

# The Treaty of Lisbon

## Amendments to the EU Treaties and Their Consequences for EMU

Sylvia Gloggnitzer<sup>1</sup>

The Treaty of Lisbon is the EU's new legal framework. The EU heads of state or government have agreed on a new EU treaty conceived to ensure that the enlarged EU consisting of 27 Member States functions more efficiently than under the Treaty of Nice, which is currently in place. The Treaty of Lisbon was signed by EU heads of state or government on December 13, 2007, in Lisbon. The Treaty of Lisbon is to replace the EU Constitutional Treaty rejected in national referendums in France and the Netherlands; it has retained large parts of the constitutional treaty's substance. First and foremost, the new EU treaty represents a reform that introduces increased majority voting, a clear delimitation of EU competences and a changed institutional framework for EU institutions.

Other than the general institutional changes, elements of the Treaty of Lisbon relevant to Economic and Monetary Union (EMU) include, above all, the introduction of price stability to the new treaty's list of objectives, the institutional status of the ECB and the protection of its independence as well as the strengthening of the Eurogroup. The conditions for EMU set out in the Treaty of Maastricht are now reinforced politically in the Treaty of Lisbon.

For the EU's new legal basis to enter into force on January 1, 2009, as scheduled, the Treaty of Lisbon needs to be ratified by all 27 Member States prior to the elections to the European Parliament in 2009.

JEL classification: A12, E50, F15, F55, K0, K10, N44

Keywords: Treaty of Lisbon and EMU, ECB an institution of the EU, independence of the ECB.

### 1 Introduction

This study describes the consensus-finding process for the Treaty of Lisbon<sup>2</sup> and outlines the major results of the 2007 Intergovernmental Conference and possible effects of the treaty on the EU and EMU.<sup>3</sup> This study attempts to provide an overview of the approach pursued at the Intergovernmental Conference. Section 2 tries to span a bridge between the Treaty of Nice and major revisions introduced by the Treaty of Lisbon. Section 3 describes the structure of the Treaty of Lisbon. Section 4 is dedicated to consequences for EMU

with a focus on changes relating to the ECB and the Eurogroup. The study concludes with section 5, which provides an overview of the Member States' ratification process, which is currently scheduled to be concluded by January 1, 2009.

### 2 From the Treaty of Nice to the Treaty of Lisbon

By amending the EU treaties, the EU intends to pave the way for future integration processes to widen and deepen the EU. The current legal basis of the EU is the Treaty of Nice, which has been in effect since 2003.

<sup>1</sup> The author would like to thank Isabella Lindner, Marlies Stubits and Paul Schmidt for their valuable comments as well as Irene Mühldorf and Ingeborg Schuch (OeNB) for manuscript editing. Special thanks go to Gregor Schusterschitz for the scientific evaluation of this study.

<sup>2</sup> Original name of the treaty: "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community." See OJEU 2007/C 306/01; referred to as the Treaty of Lisbon in this study.

<sup>3</sup> This study does not describe all milestones leading to the consensus about the new legal basis for the EU, nor does it include information about articles that have been revised or added since the Treaty of Nice came into force; given that the treaty is several hundred pages long and that this endeavor would thus go beyond the scope and purpose of this paper.

Refereed by:  
Gregor Schusterschitz,  
Director of the Legal  
Department, Permanent  
Mission of Austria to the  
EU in Brussels.

Table 1

### Milestones Leading from the Treaty of Nice to the Consensus about the Treaty of Lisbon

Date	Milestone
February 26, 2001	Signing of the Treaty of Nice.
December 14/15, 2001	"Laeken Declaration." In Laeken (Belgium), the European Council decides to entrust consultations about the future of Europe to a convention, which concludes in 2004 with the signing of the Constitutional Treaty.
February 28, 2002	Constitution of the convention on the future of Europe, headed by Valéry Giscard d'Estaing, the former president of France.
February 17, 2003	The Treaty of Nice enters into force.
October 4, 2003	Opening of the 2003 intergovernmental conference.
June 16/17, 2004	Consensus about the Constitutional Treaty among EU heads of state or government in Brussels.
October 29, 2004	Signing of the Constitutional Treaty in Rome.
May 29, 2005	Referendum on the Constitutional Treaty in France – the majority rejects the treaty.
June 1, 2005	Referendum on the Constitutional Treaty in the Netherlands – the majority rejects the treaty. For the time being, reform efforts have thus failed.
June 17 to 18, 2005	Crisis summit in Brussels – initiation of a period of reflection about the rejected Constitutional Treaty.
March 25, 2007	"Berlin Declaration" on the occasion of the 50 <sup>th</sup> anniversary of the signing of the Treaties of Rome – EU heads of state or government commit to providing a new legal basis for the EU by 2009. (At that time, 18 Member States had ratified the failed Constitutional Treaty).
June 21/22, 2007	Political consensus about a detailed mandate for an intergovernmental conference on the reform treaty for Europe was reached at the European Council in Brussels.
July 23, 2007	Opening of the 2007 intergovernmental conference.
October 18/19, 2007	Political consensus about the reform treaty for Europe was reached among EU heads of state or government at the European Council in Lisbon (Treaty of Lisbon), following the shortest intergovernmental conference in the history of the EU.
December 12, 2007	Proclamation of the Charter of Fundamental Rights at the European Parliament in Strasbourg by the president of the European Parliament, the EU Council president and the president of the European Commission.
December 13, 2007	Signing of the Treaty of Lisbon by the heads of state or government of all 27 EU Member States; start of the ratification process.

Source: Weidenfeld and Wessels (2007); Borchardt (2006).

However, the number of Member States has increased from 15 to 27 since then. At the same time, EU Member States have stepped up their cooperation in specific areas to stand their ground in a globalized economy and in the international financial markets. Moreover, while the consensus expressed in the Treaty of Nice paved the way for the most recent enlargement of the EU, a forward-looking or comprehensive EU reform – to which the EU had already expressed its commitment even before the Treaty of

Nice was drafted – had yet to be achieved.<sup>4</sup>

Table 1 shows the milestones leading to the revision of the EU treaties since the signature of the Treaty of Nice in 2001.

