

# **Can the Treaty of Lisbon be ratified or implemented?**

## **A legal analysis**

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19 June 2008

Can the Treaty of Lisbon still be ratified, following the ‘No’ vote in the Irish referendum on June 12? Or could it least be implemented in practice, even if it is not ratified? What would be the impact of non-ratification upon the EU?

This analysis examines each of these three issues in turn, from a legal point of view. It does not examine the purely political question of whether or not there *should* be further attempts to ratify the Treaty following the referendum vote.

It is, of course, legally possible for the EU, in light of the referendum result, to give up on the process of considering amendments to the EU Treaties. Equally, it is legally possible, in light of the result, to restart a wholly new process of considering amendments to the Treaties.

This legal analysis does not assume that an attempt to ‘rescue’ the Treaty of Lisbon is more (or less) desirable than a decision to restart the process of Treaty amendment, or to end it altogether. Parts B and C examine the legal position if the Treaty is not ratified, either in its original form or an amended form.

### **A. Can the Treaty of Lisbon still be ratified?**

Article 48 of the Treaty on European Union (TEU) states clearly that any amendments to the Treaties need to be agreed unanimously by all Member States, and then ratified by all Member States in accordance with their national constitutional requirements. The ‘No’ vote in Ireland obviously *prima facie* prevents this requirement from being satisfied.

However, there are several ways in which the Treaty might nevertheless be ratified. It would also be possible to agree on amendments to the Treaty, in which case the revised Treaty would not be exactly the same text as the Treaty which was rejected in the referendum – although it would probably still be called the ‘Treaty of Lisbon’.

The various possibilities will be examined in turn. Since the Constitutional Treaty was the EU's 'Plan A' for Treaty changes, and the Treaty of Lisbon can be considered 'Plan B' (since it incorporated a large majority of the text of the Constitutional Treaty), I will describe any further efforts to ratify the Treaty as variations of 'Plan C'.

This legal analysis does not assess the political merits of any of these solutions, or the likely political response to them, although it is obvious that some of these options are likely to have greater appeal to Irish voters, the Irish government and the governments of other Member States than other options would.

It should be noted that the Court of Justice has established the basic rule that the Treaties can only be amended by the procedure set out in them (*Case 43/75 Defrenne II*). So it is not possible, for example, to amend the Treaties without unanimous agreement and national ratification as set out in Article 48 TEU – except for a few provisions which specifically permit this.

It should also be noted that the Treaty of Lisbon does *not* have to be ratified by 1 January 2009. The Treaty provides expressly that it can come into force at any later point, once all Member States have ratified it.

### **Plan C.1: Expel Ireland from the EU**

This would obviously leave the remaining 26 Member States free to ratify the Treaty of Lisbon. However, legally it is simply impossible to expel a Member State from the Union, because there is no legal provision in the Treaties allowing for it. Article 7 TEU does permit a Member State to be *suspended*, rather than expelled, from the EU, if it is judged guilty by *all* the other Member States of a 'serious and persistent breach' of 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'. But obviously this is not the case in Ireland today.

### **Plan C.2: Expel Ireland from the EU *indirectly***

While it is legally impossible to expel a Member State from the EU *directly*, it would be legally possible to expel a Member State *indirectly*. This could be achieved if all of the Member States *except* Ireland denounced the existing Treaties and simultaneously re-ratified them, as amended by the Treaty of Lisbon, taking out all references to Ireland from the Treaties. As a consequence, the Treaties would in effect continue in force, as amended by the Treaty of Lisbon, in 26 Member States

only. Presumably Ireland would be offered some form of association with the EU instead (for more on this, see Plan C.3 below).

The legal problem with this option is that the current Treaties do not provide for Member States to denounce them, and so arguably either a provision for denunciation would first have to be added to the Treaties, or the mass denunciation itself would have to take the form of a Treaty amendment. Either way, this would require Ireland's consent – so Ireland could not be expelled indirectly by this process against its will.

But an alternative argument is that Member States have an implied right to withdraw from the Union, even if this right is not expressly mentioned in the Treaty, by virtue of the general rules of international law. Article 56(1) of the Vienna Convention on the Law on Treaties states that:

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
  - a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
  - b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

A leading text on the law of treaties states that 'the constituent instrument of an international organisation...almost certainly falls within paragraph (b)'. (see Aust, *Modern Treaty Law and Practice*, 2<sup>nd</sup> edition (Cambridge University Press, 2007), page 291; and see also page 398).

