



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. The treaty aims to reform the EU's governing institutions and decision-making process to enable the 27-member EU to operate more effectively. This new treaty grew out of the proposed "constitutional treaty" that foundered after French and Dutch voters rejected it in referendums in 2005.

The Lisbon Treaty seeks to give the EU a stronger and more coherent voice with the creation of a new position, President of the European Council. This individual would chair the activities of the 27 EU heads of state or government to help ensure policy continuity, guide the strategic direction of policy-making, and give the EU greater visibility on the world stage. The President would also coordinate relations between EU institutions. The Lisbon Treaty would also create the new position of High Representative of the Union for Foreign Affairs and Security Policy, a *de facto* EU foreign minister who would be supported by a new EU diplomatic service.

The Lisbon Treaty would make changes to the EU's internal decision-making mechanisms. These changes have been designed to streamline the process and make it less susceptible to gridlock or blockage by a single member state. The treaty attempts to address concerns about democratic accountability and transparency in EU policy-making by granting a greater role to the directly elected European parliament, national parliaments, and citizens' initiatives.

The treaty must be ratified by all 27 members before it can come into force. Twenty-three countries have completed ratification. Ireland is the only member state bound by law to hold a referendum on the treaty, and in June 2008 Irish voters rejected it. Ireland plans to hold a second referendum attempting to pass the treaty on October 2, 2009. The EU negotiated concessions with Ireland to improve the chances of approval, and recent polls support an analysis that the treaty is likely to pass the second time—but the final vote is expected to be close and a "Yes" result is not guaranteed. Germany is expected to complete ratification this month. The Polish and Czech parliaments have approved the treaty, but full ratification in those countries requires a presidential signature. Observers are concerned that the Czech President, in particular, may delay ratification.

If Ireland ratifies the treaty, the Swedish Presidency of the EU is planning a Summit in late October 2009 to resolve remaining institutional questions about the treaty's implementation. Such a Summit would likely feature vigorous debate about appointments to the new President and "foreign minister" positions. If the Lisbon Treaty fails, the most likely scenario is that the EU will move forward under the current rules of the Treaty of Nice.

Experts assert that the Lisbon Treaty would have positive implications for U.S.-EU relations. While the treaty is unlikely to have major effects on U.S.-EU trade and economic relations, some believe that it could allow the EU to take on a more active global role and be a more effective partner for the United States in tackling common global challenges. If the treaty fails, the EU may continue to be preoccupied with distracting internal questions. There are indications that adoption of the Lisbon Treaty would make the EU more amenable to future enlargement, including to the Balkans and perhaps Turkey, which the United States strongly supports. Others maintain that a stronger EU poses a potentially detrimental rival to NATO and the United States. This report provides information on the Lisbon Treaty and possible U.S.-EU implications that may be of interest to the 111th Congress. Also see CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick and Derek E. Mix.

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Background

The European Union (EU) is an economic and political partnership that is unique in history. Built upon a series of treaties and embodied in a set of governing institutions, the EU represents a voluntary pooling of sovereignty among 27 countries.¹ These countries have committed to a process of integration by harmonizing laws and adopting common policies on an extensive range of issues. Notable areas of shared sovereignty include a customs union; a common trade policy; a single market in which goods, people, and capital move freely; a common currency (the euro) that is used by 16 member states; and many aspects of social and environmental policy. EU member states have also taken significant steps in the development of a Common Foreign and Security Policy (CFSP) and closer police and judicial cooperation.²

A group of leaders from six countries—Belgium, France, Germany, Italy, Luxembourg, and the Netherlands—began the process of integration after World War II in an effort to ensure peace and promote economic prosperity in Europe. As cooperation between these countries deepened, new members were added to the group: Denmark, Ireland, the United Kingdom joined in 1973, Greece in 1981, Portugal and Spain in 1986, and Austria, Finland, and Sweden in 1995. In 2004, eight formerly Communist countries of central and eastern Europe—the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia—plus Cyprus and Malta joined the EU. Bulgaria and Romania joined in 2007, bringing the number of member countries to 27.

