



EDITED BY  
MARTIN TRYBUS • LUCA RUBINI

# THE TREATY OF LISBON AND THE FUTURE OF EUROPEAN LAW AND POLICY



# The Treaty of Lisbon and the Future of European Law and Policy

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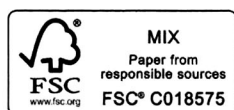
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# Preface: The European Union and the Rule of Law

**Gisela Stuart**

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Wittgenstein thought that the ‘aim of philosophy is to show the fly the way out of the fly-bottle’. The Lisbon Treaty and its precursor, the Constitutional Treaty, was to make the European Union more effective, accountable and transparent, as well as bringing it closer to the people. After years teaching EU law, attending Council of Ministers’ meetings and having been one of the 13 people who drafted the Constitutional Treaty – I, just like Wittgenstein’s fly – am still in need of help. Trying to understand the entirety and complexity of the workings, rules and institutions of what we call Europe makes getting out of the fly-bottle look like child’s play. What’s gone wrong?

For a start don’t call it Europe. It is the European Union, or the Union for short. Europe is a geographic entity which stretches from Ireland in the west to the Urals in the east. It is a historic entity which certainly includes the capital city of the Eastern Roman Empire, known today as Istanbul. The Union on the other hand is a post-World War II construct of currently 27 nation states.

With the Lisbon Treaty the Union is said to have given up its ambition for wider and deeper integration and accepted that it is made up of sovereign Member States; it has no intentions of moving towards a federal structure. Lisbon has given greater powers to the European Parliament, transferred whole swathes of areas from unanimity to qualified majority, done away with the Pillar structure which protected competences, and created new institutions like the Diplomatic Service and a Foreign Representative. One is left to wonder just what else they could they have done had they intended to ‘widen and deepen’.

The Union’s individual components can claim democratic legitimacy, the Union itself cannot. The members of the European Parliament are elected in the Member States. They campaign on national party tickets. Once elected, their political groups in the European Parliament bear little resemblance to the national party they came from. Whether left or right, what

matters much more is whether their party is in government back home or not. Believe me, as a Labour minister in the Blair administration, I constantly had to face the British Labour MEPs voting against us. The Council of Ministers is composed of democratically elected ministers of the Member States, but they change so frequently that the collective memory of the institution remains with Brussels bureaucrats. Until the permanent representations in Brussels become answerable to national parliaments, the deals and trade-offs will forever remain secret and unaccountable. The Commissioners are appointed by democratic Member States, but once they take up office they vow their allegiance to the institution they serve. The European Court of Justice does much more than applying and interpreting the law. Part of its institutional remit is to 'further European integration'. Its interpretations and judicial developments cannot be corrected by further primary legislation as is the case in nation states. Democratic checks and balances are missing in the Union. No wonder that after Lisbon the Union is even more remote from the people than it was before.

Aristotle tells us in his *Metaphysics* that 'the whole is greater than the sum of its parts'. In the case of the Union it's something else. To some this is a great achievement; a supranational organisation which we have not seen before. To others it is a 21st-century form of an empire that becomes consumed by perpetuating self interest in the constant struggle for survival. It is probably a bit of both, but for me democracy is a space within which political discourse can take place, and at regular intervals those who govern can – at will – be removed by those who are governed. If the European Union wants to survive it has to anchor itself in the democratic institutions of the nation state, not try to replace them.

*Gisela Stuart, Member of Parliament for Edgbaston  
Member of the former Convention on the Future of Europe*

# Abbreviations

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CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
C.M.L.R.	Common Market Law Reports
CT	Constitutional Treaty
EC	European Communities
E.C.R.	European Court Reports
ECJ	European Court of Justice
EU	European Union
OJ	Official Journal of the European Union
TFEU	Treaty on the Functioning of the European Union

# Table of legislation

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Agreement between UK and  
Ecuador for the Promotion  
and Protection of Investments,  
UK Treaty Series No. 18  
(1996), Cm. 3076 **280**

Agreement between UK and  
Moldova for the Promotion  
and Protection of Investments,  
UK Treaty Series No. 8 (1999),  
Cm. 4260 **280**

Agreement between UK and  
Philippines for the Promotion  
and Protection of Investments,  
UK Treaty Series No. 7  
(1981) **281**

Charter of Fundamental Rights of  
the European Union,  
OJ [2010] C 83/389  
Preamble **49, 110, 207, 208, 209,**  
**210, 213, 214, 223, 224, 226,**  
**232**

Article 2 **190**

Article 3 **217**

Article 4 **190**

Article 5(1) **190**

Article 5(2) **190**

Article 6 **190**

Article 7 **190, 224, 227**

Article 9 **190**

Article 10(1) **190**

Article 11 **190**

Article 12(1) **190**

Article 14(1) **190**

Article 14(3) **190**

Article 17 **190, 224**

Article 19(1) **190**

Article 19(2) **190**

Article 21 **193**

Article 24 **193**

Article 34 **193, 391, 392**

Article 35 **391, 395**

Article 36 **9, 391, 392, 413, 414,**  
**433, 434, 435**

Article 41 **109**

Article 47(2) **190, 224, 229**

Article 47(3) **190, 224**

Article 48 **190, 224**

Article 48(2) **229**

Article 49 **190, 224**

Article 50 **190**

Article 51 **181, 183, 186, 187,**  
**228, 351**

Article 51(1) **42, 50, 212, 218,**  
**220, 450**

Article 52 **6, 190, 207, 221, 222,**  
**223, 224, 228, 235**

Article 52(1) **228, 453**

Article 52(2) **221, 222, 395, 427**

Article 52(3) **214, 217, 218, 220,**  
**222, 223, 224, 226, 227, 228,**  
**231, 235**

