



## CRS Report for Congress

# The European Union's Reform Process: The Lisbon Treaty

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### Summary

In December 2007, leaders of the European Union (EU) signed the Lisbon Treaty, which seeks to reform the EU's governing institutions and decisionmaking processes to enable a larger EU to operate more effectively. This new treaty represents the latest stage in a reform process begun in 2002 and essentially replaces the proposed EU "constitution" that foundered after French and Dutch voters rejected it in referendums in 2005. In order to avoid such risky public referendums on the Lisbon Treaty, all EU member states except Ireland decided to ratify the new treaty through their parliaments; Irish law, however, required that the treaty be ratified through a public vote. In June 2008, Irish voters rejected the Lisbon Treaty, and have thrown its future into doubt. This report provides background information on EU reform efforts and possible implications for U.S.-EU relations that may be of interest in the second session of the 110<sup>th</sup> Congress. It will be updated as events warrant. Also see CRS Report RS21344, *European Union Enlargement*, by Kristin Archick.

### Background

The European Union (EU) is a treaty-based, institutional framework that defines and manages economic and political cooperation among its 27 member states (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom). The Union represents the latest stage in a process of European integration begun after World War II to promote peace and economic prosperity in Europe. This European integration project has evolved from encompassing primarily economic sectors to include developing a common foreign policy and closer police and judicial cooperation. With the end of the Cold War, the Union has also sought to extend the benefits of membership, especially to central and eastern Europe. Ten states — Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia — joined the EU on May 1, 2004. Two other states — Bulgaria and Romania — acceded to the Union on January 1, 2007. Turkey is another candidate

for membership and began accession negotiations in October 2005, but these will take at least a decade to complete. The western Balkan states also harbor EU aspirations in the longer term. The EU opened accession talks with Croatia in October 2005 and has named Macedonia as a candidate for membership.

The EU represents a unique form of cooperation among sovereign states that has been built through a series of binding treaties. EU members work together through common institutions that embody the EU's dual supranational and intergovernmental character. Different policy areas have different decision-making procedures; economic, trade, and social policies, for example, are currently decided by a complicated system of majority voting, while decisions relating to foreign and security policy require consensus. Critics have long charged that the EU's decision-making processes are too slow and cumbersome, and that the EU's institutions are overly complex, lack transparency, and are unintelligible to the average European citizen.

Key institutional reforms in the EU's December 2000 Treaty of Nice were intended to enable an enlarged Union to function effectively. Skeptics argued, however, that Nice set up an even more complex and less efficient decision-making process. Thus, EU leaders in December 2001 announced they would convene a Convention on the Future of Europe to examine how to reform EU decision-making further and to review EU structures.

### EU Institutions

The *European Commission* is essentially the EU's executive and has the exclusive right of legislative initiative. It ensures that the provisions of the Treaties are carried out properly. The 27 Commissioners, including a President, are appointed by agreement among the governments of the member states for five-year terms. Each Commissioner holds a distinct portfolio (e.g., agriculture). The President of the Commission sets its policy priorities, organizes its work, and represents the Commission internationally.

The *Council of the European Union (Council of Ministers)* is comprised of ministers from the national governments. As the main decision-making body, it enacts legislation based on proposals put forward by the Commission. Different ministers participate depending on the subject under consideration (e.g., economics ministers could convene to discuss unemployment policy). The presidency of the Council currently rotates among the member states for a period of six months.

The *European Council* brings together the Heads of State or Government of the member states and the President of the Commission at least twice a year. It acts principally as a guide and driving force for EU policy.

The *European Parliament* consists of 785 members. Since 1979, they have been directly elected in each member state for five-year terms. The Parliament cannot enact laws like national parliaments, but it shares "co-decision" power in some areas with the Council of Ministers and can amend or reject the EU's budget.

The *Court of Justice* interprets EU law and its rulings are binding; a *Court of Auditors* monitors the Union's financial management. Additionally, a number of advisory bodies represent economic, social, and regional interests.

