



The Implications of the Lisbon Treaty for Sexual and Reproductive Health Rights Advocates

A Short Overview

The EU has emerged as a major actor in international development cooperation, both in terms of granting development aid and as a trading bloc. The Lisbon Treaty, which entered into force on 1 December 2009, is envisioned to enhance the Union's newly-acquired legal personality and capacity as a global actor and aims to increase the efficiency and effectiveness of the EU institutions and their decision-making mechanisms. For this to be realised, some far-reaching reforms of the EU's institutional architecture were required. There are expectations that progress in EU integration and

a stronger EU profile in the world would strengthen specific aspects of the EU's development policy. With promises of greater efficiency and improved quality of delivery to partners in the South, the Treaty is hoped to deliver a good framework for encouraging the necessary policy space for development cooperation and SRH to thrive. However, risks for EU development cooperation within the Treaty have also been expressed such as a drive for 'consistency' in all EU external relations, where development and humanitarian responses could be subordinated to political and security objectives.

Key Points for SRH Advocacy

The Lisbon Treaty introduces a specific legal basis for humanitarian aid. Development cooperation is clearly identified as a separate and independent policy area with EC competence and is centered on the main objective of poverty eradication.

*'Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty.'*¹

The specific objectives of development cooperation have been concentrated in line with the UN's Millennium Development Goals (MDGs) to underline the reduction and long-term eradication of poverty. This implies, among other things, that development policy is a policy area in its own right and not an accessory of the Common Foreign and Security Policy (CFSP). However, as development policy is to comply with the principles and objectives of the Union's external action² observers fear that development policy and humanitarian aid would be less autonomous vis-à-vis the general objectives of EU external policy.

It is important that development and SRH advocates ensure that development policy maintains and operates on the basis of its own principles, objectives and instruments and is on an equal footing with EU foreign, security and commercial policy agendas.³

Development cooperation and humanitarian aid remain "shared parallel competences" between the EU and its member states in the Lisbon Treaty. Hence it is important that the Treaty states that EU and member state development cooperation must "complement and reinforce each other"⁴ leading to greater clarity between the roles of the Commission and the member states, enhanced donor coordination and a better division of labour⁵ in the interests of greater aid effectiveness.⁶

The coherence obligation within the Treaty offers a unique opportunity to ensure that the EU's internal and external policies that have an impact on developing countries are coherent with EU development objectives. This clause can contribute to a strengthened position of development and SRH vis-à-vis the CFSP. Policy decisions taken in all policy areas should be supportive of the EU's pursuit of its development objectives and should certainly not undermine them.⁷

Important Changes for SRH Civil Society - Where do We Stand Now?

The Treaty will introduce some significant changes to the underpinning legal provisions of the EU and lead to a significant number of reforms to the EU's institutional structures, whilst also having the potential to streamline and rationalise the EU's development and SRH architecture. However, civil society must



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remain vigilant to ensure that development and SRH concerns are represented at the table when it is decision-making time.

“Double Hatted” High Representative Foreign and Security Policy (HRFASP)

Catherine Ashton, the first HRFASP of the EU, assumed her post in November 2009 when appointed at a summit of the 27 European Council leaders. A British Labour politician, Ashton previously had an EU trade portfolio where she championed trade as a means of promoting development around the world, putting the EU's economic relationship with African, Caribbean and Pacific (ACP) countries on a firmer footing.⁸

Her position is seen as a “novelty” due to being both a member of the EU Council of Ministers and Vice-President of the European Commission. Lobbyists approaching her “will have to take into account the Commission’s position on a specific dossier as well as that of the majority of member states as she represents both.”⁹ Also within her mandate is to chair the new Foreign Affairs Council, represent the EU externally and ensure consistency of the EU's external policies.

This may present an opportunity to strengthen EU external action in the EU's relationship with third countries. However, it cannot be taken for granted that the new service will attach equal importance to attaining the EU's development, SRH policy objectives and the MDGs. It is uncertain whether development would be brought to the heart of EU political processes, alongside other EU interests or submitted to the ‘political control’ of the HRFASP,¹⁰ therefore politicising the EU's aid-giving.

