

## FOREWORD

The Treaty of Lisbon, or the Reform Treaty, has come about through the failure of the Constitutional Treaty to be ratified by the Member States, owing to the results of the referendums held in France and The Netherlands. After a period of ‘reflection’ lasting two years, it was agreed by the Heads of Government that a new treaty should be drawn up, and at the European Council of 26 June 2007, an Inter-Governmental Conference (IGC) Mandate was adopted that set out the basis and framework of the provisions that would be adopted.

As such, the Treaty of Lisbon is not a treaty in its own right, but is composed of a series of amendments to the existing treaties, ‘*The Treaty on European Union*’, introduced by the Maastricht Treaty in 1992, and ‘*The Treaty establishing the European Community*’, introduced by the Treaty of Rome in 1957, and is the successor to the Treaties of Amsterdam and Nice.

The new Treaty incorporates many of the provisions of the draft Constitution, as well as introducing new ones of its own. As each treaty becomes law, it is incorporated into the existing treaties; as a result, the changes and amendments made by each successive treaty become increasingly difficult to follow. This BMDF book places these amendments in context by highlighting the changes made by the Treaty of Lisbon and the changes made by the draft Constitution which have been included into the Treaty of Lisbon.

A provision was included in the Treaty of Nice for the Treaties to be revised once the number of Member States reached twenty-seven; with the accession of Bulgaria and Romania in January 2007, this number was reached. The purpose of this provision was to enable a review to take place to assess the state of the institutions of the Union and how the Union should proceed with a far larger number of Member States than the original six members. The Treaty is a continuation of the process begun in the Treaty of Amsterdam and the Treaty of Nice in reforming the Union and its institutions in preparation for enlargement of the Union; as part of this process, the Treaty incorporates the amendments made by the draft Constitution to the institutional structure.

In the IGC Mandate, the concept of a constitution was stated as being a single text that replaced the existing treaties, implying that the main difference between the Constitutional Treaty and the Treaty of Lisbon is that with the Treaty of Lisbon, the existing treaties will continue to be in force with the text being modified by the new amendments. The IGC Mandate makes it clear that the consequences of the Treaty of Lisbon are that the European Community will be replaced and succeeded by the new European Union and that the two treaties, the Treaty on the European Union and the Treaty on the Functioning of the European Union, will constitute the basis and framework on which the Union is based.

In an open letter published in *Le Monde* on 26 October 2007, Valéry Giscard d’Estaing, the President of the Convention that drew up the text of the draft Constitution, said:

*“If one looks at the content, the result is that the institutional proposals of the Constitutional Treaty ... are found complete in the Treaty of Lisbon, only in a different order, and inserted in the preceding treaties.”*

*“In the Treaty of Lisbon, drawn up exclusively from the Constitutional Treaty, the tools are exactly the same. Only the order has been changed in the tool box. The box itself has been redecorated, using an old model, which has three compartments in which you have to rifle around to find what you are looking for.”*

During the debates leading up to the agreement of the text on 18 October 2007, there had been considerable discussion among the Member States, each of which had put forward requests and expectations on what they would wish to be in the Treaty, and what they would consider to be essential for them to agree. In the event, there was the inevitable compromise and a consensus was reached. The President of the Commission, José Barroso, in a speech to the European Parliament on 23 October 2007 said:

*“I know that some committed Europeans are not happy with the number of opt-outs. Myself and the Commission, we would also have preferred to avoid them. However, diversity is a central feature of the European Union and sometimes it requires political and institutional compromises. I prefer to have specific opt-outs for specific countries than to be forced to lower the level of overall ambition of the Treaty.”*

As a consequence, the Treaty of Lisbon is a compromise and reflects the tension arising from the conflicting interests of the small and large states, the balance between the social, economic and environmental policies, which together represent the three principal objectives of the Union, and the two principal views in which direction the European Union might follow: that of the inter-governmental view of separate nation states acting together where appropriate and in a free market and that of the European Union being a single political entity operating under the principles of a European social market with the Member States having a subordinate role.

It is noticeable that the draft Constitution and the Treaty of Lisbon are the first treaties to be signed by the Heads of State or of Government, rather than being delegated to the Foreign Ministries of each Member State, signifying the increased importance of the new treaties and the European Union as a whole.

As with the previous European treaties, all of the Member States must ratify the Treaty before it can come into force. In the ratification process that takes place within the national parliaments, the Treaty can only be accepted or rejected as a whole and amendments cannot be made.

The aim of this book is to identify the principal important areas in the Treaty and to give the reader sufficient information to interpret the provisions of the Treaty of Lisbon in the context of the consolidated Treaties. The consolidation of the texts has been done to show the amendments made by the draft Constitution, which have been brought forward to the Treaty of Lisbon, and the amendments made by Lisbon in its own right. These are described more fully in the chapter ‘Notes to the Text’.

This is the fifth major book by the BMDF on the European Treaties and follows the same layout as the previous texts in the series.

The analysis is in the front of the book, in Roman numerals:

- There are summaries on the background the Treaties and some notes on the text of the Treaties, to explain the layout and the annotations that the BMDF has added to the text;
- The main part of the analysis covers the principal issues and key points in the Treaties and the changes to the legislative procedure;
- there is a summary of the changes in the voting by the Council from unanimity to qualified majority voting and a summary of the areas that are still under unanimity;

The complete consolidated texts of the Treaties, together with all of the Protocols and Declarations, are shown in Arabic numerals.

There are a number of additional papers including the text of the Treaty of Lisbon, the Charter of Fundamental Rights, the Berlin Declaration, three speeches given at the time of the signing of the Treaty, and the opinions of the Commission and the European Parliament relating to the Treaty of Lisbon. In addition, there are the texts of the Prüm Treaty, concerning the sharing of information on DNA, and the Leaken Declaration of 2001.

In addition, the BMDF has prepared a fourteen-page index to the Treaty and a Table of Equivalences to enable the reader to trace individual articles in the Constitution to the corresponding article in the existing Treaties as amended by the Treaty of Lisbon.