## The European Constitution and the 2005 Ratification Crisis

**Developing the European Constitution.** The Convention on the Future of Europe began work in March 2002 in Brussels, Belgium. EU member states appointed former French President Valéry Giscard d'Estaing to serve as chairman, and charged the 105-member Convention with examining the EU's institutions, encouraging the development of the EU as a coherent foreign policy actor, and strengthening the Union's democratic legitimacy. In October 2002, the Convention decided to develop a draft constitutional treaty — commonly referred to as a "constitution" — to merge and reorganize the EU's four existing treaties into a single document and lay out new

proposals for institutional reform. In July 2003, the Convention finalized a 240-page “Draft Treaty establishing a Constitution for Europe” and concluded its work.

In October 2003, EU leaders convened an Intergovernmental Conference (IGC) to work out the definitive text of the new constitutional treaty. A key sticking point for some member states were the proposed voting rule changes. Poland in particular feared that the simplified voting rules would give larger member states an advantage; the EU’s current weighted voting system tends to favor smaller and medium-sized states. Polish concerns, however, were overcome and EU leaders signed the constitutional treaty in October 2004; they set November 2006 as the target date for the constitution’s entrance into force.

**The 2005 Ratification Crisis.** In order to come into effect, the EU’s constitutional treaty had to be ratified by all 27 member states through either parliamentary approval or public referendums. The constitution’s future was thrown into doubt following its rejection by French and Dutch voters in separate referendums in May and June 2005.<sup>1</sup> In both countries, some arguments against the constitution reflected concerns that it would enshrine liberal economic trends that could undermine French or Dutch social protections. In addition, many French and Dutch voters viewed a “no” vote as a way to express dissatisfaction with their unpopular national governments, the EU bureaucracy, and Turkey’s prospective EU membership. Other reasons for rejecting the constitution differed. In France, some feared that the constitution — by paving the way for further EU enlargement — would erode French influence in the EU, while Dutch voters complained that the EU’s big countries were already too strong and that certain provisions of the constitution would increase their power even more.

Although several EU members had already approved the constitution by the spring of 2005, the UK and others decided to shelve their ratification plans in the wake of the French and Dutch “no” votes. At their June 2005 summit, EU leaders reaffirmed their commitment to the constitution but acknowledged that the November 2006 ratification deadline was no longer tenable. Thus, the constitution was effectively put on hold.<sup>2</sup>

## **Reviving the Constitution as a Reform Treaty and the Irish “No”**

In January 2007, Germany assumed the EU’s rotating six-month presidency and made reviving the stalled constitution one of its presidency priorities. German Chancellor Angela Merkel appeared keen to get a new deal on the EU constitution in order to move the Union beyond its internal crisis and forge a more cohesive, outward-looking EU. Analysts say that Merkel’s task was eased by the April 2007 election of new French President Nicolas Sarkozy, who shared Merkel’s goal of reviving the constitution in some form in order to restore France’s role as a leader in Europe following the “no” vote.

Although Germany and many states that had already ratified the constitution were eager to preserve as much of the original document as possible, it became evident that some changes would be necessary in order to address French and Dutch concerns, as well as those of some other states. The UK government, for example, was under public

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<sup>1</sup> French voters rejected the constitution by 55% to 45%; Dutch voters rejected it by 62% to 38%.

<sup>2</sup> “Varied Reasons Behind Dutch No,” BBC News, June 1, 2005; “Humbled EU Leaders Scrap Constitution Deadline,” *Financial Times*, June 17, 2005.

pressure to protect national prerogatives in the foreign policy and home affairs areas, while Poland sought to get a better deal on voting rights. After contentious negotiations at the EU summit in June 2007, EU leaders announced the outlines of a new EU “reform treaty” that would essentially amend, not replace, the existing EU treaties. As such, EU leaders sought to present the new treaty as a document that could be ratified by parliaments, thereby avoiding risky public referendums in most EU states, except Ireland, which was required by law to hold a public vote. EU leaders dropped the term “constitution” given that it had become negatively associated in some countries with creating an EU “superstate.” Another Intergovernmental Conference was convened in July 2007 to work out the precise text of the new treaty; EU leaders signed the resulting Lisbon Treaty in December 2007. EU officials had hoped the Lisbon Treaty would be ratified and enter into force before the next European Parliament elections in the spring of 2009.