#### 2.1 The Consensus-Finding Process at the 2007 Intergovernmental Conference

Following the conclusion of a period of reflection of several years and arduous negotiations, the foundations for a new common basis for the EU

<sup>4</sup> According to declaration No. 23 of the Treaty of Nice on the future of the Union, the debate about the reform was to focus on the following issues: the principle of subsidiarity, the future role of national parliaments, the status of the Charter of Fundamental Rights and the possible simplification of EU treaties.

were laid during a European Council meeting under the German EU Council Presidency on June 21–22, 2007. This breakthrough was achieved by the decision of the heads of state or government to convene an inter-governmental conference and their consensus about a mandate for this intergovernmental conference. This mandate for treaty reform was the groundwork to enhancing the efficiency and democratic legitimacy of the enlarged EU as well as the coherence of its external action compared to the situation today (European Council, 2007). The Intergovernmental Conference opened on July 23, 2007,<sup>5</sup> on the occasion of a meeting of the EU foreign ministers under Portuguese Presidency.

#### 2.1.1 Specifications for the Treaty of Lisbon – the Mandate for the 2007 Intergovernmental Conference

The basis for negotiations at the 2007 Intergovernmental Conference was a highly detailed 16-page mandate that largely determined the wording of the new treaty to reform the EU institutions. This paper was the only basis for negotiations and therefore, all work done by the Intergovernmental Conference relied on this mandate. All changes *vis-à-vis* the draft constitutional treaty had to be explicitly itemized in the mandate (European Council, 2007).

The main purpose of the mandate was to transfer the content envisaged for the Constitutional Treaty to the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC).<sup>6</sup> With this approach, the substance of the Constitutional Treaty remained mostly intact. The content of the mandate reflects previously agreed political solutions.

#### 2.1.2 Swift Negotiations at the Technical Level – A Decisive Factor for the Breakthrough

When Portugal assumed the EU Council Presidency on July 1, 2007, it aimed at reaching an agreement about the new Treaty during the informal summit of the heads of state or government held on October 18–19, 2007. It was to be the shortest Intergovernmental Conference in the history of the EU: formally opened on July 23, 2007, a political consensus about a new Treaty was reached on October 18, 2007. On December 13, 2007, EU heads of state or government signed the Treaty of Lisbon at the meeting of the European Council.

The conduct of negotiations during the 2007 Intergovernmental Conference differed greatly from the one at the 2003/2004 Intergovernmental Conference<sup>7</sup> which passed the Constitutional Treaty.

A tight timeline was applied at the 2007 Intergovernmental Conference

<sup>5</sup> *The convening of intergovernmental conferences is based on article 48 of the TEU, which determines that, in the case of institutional changes to monetary matters, the ECB must be consulted, in addition to the European Commission, the European Parliament and the European Council.*

<sup>6</sup> *See section 3.*

<sup>7</sup> *The 2003/2004 intergovernmental conference was preceded by a convention whose members essentially drafted the Constitutional Treaty for Europe. Not only the governments of Member States participated in this European convention, but also two members of each national parliament. There was an extensive debate, which was also open to the general public, and negotiations documents were therefore made publicly available. This approach was to bring to bear the democratic element in the drafting process of the Constitutional Treaty.*

– the goal being that it “... complete its work as quickly as possible, and in any case before the end of 2007 ...” (European Council, 2007).

Actual negotiations were not conducted at the political, but at the technical level, i.e. in the committee of legal experts of all 27 Member States, chaired by the Director-General of the Legal Service of the Council of the European Union. However, the previously specified timeline (IGC 6/07, 2007) was not fully met. The legal experts held meetings until October 3, 2007. Representatives of the European Parliament and the European Commission were closely involved in these negotiations. The General Secretariat of the Council was in charge of the conference’s secretarial tasks. All documents and information about the 2007 Intergovernmental Conference have been published on a dedicated European Council website.<sup>8</sup> EU heads of state or government had the overall responsibility for the Intergovernmental Conference and were supported by the Council of Foreign Ministers. Generally speaking, this was an unprecedented approach in the history of EU Intergovernmental Conferences (IGCs).

The group of legal experts carried out its work while strictly adhering to the IGC mandate. This mandate was the “manual” for amendments to fundamental EU treaties. Issues that could not be resolved at the technical level were addressed at the political level during the Council of Foreign Ministers<sup>9</sup> and at the European Council.<sup>10</sup>

On October 5, 2007 a “finished draft” of the reform treaty was available. On October 19, 2007, at the European Council in Lisbon, the Portuguese President of the European Council announced the agreement on a new constitutional basis for Europe, the Treaty of Lisbon. The ceremony for the formal proclamation of the Charter of Fundamental Rights by the European Parliament in Strasbourg took place on December 12, 2007. On December 13, 2007, the Treaty of Lisbon was signed by EU heads of state or government and foreign ministers at the European Council. The Treaty of Lisbon is scheduled to enter into force on January 1, 2009, before the elections to the European Parliament. However, the ratification process could still constitute a road-block.

## 2.2 Major Amendments vis-à-vis the Treaty of Nice

The Treaty of Lisbon contains the following major institutional amendments vis-à-vis the Treaty of Nice (Dippel, 2007).