Article 52(4) **214, 217, 218, 221,**  
**222**

Article 52(5) **210, 211, 212, 218,**  
**393, 433**

Article 52(7) **49, 209, 223, 224,**  
**392**

Article 53 **214**

- Community Framework for State Aid in the Form of Public Service Compensation, OJ [2005] C297/4 **417**
- Convention based on Article K3 of the Treaty on European Union on the establishment of a European Police Office, OJ [1995] C 316 **326**
- Convention on simplified extradition procedure between the Member States of the European Union, OJ [1995] C 78 **332**
- Convention relating to extradition between the Member States of the European Union, OJ [1996] C 313 **332**
- Council Joint Action 2004/551/CFSP, on the establishment of the European Defence Agency **314**
- Article 4(3) **314**
- Article 8(2) **314**
- Article 9(2) **314**
- Article 9(3) **314**
- Decision 2000/596/EC of the Council, establishing a European Refugee Fund **366**
- Decision 2004/573/EC of the Council, on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders **374**
- Decision 2004/752, establishing the European Union Civil Service Tribunal OJ [2004] L333/7 **36**
- Decision 2007/435/EC of the Council, establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows **366**
- Decision 2009/809/EU of the Council, Article 2 **28**
- Decision 2009/879/EU of the European Council, Electing the President of the European Council, OJ L 315/48 **247**
- Decision 2009/880/EU of the European Council, taken with the Agreement of the President of the Commission of 1 December 2009 appointing the High Representative of the Union for Foreign Affairs and Security, OJ L 315/49 **247**
- Decision 2009/881/EU of the European Council, Article 1 **28**
- Decision 2009/937/EU of the Council, Annex, Article 2(5) **28**
- Decision 2010/125, appointing the members of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union OJ [2010] L50/20 **37**
- Decision 2010/306, appointing a judge to the Court of Justice, OJ [2010] L137/3 **38**
- Decision 2010/320/EU of the Council, addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit



- reduction judged necessary to remedy the situation of excessive deficit, OJ L 145/6 **83**
- Decision 2010/405/EU of the Council, authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ [2010] L 189/12 **150**
- Decision 2010/411/EU of the Council, on the signing on behalf of the Union of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking program (SWIFT) OJ [2010] L 195 1 **143**
- Decision 2010/427/EU of the Council, Establishing the Organisation and Functioning of the European External Action Service **256, 257, 302**
- Article 1(2) **258**
- Article 1(4) **258**
- Article 2 **255**
- Article 3(1) **258**
- Article 5 **258**
- Article 6 **257**
- Article 9(2) **257**
- Article 9(4) **257, 259**
- Decision 573/2007/EC of the Commission, implementing Decision 573/2007/EC of the European Parliament and of the Council as regards the adoption of the strategic guidelines 2008 to 2013 **367**
- Decision 573/2007/EC of the European Parliament and the Council, establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration flows’ and repealing Council Directive 2004/904/EC **365**
- Decision 574/2007/EC of the European Parliament and the Council, establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ **366**
- Decision 575/2007/EC of the European Parliament and the Council, establishing the European Return Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ **366**
- Decision 69/494/EEC of the Council, on the progressive standardization of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements **268, 279**
- Decision ECB/2010/5 of the European Central Bank, establishing a securities markets programme, OJ [2010] L 124/8 **82, 86**

- Decision N541/2004 and N542/2004 – C (2005) 1329 fin of the Commission, on the Introduction of a Risk Equalisation System in the Dutch Health Insurance **421**
- Decision 2009/371/JHA of the Council establishing the European Police Office (Europol) OJ [2009] L 121/37 (Europol Decision) **326, 333, 336, 337**
- Decision 2011/199/EU of the European Council, amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the Euro, OJ [2011] L 91/1 **84**
- Decision 8675/2/98 of the Council, European Union Code of Conduct on Arms Export, DG E-PESC IV **307**
- Directive 2000/78/EC of the Council, establishing a general framework for equal treatment in employment and occupation, OJ [2000] L303/16–22 **191**
- Directive 2001/40/EC of the Council, on the mutual recognition of decisions on the expulsion of third country nationals **373**
- Directive 2003/9/EC of the Council, laying down minimum standards for the reception of asylum seekers **358**
- Directive 2003/87/EC of the European Parliament and of the Council, establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC OJ L 275 **288**
- Directive 2003/110/EC of the Council, on assistance in cases of transit for the purposes of removal by air **374**
- Directive 2004/38/EC of the European Parliament and of the Council, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ [2004] L158/77 **423**
- Directive 2004/83/EC of the Council, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted **370**
- Directive 2005/85/EC of the Council, on minimum standards on procedures in Member States for granting and withdrawing refugee status **371**
- Directive 2006/123/EC of the European Parliament and of the Council, on services in the internal market, OJ [2006] L376/36 **417**
- Directive 2008/104/EC, Agency Workers Directive, OJ [2008] L327/9 **442**
- Directive 2008/115/EC of the European Parliament and of