With enlargement and a progressively wider policy scope came the need to reform the EU's institutional arrangements and procedures to reflect the heightened complexity of decision-making. The landmark Maastricht Treaty of 1993 set out the blueprint for an EU of 12 members

¹ The member countries of the EU are 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.

² See CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick and Derek E. Mix.

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 EU Treaties are carried out by the member states. 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 every six months.

The **European Parliament** consists of 736 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 many areas with the Council of Ministers, can amend or reject the EU's budget, and must approve each new European Commission.

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 **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.

and the Treaty of Amsterdam (1999) refined arrangements for a Union at 15. The Treaty of Nice (2003) further amended the workings of the EU to prepare for eastward enlargement.³ Although the Treaty of Nice was intended to enable an enlarged Union to function effectively, skeptics have argued that the treaty set up an overly complex and inefficient decision-making process. In addition to being slow and cumbersome, critics have long charged that EU institutions and decision-making lack transparency and are unintelligible to the average European citizen.

As the scope of EU policy continues to grow, future enlargement beyond 27 members is likely: Iceland, Turkey, and the countries of the Western Balkans are in line for admission. In this context, as well as in the context of currently perceived institutional shortcomings, many leaders and analysts have advocated the adoption of a new EU treaty that enacts what they consider to be necessary internal reforms. The proposed Lisbon Treaty is the latest attempt to achieve such reforms.

The Constitutional Treaty

The Lisbon Treaty grew out of the so-called constitutional treaty, an earlier failed attempt to merge the EU's existing treaties into a single document while enacting institutional reforms. Already in December 2001—before ratification of the Treaty of Nice and the EU's eastward enlargement—EU leaders announced they would convene a Convention on the Future of Europe to examine the EU's institutional arrangements and make proposals that would increase democratic legitimacy and encourage the development of the EU as a stronger global actor.

The Convention began work in March 2002 under the leadership of former French President Valéry Giscard d'Estaing and finalized a 240-page "Draft Treaty establishing a Constitution for Europe" in July 2003.⁴ After a period of discussion and negotiation among the member state governments, EU leaders signed the treaty in October 2004 and set November 2006 as the target date for its adoption.

However, in order to come into effect the treaty had to be ratified individually by all 27 member states through either parliamentary approval or public referendums. In May 2005, French voters rejected the document in a national referendum, and in June 2005 Dutch voters followed suit. Although a number of EU members had already approved the treaty by this point, these setbacks effectively ended its prospects. In both France and the Netherlands, some arguments against the constitutional treaty reflected concerns that it would entrench liberal economic ideas that could undermine social protections. In addition, many French and Dutch voters viewed a "no" vote as a way to express dissatisfaction with their unpopular national governments, EU bureaucracy, and Turkey's prospective EU membership.

The Lisbon Treaty

In January 2007, as Germany took over the six-month EU presidency, Europe remained in what some analysts called a "period of reflection"—a condition of stasis born in the uncertainty that followed the rejection of the constitutional treaty. German Chancellor Angela Merkel made

³ For summaries of these three treaties, see http://europa.eu/legislation_summaries/institutional_affairs/treaties/index_en.htm.

⁴ The document can be downloaded at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

reviving the stalled reform process one of her key priorities, seeking a new treaty deal that would institute crucial reforms. Analysts say that Merkel received a key assist with the May 2007 election of Nicolas Sarkozy as President of France: Sarkozy shared Merkel's goal of reviving the constitutional treaty in some form, at least in part to restore France's role as a leader in Europe following its 2005 "No" vote.

Germany and others that had ratified the constitutional treaty wanted to preserve as much of the original document as possible. However, some changes were considered necessary in order to address concerns raised by French and Dutch voters, as well as to satisfy countries such as the UK, which sought to protect its national sovereignty in some areas, and Poland, which wanted more voting weight in the Council of Ministers.