- **A single legal personality for the EU:** The Treaty of Nice distinguishes between two separate entities, the EC and the EU. In contrast to the EC, the EU had not had any treaty-making power up to now. The EU was previously not entitled to enter into treaties with third parties (Seeger and Emmanouilidis, 2007). This will change as soon as the Treaty of Lisbon takes effect, because the EC – EU dichotomy will cease to exist in matters relating to exter-

<sup>8</sup> [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=1297&lang=en](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1297&lang=en)

<sup>9</sup> *Meeting of foreign ministers of all member states: September 7 to 8 and October 15, 2007.*

<sup>10</sup> *Meeting of EU heads of state and government at the European Council, October 18 to 19, 2007.*

Table 2

The Treaty of Nice and the Treaty of Lisbon: Comparison of Specific Areas		
Regulatory area	Regulations in the Treaty of Nice	Regulations in the Treaty of Lisbon
Structure of the treaty	Treaty of Nice consists of two parts: EU Treaty (TEU) EC Treaty (TEC)	Treaty of Lisbon consists of two parts: Amendments to the EU Treaty (TEU) Amendments to the EC treaty and renamed "Treaty on the Functioning of the EU" (TFEU)
Legal personality	EU does not have legal personality	EU has legal personality
European Council	European Council is not an EU institution	European Council becomes an EU institution
External representation	High Representative for Foreign Affairs and Security Policy	High Representative for Foreign Affairs and Security Policy is also the vice president of the European Commission
European Parliament	732 seats in the European Parliament in accordance with the Treaty of Nice (due to the enlargement, currently 785 seats); Codecision procedure in selected areas	751 seats in the European Parliament, effective 2009 Codecision procedure becomes the rule
Charter of Fundamental Rights	Not legally binding	Legally binding
European Commission	1 commissioner per Member State, currently 27	Reduction of number of commissioners to two thirds of current number; effective 2014; introduction of a rotation principle with equal rights
Council of Ministers	Term of presidency six months	Term of "team presidency" 18 months
Vote allocation in the council	The system of Nice applies until November 1, 2014; principle of "qualified majority" with 255 out of 345 votes	Transitional period from November 1, 2014, to March 31, 2017; applicable as of 2017; principle of "double majority" representing 55% of EU Member States and 65% of the population
Majority votings	In 137 policy areas	In 181 policy areas
ECB <sup>1</sup>	The ECB is not an EU institution, but an institution "sui generis"	The ECB is an EU institution
Eurogroup <sup>2</sup>	No president Eurogroup is not part of the treaty	President elected for 2.5 years Eurogroup explicitly enshrined in primary law
Withdrawal from the EU	Not possible	Withdrawal possible

Source: Dippel (2007); OJEU 2007/C 306/01.

<sup>1</sup> See section 4.2.

<sup>2</sup> See section 4.3.

nal policy. In the future, the EU will have the right to negotiate international treaties and to become a member of international organizations.

- **The European Council will become an EU institution:** In the Treaty of Lisbon, the European Council is listed as an EU institution. The Treaty of Lisbon creates the function of President of the European Council, who is elected for two and a half years by the EU heads of state or government; the term is renewable once. The purpose of this innovation is to enhance the continuity of

political leadership in the EU (Schwarzer and Richter, 2007). The President of the European Council will preside over the four annual meetings of EU heads of state or government and will expedite the work of this committee, which is the EU's highest decision-making institution. The rotation of Councils of Ministers will be retained, with the effect that the chairpersons of Councils will change semiannually (except for the Council of Foreign Ministers). Three countries will have equal rights and work in a team presidency.

- **External representation of the EU:** The function of “High Representative of the Union for Foreign Affairs and Security Policy” will considerably increase in relevance. This function will combine the tasks of the former EU Representative for Foreign Policy and the EU Commissioner for External Relations. The High Representative will have a diplomatic service, will be the Vice-President of the European Commission and will preside over the Council of Foreign Ministers. The function of the Commissioner for External Relations at the European Commission will therefore cease to exist. The High Representative is to serve as the highest diplomatic authority of the EU.
- **Strengthened role of the European Parliament:** With the establishment of the codecision procedure as the primary law-making procedure in the EU, the European Parliament and the Council will now be on an equal footing as legislative bodies. This will lead to increased control and more democracy. In the future, the European Parliament will also elect the president of the European Commission. The reduction of the number of members of parliament from 785 to 751,<sup>11</sup> effective in 2009, will give the European Parliament more capacity for action. The new allocation of seats in the European Parliament will become effective even before the next elections to the European Parliament. Effective in 2009, Austria will have 19 seats in the European Parliament instead of 18. This maximum of 751 members of parliament will be retained even in the case of further EU enlargements. Hence, a new seat allocation within the European Parliament has to be introduced no later than in 2014 for the accession of Croatia.
- **A strengthened role for national parliaments:** National parliaments will now have eight weeks to scrutinize proposed EU legislation, allowing them to object to legislation if the Member States in question believe that national competences are threatened. The Treaty of Lisbon also strengthens the principle of subsidiarity by introducing clearly defined areas of competence between Member States and the EU and by increased monitoring of the subsidiarity principle by national parliaments.<sup>12</sup>
- **Binding legal force of the Charter of Fundamental Rights:** The Charter of Fundamental Rights establishes civil rights, e.g. the freedom of speech, in 54 Articles. Enshrined in Article 6 of the TEU by a cross-reference,<sup>13</sup> fundamental rights have binding legal force and can therefore be asserted before the European Court of Justice.

<sup>11</sup> Consensus was reached about a maximum of 750 members plus the President of the European Parliament because the seat of the President was attributed to Italy, which was established in a declaration.

<sup>12</sup> See the protocol on the application of the principles of subsidiarity and proportionality to the Treaty of Lisbon, which describes subsidiarity as the principle that the EU is to provide only those regulations that are required at the supranational level and which promise more positive effects than measures taken by single states or regional measures.

<sup>13</sup> The Charter of Fundamental Rights is not part of the treaty, but was formally passed one day prior to the signing of the Treaty of Lisbon. Article 6 of the TEU refers to the charter passed on December 12, 2007.

