

## **Dóchas Discussion Paper**

### **The EU Reform Treaty from a Development Perspective.**

**April 2008**

This document outlines some of the key points of the EU Reform Treaty from a Development perspective.

It specifically does not set out to provide a recommendation for or against ratification of the Treaty. Rather, it aims to highlight some of the Treaty's pros and cons from a Development viewpoint and presents recommendations for its effective implementation.

In publishing this paper, Dóchas aims to contribute to the public debate on the Lisbon Treaty, and to highlight the Treaty's importance for the way in which Europe interacts with the world.

#### **1. BACKGROUND**

##### **The EU Reform Treaty was agreed to provide the EU with the institutional set-up to deal with its rapidly growing membership and mandate.**

The EU Reform Treaty (also known as the Lisbon Treaty) was agreed by European Heads of State and Government in Lisbon on 18<sup>th</sup> and 19<sup>th</sup> October 2007.

Since its formation 50 years ago, the EU has been governed by a set of rules laid out in a series of treaties. These have been amended over time to adapt to a changing and expanding European Union. With membership now numbering 27 countries, there is a need to adapt the current EU governing treaties to meet demands of the growing union. The Reform Treaty is the latest of these.

##### **The Treaty is not easily accessible, but key to the EU's future.**

Initially, the Treaty was presented as a European Constitution (worked on under Ireland's EU Presidency in 2004), in the hope of simplifying the legal basis of the EU. When the Constitution was rejected in referendums in the Netherlands and France, Member States opted for the more traditional format of amendments to existing treaties, namely The Treaty Establishing the European Community (Rome) and the Treaty on European Union (Maastricht).<sup>1</sup>

The Treaty therefore reads as a series of amendments to existing texts, and is impossible to read without having access to those other texts. As a result, the Reform Treaty is a complicated and inaccessible document. But no less important.

The Reform Treaty can only come into effect once it is ratified by all member states.

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<sup>1</sup> The English text of the Treaty can be found here: <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf>

## 2. INSTITUTIONAL REFORM

**One of the most significant aspects of the Reform Treaty is that it paves the way for significant institutional reform of the EU.**

Most of the changes proposed by the Reform Treaty are aimed at simplifying decision-making processes in an enlarging European Union, and strengthening democratic accountability.

The Reform Treaty introduces a number of institutional changes: <sup>2</sup>

- The **EU Presidency** will cease to rotate among Member States; in stead a semi-permanent position of President of the Council is created.<sup>3</sup>
- The number of **Commissioners** will be reduced from 27 to two-thirds of the number of Member States (ie. 18 at present).
- The **High Representative for Foreign Affairs** will represent both the Council and the Commission.
- The **European Parliament** will have co-decision powers in many more areas, including agriculture, fisheries, transport, justice and home affairs. The number of MEPs will be reduced to 751.
- A veto is introduced for **national parliaments**: One third of national parliaments can block legislative proposals. Parliaments will also be given more time to scrutinise EC proposals.<sup>4</sup>
- **Qualified majority voting** in the Council is extended to cover more areas. Unanimity is only required in areas such as tax, social security and foreign/security policy.
- **Citizens** will be able to force proposals from the Commission, once they have collected one million signatures in support of their cause.

**The new post of a High Representative for Foreign Affairs offers the potential for greater coherence, but also the danger that the aim of the coherence is Security, not Development.**

The **High Representative of the Union for Foreign Affairs and Security Policy** will combine the jobs of the current High Representative for the Common Foreign and Security Policy and the European Commissioner for External Relations. Based in the Council of Ministers, the High Representative will be responsible for EU external policies. He/She<sup>5</sup> will also chair the EU's Council of Ministers dealing with external issues. Alongside this, the High Representative will also have a role in the Commission as Vice President and will coordinate all the EU's external policy areas in addition to those where the Commission currently have competence, including: development, trade, economic cooperation and humanitarian aid.

**The Treaty also establishes a new civil service, to help implement the EU's foreign policy.**

Provision has also been made in the Reform Treaty for the establishment of an EU diplomatic service: the **European External Action Service (EEAS)**. This Service will support the High Representative in carrying out his/her mandate. Officials will be drawn from 'relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states'.