### **Plan C.3: Ireland withdraws from the EU**

If Ireland withdrew from the EU, it would obviously be open to the other Member States to ratify the Treaty of Lisbon. The legality of a Member State withdrawing from the EU under the current Treaty arrangements was discussed above (see Plan C.2).

The remaining Member States might wish to offer Ireland some form of association with the EU that would replicate, or very nearly replicate, Ireland's existing membership of the EU. It might be questioned, however, whether such a close relationship with the EU could legally be offered to a non-Member, and there might also be necessary to establish the extent of EC/EU and Member State competence as

regards such an agreement. It would be possible to ask the Court of Justice to answer such questions under a special procedure provided for in the existing Treaty (see Article 300(7) of the EC Treaty), and the Court would almost certainly be willing to deal with the case on an accelerated basis and give its answer within a few months. However, under the current legal framework the Court only has jurisdiction to answer these questions in respect of the Community treaties (the ‘first pillar’ of the EU), rather than the second or third pillars (respectively concerning foreign policy and policing and criminal law).

#### **Plan C.4: Ireland withdraws from the EU *temporarily***

Under this scenario, Ireland would withdraw from the EU temporarily, with an association agreement that retains much or all of its existing rights and obligations. This would raise the legal and political questions referred to above (Plans C.2 and C.3). It would therefore be open to the other 26 Member States to ratify the Treaty of Lisbon. There would be a political commitment, though, that Ireland would *rejoin* the EU within a short time, after negotiations to the Treaty that would provide for some form of special status for Ireland.

#### **Plan C.5: Ireland votes again, without any EU action**

Under this scenario, Ireland would be asked to vote again, without the EU taking any form of action at all to address the issues that concerned Irish ‘No’ voters. It might be questioned, however, whether a vote on exactly the same issue would be legal as a matter of domestic Irish law – an issue outside the scope of this legal analysis.

#### **Plan C.6: Ireland votes again, in the event of an EU Declaration**

Under this scenario, Ireland would vote on exactly the same Treaty, but the EU (in the form of the European Council) would in the meantime issue a (non-binding) Declaration on the issues that are identified as being of particular concern to Irish voters. This is exactly the process that was followed when the first Irish referendum on the Nice Treaty resulted in a ‘No’ vote.

#### **Plan C.7: Ireland votes again, in the event of a Decision by EU Member States**

Under this scenario, Ireland would vote on exactly the same Treaty, but the EU Member States would in the meantime adopt a Decision, meeting in the framework of the European Council (the formal name for EU summits), concerning specific issues that they believed to be of particular concern to Irish voters as regards the Treaty of

Lisbon. This would be similar to the process that was followed when Danish voters first voted 'No' to the Treaty of Maastricht. However, in that case, the EU also adopted further measures as part of a 'package deal' (see further plan C.8, below).

The Decision could address the following issues:

- confirming Ireland's facility to opt-out from EU legislation concerning civil and criminal law issues, perhaps with reference in particular to specific topics like divorce;
- confirming that Ireland would retain a veto on all matters relating to any form of taxation;
- confirming that nothing in the Treaties, or the Charter of Rights, can impact upon Irish law concerning abortion (there is already a Protocol confirming that nothing in the Treaties can affect a specific provision of the Irish Constitution concerning abortion);
- confirming that nothing in the Treaties affects Irish neutrality, and confirming that Ireland retains a veto over all substantive decisions relating to security or defence.

It would also be possible (as was the case with Denmark) to include within this Decision the decision by Ireland not to participate in certain EU measures, for example in the 'structured cooperation' regarding defence which the Treaty of Lisbon provided for. Furthermore, it would be possible (again, as in the Danish case) for the European Council and Ireland to adopt connected Declarations relating to the Decision.

A Decision of Member States within the framework of the European Council is legally unusual. A detailed legal analysis of the earlier Decision relating to Denmark concluded that:

- such Decisions are legally binding as a matter of international law, as a form of simplified treaty;
- such decisions cannot amend the Treaties (see the *Defrenne II* case mentioned above), but only implement or clarify them;
- therefore, in the event of any conflict, the Treaties take precedence over the Decision; and
- there is some uncertainty over the legal requirements to ratify such a Decision, and on the question of whether the EU's Court of Justice would have jurisdiction to interpret such a Decision.

