military or defence implications), some measures relating to family rights with cross-border implications (article 81 of the TFEU), the multi-annual financial framework (article 312 of the TFEU).

Finally, it can be decided to switch from a special legislative procedure to an ordinary legislative procedure in certain spheres, in particular the rights of workers (article 137 § 2 of the TFEU), the environment and regional development (article 175 § 2 of the TFEU).

2. More efficient Community institutions

a) Reinforced European Parliament

The European Parliament has played an extremely important role in the past in relation to the Services Directive. The Directive was a central element of the 2005-2008 Lisbon community programme. The benefit of reinforcing this institution by the new Treaty, in the framework of the implementation of a European strategy for globalisation, is thus immediately perceptible.

The codecision procedure, that gives the European Parliament and the Council an equivalent role, is extended to the majority of areas governed by qualified majority voting. It has been renamed the “ordinary legislative procedure” by the Treaty of Lisbon, thereby confirming its central role in the decision-making process.

The European Parliament’s role has also been reinforced in relation to the adoption of the annual budget because it will have equal decision-making powers in this field with the Council that will therefore lose its “last word” prerogative on compulsory spending (in particular regarding the amounts allocated to the common agricultural policy). The Treaty of Lisbon moreover abandons the distinction between compulsory and non-compulsory Structural Funds and internal policy expenditure in particular). Even if the European Parliament has the last word on budget, it will only be able to reject the budget by a majority of its members, and in the case of a budget rejected by the Council, will only be able to adopt it with three-fifths of the votes cast.

The prominent budgetary role given to the European Parliament confirms its significant position in the framework of the new budgetary deal required by a European strategy for globalisation.

A reinforced right of intervention has also been recognised for the European Parliament. It now has a right of approval in domains in which it had until then only been consulted: flexibility clause, adoption of the multi-annual financial framework, suspension of certain rights of Member States in the case of a serious breach of Union values, extension by the Council of the scope of criminal areas that can give rise to harmonisation, and a large proportion of international agreements. It also has the power to approve the authorisation of reinforced cooperation and likewise regarding the European Council’s choice to revise treaties without the prior convening of a Convention.

Finally, the European Parliament will now be consulted in areas such as the diplomatic and consular protection of Union citizens, the linguistic regime of intellectual property titles, passports and other identity documents, etc.

b) Refocused European Commission

The Commission has an essential role to play regarding the implementation of the Lisbon community programme. The better it is organised, the more efficiently the policies necessary to a European strategy for globalisation will be implemented.

The Treaty provides for the improved coordination of the Commission's staff, and above all, the limitation, from 2014, of the number of commissioners to two-thirds of the number of Member States, a measure with important consequences and more complex conditions of implementation. Many of Lisbon's policies currently fall under the domain of competence of several commissioners, which complicates implementation. The implementation of a European strategy for globalisation can only benefit from this new configuration.

The Treaty does not modify competences. On the other hand, the role and political influence of the President of the European Commission are clearly asserted and reinforced by the Treaty of Lisbon. The Commission's monopoly of power of initiative is clearly asserted and its decisive role in the launch of reinforced cooperation is recognised.

c) A genuine institutional regime for the European Council

Since the launch of the Lisbon strategy, the Council has played a significant role in its implementation and a European Council session, organised every spring addresses the Lisbon Strategy.

Now recognised as an institution of the Union, the functioning rules of the European Council have been substantially modified because it will elect, by qualified majority, a President for a two and half year term, renewable once. The European Council President will be, with the High Representative and the President of the European Commission, the "third man" at the head of the European Union. This three-headed "presidency" of the Union may call into doubt the Union's future effectiveness to speak with a single voice. The presidency of the Council's different configurations under a Troika format will persist. Interaction with the stable presidency of the Council may prove complex.

However, should the future President of the European Council seize the opportunity of a European strategy for globalisation, the visibility of the strategy will be significantly enhanced and result in substantial repercussions from the point of view of its national political appropriation at the very highest level.

II. The Union's scope of competence is reinforced by the Treaty of Lisbon

1. Clarified breakdown of competences

The Treaty of Lisbon clarifies the breakdown of competences between the European Union and the Member States. This clarification must encourage the implementation of the Lisbon strategy by distinguishing more clearly not only “national reform programmes” and “community programmes”, but also national tools subject to the OMC and community action tools. Moreover, the transfer of technological research and development, formerly a support competence, to that of shared competence, will reinforce the community dimension of an essential policy in the framework of the success of the Lisbon strategy.