After contentious negotiations at the June 2007 EU Summit, EU leaders announced the outlines of a new "reform treaty" that would amend, rather than replace, the existing EU treaties. EU leaders also dropped the term "constitution," given that it had become negatively associated in some countries with creating an EU "superstate." As an amendment to existing treaties, EU leaders sought to present the new document as one that would be ratified by parliaments, thereby avoiding the risks of public referendums. However, alone among the member states, Ireland is still required by its national law to hold a public vote on any major change to the existing body of EU rules.

After working out the text at a July 2007 Intergovernmental Conference, EU leaders signed the new treaty—now called the Lisbon Treaty—in December 2007.⁵ Analysts assessed that over 90% of the substance of the constitutional treaty had been preserved in the Lisbon Treaty. EU officials initially hoped that the Lisbon Treaty would be ratified by all 27 member states and enter into force before the June 2009 European Parliament elections. However, four countries still have yet to complete ratification of the treaty (see *State of Ratification* below). Leaders now hope that the Lisbon Treaty will come into effect at the start of 2010.

Key Reforms

Major changes under the Lisbon Treaty aim to achieve three broad goals:

1) A stronger and more coherent EU voice. The Lisbon Treaty would create the new position of President of the European Council to help ensure policy continuity and raise the EU's profile on the world stage. This individual would chair the meetings of the 27 EU heads of state or government (the European Council, whose meetings are commonly termed EU Summits) and guide their activities in providing strategic direction to EU policy. The President of the European Council would be elected by member states for a term of two and one-half years, renewable once.

Internally, creation of this position would also address concerns about the personnel and financial burdens, especially for smaller members, of the rotating six-month presidency system. A modified system of rotation would remain, under the presidency country, together with the previous and following presidency countries (the troika), to help coordinate and chair meetings of the Council of Ministers, other than in the area of foreign policy. The President would have overall responsibility for coordinating relations between the EU's institutions.

⁵ For a summary or full text of the treaty, see http://europa.eu/lisbon_treaty/full_text/index_en.htm.

The Lisbon Treaty would also create another important new position to boost the EU's international visibility: High Representative of the Union for Foreign Affairs and Security Policy. The position was originally called the EU "foreign minister" in the constitutional treaty, but this term was dropped due to British objections. Nevertheless, this individual will be the EU's chief diplomat, exercising the current responsibilities of both the Council of Ministers's High Representative for the Common Foreign and Security Policy (Javier Solana) and the Commissioner for External Relations (Benita Ferrero-Waldner). The High Representative will therefore be an agent of the Council of Ministers (representing the member states) and hold the title of a Vice-President of the European Commission. The High Representative would have extensive staff support with the creation of a European External Action Service, in effect a new EU diplomatic corps.

The Lisbon Treaty would also promote steps toward building a stronger common EU defense policy. As proposed in the constitution, the Lisbon Treaty asserts that the EU 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.

2) *More streamlined decision-making.* After a contentious debate with Poland, EU leaders agreed on a simplified formula (ultimately similar to that proposed in the constitutional treaty) for the Council of Ministers' Qualified Majority Voting (QMV) system. Decisions made by QMV would 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 would be introduced in 2014 (instead of 2009-2010), and would 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 in this area). Unanimity will continue to be required (any member state may veto a common policy) in sensitive areas such as taxation and most aspects of foreign and defense policy.

The Lisbon Treaty had initially planned to slim down the size of the European Commission starting in 2014. To help decrease gridlock, EU leaders had proposed reducing the number of Commissioners from one per member state to correspond to two-thirds of the number of member states. However, concessions related to Ireland's attempt to ratify the treaty (see below) have now shelved this idea.

3) *Increased transparency and democratic accountability.* In many policy areas, the directly elected European Parliament holds the right of "co-decision" with the Council of Ministers: both institutions must approve a piece of legislation for it to become law. The Lisbon Treaty would extend the European Parliament's "co-decision" powers to include many additional policy areas, including agriculture and "home affairs" issues.