<sup>2</sup> These changes will only come into effect if the Treaty is ratified, and after a transitional phase 2009- 2014.

<sup>3</sup> The Treaty creates the position of President of the Council. Technically, however, the Council of Ministers will continue to rotate its chairmanship, with the exception of the General and Foreign Affairs Council, which will be presided by the High Representative.

<sup>4</sup> Any Council decision can be vetoed by a certain number of Member States representing 66% of the EU's population.

<sup>5</sup> The Treaty text systematically refers to the High Representative as "he".

### 3. IMPLICATIONS FOR DEVELOPMENT

**From a Development perspective, one of the key positives of the Treaty is that it puts Poverty Eradication at the heart of the EU's development policies.**

Development cooperation and humanitarian aid are covered under Title III of the Reform Treaty. It puts poverty eradication at the heart of the Treaty's development agenda.<sup>6</sup>

Article 208 of the Treaty on the functioning of the European Union:

“Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy **shall have as its primary objective the reduction and, in the long term, the eradication of poverty.**

**The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.**

The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.”

The Treaty also provides scope for a strong, independent voice for development, and for the first time, outlines legal provision for humanitarian assistance. It specifically mentions its role in contributing to ‘peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication poverty and the protection of human rights’. By advocating for these, and by placing poverty alleviation centrally, the Treaty therefore presents an opportunity to promote a responsible global role of the EU.

Art 188 J:

**“The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union.** Such operations shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's measures and those of the Member States shall complement and reinforce each other.

**Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.**

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.”

**The Treaty recognises that Development is more than “aid”, and highlights the need for policy coherence.**

The Treaty maintains the principle that EU policies must consider their impact on developing countries (art. 208): ‘The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries’. Such statements are in line with international commitments to poverty eradication, specifically the Millennium Development Goals.<sup>7</sup>

<sup>6</sup> This article draws on Articles 177(1), 177(3) and 178 TEC. Paragraph 1 as formulated in the Lisbon Treaty places relatively greater emphasis on the new ‘primary objective’ of poverty reduction and eradication.

<sup>7</sup> Art. 9 speaks of the need for ‘consistency’ in the Union's external actions.

This means that the Treaty builds on the Maastricht Treaty's recognition that internal and external policies may have an impact on developing countries, and strengthens it by reinforcing the poverty eradication objectives of the Union's development cooperation policy.

**The Treaty acknowledges an increased number of Development issues - such as climate change, energy, fair trade ('free and fair trade'), humanitarian action and civil dialogue - which were not explicitly on the EU agenda before.**

The Reform Treaty significantly raises the profile of sustainable development, citing the fight against climate change as one of its main objectives. Sustainable development is better defined under the Treaty. For the first time there is also a section on energy. Free and fair trade is likewise endorsed as a principle. Similarly, the Charter of Fundamental Rights is legally adopted under the Treaty, further embedding the rights agenda into EU policy frameworks.<sup>8</sup>

Although the words "climate change" only appear in the Lisbon Treaty once, there are several amendments which will influence internal and external climate-change policy in the EU: The objectives of the EU have been amended - achieving "balanced and sustainable development" has been replaced with the more forceful "it [the EU] shall work for sustainable development . . . and a high level of protection and improvement in the quality of the environment"<sup>9</sup>, and Article 191(1) commits the EU to "promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change".

The Treaty, in addition, recognises the power of civil action. Art 8B binds the EU institutions to an "open, transparent and regular dialogue with representative associations and civil society" and the Treaty initiates a procedure whereby one million EU citizens can request action by the EU in areas of EU competence.<sup>10</sup>

**By strengthening the European Parliament's mandate for co-decision, the Treaty extends democratic scrutiny.**

The Treaty extends the areas where the European Parliament has co-decision power.<sup>11</sup>

**The incorporation of Humanitarian Aid principles provides scope for quicker financial aid in the future.**

The Treaty states that, "in case of urgent financial aid, the Council will act by qualified majority upon a proposal from the Commission. This should mean quicker financial aid in the future".