When the EU has **exclusive competence** (article 3 of the Treaty on the Functioning of the European Union¹⁶, hereafter TFEU) in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts. The Union has exclusive competence over the **customs union, common commercial policy**, the establishment of **rules of competition** necessary to the functioning of the internal market and **monetary policy** for Member States whose currency is the euro.

When a **competence shared** with Member States is granted to the EU in a specific area, the EU and the Member States may legislate and adopt legally binding acts in that area. Member States shall exercise their competence to the extent that the Union has not exercised or has ceased exercising its competence. Among these competences are the **Internal market, social policy** for aspects defined by the Treaty, “**agriculture** and fisheries with the exception of the conservation of marine biological resources”, **transport, energy** and domains relating to **research, technological development** and space.

A third type of competence, **support competence**, exists in areas where the EU can carry out actions to support, coordinate or supplement actions by Member States, without thereby superseding their competence in these areas. Legally binding acts of the EU adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations. This area of competence includes protection and improvement of human **health, industry, education**, youth, sport and **vocational training**.

NB: the coordination of economic and employment policies and common foreign and security policy are specific policies, poised between shared competences and support competences.

2. The “flexibility clause”, foundation of new European policies

At present, article 308 of the EC Treaty provides “*If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.*”

This clause, maintained, has always been present in European treaties and has made it possible to implement policies essential to the European Union but not provided for in treaties, such as the environment policy, for example, or the premises of a European energy policy. The timid progress made in the energy area was also based on this provision.

¹⁶ The Treaty on the Functioning of the European Union is the new name the Treaty of Lisbon has given to the Treaty on the European Community.

The new article 308 however specifies in paragraph 2 that it cannot serve as the foundation for attaining an objective relating to common foreign and security policy. It will provide a pertinent legal base for the implementation of the new community policies required by a European strategy for globalisation.

3. External visibility of the European Union

a) Disappearance of the three-pillar structure and legal personality of the European Union

At present, the European Union is structured according to three pillars: the first pillar contains the European Community and is governed by the Community method, the second and third pillars respectively feature provisions relating to common foreign and security policy and to justice and internal affairs.

The Treaty of Lisbon provides for the disappearance of this complex and somewhat illegible system. The three pillars will be merged into a single entity: the European Union. The EU will be endowed with a legal personality, which will represent a crucial innovation, particularly on the international scene because it will enable the Union to be a party to international conventions and agreements in its own right.

This improvement, from a point of internal legibility and international visibility, was essential for the European Union to be able to implement certain policies essential to globalisation, with an international dimension, such as the Union's commercial policy.

b) Reinforcement of the European Union's diplomatic role

The Treaty of Lisbon provides for the appointment of a High Representative of the Union for foreign affairs and security policy, who will chair the Council of Ministers of Foreign Affairs, whilst also holding the position of Vice-President of the European Commission entrusted with external relations and the coordination of other aspects of the Union's external action.

The High Representative will be required to lead the Union's common foreign and security policy, to contribute to the development of this policy and to carry it out with the Council's mandate. His or her competence also extends to common security and defence policy, for which he or she will have the backing of a new "External Action Service" made up of the services of the European Commission and of Member States. This new European Commission Service seems quite promising in relation to the Union's external policy.

The High Representative will report to the European Council that will be able to dismiss him or her, but will also be a member of the European Commission, and will thus be subject to the investiture vote of the European Parliament. He or she can lose his or her position of Commissioner should the latter vote a motion of censure. In this way, and in the name of the principle of collegiality of the European Commission, he or she must thus obtain the backing of the majority of his or her colleagues for any initiative in the areas of his or her competence.

In light of the importance of the Union's external policies in the framework of the implementation of the Lisbon strategy and that of the strategy that will succeed it, in particular regarding the Union's difficulties in negotiating internationally, this innovation can only be beneficial.