The treaty would also give national parliaments a greater role in EU policy-making and more authority to challenge draft EU legislation. The treaty would introduce the concept of citizens' initiatives, whereby European citizens may petition the European Commission with legislative suggestions.

State of Ratification

Twenty-three of the 27 EU member states have completed ratification of the Lisbon Treaty. Observers agree that Ireland, which is legally bound to decide on the treaty via national referendum, clearly presents the greatest obstacle to full ratification. In June 2008, Irish voters rejected the Lisbon Treaty in a national referendum by 53.4% to 46.6%.⁶ Opponents of the treaty argued that it would reduce Ireland's influence in the EU, undermine its neutrality in international security issues, and eliminate its ability to set domestic tax policy and social policy on sensitive issues such as abortion.

At the June 2008 EU Summit, leaders called on the ratification process to continue in the remaining EU states and gave the Irish government until October 2008 to propose a way forward. Irish and EU leaders decided that this way forward would be to hold a second referendum attempting to pass the treaty. In order to increase the chances of a favorable vote, the EU and Ireland negotiated a number of "Irish-specific" concessions in December 2008.⁷ The concessions include guarantees about Irish neutrality in the context of the European Security and Defense Policy (ESDP), and guarantees on Irish voters' tax and social policy concerns. The Lisbon Treaty had proposed reducing the size of the European Commission—EU leaders had decided to shrink the Commission from 27 to 18 commissioners, meaning that it would contain one national from each given member state for two out of every three of the Commission's five-year terms. To meet Irish concerns over a loss of influence, EU leaders agreed that should the Lisbon Treaty take effect, the Commission would remain at one commissioner per member country, thereby allowing Ireland to retain its national nominee.

The second Irish referendum has been set for October 2, 2009. Analysts assert that the outcome of this vote has profound consequences for the EU: Ireland's approval will likely lead to the full ratification and adoption of the treaty. A second rejection could trigger a political crisis in the EU and force tough decisions on the future of reform efforts (see below). Recent polls showed that 46% of Irish voters plans to vote "Yes," while 29% plan to vote "No," and 25% remain undecided.⁸ Besides the high percentage of undecided voters, the poll numbers show a significant drop in support for the treaty compared to results from Spring 2009. Most observers believe that the Lisbon Treaty is likely to pass in the second Irish referendum—however, the final vote is expected to be close either way, and a "Yes" result is by no means guaranteed.

Germany, Poland, and the Czech Republic have also not yet completed their national ratifications. In Germany, ratification was held up over a challenge in the German Constitutional Court asserting that the treaty does not accord the national parliament a strong enough role in EU affairs. This problem appears to have been overcome, and Germany now expects to complete ratification before its September 27 general election. In Poland and the Czech Republic, the respective parliaments have approved the treaty and it awaits the signature of the Polish and Czech Presidents. Polish President Lech Kaczynski has stated that he is waiting for the outcome of the second Irish vote before signing the treaty—most observers believe that Polish ratification would follow a "Yes" vote in Ireland. Czech President Vaclav Klaus has taken a similar stance,

⁶ "Ireland rejects EU reform treaty," *BBC News*, June 13, 2008.

⁷ Ireland Department of Foreign Affairs, *Legal Guarantees and Assurances on the Lisbon Treaty*, <http://www.lisbontreaty.ie/guarantees/full-text.asp>.

⁸ Honor Mahony, "Support for Lisbon Treaty drops in Ireland," *EU Observer*, September 4, 2009, <http://euobserver.com/18/28616>.

although observers believe that Klaus' signature has greater potential to pose a final hurdle to the treaty's adoption. The Czech President has long been a prominent "Euro-skeptic" who opposes what some perceive as an increasing centralization of power in EU institutions. Klaus would come under considerable political pressure from his fellow EU leaders, and most observers assume that he will concede to signing the treaty. However, some analysts caution that he could also be a relatively unpredictable wild card in this matter.