(See Curtin and van Ooik, 'Denmark and the Edinburgh Summit: Maastricht without tears: A Legal Analysis', in O'Keefe and Twomey, *Legal Issues of the Maastricht Treaty* (Wiley Chancery, 1994), 349-365).

This analysis is convincing, but it has never been confirmed by any court. So therefore there might be some question as to whether such measures are fully legally binding and the process of their ratification. In any event, since the Treaties (as amended by the Treaty of Lisbon) would take precedence over the Decision in the event of conflict, it might be argued that specific controversial provisions in the Treaty of Lisbon would still take their full effect if the Treaty were ratified, notwithstanding this Decision.

### **Plan C.8: Ireland votes again, in the event of a Decision by EU Member States, with a package of further measures**

Under this scenario, Ireland would vote on exactly the same Treaty, but the EU Member States would in the meantime adopt a Decision concerning specific issues (as discussed in C.7 above), along with a package of further measures that they believed would address issues of particular concern to Irish voters. This would be identical to the process that was followed when Danish voters first voted 'No' to the Treaty of Maastricht.

What would the 'package' include? First of all, it could include measures on **democracy, openness and transparency in the EU**. This was also a particularly important part of the Danish 'package'. There are in any event strong arguments for improving the level of democracy, openness and transparency in the EU, regardless of whether or not further attempts are made to ratify the Treaty of Lisbon. To this end, a detailed suggested agenda is set out in a separate Statewatch analysis with Proposals for greater openness, transparency and democracy in the EU (forthcoming).

Secondly, the package could address the issue of reducing **the number of Commissioners**. The Treaty of Lisbon provides that starting in 2014, the number of Commissioners will be cut from one per Member State to two-thirds of the number of Member States. However, the new Treaty provision also permits the European Council, acting unanimously, to alter the number of Commissioners. The European Council could therefore decide in principle in advance either to **delay cutting the number of Commissioners**, or even to leave the number of Commissioners at **one per Member State indefinitely**.

It should be pointed out that under the *current* Treaty framework, the number of Commissioners *must* be cut to fewer than one per Member State, with no delay possible, with effect from 2009. This issue is discussed further in section C below.

Thirdly, the package could address the issue of a possible agreement for trade liberalisation within the **World Trade Organisation**. There could be an agreement that the EU Member States will agree on the negotiations by consensus even if the Lisbon Treaty is ratified, and/or an agreement that particular aspects of the EU's negotiating position are non-negotiable. This agreement could include specific commitments relating to developing countries.

Fourth, the package could address the balance between **social protection and economic freedoms** within the EU. There could be a commitment to adopt outstanding and upcoming social law proposals (concerning working time, temporary workers, works councils, non-discrimination, pregnancy and parental leave) and to draw up and adopt legislation strengthening social protection as regards 'posted workers' within a short time frame.

Fifth, the package could address the status of the **full-time President of the European Council**, as provided for in the Lisbon Treaty. There could be agreement in advance on the rules of procedure of the European Council (which are already under discussion), assuming that they regulate the role of the President, and making the text of those rules available to the public. If those rules do not regulate the role of the President, then some other form of advance agreement on the status of the President could be agreed. In either case, in order to ensure that the President has only a limited role, the following basic principles should be set out:

- the President cannot vote within the European Council or the Council;
- the President cannot veto any EU measures;
- the President cannot propose any EU measures, or exercise any law-making power;
- the President cannot issue binding instructions to the European Council, the Council, the Commission, the European Parliament or individual Member States;
- when acting at international level (ie when meeting with the US President), the President shall act on the basis of guidelines and mandates adopted in accordance with the Treaties by the other EU institutions (ie by the ministers within the Council, by EU leaders in the European Council, in accordance with legislation as jointly adopted by the EP and the Council and in conformity with the Commission's powers to represent and negotiate for the EU, on a mandate from the Council, regarding matters other than foreign policy)

These limitations are either implicit or explicit in the Treaty already, but should be expressly and clearly spelt out in one document.

Sixth, to address the **comprehensibility** of the Treaty, the European Council could agree to draw up an objective and readable summary of what the Treaty provisions mean.