The key to coherence is collaboration. Therefore, it will be important to advocate a strong, close relationship between the Commissioners for Development and for Humanitarian Assistance. They should be on an equal footing with the HRFASP and be in a position to promote the interests of EU development policy in order to avoid instrumentalising development programmes in support of foreign policy objectives.

Having a well-appointed team which is knowledgeable of development issues and the ICPD¹¹ agenda can promote a good understanding between the two positions and help ensure a healthy balance between development and foreign policy priorities while maintaining focus on SRH.

European External Action Service (EEAS)

The set-up of the EU's new diplomatic service (EEAS) will assist the HRFASP to shape the foreign policy agenda. Comprising of staff from the Commission, Council Secretariat and seconded staff from the member states, the EEAS is unique and separate from the Commission and Council Secretariat.

NGOs should advocate to assure the EEAS reflects the common values and principles of the European Consensus on Development with dedicated human rights and gender experts included in each EU delegation. The EEAS will play a leading role in the strategic decision-making and will be jointly involved in the whole programming chain, alongside the HRFASP and the relevant Commissioners. Trade and development policy remain the responsibility of relevant Commissioners and Directorates-General of the Commission.

The Presidency report issued on the guidelines for the EEAS only points out that ‘the specific division of labour for programming the geographical and thematic instruments (European Partnership and Neighbourhood Instrument (EPNI), Development Cooperation Instrument (DCI) and European Development Fund (EDF) between the EEAS and the Commission services is yet to be determined.’¹²

These competences are to be decided by the HRFASP, Catherine Ashton, who has to submit her formal proposal to decipher the exact organisation and function of the EEAS, with a view to its adoption by the Council at the latest by the end of April 2010. This will be an important time for SRH advocacy to ensure that the development voice is heard amongst all these new changes.

The Development Commissioner is responsible for AIDCO (the DG responsible for the implementation of aid) without prejudice for the future creation of the EEAS.¹³ This means that the programming and implementation of development cooperation may be split between the High Representative and the Development Commissioner. Latvian Andris Piebalgs, former energy Commissioner, is the Commissioner-designate for Development. It will be important for SRH advocates to push for him to have a strong budget, a clear programming mandate and control over implementation.¹⁴

It will also be important for development and SRH advocates to ensure that the EEAS creates a culture of, as well as processes



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and systems for, regular dialogue and collaboration with civil society, including commissioning civil society to implement elements of its work where appropriate.¹⁵

General Affairs External Relations Committee (GAERC) Splits

The Treaty splits the former GAERC into two bodies: the General Affairs Council (GAC) which is the coordinating body ahead of European Council meetings, and the Foreign Affairs Council (FAC) which deals with the whole of the EU's external action, including CFSP, Common Security and Defence Policy, foreign trade and development cooperation. The HRFASP will be given more power under this new structure, as she will be the permanent chair of the FAC where foreign policy will be developed, whereas the GAC will be chaired by a rotating presidency and therefore will be a forum for the ministers of the member states.

Within the FAC, the HRFASP assisted by the EEAS, will conduct political dialogue with third countries on the Union's behalf and will also be responsible for development cooperation and humanitarian aid. The Development Commissioner also has a seat on the FAC and it will be important that the development voice is heard amongst the EU's external action to ensure coherence of the EU's messages towards third countries.

EU Delegations

Under the Treaty, the EU has attained a single legal personality, giving it a strengthened negotiating power, to be more effective on the world stage and a more visible partner for third countries and international organisations. All 136 Commission delegations were renamed "EU delegations" and 54 of these foreign delegations have been converted into embassy-type missions authorised to speak for the entire Union.

In practice, this will mean that these new "super-delegations" will take over the work that was previously done by the national embassies of the member state holding the rotating EU presidency. The heads of the 54 delegations are also empowered to speak on behalf of the EU as a whole after their statements have been pre-approved by the member states in Brussels.¹⁶ All this confirms that advocacy work with the EU delegations has become even more important now, as they will hold a key role in coordinating the EU's positions and priorities on sexual and reproductive health.