On June 12, 2008, Irish voters went to the polls and defeated the Lisbon Treaty by 53.4% to 46.6%. Opponents of the treaty argued that it would reduce Ireland’s influence in the EU, undermine Ireland’s neutrality, and eliminate Ireland’s ability to set its own tax rates. At their June 19-20, 2008 summit, EU leaders called on the ratification process to continue in all remaining EU states (19 have completed ratification so far), and essentially gave the Irish prime minister until October 2008 to propose a way forward. Some suggest that Ireland may seek further modifications to the Lisbon Treaty and then hold another public referendum, as happened with the previous Nice Treaty, which was also rejected by Irish voters in an initial vote in 2001. Others point out that any major alterations would likely be opposed by other member states that have already ratified the treaty. At the same time, the Irish “no” vote has also led to renewed objections to the treaty in the Czech Republic and Poland, which may further complicate EU efforts to save the Lisbon Treaty.<sup>3</sup>

Major changes to the EU’s governing institutions, decision-making processes, and policies agreed to by EU leaders in the Lisbon Treaty include:

- *A New President of the European Council.* The Lisbon Treaty creates this new position to help ensure policy continuity, raise the EU’s profile on the world stage, and address concerns about the personnel and financial burdens, especially for smaller members, of the EU’s rotating six-month presidency. A modified system of rotation will remain, under which three EU countries will work together for a period of 18 months to chair various EU meetings. The new President will be elected by member states for a term of two and one-half years, renewable once.
- *A New Chief EU Diplomat.* The Lisbon Treaty will create a new High Representative of the Union for Foreign Affairs and Security Policy to boost the EU’s international visibility. It will combine into one position the current responsibilities of the Council’s High Representative for the Common Foreign and Security Policy (CFSP) and the External Relations Commissioner, who coordinates the European Commission’s diplomatic activities and manages the EU’s development programs. The person in this position will be an agent of the Council of Ministers (representing the

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<sup>3</sup> Kevin Sullivan, “Ireland Shoots Down Plan for a More Unified EU,” *Washington Post*, June 14, 2008; “EU Leaders Make It Clear Cowen’s Options Are Limited,” *Irish Times*, June 23, 2008.

member states), as well as a Vice-President of the Commission. Originally called the EU “foreign minister” in the constitution, this term was dropped because of UK objections on national sovereignty grounds.

- *Simplified Voting Rules.* After a contentious debate with Poland, EU leaders agreed to simplify the EU’s current system of Qualified Majority Voting (QMV), a complex weighted voting formula, largely as proposed in the constitution. Decisions made by QMV will pass if supported by 55% of member states, representing 65% of the EU’s population; as a concession to Poland, this new “double majority” system will be introduced in 2014 (instead of 2009), and will be gradually phased in over three years and not fully implemented until 2017. The use of QMV is also expanded to policy areas previously subject to unanimity, especially in matters related to police and judicial cooperation (the UK, however, has been granted an opt-out). Member states will retain national vetoes in sensitive areas such as taxation and most aspects of foreign policy.
- *A Revamped European Commission.* Starting in 2014, to help decrease gridlock, the number of Commissioners will be reduced to correspond to two-thirds of the number of member states (currently, the number would drop from 27 to 15). Small states had initially opposed slimming down the Commission, fearing that it would decrease their influence. However, the European Council may alter the number of Commissioners, thus leaving the door open to a larger Commission in the future.
- *Increased Parliamentary Powers.* The Lisbon Treaty will extend the European Parliament’s right of “co-decision” with the Council of Ministers to many additional policy areas, including agriculture and home affairs issues. At the same time, it will give national parliaments a degree of greater authority to challenge draft EU legislation.
- *A New Solidarity Clause.* This provision affirms that the EU “shall act jointly in a spirit of solidarity” if any member is the victim of a terrorist attack, energy supply problem, or other natural or man-made disaster; it calls on member states to offer assistance, including military resources.
- *Steps Toward Building a Common Defense Policy.* As proposed in the constitution, the Lisbon Treaty will assert that the Union shall seek “the progressive framing of a common Union defense policy,” which “will lead to a common defense.” It will establish a “mutual assistance clause” permitting a member state that is the victim of armed aggression to ask for military assistance from the other members. Member states may also engage in “structured cooperation,” which would allow a smaller group of members to cooperate more closely on military issues.