III - Policies necessary to a European strategy for globalisation reinforced by the new treaty

1. On a macro-economic scale

This is an essential dimension of a European strategy for globalisation, a domain in which European coordination suffers from a number of shortcomings. The Treaty of Lisbon introduces several interesting modifications, particularly in terms of the representation of the euro zone.

a) Economic policy

The European Central Bank has become a genuine European institution.

In terms of the implementation of the Stability and Growth Pact, the procedure relating to deficits changes very little. The Commission's role is reinforced because the Council will only be able to modify a proposal made by the Commission concerning excessive deficit by unanimous vote, while only a simple qualified majority of the Council suffices at present. This measure will enable more objectivity in the procedure.

Article 99 of the TFEU innovates in the field of multilateral surveillance and reinforces the role of all European institutions. Consequently, the Commission's role is reinforced should a state deviate from its budgetary adjustment trajectory compared with the Broad Economic Policy Guidelines (BEPGs). The Council will be able to make a recommendation to the State or make it public without taking into account the vote of the country concerned. Finally, the role of the European Parliament has been reinforced because it will jointly rule with the Council on the procedural modes of multilateral surveillance.

b) Monetary policy and the role of the Eurogroup

The amending treaty contains a section concerning the provisions relating to Member States whose currency is the euro and to the coordination of their economic policies, and sanctions the informal status of the Eurogroup (whose functioning is detailed in a protocol annexed to the Treaty). The provisions relating to the Eurogroup concern in particular the reinforcement of the budgetary coordination and surveillance of these States, and the development of economic policy guidelines that contribute to the proper functioning of the economic and monetary Union.

The treaty also features provisions relating to the external representation of the euro zone and its role in international financial institutions. In this way the Council may, after a proposal by the Commission and consultation with the ECB, determine common positions on the representation of the euro. Furthermore, the Council, reduced to the euro zone (i.e. only the States within the zone can vote), may adopt measures to "ensure unified representation" of the euro zone.

2. Employment and social policies

The Treaty of Lisbon is at the heart of the eponymous strategy, by undeniably reinforcing the social dimension of the European Union. This involves, in particular, the objectives assigned to the Union, the procedures that aim to ease the freedom of circulation of workers, the social clause or the legal basis granted to services of general economic interest.

New social objectives are assigned to the European Union: full employment, social progress, the fight against social exclusion and discrimination, justice and social welfare, gender equality, solidarity between generations and the protection of children.

At a general level the area of social security remains subject to unanimity. However, issues related to the social security rights of workers circulating in the European Union may be debated by qualified majority (article 42 of the TFEU). Should a Member State consider that the latter undermines its “*own social welfare system*”, it will be able to appeal to the European Council. In practical terms, this takes the form of a right of veto.

The European Council can also resort to the qualified majority in a certain number of areas, in particular the adoption of measures that seek to improve cooperation between Member States regarding the protection of workers in the case of termination of employment, representation and collective defence of workers’ and employers’ interests and the labour conditions of nationals of third countries with a legal right of presence in the Union.

The Union is moreover under obligation, by way of a “social clause”, to take into consideration objectives governed in part by the Lisbon strategy (in particular the promotion of high levels of employment, adequate social welfare and a high level of education and training, etc.) when defining and implementing its actions.

A legal base relating to “services of general economic interest” has been inserted into the treaties and can be used for the adoption of guidelines on this subject. One of the protocols annexed to the Treaty underlines the importance of services of general interest together with the role and extensive discretionary powers of national, regional and local authorities in the provision, carrying out and organisation of services of general economic interest. It recalls the diversity of these services, their high level of quality, security and accessibility, the equality of treatment and the promotion of universal access and rights of users. Finally, the protocol specifies that the provisions of the treaties may not undermine the competence of Member States to provide, carry out and organise services of general non-economic interest.

The legal value granted by the Charter of Fundamental Rights, which contains many social rights, contributes to the social dimension of the European Union. In particular, it recognises professional freedom and the right to work, the right to information and communication of company employees and the fact that European employees must be informed of the situation and decisions concerning their company.

The role of management and labour is sanctioned, as is the necessity of “preserving the diversity of national systems”. The spring European Council is officially devoted to growth and employment.

The influence of the European Parliament is further reinforced because it is informed of agreements signed between management and labour and of actions taken by the Commission to facilitate cooperation between Member States.

