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978-0-521-14234-2 - The Lisbon Treaty: A Legal and Political Analysis

Jean-Claude Piris

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## THE LISBON TREATY

Given the controversies and difficulties which preceded the coming into force of the Lisbon Treaty, it is easy to forget that the Treaty is a complex legal document in need of detailed analysis for its impact to be fully understood. Jean-Claude Piris, the Director-General of the Legal Service of the Council of the European Union (EU), provides such an analysis, looking at the historical and political contexts of the Treaty, its impact on the democratic framework of the EU and its provisions in relation to substantive law. Impartial legal analysis of the EU's functions, its powers and the treaties which govern it make this the seminal text on the most significant recent development in EU law.

SINCE 1988, JEAN-CLAUDE PIRIS has served as the Legal Counsel of the Council of the EU and Director-General of its Legal Service. He is an Honorary Counsellor of State of France, a former diplomat at the UN and the former Director of Legal Affairs of the OECD. He was the Legal Advisor of the successive Intergovernmental Conferences which negotiated and adopted the treaties of Maastricht in 1992, Amsterdam in 1997 and Nice in 2001, the Constitutional Treaty signed in Rome in 2004 and, finally, the Lisbon Treaty in 2007.

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To Margrét Thoroddsdottir-Piris and Anne-Sophie Sunna  
Piris, my wife and daughter, for their constant support and  
patience during the time of writing this book.

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I do absolutely believe in the European project.

I think it is the most noble political ideal  
in European history in a thousand years.\*

\* Peter Sutherland, chairman of British Petroleum, chairman of Goldman Sachs International, chairman of London School of Economics, former EU Commissioner and former Director-General of the World Trade Organization. Interview by Harry Eyres, *Financial Times*, 3–4 January 2009.

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## FOREWORD

Mit dem Vertrag von Lissabon wurde ein neues Kapitel der europäischen Geschichte aufgeschlagen. Einen entscheidenden Impuls für diesen neuen Vertrag gaben die Feierlichkeiten zum 50. Jahrestag der Unterzeichnung der Römischen Verträge am 25. März 2007. Denn hier bekannten sich die europäischen Staats- und Regierungschefs in der “Berliner Erklärung” zu den gemeinsamen Werten, Aufgaben und Strukturen der Europäischen Union – und dazu, die Europäische Union auf eine erneuerte gemeinsame Grundlage zu stellen.

Diesen Willen in ein Mandat für eine Regierungskonferenz umzusetzen, war sicherlich nicht einfach. Dass dieses Ziel schließlich noch während der deutschen Ratspräsidentschaft auf dem Europäischen Rat vom 21. bis 23. Juni 2007 erreicht wurde, ist auch ein Verdienst von Jean-Claude Piris als Generaldirektor des Juristischen Dienstes des Rates. Die Mühen haben sich gelohnt. Denn der Vertrag von Lissabon macht die Europäische Union nach außen stärker und selbständiger und nach innen demokratischer. Die Union ist damit für die neuen Herausforderungen der zunehmend globalisierten Welt besser gerüstet.

Mit Inkrafttreten des Vertrags von Lissabon am 1. Dezember 2009 wurde ein vielschichtiger Reformzyklus erfolgreich abgeschlossen, der bereits mit den Verhandlungen zum Vertrag von Maastricht begann. Das vorliegende Buch zeichnet die historischen Linien nach. Dadurch werden die Wurzeln und Bezüge der zentralen Regelungen klar herausgearbeitet. Daneben stellt das Werk auch die wichtigsten Urteile zum Vertrag von Lissabon dar – beispielsweise das Urteil des deutschen Bundesverfassungsgerichts. Das Buch leistet somit eine umfassende Einordnung des geltenden Primärrechts der Europäischen Union aus einer berufenen Hand.