Plan A: Debate and Implementation

Should Ireland ratify the Lisbon Treaty on October 2, Sweden, which holds the six-month EU presidency for the second half of 2009, would chair a special EU Summit in late October. Assuming the treaty has been fully ratified by the end of the month, Summit participants would debate and try to settle lingering institutional questions about how it will be implemented, with a presumed goal of January 1, 2010 for the treaty to enter into force.

At the Summit, EU leaders would expect to appoint the new President of the European Council and the new EU "foreign minister." Considerable debate and political maneuvering are expected surrounding these appointments. There is disagreement within the EU as to the type of role the President should play. Some view the position as one that would actively assert leadership and guidance, requiring a highly visible senior heavyweight, most likely a former national head of state or government or a former senior minister. Others view the position as more of a coordinator and manager, who would build consensus and reflect the group decision. Such a President would still likely be a former senior leader, but not necessarily one with "A-list" stature. In any case, a number of candidates have already been floated in media reports, including former British Prime Minister Tony Blair, former Spanish Prime Minister Felipe Gonzalez, former German Foreign Minister Joschka Fischer, and current Luxembourg Prime Minister Jean-Claude Juncker.

Conclusions regarding the nature of the President will relate to two other issues that the meeting would be expected to discuss: how exactly the system of rotating national presidencies will function under the Lisbon Treaty in managing the day-to-day business of the Council of Ministers; and how the President and the presidency countries will interact.

The desired nature of the High Representative of the Union for Foreign Affairs and Security Policy will likely produce similar debate—whether the position should act as a strong, independent-minded leader who both drives and oversees EU foreign policy, or as more of a facilitator who advances the members' consensus. Names including Swedish Foreign Minister Carl Bildt and Greek Foreign Minister Dora Bakoyannis have been reported in speculation about the position. Leaders at the October Summit would also be expected to discuss how the new EU diplomatic corps would operate.

In addition, leaders at the October Summit would also be expected to appoint the members of the new European Commission for its 2009-2014 term.

Plan B: The Nice Treaty

If the Lisbon Treaty is not ratified—at this point, most likely due to a second rejection in Ireland—some degree of political crisis would probably ensue in the EU. Lacking a new reform treaty, Europeans may, as was the case following the failure of the constitutional treaty, be drawn into another period of institutional introspection and re-grouping that eventually leads to the next

reform effort. In the meantime, many observers would likely again perceive a lack of clarity and direction regarding the future of integration and the EU's role in the world.

In the case of rejection, some observers advocate simply moving ahead with the Lisbon Treaty coming into force among those EU members that have ratified it—meaning that those who reject the treaty might be relegated to some form of “second-tier” or associate membership.

The most likely scenario, however, is that the EU would decide to move ahead under the terms of the existing Treaty of Nice. Although observers assert that the Treaty of Nice has significant shortcomings for an EU of 27 members, many note that the EU can certainly continue to function under the current rules.

Implications for the United States

Critics contend that the Lisbon Treaty will do little to simplify the EU, and assert that many difficult issues that are often the source of gridlock—such as foreign policy and taxation—will remain subject to national vetoes. However, most argue that the treaty's reforms are necessary and helpful and will at any rate allow the EU to move past this decade's preoccupation with process and internal questions to focus more time and energy on “doing things.”

Many experts assert that passage of the Lisbon Treaty would have positive implications for the U.S.-EU relationship because elements 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 could take on a more active and assertive global role and be a more credible and effective partner for the United States in tackling common global challenges. 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.

Analysts also note that the Lisbon Treaty would remove obstacles to further EU enlargement to the Balkans and perhaps eventually Turkey, which the United States strongly supports: some European leaders have asserted that the streamlining reforms of the Lisbon Treaty would make the political atmosphere more amenable to additional enlargement, and some have called for a freeze on enlargement until the treaty is passed.

Some in the United States contend that a larger and potentially more united EU may seek to rival the United States and are more sanguine about the Lisbon Treaty's potential demise. They maintain 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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