The Treaty of Lisbon also contributes to reinforcing European civil society by reinforcing democracy. This entails reinforcing the influence of the European Parliament, but also introducing a more participatory democracy, via the right to petition and the right to popular initiative, a genuine innovation of the constitutional treaty that enables citizens, providing they number at least one million and represent a significant number of states, to invite the European Commission to take measures in an area they deem requires intervention. The European Council and Parliament already feature this power of initiative, and as the European Commission also seems relatively open to this question, it is hoped that it will do likewise.

The reinforcement of the role of national parliaments, particularly by ensuring that the principle of subsidiarity is respected, contributes to the democratic dimension of the European Union.

3. External policies of the European Union

a) Common trade policy

This is one of the main instruments of the Union's external policy and represents the counterpart to the customs union. The Treaty of Lisbon does not modify in depth the common commercial policy, but modernises it by reinforcing certain aspects. As a result, the defence of intellectual property rights, services and foreign direct investments are now covered by this area (article 188 C of the TFEU). The Treaty of Lisbon generalises the qualified majority vote, except in relation to cultural and audiovisual services and welfare, education and health services.

At present, the external competences of the European Union are not explicitly defined, giving rise to controversy between the Commission and the Council. Article 300 of the EC Treaty grants the European Community competence to sign international agreements, which is a welcome clarification.

b) Common foreign and security policy

The current tasks of the European security and defence policy, known as Petersberg, are specified by the Treaty on European Union (article 17). They encompass: humanitarian missions and the evacuation of nationals, peacekeeping missions and tasks of combat forces in crisis management, including peacemaking operations. To these tasks, the Treaty of Lisbon adds: disarmament, advice on military issues, stabilisation at the end of conflicts and the fight against terrorism, including in third country States.

The Treaty of Lisbon also enriches the common foreign and security policy by a mutual defence clause and an antiterrorist solidarity clause, the launch of permanent structured cooperation between States that undertake certain commitments, and finally the creation of an armaments agency, the European Defence Agency, that was created by anticipation in 2004. The latter is required to develop the Union's defence capacities, set up cooperation in terms of armaments, develop the European defence market and assist research and technology in this area.

The improvement of the common foreign and security policy must regain a more prominent and visible position within the actions undertaken by the European Union. It is an integral aspect of the European strategy for globalisation.

4. New European policies

a) Technological research and development

This is key to the success of the European Union in terms of globalisation: the benefits of a united approach to this policy are huge. Technological research and development at a

community-wide level are among the noteworthy innovations, in terms of policy, provided for by the Treaty of Lisbon.

This policy becomes a shared competence of the EU and the Member States. Article 4 of the TFEU specifies that: “In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.”

The Treaty of Lisbon provides a clear legal base for the foundation of European research area, indicating that: “The Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties.” As, up until now, the provisions concerning a European research area had no legal basis within the EC treaty, they were based on other provisions such as the freedom of circulation of workers or services.

Other elements of European research policy (such as RDFP for example) will continue to be adopted on the same basis and according to the same procedures as at present.

b) Energy policy

The Treaty of Lisbon specifies and reinforces the Union’s competences in order to ensure the proper functioning of the energy market, the supply of energy, the promotion of energy efficiency and sources of renewable energy. It is a core element of the European Union’s security and competitiveness. Up until now, the few timid attempts to develop a European energy policy could only be based on the flexibility clause of Article 308 of the EC treaty. The provision of a “genuine” legal base to this policy is one of the points highlighted on the occasion of the adoption of the Treaty of Lisbon.

This competence is shared between the Union and the Member States. Article 176 A of the TFEU specifies that the European Parliament and Council, ruling according to the ordinary legislative procedure, i.e. the codecision procedure, establish the measures necessary to reach these objectives. Even so, each State may determine the conditions of use of its own energy resources, its choice between different energy sources and the overall structure of its energy provisioning.

The treaty sanctions the concept of “solidarity between Member States”, which must guide the Union’s policy on this issue. Article 100 § 1 of the amending treaty endows the Council in particular with the competence to decide, on proposal by the Commission, in a spirit of solidarity between Member States, upon “the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.”

The TFEU does not specify any major changes concerning civil nuclear energy governed by the Euratom Treaty.

The emergence of a genuine European policy in this area is one of the critical aspects of a European strategy for globalisation.