While this statement is welcomed, it must also be backed up with effective institutional structures to meet these aims. The EEAS and the Commissioner for Development<sup>12</sup> should have the scope and budgets to be able to respond accordingly to humanitarian need. It is essential also that Humanitarian Aid remains independent from Security concerns and Foreign Policy. Under no circumstances should the principle of independence for Humanitarian Aid be compromised, irrespective of European or International political climates. Humanitarian Aid should remain impartial and neutral.

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<sup>8</sup> In practice, the Charter already formed part of EU jurisprudence. The main improvement in this context relates to the Charter becoming legally enforceable to the treatment of citizens by the EU's own institutions.

<sup>9</sup> Article 3(3) of the Treaty on European Union.

<sup>10</sup> It is important to note that this Citizens Initiative could, in fact, have the opposite effect, as it introduces stipulations regarding who may or may not petition any part of the EU, where there currently are none. It also only applies to situations where citizens wish to 'invite' the European Commission to consider a legal act that is required for the purpose of implementing the treaties.

<sup>11</sup> Article 188 confirms the role of the European Parliament in EU decision-making in the area of development policy. The EP already had the right to scrutinise all Development policies, as part of the "comitology procedures". In addition, the EP had a say in the discharge of the European Development Fund, as well as the Commission's aid budget.

<sup>12</sup> The reduction in the number of Commissioners foreseen in the Lisbon Treaty will not take effect until 2014.

## **4. ARGUMENTS AGAINST & RISKS**

**Ratification of the Treaty is not enough to guarantee the treaty's success from a development perspective. Reform of the EU must ensure that sufficient mechanisms for implementing the treaty are in place.**

While the proposed new structures have the potential to streamline decision-making and forge greater cohesion between the institutions, there is no guarantee that Development will remain a clear focus within the institutions. Development should have a clear administrative structure within the EU, with sufficient funding and staff to help meet international development targets.

Worth noting here that in recent years the Union has dissolved the Development Council (meeting of Development Ministers), relegating development to two GAERC meetings each year.

**Inherent in the Treaty is a risk that both development and humanitarian responses will be subjugated to political objectives.**

Both the High Representative and the EEAS have the potential to make a significant positive contribution to the EU's development policy, forming important new institutional architecture which will help to bridge the current communication divides between the two 'pillars' of the current EU set up: the Council and the Commission.

While the merging of the roles of High Representative and Security Policy creates an opportunity for reform, it may well end up sidelining development concerns. The 'double-hatted' nature of the role of the High Representative is an opportunity to increase consistency in policy areas. Importantly, however, the mandate of the High Representative stresses the centrality of Security issues, not Development. It is unlikely that the High Representative will prioritise Development priorities in this high-powered position, that is built around the EU's foreign and security interests.

The establishment of the European External Action Service (EEAS) also presents a risk that EU development funds are diverted to financing EU foreign policy objectives. The EEAS essentially is there to support the role of the High Representative. All currently existing regional Commission departments, as well as those that focus on themes such as Human Rights, anti-terrorism, nuclear non-proliferation and the EU's relations with the UN, may well become part of the new EEAS.<sup>13</sup> Issues such as Development, Trade and Enlargement will, in contrast, remain a Commission competence.<sup>14</sup>

As the composition, size, roles and responsibilities of the EEAS remain to be defined by the Council, the real benefits of this new service remain unclear, and will do so until after the Treaty is ratified.

**The principles of partnership and independence are not incorporated into the Treaty.**

Article 10 A sets out the principles for the Union's actions on the international scene: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."

The development chapter in Treaty does not set out further principles, as these are formulated in other documents such as the EU Consensus on Development and the EU-Africa Strategy.

Similarly the humanitarian aid chapter (art. 188J) does set out the principles of "impartiality,

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<sup>13</sup> The precise role, competencies and composition of the EEAS are yet to be defined.