Moreover, it will be important to ensure that the new EU delegations include development and health professionals to strengthen and maintain the development and SRH voice. Development officials within the delegations should report directly to the Development Commissioner and work closely with the political desks to ensure coherence.¹⁷ SRH organisations could advocate for training on the ICPD and MDGs to be offered or required in EU delegations.

More Power for the European Parliament (EP)

The Lisbon Treaty gives the European Parliament new lawmaking powers: it now decides on the vast majority of EU legislation and also will enjoy full parity with the Council in deciding the EU Budget. Over 40 new fields come under the procedure for co-decision - the joint adoption of legislation by the Parliament and the Council of Ministers proposed by the European Commission, making it the normal legislative procedure. The Parliament attains increased inclusion during all stages regarding the procedure for negotiating and concluding international agreements between the EU and third countries or international organisations.

As the Treaty has enhanced the Parliament's power and position within the EU, it is important to ensure that there is proactive EP scrutiny and oversight in relation to SRH, development cooperation and humanitarian aid.

Improved communication between national MPs knowledgeable about ICPD and MEPs could help assure that the newly empowered EP acts to strengthen policies and funding for ICPD.

Implications for ACP-EU Relations

European development cooperation was previously geographically split between the African, Caribbean and Pacific (ACP) group, (managed by DG Development) and the rest of the world (managed by DG External Relations). It was also split institutionally between policy/programming and implementation. This caused inconsistencies between the treatment of the ACP and other developing countries. The Lisbon Treaty is going to change the old relationship between EU and ACP countries, rationalising the EU development architecture. One alternative is the possible loss of the ACP group in the current DG Development set-up, as the country desks maybe transferred to DG External Relations, thus weakening the position of the ACP group and accelerating the watering down of the ACP-EU relations in the context of



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the EU's development cooperation policies.¹⁸ However, the Cotonou Partnership Agreement - one of the largest North-South Partnerships - remains a stable foundation for ACP-EU relations until 2020.

European Development Fund (EDF)

'Budgetisation'?

The EDF is the EU's main means of supporting ACP countries. "Budgetising" involves incorporating the EDF into the EU budget. The European Parliament, a traditional supporter of budgetisation, remains firm in its view that if the EDF were budgetised it could protect the level of funding available for the ACP, while increasing European democratic legitimacy and control of ACP development expenditures.¹⁹ The EDF is currently the only EU financial instrument that is not subject to the full democratic control of the Parliament, and it's a big one with €22,682 billion allocated between 2008 -2013. Appropriations for the EDF are contributed voluntarily by member states outside of the general EU budget; therefore the EP has no oversight over the whole process. Some governments will resist budgetisation because how much each member state contributes to the general EU budget is based on different measurements of

wealth from those used for the EDF.²⁰

If the EDF would be budgetised and come under the co- decision procedure, this would represent increased power over ACP cooperation resources and would increase European democratic control and accountability. This would in principle be welcomed by development and SRH advocates as the Parliament is the most accessible and "development sensitive" of the institutions.²¹ It would also eliminate differences between the rules for the use of EDF money and the rules for other EU development support. The budgetisation of the EDF would have to ensure that there is no net reduction of funding made available for the EU's development cooperation.

With the Lisbon Treaty in force, a decision on budgetisation will only require a decision of the Council. In the process of the 2008/2009 budget review, the European Commission has drafted a communication, presenting its vision for a future EU budget reform. This paper is supposed to serve as a basis for the 2011 debates on the new Multi-Annual Financial Framework (2013 -2018). This could present an important SRH advocacy opportunity as the Framework is being prepared. The vision of how the EDF budget will function if/when integrated into the EU budget will come under the mandate of the new European Commission (February 2010).



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Endnotes*

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- ¹² Presidency report to the European Council on the EEAS, 14930/09, <<http://register.consilium.europa.eu/pdf/en/09/st14/st14930.en09.pdf>>
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