- **A smaller Commission:** Starting on November 1, 2014, the number of EU Commissioners will be reduced to two-thirds of the current number, and a rotation principle will be introduced. The European Council can determine the number of commissioners by unanimous vote. Details regarding the rotation principle have yet to be determined. The President of the Commission will, in the future, be elected by the European Parliament. The High Representative for the Union in Foreign Affairs and Security Policy will become one of the Vice-Presidents of the Commission.
- **Vote allocation in the Council of Ministers:** Until 2014, voting rules in the EU will continue to follow the qualified majority voting procedure established in the Treaty of Nice (Hummer and Obwexer, 2001). As of November 1, 2014, the “double majority” principle will be introduced, while respecting a transitional period applicable until 2017. This means that decisions taken by the Council of Ministers will require a double majority of 55% of the Member States representing at least 65% of the Union’s population. In the transitional period from 2014 to 2017, the system determined in the Treaty of Nice may be used for voting as long as a single Member State requests it. Poland’s demand to incorporate the “Ioannina clause”<sup>14</sup> into primary law of the new TEU was met by annexing the “Ioannina clause” to the Treaty of Lisbon as a protocol.
- **Increased use of qualified majority voting:** Decision-making processes in the EU will be made easier because in many cases,<sup>15</sup> unanimity will no longer be required, potentially making the EU’s work more efficient. However, the principle of unanimity will remain in place for decisions in sensitive areas, for instance foreign policy, fiscal policy and social policy as well as for amendments to EU treaties.
- **The EU’s enlargement strategy:** In the Treaty of Lisbon, no specifications about the criteria for enlargement with regard to the EU’s capacity of integration have been made. A reference has been added to Article 34 of the TEU to take into account the conditions of eligibility agreed upon by the European Council. Hence, defining the capacity for integration and/or absorption capacity is incumbent on the European Council.
- **Withdrawal from the EU:** The Treaty of Lisbon provides the possibility for a Member State to withdraw from the EU on its own accord. Member States now have the option of systematically withdrawing from the Union within a timeframe of two years. During the course of these two years, a withdrawal agreement determining the political and economic relations between EU Member States and the withdrawing Member State is to be drafted.

<sup>14</sup> The “*compromise of Ioannina*” provides that Council members backed by at least 75% of the required blocking minority (either in terms of number of states or population) may demand further discussion of a given issue. If that is the case, the European Council commits to doing everything within its power within a reasonable period of time to find a satisfactory solution to the problem at hand.

<sup>15</sup> See section 4.3.

### 3 The Structure of the Treaty of Lisbon

The Treaty of Lisbon consists of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), including annexed protocols and declarations. Table 3 shows the structure of both treaties.<sup>16</sup>

All treaty innovations were introduced by way of traditional amendments and were incorporated into the existing structure of the TEU and the Treaty establishing the European Community (TEC). As a consequence, the Treaty of Lisbon is, like previous treaties, an amendment instruction. Article 1 of the Treaty of Lisbon amends the TEU and Article 2 of the Treaty of Lisbon amends the TEC. The TEU will, by definition, remain in place, and the TEC will be renamed TFEU (Treaty on the Functioning of the European Union).

The Treaty of Lisbon (OJEU 2007/C 306/01) is more than 250 pages long and consists of the introductory preamble, the TEU, the TFEU, 13 protocols and 65 declarations. The TEU and the TFEU have the same legal force and are interpreted as such. Both have the status of primary law, as do the protocols annexed to the Treaty of Lisbon. The term “Community” has been replaced by the term “Union” in the entire TEU. The three-pillar structure of EU treaties has been abandoned.

In its current version, the Treaty of Lisbon is difficult to read and understand. This lack of accessibility is, among others, due to the fact that different treaties dating from different eras of the EU’s history of unification have been combined. An official consolidated version will probably not be available before the conclusion of the ratification process by the Member States.

Table 3

#### Structure of the TEU and of the TFEU

The TEU is divided into six titles:	The TFEU is divided into seven titles:
Title I. Common provisions	Part One: Principles
Title II. Provisions on democratic principles	Part Two: Non-discrimination and citizenship of the Union
Title III. Provisions on the institutions	Part Three: Policies and internal actions of the Union
Title IV. Provisions on enhanced cooperation	Part Four: Association of the overseas countries and territories
Title V. General provisions on the Union’s external action and specific provisions on the common foreign and security policy	Part Five: External action by the Union
Title VI. Final provisions	Part Six: Institutional and budgetary provisions
	Part Seven: General and final provisions

Source: OJEU 2007/C 306/01.

<sup>16</sup> The articles in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) cited in this study are derived from [http://cms.euro-info.net/received/\\_4580\\_Unionsvertraege\\_Lissabon\\_MWalther.pdf](http://cms.euro-info.net/received/_4580_Unionsvertraege_Lissabon_MWalther.pdf), published by the Austrian Society for European Politics on November 20, 2007, and [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=1317&lang=de&mode=g](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1317&lang=de&mode=g) under “Oktober 2007: (CIG 1/1/07 REV 1)”. At the time of writing, no official, consolidated version of the Treaty of Lisbon was available.



#### 4 The Treaty of Lisbon and EMU

This section describes possible consequences of the Treaty of Lisbon on key areas of EMU.<sup>17</sup>

Since the Treaty of Maastricht (1993), EMU has been one of the main pillars promoting the integration process of the Union. Hence, treaty changes relating to EMU will have a decisive effect on the EU as a whole. EMU relies both on the idea of an independent ECB and its exclusive competence for monetary policy in the euro area and on the coordination of national measures taken by Member States (Breuss, 2002). EU Member States regard economic policy as an issue of common European interest with the goal of promoting growth, employment and price stability in the EU. Given this high priority, EU heads of state or government have accepted the application of common rules for budget discipline and coordination procedures for economic matters to all Member States. All this has been included in the Treaty of Lisbon.

Since the Union's three-pillar structure will not be retained, the new treaty explicitly specifies the allocation of competences between the Union and its Member States. Competences will now be divided into "exclusive" competences, competences shared among the Member States and competences that are subject to the process of "open coordination:"

According to Article 3(1) of the TFEU, the Union will have **exclusive competence** in the following areas: "... (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the

internal market; (c) monetary policy for the Member States whose currency is the euro .... and (e) common commercial policy."

**Shared competence** (while respecting the principle of subsidiarity) between the Union and the Member States applies in the following principal areas as defined in Article 4(2) of the TFEU: "... (a) internal market; (b) social policy ...; (c) economic, social and territorial cohesion; (d) agriculture and fisheries ...; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy."

Economic and employment policies will, in accordance with Article 2(3) of the TFEU, be organized in through the "**open coordination**" method with Member States. This applies especially to employment programs (Gutmann, 2007).