*Angela Merkel  
Bundeskanzlerin  
Bundesrepublik Deutschland*

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## FOREWORD (TRANSLATION)

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The Lisbon Treaty opened a new chapter in European history. The celebrations on 25 March 2007 to mark the fiftieth anniversary of the signing of the Treaties of Rome were a significant driver of this new Treaty, for it was on this occasion that the European heads of state or government, in signing the Berlin Declaration, committed themselves not only to a set of shared values, tasks and structures within the European Union but also to placing the European Union on a renewed common basis.

Converting this commitment into a mandate for an Intergovernmental Conference was by no means easy. The fact that this goal was indeed accomplished at the European Council meeting held on 21–23 June 2007 – and still within the period of the German EU Council Presidency – was thanks in no small part to Jean-Claude Piris in his role as Director-General of the Council Legal Service. It was worth the effort. For the Lisbon Treaty makes the European Union stronger and more independent in foreign policy but internally more democratic, which means it is better equipped to face the new challenges of an increasingly globalised world.

With the entry into force of the Lisbon Treaty on 1 December 2009, a complex cycle of reform that had in fact begun with the negotiations for the Maastricht Treaty was successfully completed. This book traces the outline of the historical process and in so doing clearly elucidates the roots of the core provisions and also the relationships between them. At the same time the work illuminates the most significant judgments relating to the Lisbon Treaty – for instance the judgment by the German Federal Constitutional Court. The book achieves in effect a comprehensive assessment of existing primary law in the European Union, written by an authoritative hand.

*Angela Merkel*  
*Chancellor*  
*Federal Republic of Germany*  
*(Berlin, November 2009)*

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ABBREVIATIONS

CAP	common agricultural policy
CFSP	Common Foreign and Security Policy
Coreper	Committee of Permanent Representatives <sup>1</sup>
COSAC	Conference of European Affairs Committee of national parliaments <sup>2</sup>
COSI	Standing Committee on operational co-operation on internal security <sup>3</sup>
CSDP	Common Security and Defence Policy
Cst	Treaty establishing a Constitution for Europe
EAEC	European Atomic Energy Community (Euratom)
EC	European Community/Communities
ECB	European Central Bank
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEAS	European External Action Service
EEC	European Economic Community ('EC' after the 1992 Maastricht Treaty)
EIB	European Investment Bank
EMU	Economic and Monetary Union
EP	European Parliament
ESDP	European Security and Defence Policy
EU	European Union
Euratom	European Atomic Energy Community (EAEC)
Eurojust	European Union's Judicial Co-operation Unit
Europol	European Police Office
FP	Financial Perspectives
FSJ	Freedom, Security and Justice
FYROM	Former Yugoslav Republic of Macedonia
GNI	Gross National Income

1 French acronym for 'Comité des Représentants Permanents'.  
2 French acronym for 'Conférence des Organes Spécialisés dans les Affaires Communautaires et européennes des parlements de l'Union européenne'.  
3 French acronym for 'Comité permanent de coopération opérationnelle en matière de Sécurité Intérieure'.

HR	High Representative (of the Union for Foreign Affairs and Security Policy) (after the Lisbon Treaty)
HSG	heads of state or government
IGC	Intergovernmental Conference
IIA	Interinstitutional Agreement
JHA	Justice and Home Affairs
MEP	member of the European Parliament
MFF	Multiannual Financial Framework
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
OJ	<i>Official Journal of the European Union</i> (before 1 January 2003: <i>Official Journal of the European Communities</i> )
OLAF	European Anti-Fraud Office <sup>4</sup>
QMV	qualified majority voting
SG/HR	Secretary General/High Representative for CFSP (before the Lisbon Treaty)
SIS	Schengen Information System
TEC	Treaty establishing the European Community
TEU	Treaty on European Union ('former TEU': refers to the Treaty on European Union in force before 1 December 2009)
TFEU	Treaty on the Functioning of the European Union
VIS	Visa Information System
WEU	Western European Union

4 French acronym for 'Office européen de Lutte Anti-Fraude'.