Seventh, a package could address the issue of the **Euratom Treaty**, which concerns nuclear energy. In fact, the Treaty of Lisbon makes no substantive amendments to the Euratom Treaty. In any case, in a Declaration to the Treaty of Lisbon, a group of Member States have called for a renegotiation of the Euratom Treaty. It would probably be more likely for such a renegotiation to go ahead if the Lisbon Treaty were ratified, than if it were not. But in any case, the European Council could commit itself to a renegotiation of the Euratom Treaty if the Lisbon Treaty is ratified, within a period of one year. Furthermore Member States could commit themselves to make specific changes to that Treaty (for example, to make clear that it is entirely up to each Member State whether or not to develop a nuclear industry).

Eighth, as regards **public services**, it could be confirmed that the EU's new explicit power to regulate public services in the Treaty of Lisbon could not be used to require Member States to privatise public services. This is in any event implicit already due to Article 295 of the current TEC (which would be retained by the Treaty of Lisbon), which states that nothing in the Treaty shall affect Member States' rules regarding the system of property ownership.

#### **Plan C.9: Ireland votes again, in the event of a Protocol added to the Treaty of Lisbon concerning 'Irish issues'**

This would be the same scenario as Plan C.7, except that the Decision concerning specific provisions for Ireland would take the form instead of a Protocol. Since Protocols have the same legal force as the Treaties, this would avoid all the questions concerning the legal effect of Decisions of Member States. In particular, the Treaties would *not* take precedence over a Protocol, since the Protocol would form a part of the Treaties – so the guarantees in a Protocol concerning Irish neutrality, abortion law and taxation (for example) could not possibly be struck down on the grounds that they were in breach of the main Treaties. In this case, in a second referendum, Irish voters would *not* be voting on the same text.

A Protocol could also go further than a Member States' Decision in that it could not merely clarify or implement the Treaty of Lisbon, but *alter* it as regards Ireland. For example, it would be possible for a Protocol to amend the Treaties in order to permit Ireland to withdraw from the Euratom Treaty.

Legally, some or all of the other Member States might not find it necessary to ratify this new Protocol by means of a new national parliamentary procedure, since it would apply only to Ireland. There would certainly be no requirement for a further act of Parliament in the UK, for instance. Other Member States could simply confirm to the Treaty depositary that they consider the new Protocol to be ratified, in accordance with their national law.

**Plan C.10: Ireland votes again, in the event of a Protocol added to the Treaty of Lisbon concerning 'Irish issues', with a package of further measures**

This would combine a protocol, as set out in Plan C.9, with a package of further measures, as set out in Plan C.8.

This Plan would reach the limit of what the EU could do legally without making amendments to the main provisions of the Treaty of Lisbon, affecting all Member States.

**Plan C.11: The EU makes substantive amendments to the general provisions of the Treaty of Lisbon**

This would really amount to a 'Plan D'. It could be combined with a Protocol concerning Irish issues and/or a further package of measures. However, in this scenario some of the further package of measures could be included in the text of the revised Treaty itself. The amendments could take the form of a further Protocol added to the Treaty. A further ratification process would be required in all Member States.

**Plan C.12: The EU inserts some or all provisions of the Treaty of Lisbon as part of the accession Treaty with Croatia**

The accession treaty is likely to be signed in 2009 or 2010, and enter into force in 2010 or 2011. In the past, accession treaties have all made essentially mechanical changes to the institutional rules in the Treaties (ie to add more MEPs and Commissioners to correspond to the number of new Member States). It might be questionable whether legally an accession treaty could include provisions amending

the basic institutional framework, and even more questionable whether it could include rules altering the EU's competence and decision-making rules. While the Court of Justice does not have the jurisdiction to rule on the validity of accession treaties, there might be challenges to such a 'super-accession' treaty before national courts.

Legally, as a matter of Irish domestic law, a fresh Treaty referendum would likely be required. The process of ratifying the accession Treaty might be legally complicated in other Member States.

**B. Can the Treaty of Lisbon be implemented in practice, if it is not ratified?**

By and large, **NO**.

