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CSC Report on the Treaty of Lisbon

The entry into force on 1 December 2009 concluded an eight-year long process towards a new legal foundation for the European Union (EU). According to the Church and Society Commission of the Conference of European Churches (CSC of CEC), the Lisbon Treaty will enhance possibilities to strengthen human rights and the social dimension of the European Union and will foster participatory democracy. For the churches, this culminates in the legal basis for an open, transparent and regular dialogue between the EU institutions and churches and religious communities.

In October 2004, the EU countries signed a Treaty establishing a Constitution for Europe. Its draft had been elaborated by the Convention on the Future of Europe and amended during the Intergovernmental Conference. In the summer 2005 the Treaty was rejected by the referenda in France and in the Netherlands. This halted the ratification process and led to a “period of reflection”. The new round of talks was held in 2007. The Reform Treaty “Treaty of Lisbon” was approved at the Lisbon Summit on 19 October 2007 and signed on 13 December 2007.

The new ratification process faced major setback when Ireland as the only country to hold a referendum on the Treaty voted ‘no’ in June 2008. This time the Member States agreed to continue the ratification process. As a first concrete concession to Irish concerns, the December European Council of 2008 agreed that provided the Treaty entered into force the Commission would continue to include one national of each Member State. At the European Council of June 2009, Ireland was given further legal guarantees designed to respond to concerns raised by the country. The Summit affirmed that the Treaty would not affect the Irish law on the protection of the right to life, the protection of the family and the rights in the field of education. The Summit affirmed that EU competences in relation to taxation would not change with the Treaty. It would neither affect the possibility for Ireland to maintain its traditional policy of military neutrality. In addition, the Summit confirmed the high importance the Union attaches to social progress. At the second referendum held last October, 67.1 % of the Irish voted in favour of the Treaty. The Irish vote convinced the Presidents of Germany and Poland to sign the Treaty. After the Czech Republic was allowed to opt out from the Charter of Fundamental Rights, the Czech President finally concluded the ratification process with his signature.

The consolidated version of the Treaty of Lisbon is available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ%3AC%3A2008%3A115%3ASOM%3AEN%3AHTML>

TREATY EVALUATION BY THE CHURCH AND SOCIETY COMMISSION

When comparing the Treaty of Lisbon with the objectives the Church and Society Commission (CSC) advocated all along the process, the following could be stated:

CSC called the EU to be more than an economic cooperation and to have a strong value-basis. Although there are reasons to be pleased with the way the EU values and objectives are now defined, CSC will continue to monitor their implementation in the EU policies. CSC welcomes the reference to Europe's religious inheritance in the preamble.

CSC wanted the Charter of Fundamental Rights to be made legally binding and the EU to accede to the European Convention on Human Rights (ECHR). This is happening. The Charter will become legally binding, except for the UK, Poland and the Czech Republic, and the EU shall accede to the ECHR.

CSC hoped the treaty reform to serve as a way to balance the now dominating economical interests with social considerations. The new social clause stipulates that "in defining and implementing its policies and actions" the Union shall take into account requirements linked to the promotion of a high level of employment, adequate social protection, fight against social exclusion, high level of education, training and protection of human health. The social dimension is also strengthened by the Charter of Fundamental Rights. Yet again, the real test will lie in the practical implementation of these legal innovations.

Furthermore, CSC promoted participatory democracy. In this regard, the treaty reform brings along a couple of innovations. The first one is the "citizen's initiative", which might become a useful mechanism for churches. Moreover, CSC welcomes the commitment on the part of the EU institutions to conduct an open, transparent and regular dialogue with civil society. CSC also feels that participatory democracy will be empowered by the increased clarity concerning the competences of the different EU institutions. Moreover, the EU processes will become more transparent with the introduction of the co-decision procedure (the European Parliament is involved) as the ordinary legislative procedure.