Generally speaking, the Treaty of Lisbon stipulates no substantial fundamental changes in areas relevant to EMU (e.g. Brady and Barysch, 2007; Garach, 2007). Most changes were technical. In the Treaty of Lisbon, provisions affecting EMU are mainly found in the Part Three of the TFEU, Union Policies and Internal Actions, Title VII Economic and Monetary Policy. Regulations concerning EMU are now found in four chapters: "chapter 1 – the economic policy, chapter 2 – the monetary policy, chapter 3 – institutional provisions, chapter 3a – provisions specific to Member States whose currency is the euro, and finally chapter 4 – transitional provisions."

In my comments below, I will focus on the criterion for price stability, the ECB as an EU institution, the

<sup>17</sup> This section does not include an exhaustive itemization of all changes made to EMU-related provisions. Rather, it describes the major effects changes introduced in the new treaty will have on EMU.

Ecofin Council and the Eurogroup, and the role of the euro in the Treaty of Lisbon.

#### **4.1 Price Stability Is Now a More Important Objective of Economic Policy than before**

EMU is based on an independent monetary policy oriented toward stability, whose primary objective is to maintain the price stability of the euro. The definition of the ESCB as part of the Union's monetary policy, which also emphasizes the primary objective of price stability, is specified in Article 105 (1) of the TFEU. "The primary objective of the European System of Central Banks ... shall be to maintain price stability. Without prejudice to that objective, the ESCB shall support the general economic policies in the Union as long as this does not affect its objective of maintaining price stability ..." The orientation of the ECB's monetary policy strategy toward the objective of price stability has been an essential element of the success story of the euro so far and thus of EMU as a whole. This objective has now also been incorporated into the list of objectives specified in the Treaty of Lisbon. The list of objectives specified in Article 3(3) of the TEU states, among others, the following: "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, ..." (OJEU 2007/C 306/01). Since price stability has been defined as an objective of economic policy within the entire Union, it will now be the guiding principle of all actions by its institutions and Member States. There-

fore, price stability as a premise of stability-oriented monetary policy will remain an intrinsic part of the Union's new legal basis.

#### **4.2 The ECB As a New "Body" of the EU**

According to Article 48 of the TEU, at intergovernmental conferences, the ECB has to be consulted in the case of institutional changes in the area of monetary policy. In a declaration, the ECB welcomed the opening of an intergovernmental conference for the elaboration of a treaty to amend existing treaties (ECB, 2007). At the 2007 Intergovernmental Conference, the ECB Council introduced a "Task Force of the Eurosystem," as it had previously done in 2003 (Lindner and Schmidt, 2004), where possible effects of institutional changes on the ESCB/Eurosystem and the ECB were discussed. Special provisions relating to the ECB as established in the Treaty of Lisbon are described below.

##### **4.2.1 The ECB in the Treaty of Lisbon**

A major innovation compared to the Treaty of Nice is the status of the ECB as a body. In Article 9(1) of the TEU, the ECB is included in a list of EU institutions, along with the European Council, the European Parliament, the Council of Ministers, the European Commission and the Court of Auditors and is thus part of the "institutional framework" of the EU. However, pursuant to Article 9(3) in the TEU part of the Treaty of Lisbon, "provisions concerning the ECB are specified in the Treaty about the functioning of the Union ..." (OJEU 2007/C 306/01). Hence, the legal and institutional basis for a common monetary policy by the ECB has been determined both in the TEU part and

in the TFEU part of the Treaty of Lisbon.<sup>18</sup> In the Treaty of Lisbon, provisions concerning the ECB can be found in the following parts and chapters:

- TEU: in Title III “Provisions on the institutions”: Article 9 of the TEU.
- TFEU: Part Three of the TFEU: “Union Policies and Internal Actions” in Title VII – chapter on monetary policy: Articles 105 to 111, especially Article 105 and
- TFEU: in Part Six of the TFEU: “Institutional and Financial Provisions” in chapter 4a “The European Central Bank”: Articles 245a, 245b and 245c.

Prior to the agreement on the Treaty of Lisbon, the ECB and EU Member States had different positions regarding the new approach of listing the ECB as an institution along with other EU institutions. The ECB pursued the goal<sup>19</sup> of being distinguished from other EU institutions by being named under “other institutions” in the treaty. There had already been an intensive debate about the “institutional status” of the ECB at the 2004 Intergovernmental Conference. This debate was revived at the 2007 Intergovernmental Conference. The goal was to emphasize the special status of the ECB’s tasks and the legal basis (personal, operational, financial and legal independence) within the institutional framework of the EU (European Commission, European Council and European Parliament). These demands brought forward by the ECB were not granted at the Intergovernmental Conference. The argument against these demands was that the

ECB’s independence was not threatened by the new treaty. The status of the ECB as an EU institution does not affect the ECB’s or the ESCB’s structure, tasks, statutes or objectives. Revisions to the statutes of the ESCB and the ECB, which are annexed to the TFEU as a protocol, were mostly of technical nature (Garach, 2007). Some of the Articles of the Treaty of Lisbon that are relevant to the ECB are analyzed on more detail below.

#### 4.2.2 Guaranteed Independence of the ECB

Provisions regarding the *ECB’s freedom from receiving instructions* are specified in Article 108 of the TFEU: “When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statutes of the ESCB and ECB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions or bodies, from any government of a Member State or from any other body.”

In Article 245a (1) of the TFEU, the most important provisions regarding the functioning of the ESCB and the ECB’s Eurosystem are detailed (OJEU 2007/C 306/01). The *operational independence* of the ECB is emphasized in Article 245a (3) of the TFEU: “... The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its resources. Union institutions, bodies, offices and agencies and the governments of the Mem-

<sup>18</sup> It is also laid down in the statutes of the ESCB and the ECB, which have been annexed to the Treaty of; see [http://www.ecb.int/ecb/legal/pdf/en\\_statute\\_2.pdf](http://www.ecb.int/ecb/legal/pdf/en_statute_2.pdf)

<sup>19</sup> Germany, the Netherlands and Luxembourg supported the ECB in this approach.

ber States shall respect that independence.”