Many experts assess that over 90% of the substance of the original constitution has been preserved in the Lisbon Treaty. As with the text of the constitution, almost all of the proposed changes represent compromises between member states who favor greater EU integration and those who prefer to keep the Union on an intergovernmental footing in which members can better guard their national sovereignty. Also evident in many of the

provisions are compromises between big and medium/small states. France and the Netherlands also secured changes from the original constitution that seek to address voter concerns about safeguarding social protections and worries about EU enlargement. Critics contend that the Lisbon Treaty will do little to simplify the EU, and note that some changes will not take effect until 2014 at the earliest. In addition, they assert that many difficult issues that are often the source of gridlock — such as foreign policy and taxation — will remain subject to national vetoes.<sup>4</sup>

## Implications for the United States

Many experts assert that passage of the Lisbon Treaty would have positive implications for the U.S.-EU relationship because certain provisions — such as the new president and chief diplomat positions — are designed to promote an EU able to “speak with one voice” on foreign policy issues. Such an EU would be a more credible partner for the United States in tackling common challenges such as terrorism and Middle East instability. Supporters of this view also note that efforts to encourage a common EU defense policy and the proposal for “structured cooperation” seek to improve European defense capabilities. A more militarily-capable Europe, they argue, could shoulder a greater degree of the security burden with the United States. And analysts note that the Lisbon Treaty should remove at least the technical obstacles to further EU enlargement to Turkey and the Balkans, which the United States strongly supports. (The Nice Treaty effectively authorizes the EU to enlarge to 27 members but no more.) Conversely, some contend that a failure to ratify the Lisbon Treaty could stymie further EU enlargement and inhibit EU efforts to be a more effective U.S. partner because EU attention would likely remain focused on internal reforms rather than on external challenges.

Other U.S. experts who worry that a larger and potentially more united EU may seek to rival the United States are more sanguine about the Lisbon Treaty’s potential demise. They contend that a more unified EU would likely lessen Washington’s leverage on individual members and could complicate U.S. efforts to rally support for its initiatives in institutions such as the United Nations or NATO. These skeptics remain concerned that parts of the Lisbon Treaty that promote greater EU defense coordination could lead to the eventual development of EU military structures that would duplicate those of NATO and weaken the transatlantic link.

U.S.-EU trade relations are unlikely to be significantly affected by the new treaty, which does not alter the roles of the European Commission or Council of Ministers in formulating or approving the EU’s common external trade policy. Although EU rules allow the Council to approve or reject trade agreements negotiated by the Commission with QMV, in practice, the Council tends to employ consensus and will probably continue to do so regardless of the changes in EU voting procedures.

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<sup>4</sup> George Parker, “EU Leaders Strike Deal on Reform Treaty,” *Financial Times*, June 22, 2007; “Deal Paves Way for EU To Move On,” BBC News, June 23, 2007; Tobias Buck, “EU Treaty Breaks Years of Deadlock,” *Financial Times*, June 24, 2007.