Finally, the Treaty of Lisbon will also include an article on open, transparent and regular dialogue with churches and religious associations (Article 17 TFEU). This same article also confirms that the Union respects the status granted to churches and religious associations or communities by the national legislations of Member States.

There are, nevertheless, areas where CSC did not succeed in achieving its objectives. The biggest disappointment concerns the lack of progress in the enhancement of non-military means of conflict prevention and crisis management.

All in all, there are reasons to believe that the Treaty of Lisbon will be one step towards the kind of Europe CSC has promoted.

MAIN ELEMENTS OF THE REFORM

STRUCTURE

Instead of one cohesive text, the Treaty of Lisbon reforms the two existing treaties: Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC). Of these the latter is renamed the Treaty on the Functioning of the Union (TFEU).

CONSTITUTIONAL ELEMENTS

At the June Summit 2007, all the constitutional elements were deleted, including any terminological reference to "constitution" and symbols such as the flag, the anthem and the motto. Also the proposed denominations "law" and "framework law" were abandoned and the existing denominations "regulations", "directives" and "decisions" retained.

PREAMBLE

The preamble of the EU Treaty (TEU) is amended in order to include the following sentence: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law."

VALUES

The European Union accepts to embrace the following values (Art 2 TEU): "respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of persons belonging to minorities". The Treaty of Lisbon also states that "these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

OBJECTIVES

In summary, the Union aims to promote peace, its values and the well being of its peoples (1). It offers its citizens an area of freedom, security and justice (2) and establishes an internal market (3). The Union establishes an economic and monetary union whose currency is the euro (4). In its relations with the wider world, the Union will uphold and promote its values and interests and contribute to the protection of its citizens (5).

HUMAN RIGHTS

Reference to the Charter of Fundamental Rights appears in one Article (6 TEU) only but it is made legally binding except for the UK, Poland and the Czech Republic.

EU Charter of Fundamental Rights:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:303:SOM:EN:HTML>

The EU will have a single legal personality (Art 47 TEU), which allows it to adhere to international conventions including the European Convention on Human Rights. Member States may only sign international agreements that are compatible with EU law.

DIALOGUE WITH CHURCHES AND CIVIL SOCIETY

The Treaty of Lisbon contains an Article (17 TFEU) regarding the status of churches and religious associations and the open, transparent and regular dialogue with them. CSC of CEC and the Commission of the Bishops' Conferences of the European Community (COMECE) will submit their joint proposal for the implementation of Article 17 early in 2010.

Article 17 (Treaty on the Functioning of the EU) on the status of churches and non-confessional organisations stipulates the following:

1. Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

The Union also commits itself to an open, transparent and regular dialogue with civil society (Art 11 TEU).

CITIZENS' INITIATIVE

One million EU citizens, representing a significant number of Member States, can invite the European Commission to consider a legislative proposal on a matter within the framework of its powers (Art 11 TEU).

SERVICES OF GENERAL INTEREST

The Treaty includes a specific protocol concerning services of general interest. The protocol recognises that the shared values of the Union in respect of services of general economic interest include, in particular, "the essential role of the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of users". Furthermore, it acknowledges the diversity between these services and the differences in the needs and preferences of users that may result from different geographical, social and cultural situations. The shared values also include a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights. Finally, the protocol states that the provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise *non-economic* services of general interest.

SOCIAL DIMENSION

The "social clause" (Art 9 TFEU) features among the provisions having general application. The clause stipulates that "in defining and implementing its policies and actions" the Union shall take into account requirements linked to the promotion of a high level of employment, adequate social protection, fight against social exclusion, high level of education, training and protection of human health.

CLIMATE CHANGE

The Treaty of Lisbon includes a new reference to climate change (Art 191 TFEU) without conferring new competences on the Union in that area.

QUALIFIED-MAJORITY VOTING

The QMV is extended to more than 50 new areas (energy market liberalisation, space policy, humanitarian aid, judicial cooperation in criminal matters etc.). Unanimity remains the rule for taxation, part of common foreign and security policy, part of social and environmental policy, languages and culture.