Regarding the *financial independence* of the ECB, it is especially Article 270b of the TFEU that was adapted to the needs of the ECB. Pursuant to Article 270b of the TFEU, “every EU institution, with the exception of the ECB, shall present a budget ...” Given this statutory exemption for the benefit of the ECB, its financial independence is explicitly acknowledged.

An *innovation regarding the appointment of members of the Executive Board of the European Central Bank* with a qualified majority by the European Council, but, just like in the past, upon recommendation by the Ecofin Council<sup>20</sup> and upon consultation of the European Parliament and the ECB Council was laid down in Article 245b of the TFEU. The current provision requires a consensual decision by the European Council when nominating the six members of the executive board of the ECB. This innovation will “... probably accelerate the nomination process and reduce the related insecurity on financial markets” (Walter and Becker, 2007).

The Treaty of Lisbon does not question the personal, operational, financial and legal independence of the ECB, nor does it have any substantive effects on the functioning of the ESCB.

### 4.3 The Ecofin Council and the Eurogroup

In accordance with Article 5 of the TFEU, EU Member States will continue to coordinate economic policies within the Union. For this purpose, the Ecofin Council adopts measures,

in particular broad policy guidelines. Specific provisions apply to Member States whose currency is the euro. In the TFEU, additional details about economic and monetary policy are specified under Part Three Title VII, “Economic and Monetary Policy” (OJEU 2007/C 306/01). In this chapter, changes introduced by the Treaty of Lisbon related to the Ecofin Council and the Eurogroup are described. This description is followed by the analysis of possible effects of interinstitutional cooperation on economic policy.

#### 4.3.1 Changes Concerning the Ecofin Council

The Council in the composition of the economics and finance ministers (Ecofin Council) is the primary body for the coordination of the Member States’ economic and financial policy. The Ecofin Council’s relevance resides mainly in its status as the primary law-making body for economic and fiscal policy. It usually meets once a month. Ecofin meetings are presided by the minister of the country that has the Presidency of the Council at the time of the meeting. The Council Presidency rotates every six months. Meetings of the Ecofin Council are, among others, prepared by the Economic and Financial Committee, whose institutional provisions have now been laid down in Article 112 of the TFEU without any substance changes.

In order to increase the Union’s capacity for action, the *qualified majority principle was extended to most EMU areas* in the Treaty of Lisbon. This will be reflected in the decision-making process at the periodic meet-

<sup>20</sup> Pursuant to article 116(h) of the TFEU, EU Member States who have introduced the euro may participate in the voting only.

ings of economics and finance ministers. One example is that decisions about excessive deficits of Member States no longer need to be unanimous. The principle of unanimity will be required in only a few areas, including the determination of the conversion rate between the euro and a Member State's national currency, employment policy and tax policy. The easier decision-making process should increase the Ecofin Council's efficiency.

#### 4.3.2 Eurogroup Enshrined in Primary Law for the First Time

Today, the Eurogroup is an informal forum for objective and open discussions about current problems of economic and fiscal policy between the respective ministers of countries whose currency is the euro. It is also intended to serve as a catalyst to accelerate the initiation of structural reforms. The Eurogroup is composed of Member States whose single currency is the euro as well as the Commissioner for economic and monetary affairs of the European Commission, the President of the ECB and the Chairperson of the Economic and Financial Committee. Jean-Claude Juncker, the prime minister of Luxembourg, has been the Chairman of the Eurogroup since January 1, 2005. His nomination was a result of negotiations about the Constitutional Treaty. While this treaty never entered into force, the nomination of a President for this informal body was anticipated. In September of 2006, Juncker's term of office was extended to run through December 31, 2008.

The term "Eurogroup" was formally used in the TEU for the first

time (Walter and Becker, 2007), and the concept of the Eurogroup was enshrined in primary law for the first time in a dedicated protocol<sup>21</sup> annexed to the Treaty of Lisbon. The official function of President of the Eurogroup, elected for two-and-a-half years, is explicitly laid down in the protocol. Special provisions concerning the Eurogroup are specified in "Provisions specific to Member States whose currency is the euro" (OJEU 2007/C 306/01). The room for independent decision-making by the Eurogroup had been extended accordingly. The increased use of independent decision-making processes had already been envisaged as a result of the 2004 Convention for the Constitutional Treaty (Lindner and Stubits, 2004). The increased competences of the Eurogroup are described below.

Member States whose currency is the euro have the right to jointly and independently decide about coordination measures and guidelines specifically referring to the Eurogroup. They can also make recommendations about the admission of new members into the Eurogroup and the Ecofin Council. However, the final decision about the admission of new members into the Eurogroup will remain with all EU Member States.

According to Articles 114ff of the TFEU, broad economic policy guidelines must be compatible with broad economic policy guidelines adopted by the European Union applicable to the entire Union. The Eurogroup also makes recommendations to members of the Eurogroup within the framework of multilateral surveillance, including surveillance regarding the stability program. It can also take

<sup>21</sup> Protocol no. 3 on the Eurogroup (OJEU 2007/C 306/01).

measures regarding excessive deficit procedures, provided that members of the Eurogroup are involved.

Another new element is the provision about the position of the Union at an international level as laid down in Article 115a of the TFEU. The new Treaty empowers the Council to “establish common positions on matters of particular interest for economic and monetary union within the competent international financial institutions” (e.g. the IMF) after consulting the ECB. Only members of the Eurogroup may vote. This innovation might have considerable consequences for the external representation of the euro.

Pursuant to chapter 4, transitional provisions apply to those Member States that with a derogation. An exhaustive list of these provisions is provided in Articles 116ff of the TFEU. For instance, the issue of the euro, the objectives and tasks of the ESCB and measures governing the use of the euro do not apply to these Member States.

