

# The Lisbon Treaty – Implications for ACP-EU Relations

by Eleonora Koeb

Following the positive result of the referendum in Ireland on 2 October 2009 – but pending ratification by one EU member state, the Czech Republic – the Lisbon Treaty is widely expected to enter into force before the end of the year.

Despite a great deal of uncertainty on the interpretation and implementation of some of the new provisions under Lisbon, ACP-EU relations in general and ACP-EU trade relations in particular are expected to be affected in a number of areas. This article looks at a selected number of key issues, in particular the stronger profile the EU is expected to play on the world scene, the more politically driven yet more consistent EU external action under the guidance of the new High Representative of the Union for Foreign Affairs and Security Policy (EUHR), as well as more unified EU external commercial and migration policies.

## *Overall changes in the ACP-EU institutional relationship*

**The Lisbon Treaty will change the way the EU will relate to its international partners** through the two new leading figures in external relations: the EUHR [**High Representative of the Union for Foreign Affairs and Security Policy**] – as the Vice-President of the European Commission (EC), with its diplomatic staff, the **European External Action Service (EEAS)** – and the President of the European Council. Those two figures are expected to **guide a more politically driven EU external action**, in which a multitude of **EU external policies and instruments, including trade and development cooperation, are to be used in a complementary and consistent manner**. The EUHR will coordinate the interplay of the intergovernmental EU Common Foreign and Security Policy and the European Security and Defence Policy with the European Commission's external action areas applied to address a widening agenda of global challenges. This widening agenda is well illustrated by the expansion of the set of overarching objectives of EU foreign relations under the Lisbon Treaty, which now include the eradication of poverty as well as global trade integration.

In this new set-up of EU external relations, **the special traditional institutional relationship of the EU with the ACP cannot be taken for granted anymore**. The implementation of the EEAS will lead to a restructuring of the EC internal arrangements, with uncertain implications for relations with developing countries. The Treaty has the potential to streamline and rationalise the EC development architecture. There are various options of how to address the current multiplicity of instruments with thematically and regionally overlapping coverage managed by fragmented structures.

The main question for the ACP is whether the geographical desks for ACP countries, where the allocation and programming of Official Development Assistance is currently conducted in **DG Development, will be partly integrated into the EEAS and hence be brought under the control of the EUHR**. The **scenario at the other end** of the spectrum of options for EC architectural change would be a **strengthened DG Development, uniting all EU development policy under one Commissioner, merging at least the current DG DEV, the development-relevant part of DG RELEX and DG Europeaid**. Other hybrid models for

the architectural reform are being discussed. The two options sketched represent the two extreme measures, which would bring an end to the current special treatment of the ACP manifested in the traditional geographic identification of DG Development with the ACP.

In this context, it is noteworthy that the reference to the ACP – in place since the Treaty of Maastricht of 1992 that safeguarded the intergovernmental nature of EU-ACP relations – has been removed from the Lisbon Treaty. The ‘Declaration on the European Development Fund’, part of the Treaty of the EU under the Final Act since the Maastricht Treaty, stipulating that the EDF should be outside the budget, has also been removed. These two changes are politically significant and give some indication that the ACP may be sliding from the EU agenda. They also removed some formal barriers to the ‘budgetisation’ of the EDF, but they do not, as such, promote it either.

### ***Changes in the area of EU trade policy***

The Lisbon Treaty brings the entire Common Commercial Policy – including trade in services, foreign direct investment and intellectual property rights, which are currently shared competences – under exclusive EU competence, mostly subject to the co-decision procedure. This will have implications for the capacity of the EC to negotiate trade and investment agreements with third countries.

On the institutional side, DG Trade would not be integrated in the EEAS and the Commissioner for Trade would not necessarily be reporting to the EUHR. There is now a strong case for DG DEV to develop stronger policies on trade and agriculture towards Africa and to set up mechanisms and structures to ensure that EU trade policies are conducive and supportive to development.

In terms of guiding values, the Lisbon Treaty elevates the objective of trade integration to the level of an overarching objective of the EU’s external action. The Treaty of Nice included “the smooth and gradual integration of the developing countries into the world economy” as one objective of development cooperation. While the only objective mentioned in the chapter on development cooperation in the Lisbon Treaty is poverty reduction and eradication, the objectives of external action now include: to “[e]ncourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade”. The adjectives “smooth and gradual” were lost in this re-phrasing, which could be interpreted as an ideological shift.

### ***Changes in the area of EU migration policy***

One of the areas of most profound reform under the Lisbon Treaty is Justice and Home Affairs, where increasing EU integration is expected to accelerate the creation of a common immigration and asylum policy. This change has the potential to impact the capacity of the EC to negotiate agreements with third countries, including on temporary movement of persons (GATS Mode 4). All EU decisions on asylum, immigration and integration will be subject to qualified majority voting in the Council and the European Parliament is given joint decision-making, including on new laws on entry requirements for non-EU nationals. The European Parliament is already on equal footing with the Council regarding most EU legislation dealing with immigration, border and visa issues. But under the Treaty it will gain a stronger say in both legal and illegal migration measures. However, EU member states still maintain an

exclusive right to determine the numbers of foreign nationals admitted to their territory. Also, co-operation in the migration area is supplementary to national regulation and not about the harmonisation of laws (subsidiarity principle). The Lisbon Treaty also strengthens the role of the European Court of Justice (ECJ) abolishing the current restrictions that limit the right to appeal to the ECJ concerning asylum and immigration decisions of the supreme courts in member states. One aim in the Lisbon Treaty is to develop a legislation that ensures uniform status of asylum for nationals from third countries that is valid throughout the Union, and bolsters the rights of third country nationals who are residing legally in a Member State. The text also strengthens the Commission's legal standing to negotiate agreements with home countries on 're-admission' (taking back illegal immigrants).

### ***Taking advantage of opportunities and addressing challenges***

ACP member states collectively and individually may be well advised to keep themselves closely informed of the changes ahead and to acquire a good understanding of the implications of these changes for bilateral relations with the EU as well as for the future the Group. Such understanding would also prepare the ACP as a Group to embark on a reflection process of on their options to respond to these trends and adapt if they are going to protect and further their own interests. In some areas, awareness of the changes should help ACP countries, regions and the ACP Group to take advantage of new opportunities and openings for dialogue with the EU. In other areas, the response to the changing EU context may have to be more inward looking in order for the ACP Group to be able to continue to ensure its relevance and added value to its members and the EU.

### ***Author***

***Eleonora Koeb is a Programme Officer at ECDPM.***

### ***Related resources:***

For an overview of the Lisbon Treaty's implications for development cooperation please refer to: Koeb, E. 2008. "A more political EU external action: Implications of the Treaty of Lisbon for the EU's relations with developing countries" (ECDPM InBrief 21). Maastricht: ECDPM.

For background on the debate on budgetisation of the EDF please refer to Mackie, J. Frederiksen, J and C. Rossini. 2004. Improving ACP-EU Cooperation Is 'budgetising' the EDF the answer?(ECDPM Discussion Paper 51). Maastricht: ECDPM.