In particular, it is not possible to amend any **EU/EC competences**, or to add new competences, without a Treaty amendment. So the rules concerning the adoption of JHA measures, the new provisions on defence, and the express legal bases on issues such as civil protection and energy could not be added without a Treaty amendment. However, many measures on these issues can be adopted on the basis of the existing Treaties, albeit subject to different rules on decision-making or competences.

Most of the changes to **decision-making rules** cannot be adopted on the basis of the existing Treaties either. It should be emphasised that it is **NOT** legally possible to apply qualified majority voting and/or the co-decision procedure where the Treaty does not permit it.

The only changes which the new Treaty would make to decision-making rules which could be adopted instead on the basis of the existing Treaties concern JHA matters. However, under the existing Treaties, such changes would still have to be agreed unanimously among Member States, and in the case of policing and criminal law they would also have to be ratified unanimously.

The existing Treaties also allow for changes regarding the jurisdiction of the Court of Justice regarding JHA matters without Treaty amendment, but the same conditions (unanimity of Member States, national ratification as regards policing and criminal law) apply. However, the existing Treaty *requires* the restrictive rules concerning the Court's jurisdiction over immigration, asylum and civil law to be altered after 1 May 2004, and so far the Council has not changed them. It could therefore be sued for a 'failure to act' by the Commission, the European Parliament, or a Member State, as

regards its failure to meet this legal obligation. A change on this point would not really constitute an advance implementation of the Treaty of Lisbon, but rather a fulfilment of an existing legal obligation.

It should be noted, however, that many Member States have previously rejected initiatives on exactly the same issues, in 2006. It is conceivable, though, that opinions would change if it becomes clear that there is no possible prospect of the entry into force of the Treaty of Lisbon.

As regards the institutions, there **cannot be a full-time President of the European Council** under the current Treaties, since Article 4 TEU clearly states that '[t]he European Council shall meet...under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council'.

As for the **Council**, its voting rules (ie the definition of qualified majority) cannot be altered under the existing Treaties. The Council formations *can* be altered, ie to create separate General Affairs and External Relations Councils, by means of amending the Council's rules of procedure (by simple majority). The Council *could* also extend its obligations to hold open meetings, again by amending its rules of procedure (as it did in 2006 already). The Council has already decided, from 2006, that groups of three Member States will closely collaborate as regards their Council Presidencies; this does not seem to differ in practice from joint Presidencies of three Member States as provided for in the Treaty of Lisbon.

The post of **High Representative** of the EU for foreign policy already exists. The High Representative could arguably currently take up the task of chairing the External Relations Council, since the Treaty does not explicitly require the Member State holding the Presidency to *chair* each Council meeting, only to *convene* those meetings.

It is possible under the current Treaty for the High Representative to coordinate his or her activities with the External Relations Commissioner and the rotating Council Presidency. However, it is not possible to confer the tasks of all three of these posts upon the same individual, as the Treaty of Lisbon provides for. First of all, the current TEU explicitly gives most of the detailed powers that the High Representative would have under the Treaty of Lisbon to the Council Presidency, as distinct from the High Representative (see Articles 18 and 24 TEU). These Treaty Articles also refer to the distinct role of the Commission.

Secondly, it is legally impossible under the current Treaty for the High Representative to be a member of the Commission (as the Lisbon Treaty provides), since he or she is also Secretary-General of the Council, and since *all* Commissioners, under the current Treaty, must be independent of Member States and the Council (whereas the Lisbon Treaty provides that the High Representative is answerable to the Council as regards foreign policy tasks).

It might be just about possible for the External Action Service to be created under the current Treaty, but in the absence of a ‘double-hatted’ High Representative, it is hard to see who it would answer to. On the other hand, it is arguable that the External Action Service could not legally be created anyway, since the current Treaty could be interpreted to mean that the staff of the Council and Commission should be separate (see Article 207(2) TEC, as regards the Council staff).

Finally, as for the **Commission**, as pointed out above, its numbers *must* be cut from 2009, not 2014, according to the current Treaty, with no possibility of changing this requirement. See further part C below.

### C. **What would be the impact of non-ratification of the Treaty upon the EU?**

First of all, there would be no legal impediment to the **continued functioning of the EU** if the Treaty of Lisbon is not ratified – although of course the rules governing the functioning of the EU would be different if that Treaty were ratified. There would, however, be a severe legal problem if the number of Commissioners were not reduced in 2009, as the current Treaties require – an issue discussed further below.