#### 4.3.3 Consequences of Interinstitutional Cooperation on Economic Policy Matters Are Still Unforeseeable

In the interinstitutional cooperation between the Ecofin Council and the Eurogroup on the one hand and other EU institutions on the other hand, the new role of the European Council regarding the preparation of economic and employment policy programs will affect EMU to a yet unforeseeable degree. The European Council, as the highest-ranking body for the coordination of economic policies, will continue to play an important role for EMU by providing impetus. Changes to the EU Council Presidency will affect the Ecofin Council meetings insofar as the following

officeholders will now cooperate in economic and financial matters:

- The new President of the European Council
- The team Presidency of three Member States of equal rank for a period of 18 months following the rotational principle of the Council Presidency on the level of responsible ministers
- The new president of the Eurogroup

At the earliest, this new allocation principle might come into effect under the Czech Presidency of the European Council, starting on January 1, 2009.

Another noteworthy fact is that, regarding EMU issues, the roles of the European Parliament and of the European Commission have been strengthened in interinstitutional cooperation.

The *European Parliament has been strengthened* insofar as the codecision procedure will become the primary lawmaking procedure of the Union. This will give the European Parliament greater influence on EMU-related decisions.

The *position of the European Commission in its cooperation with the Ecofin Council has been strengthened* in the areas mentioned below. The European Commission may issue a warning directly to Member States whose national measures in the area of economic policy are not consistent with the broad guidelines of the common economic policy of the Union. The option of issuing such warnings might lead to increased efficiency in the implementation of national reform programs drawn up to achieve the objectives defined in the Lisbon Agenda, which would in turn result in improved competitiveness, higher employment rates and increased

growth within the Union (Weidenfels and Wessels, 2007). In the future and within the framework of multi-lateral surveillance, the European Commission will have the right to issue warnings to Member States if there are indications of an excessive deficit. The Commission can now make a “proposal” to the Ecofin Council rather than just a “recommendation.” These proposals include preliminary requests for correction addressed to the Member State in question. Revision of proposals by the Ecofin Council against the resolve of the European Commission require unanimous voting instead of a qualified majority, as was the case before (Walter and Becker, 2007).

From today’s perspective, specific consequences of crossfunctional interaction between the Presidency of the EU Council in its new composition and the strengthened Eurogroup and the one hand and strengthened EU institutions on the EMU on the other hand cannot be foreseen (Kurpas et al., 2007).

#### 4.4 The Role of the Euro in the Treaty of Lisbon

The Constitutional Treaty provided that the euro become a symbol (among other symbols, such as the flag, the anthem and the motto) of the EU. Since all elements that had a constitutional character were removed from the treaty, the euro is no longer mentioned as a symbol in the Treaty of Lisbon. While none of symbols of the EU has been enshrined in primary law of the EU, they all remain de facto symbols. A declaration of intent about the future use of EU symbols was annexed to the

Treaty of Lisbon as a declaration. This is an important commitment because the euro is an especially strong identity-building symbol for Europe. When asked about the EU, the majority of Austrians associate it with the euro (Fluch et al., 2007).

*The euro has consistently been enshrined in the Treaty in lieu of the ECU.* Banknotes and coins are now called euro banknotes and euro coins. While the euro has not been enshrined in primary law as a symbol, it is now explicitly mentioned as the official currency in the list of objectives laid down in Article 3, paragraph 4 of the TEU: “The Union shall establish an economic and monetary union whose currency is the euro.” Hence, the Treaty of Lisbon accounts for actual institutional developments in the EU that took place since the introduction of the euro.

*Green light for the euro in Cyrillic script.* A discussion about the spelling of euro in Cyrillic script arose during the Intergovernmental Conference. Bulgaria is the only Member State to use Cyrillic script; it spells the euro “EBPO,” which corresponds to “Evro” in Latin script. After arduous negotiations, Bulgaria’s request about the spelling of the word “euro” in Cyrillic was granted at the European Council meeting held on October 18–19, 2007.

## 5 The Process of Ratification: Wait and See

Following the signing of the Treaty of Lisbon on December 13, 2007, its ratification by all 27 Member States<sup>22</sup> will be a challenge. Amending treaties to the EU must be ratified by all EU Member States to enter into force

<sup>22</sup> *The Treaty of Lisbon will enter into force as soon as all instruments of ratification have been deposited, but not before January 1, 2009.*

(Hummer and Obwexer, 2001). The Treaty of Lisbon should enter into force in time, before the elections to the European Parliament in June 2009, so that both the elections to the parliament and the constitution of the new European Commission can be carried out in accordance with the new provisions set out in the Treaty of Lisbon. In the conclusions of the European Council of December 13–14, 2007, the swift conclusion of the ratification process by the Member States is called for.

The short Intergovernmental Conference and the resulting hard-to-read contractual basis for Europe might be a considerable threat to the successful conclusion of the ratification process. In various EU Member States, the ratification is regarded as extremely difficult. As a consequence, the European Commission, in collaboration with EU Member States, has envisaged communication measures to be implemented at a national level. The objective is to provide transparent information about the substance of EU politics as well as decision-making structures and processes in Brussels perceived as abstract by the people and their consequences on Member States (SPEECH/07/572, 2007). The European Parliament is planning to send delegations on consultative visits to those Member States that are planning on holding a referendum. For this purpose, closer cooperation between the European Parliament and national parliaments is planned to ensure coherent action. While most countries will attempt to have the new TEU ratified by their national parliament, other countries – e.g. the United Kingdom, the Netherlands, Poland and Denmark – are under pressure to hold a referendum. From today's perspective, it is

unclear which countries will eventually hold a referendum, with the exception of Ireland, where a referendum is constitutionally mandated. Austria has planned parliamentary ratification, arguing that all previous EU treaties have been ratified by parliament. In Austria, the Constitutional Treaty was ratified in mid-May 2005 with a parliamentary decision (181:1 votes in the lower chamber of parliament, the Nationalrat, and 59:3 votes in the upper chamber, the Bundesrat). The federal government is opposed to holding a referendum and is determined to ratify the Treaty of Lisbon as quickly as possible. For this purpose, the Austrian federal government is currently implementing a public relations campaign.