In the future, the qualified majority will require at least 55% of the members of the Council representing Member States comprising at least 65% of the population of the Union (Art 16

TEU). At the request of Poland, the new system will enter into force earliest at the beginning of November 2014, latest by the end of March 2017.

CO-DECISION

The co-decision procedure becomes the ordinary legislative procedure (Art 289-290 TEU) for the great majority of legislative acts, thus substantially strengthening the role of the European Parliament. The main new areas where the co-decision procedure will apply are agriculture, fisheries, transport, structural funds and police and judicial cooperation in criminal matters.

WITHDRAWAL FROM EU MEMBERSHIP

The Treaty of Lisbon includes an article on the voluntary withdrawal of a Member State from the Union (Art 50 TEU).

HIGH REPRESENTATIVE FOR FOREIGN AFFAIRS AND SECURITY POLICY

EU will have a High Representative of the Union for Foreign Affairs and Security Policy (Art 18 TEU). The High Representative will occupy the functions currently exercised by both the High Representative for Common Foreign and Security Policy and that of the Commissioner for External Relations. Furthermore, the High Representative will hold the position of European Commission Vice-President and lead the EU diplomatic corps. Provided Baroness Catherine Ashton wins the approval of the European Parliament she will be the High Representative for the next five years. Informally she is in office since 1 December 2009.

STABLE COUNCIL PRESIDENCY

The creation of a stable European Council presidency is agreed (Art 15 TEU). The President of the European Council will have a mandate of two and half years, renewable once. The first person to serve in this post is the former Belgian Prime Minister Herman Van Rompuy. With the exception of the Foreign Affairs Council, which will be chaired by the High Representative, the other Council meetings will be chaired by ministers from a group of three EU Member States in the eighteen-month Presidency Team.

EUROPEAN PARLIAMENT

The Treaty of Lisbon reduces the number of members of the European Parliament (MEPs) from the current 785 to 751. In December 2008, the European Council agreed that (if the Treaty entered into force) Germany would be entitled to temporarily keep its 99 seats instead of losing three seats. Due to the delay in the ratification process, the European Parliament elections of June 2009 were held according to the current regulations which reduced the number of seats to 736 in these elections. After the ratification, the 18 extra seats are allocated as follows: four for Spain, two for Austria, two for France, two for Sweden, and one each for the Netherlands, Poland, Italy, Slovenia, Bulgaria, Latvia, Malta and UK.

EUROPEAN COMMISSION

The Lisbon Treaty also planned to reduce the number of Commissioners to two thirds of the number of Member States as of 2014. The members of the Commission were to be selected according to a system of equal rotation among the Member States. The Irish 'no' cancelled this decision. The Commission shall continue to include one national of each Member State.

EUROPEAN COURT OF JUSTICE

The number of Advocates-General will be increased from 8 to 11. Poland will get a permanent seat as is already the case for Germany, France, Italy, Spain and the United Kingdom. The rotation system will apply to five seats.

NATIONAL PARLIAMENTS

The role of national parliaments will be strengthened. The Treaty of Lisbon affirms the right of national parliaments to be kept informed on EU developments and stipulates their role in safeguarding the respect of the principle of subsidiarity. National parliaments have eight weeks to review the initiatives of the Commission. If a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft. It will have to deliver a reasoned opinion if it chooses to maintain the draft.

LINKS

For more detailed information concerning the ratification process, read the following briefing of the European Policy Centre. The Church and Society Commission is a member of this Brussels based think-tank.

http://www.epc.eu/TEWN/pdf/562373347_The%20EU%20Reform%20Treaty.pdf

This briefing as well as all the previous briefings on the developments of the treaty reform process are available on the CEC website:

<http://csc.ceceurope.org/index.php?id=834&L=0>



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