Secondly, it would still be legally possible to continue with further **EU enlargement**. Although the Treaty of Nice makes a specific reference to 27 Member States in the particular context of changing the rules on the number of Commissioners, there is no provision of the current Treaties which expressly sets any limit on the number of Member States.

Thirdly, the **size of the Commission** would have to be cut from November 2009. More precisely, the current rule, applying since the EU enlarged to 27 Member States on 1 January 2007, is set out in Article 4(2) of the Nice Treaty Protocol on EU enlargement:

The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.

The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.

The number of Members of the Commission shall be set by the Council, acting unanimously.

It is further stated that '[t]his amendment shall apply as from the date on which the first Commission following the date of accession of the twenty-seventh Member State of the Union takes up its duties'. This means that the new rule will apply as from the date of appointment of the next Commission – 1 November 2009.

Article 4(3) of this Protocol also states that '[t]he Council, acting unanimously after signing the Treaty of Accession of the twenty-seventh Member State, shall adopt' the rules on the number of Commission members and on a 'rotation system based on a principle of equality'.

It can be seen that in the current rules, there is no provision, unlike in the Treaty of Lisbon, which would permit the Council or the European Council to maintain one Commissioner per Member State. Also, as noted above, in the Treaty of Lisbon, the obligation to cut the number of Commissioners would only apply from 2014.

Although, under the current rules, the *number* of Commissioners and the details of the rotation system would be set by the Council acting unanimously, legally this could not possibly derogate from the obligation clearly set out in the second sub-paragraph of the Treaty clause that '[t]he number of Members of the Commission shall be less than the number of Member States.' Therefore it cannot legally be maintained that any Member State could exercise a 'veto' on cutting the number of Commissioners. Moreover, the rotation system would have to treat all Member States equally, so no Member State could insist that it retain a Commissioner indefinitely, while *other* Member States rotate theirs.

Legally, if the Council cannot decide on the number of Commissioners to appoint, then a Commission cannot validly be appointed. If the Council purports anyway to appoint a Commission consisting of one Commissioner per Member State in 2009, its action would be invalid, or even non-existent (a term of EU law referring to acts which were clearly in breach of legal rules). Therefore any actions taken by such a purported Commission would be legally non-existent. So this non-existent Commission could not take action against breaches of competition or state aid rules,

and the Council and the European Parliament could not adopt any measures proposed by this Commission. Moreover, it could even be argued that the EP and the Council could not, in at least some cases, adopt measures which were validly proposed by the *previous* Commission, because they would be tainted by the *non-existent* Commission's subsequent involvement in the procedure (if this purported Commission issued an amended version of a proposal, for instance). The non-existent Commission could not validly represent the European Community in negotiations regarding international treaties or at international conferences, for example as regards climate change issues.

There would surely be legal actions challenging the validity or existence of measures adopted or proposed (if they were later adopted) by this non-existent Commission. The Council and/or the purported Commission, the European Parliament or the Member States might be sued for damages incurred as a result of their legally non-existent acts. The Court of Justice might conceivably permit the non-existent Commission to function in office on an emergency basis in order to maintain legal certainty, but this is far from certain. In any case, such a judgment would be highly questionable and might be challenged in the national courts. Undoubtedly the appointment of this non-existent Commission would be an early Christmas present for lawyers.

In short, there would be legal and political chaos.

It would be open to the Member States to amend the current Treaties solely as regards this obligation to cut the number of Commissioners from 2009 – but time is quickly running out to negotiate and ratify such an amendment before November 2009.

As regards **decision-making**, the current rules would remain in force. The retention of current voting rules would particularly impact upon the JHA area, where legal migration, criminal law and policing measures would still be adopted by unanimity in Council and consultation of the EP. This will mean greater difficulty in adopting legal migration measures in particular. On the other hand, qualified majority voting already applies to measures relating to visas, borders, asylum, and civil law (except for family law).

There would no longer be any rush to adopt measures in this area (or some other areas) before 1 January 2009, to avoid the change in decision-making rules. There will still be a rush in all areas of EU law to adopt many measures before the end of the EP's term in June 2009.

Finally, as regards the **European Parliament**, the number of MEPs will be cut to 732, rather than 751 under the Treaty of Lisbon, if the Treaty is not ratified before the next elections in June 2009.