In terms of political, economic and social integration, the Treaty of Lisbon is, in many aspects, clearly superior to the Treaty of Nice. Its superiority resides in the fact that the institutional framework of the EU has been renewed, which will enable the Union to adapt its policies to ever-changing global conditions and thus to be prepared to meet today's global challenges, such as sustainable development, competitiveness, climate change, energy policy, terrorism, migration and poverty. From today's perspective, actual consequences of institutional changes to EMU introduced by the Treaty of Lisbon are difficult to foresee. Despite all previous difficulties, the fact that Member States formerly separated by the Iron Curtain have agreed on a single legal basis for Europe as a result of peaceful negotiations is a landmark event in the history of the European integration process. However, the Treaty of Lisbon is not the final step in the EU integration process, even though, for the first time ever, no "review clause"



has been included in the treaty, meaning that it is unlikely that other inter-governmental conferences will be held in the foreseeable future. What remains to be seen now is the positive conclusion of the ratification process, which will allow the EU to meet future challenges.

## References

- Borchardt, D. 2006.** Die rechtlichen Grundlagen der Europäischen Union. C. F. Müller Verlag.
- Brady, H. and K. Barysch. 2007.** The CER Guide to the Reform Treaty. Centre for European Reform briefing note.
- Breuss, F. 2002.** Die Wirtschaftspolitische Architektur der WWU. In: Wifo-Monatsberichte 9/2002.
- Dippel, C. 2007.** Gegenüberstellung Nizza-Verfassung-Reformvertrag. Centrum für Europäische Politik (CEP).  
[www.dieeuropahaeuser.at/euinfo/Vergleich\\_Nizza\\_-\\_Verfassungsvertragsentwurf\\_-\\_EU-Reformvertrag.pdf](http://www.dieeuropahaeuser.at/euinfo/Vergleich_Nizza_-_Verfassungsvertragsentwurf_-_EU-Reformvertrag.pdf)  
 retrieved on November 19, 2007.
- ECB. 2007.** Opinion of the ECB at the request of the Council of the European Union on the opening of an intergovernmental conference to draw up a Reform Treaty amending the existing Treaties. C 160/2 Official Journal of the European Union. July 13.
- European Council. 2007.** Presidency conclusions with annex I – draft of ICG mandate. June 21/22.
- European Council. 2007a.** Conclusions of the European Council. December 13/14.
- Fluch, M., E. Gnan and A. Schlögl. 2007.** Fünf Jahre Euro-Bargeld in Österreich: ein Stimmungsbarometer. In: Geldpolitik & Wirtschaft Q1/07. OeNB. 30–55.
- Garach, C. 2007.** European Central Bank Elevated to the Rank of an Institution. In: Europolitics. October 24.
- Gutmann, M. 2007.** Der Reformvertrag. Der neue Vertrag von Lissabon. Wirtschaftskammer Österreich. November.
- Hummer, W. and W. Obwexer. 2001.** Der Vertrag von Nizza mit EU- und EG- Vertrag in konsolidierter Fassung sowie EU-Charta der Grundrechte. Manz Verlag.
- IGC 6/07. 2007.** IGC 2007 Indicative and forward timetable of the Working Party of Legal Experts.  
[www.consilium.europa.eu/cms3\\_applications/Applications/igc2007/doc\\_register.asp?lang=EN&cmsid=1300](http://www.consilium.europa.eu/cms3_applications/Applications/igc2007/doc_register.asp?lang=EN&cmsid=1300)
- IGC 14/07. 2007.** Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. December 3.  
[www.consilium.europa.eu/cms3\\_applications/Applications/igc2007/doc\\_register.asp?lang=EN&cmsid=1300](http://www.consilium.europa.eu/cms3_applications/Applications/igc2007/doc_register.asp?lang=EN&cmsid=1300)
- IGC 15/07. 2007.** Final act. [www.consilium.europa.eu/igcpdf/en/07/cg00/cg00015.en07.pdf](http://www.consilium.europa.eu/igcpdf/en/07/cg00/cg00015.en07.pdf)
- Kurpas, S., B Crum, P. Schoutheete, J. Keller, F. Dehousse, S. Andoura, A. Missiroli, S. Hagemann and H. Bribosia. 2007.** The Treaty of Lisbon: Implementing the Institutional Innovations. Joint Study Ceps. EGMONT. EPC Study. November 2007.
- Lindner, I. and M. Stubits. 2004.** A Constitutional Treaty for an Enlarged Europe: Are there Fundamental Changes for EMU. In: Workshops No. 4 – Proceedings of OeNB Workshops. OeNB.

- Lindner, I. and P. Schmidt. 2004.** Der Vertrag über eine Verfassung für Europa: Institutionelle Aspekte der Währungsunion. In: Geldpolitik & Wirtschaft Q3/04. OeNB. 57–67.
- Lamassoure, A. and A. Severin. 2007.** Bericht über einen Vorschlag zur Änderung der Bestimmungen des Vertrags betreffend die Zusammensetzung des Europäischen Parlaments. Ausschuss für konstitutionelle Fragen des EP.  
www.euoparl.europa.eu/meetdocs/2004\_2009/documents/pr/681/681717/681717de.pdf
- Mahony, H. 2007.** Unclear EU Treaty Provisions Causing "Nervousness".  
www.euobserver.com/9/25234/?rk=1
- OJEU 2007/C 306/01. 2007.** Official Journal of the European Union. ISSN 1725-2407. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.
- Seeger, S. and J. Emmanouilidis. 2007.** Ausweg oder Labyrinth? Analyse und Bewertung des Mandats für die Regierungskonferenz. Centrum für angewandte Politikforschung (C.A.P). Munich.
- SPEECH/07/572. 2007.** Margot Wallström Vice-President of the European Commission. The Reform Treaty and Europe's Future: the Communication Challenge. Economic and Social Committee Conference. September. Brussels.
- Schwarzer, R. and C. Richter. 2007.** Europa-Kompendium. Hanns Seidel Stiftung. June.
- Walter, N. and W. Becker. 2007.** Treaty Reform: Consequences for Monetary Policy. Deutsche Bank Research. October.
- Weidenfeld, W. and W. Wessels. 2007.** Europa von A bis Z. Berlin. Nomos Verlag.