<sup>14</sup> It is important to note that Trade and Development will remain separate policy areas, under separate Commissioners.

neutrality and non-discrimination”, but omits a statement on the principle of independence. This principle - that humanitarian assistance should be free of political objectives - has previously been endorsed by the European Community Humanitarian Office.

**The Treaty also carries a significant risk for the future political standing of Development issues, as it is unlikely that a separate Commissioner for Development can be guaranteed.**

As part of EU structural reform the number of EU commissioners will be reduced from 27 to 18. Under this arrangement there is no guarantee of a permanent **Commissioner for Development**. The current commissioner will be in place until 2009, after which the status remains unclear<sup>15</sup>. A permanent Commissioner of Development would help to ensure consistency in the EU development cooperation policies, and should be strongly encouraged.

**The Treaty calls for the establishment of a Voluntary Humanitarian Aid Corps; exactly that against which NGOs have campaigned for some time.**

In addition to the establishment of the High Representative and the EEAS, the reform treaty also makes provision for the creation of a European Voluntary Humanitarian Aid Corps (Title III, Chapter III, Article 118j). Arguing that achieving quality and accountability is essential for effective humanitarian assistance, many NGOs have consistently opposed this idea.

**The Treaty also copperfastens some recent tendencies to increase military cooperation among Member States, both inside and outside Europe’s own borders.**

Article 28A makes a number of statements about the need for closer military cooperation among EU Member States. Crucially, none of the statements will override “the specific character of the security and defence policy of certain member states”, but the overall tendency of the Treaty is clearly in favour of stronger collective defence.

The Treaty also states that “the common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.”

These tasks “in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.” (art. 28B)

**In the area of trade, the Treaty introduces a few new powers for the Commission, which will strengthen the EU’s role in pushing for trade liberalisation.**

Article 188 B states that “the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.”

This means that trade policy is now explicitly referred to as being part of the EU’s external agenda, which may increase the potential for policy coherence. However, the Treaty confers greater powers to the European Commission in this area, without a corresponding increase in accountability to either the European Parliament or to national parliaments. As a result, EU trade policy will remain opaque and surreptitious.

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<sup>15</sup> Commission portfolios are determined by the Commission President.

## 5. RECOMMENDATIONS

**For the members of Dóchas, it is imperative that the European Union takes every opportunity to reinforce its role in the world to promote principled development.**

The Treaty – if passed – will pave the way for institutional change that should allow Europe to play this role more effectively. The key question is whether Europe will follow through on the principles and aspirations of the Treaty, and put in place an effective infrastructure to achieve the objective of poverty eradication.

Dóchas members believe that there are a number of key ways in which the EU can strengthen its role as a positive agent for change:

- **Development policy should remain separate to Common Foreign and Security Policy**, helping to maintain a clear, independent place for development. New services and mechanisms should ensure that wider EU policies are consistent with Development objectives. Under no circumstances must Development and Humanitarian Aid policies become instrumentalised in the EU's foreign and security policies.
- **The EU's Development policy should apply to all developing countries.** The Development Service, including the Commissioner for Development, should be responsible for all programming in developing countries, to avoid any inconsistencies between African Caribbean and Pacific Countries (ACP) and other developing countries (These countries are currently split between DG Development and DG Relex).
- There should be a **permanent Commissioner for Development**, to ensure representation of Development perspectives at the highest political level and to ensure coherence in EU decision-making. The Commissioner should have a say on both development policy and funding and the implementation of those policies and budgets.
- While the Treaty does acknowledge the important of policy coherence, there is a need to **develop pro-development trade policies**, which are coherent with the EU's wider development objectives. This work should be incorporated into the roles of the High Representative and the Commissioner for Development and supported by the EEAS.
- The **mandate of the EEAS should clearly outline the importance of Development objectives in its work.** These objectives should be matched by sufficient budget lines, which remain separate to Foreign Policy and Security funding.
- **The Commissioner for Development and other relevant Commissioners must be accountable to the European Parliament** for all their actions.
- **Reference should be made to the principles of independence and partnership in Development**, and should be endorsed by all the new or restructured institutions within the EU.
- **New EU Delegations should include development professionals** to help ensure that poverty eradication remains central to EU international operations.

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