

## List of legal bases providing for the ordinary legislative procedure in the Treaty of Lisbon<sup>1</sup>

This annex lists the legal bases to which the ordinary legislative procedure established by the Treaty of Lisbon applies.

The subject areas underlined are those for which the legal basis is completely new under the Treaty of Lisbon, or where there has been a change in procedure so that the relevant measures are now subject to the "codecision"/ordinary legislative procedure.

The numbers of the articles in the TEU and TFEU are those in the consolidated version of the Treaties (in accordance with the table annexed to the Treaty of Lisbon).

The previous Treaty articles are indicated in italics and, in cases where the Treaty of Lisbon modified the procedure, an indication is also given of the procedure that applied.

- 1. <u>Services of general economic interest</u> (Article 14 TFEU) (Article 16 TEC)
- 2. Procedures for the right of access to documents (Article 15, paragraph 3, TFEU) (Article 255, paragraph 2)
- 3. Data protection (Article 16, paragraph 2, TFEU) (*Article 286, paragraph 2*)
- 4. Measures to combat discrimination on grounds of nationality (Article 18 TFEU) (Article 12 TEC)
- 5. Basic principles for anti-discrimination incentive measures (Article 19, paragraph 2, TFEU) (Article 13.2 TEC)
- 6. Measures to facilitate the exercise of the right of every citizen of the Union to move and reside freely in the territory of Member States (Article 21, paragraph 2, TFEU) (*Article 18, paragraph 2, TEC*)
- 7. <u>Citizens' initiative</u> (Article 24 TFEU)
- 8. Customs cooperation (Article 33 TFEU) (Article 135 TEC)
- 9. <u>Application of competition rules to the common agricultural policy</u> (Art. 42, which refers to Article 43, paragraph 2, TFEU) (*Article 36 TEC: qualified majority in Council and simple consultation of EP*)
- Legislation concerning the common agricultural policy (Article 43, paragraph 2, TFEU) (Article 37, paragraph 2: qualified majority in Council and simple consultation of EP)
- 11. Free movement of workers (Article 46 TFEU) (Article 40 TEC)
- 12. Internal market social security measures for Community migrant workers<sup>2</sup> (Article 48 TFEU) (Article 42 TEC: codecision unanimity in the Council)

<sup>&</sup>lt;sup>1</sup> Reproduced from A6-0013/2008, Report on the Treaty of Lisbon 2007/2286 (INI).

<sup>&</sup>lt;sup>2</sup> With an 'emergency brake' mechanism: where a Member State considers that the measures concerned 'would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system', it may request that the matter

- 13. Right of establishment (Article 50, paragraph 1, TFEU) (Article 44 TEC)
- 14. Exclusion in a Member State of certain activities from the application of provisions on the right of establishment (Article 51, second paragraph, TFEU) (Article 45, second paragraph, TEC: qualified majority in the Council without participation of EP)
- 15. Coordination of the provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals with regard to the right of establishment (Article 52, paragraph 2, TFEU) (*Article 46, paragraph 2, TEC*)
- 16. Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons and the mutual recognition of qualifications (Article 53, paragraph 1, TFEU) (Article 47 TEC: codecision unanimity in the Council when this involved a change in Member State legislation)
- 17. Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union. (Article 56, second paragraph, TFEU) (Article 49, second paragraph, TEC: qualified majority in the Council without participation of EP)
- <u>Liberalisation of services in specific sectors</u> (Article 59, paragraph 1, TFEU) (Article 52, paragraph 1, TEC: qualified majority in Council and simple consultation of EP)
- 19. Services (Article 62 TFEU) (Article 55 TEC)
- 20. <u>Adoption of other measures on the movement of capital to and from third</u> <u>countries</u> (Article 64, paragraph 2, TFEU) (*Article 57, paragraph 2, first sentence, TEC: qualified majority in the Council without participation of EP*)
- 21. <u>Administrative measures relating to capital movements in connection with</u> preventing and combating crime and terrorism (Article 75 TFEU) (Article 60 TEC)
- <u>Visas, border checks, free movement of nationals of non-member countries,</u> <u>management of external frontiers, absence of controls at internal frontiers</u> (Article 77, paragraph 2, TFEU) (Article 62 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)
- 23. <u>Asylum, temporary protection or subsidiary protection for nationals of third</u> <u>countries</u> (Article 78, paragraph 2, TFEU) (*Article 63, paragraphs 1 and 2, and Article 64, paragraph 2, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
- 24. <u>Immigration and combating trafficking in persons</u> (Article 79, paragraph 2, TFEU) (Article 63, paragraphs 3 and 4, TEC: procedure laid down in Article 67 TEC:

be referred to the European Council (thus automatically suspending the legislative procedure). The European Council must then within a period of four months either refer the matter back to the Council, thus enabling the procedure to continue, or ask the Commission to submit a new proposal.

unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)

- 25. <u>Incentive measures for the integration of nationals of third countries</u> (Article 79, paragraph 4, TFEU)
- 26. <u>Judicial cooperation in civil matters (excluding family law)</u><sup>3</sup> (Article 81, paragraph 2, TFEU) (Article 65 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)
- Judicial cooperation in criminal matters procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments (Article 82, paragraphs 1 and 2, TFEU)<sup>4</sup> (Article 31 TEU: unanimity in Council and simple consultation of EP)
- 28. <u>Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension</u> (Article 83, paragraphs 1 and, possibly, 2, TFEU)<sup>5</sup> (Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)
- 29. Measures to support crime prevention (Article 84 TFEU)
- 30. <u>Eurojust</u> (Article 85, paragraph 1, second subparagraph, TFEU) (Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)
- Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities (Article 85, paragraph 1, third subparagraph, TFEU)
- 32. <u>Police cooperation</u> (certain aspects) (Article 87, paragraph 2 TFEU) (Article 30 TEU: procedure laid down in Articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)
- 33. <u>Europol</u> (Article 88, paragraph 2, first subparagraph, TFEU) (Article 30 TEU: procedure laid down in Articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)
- 34. <u>Procedures for scrutiny of Europol's activities by EP and national parliaments</u> (Article 88 paragraph 2, second subparagraph, TFEU)

<sup>&</sup>lt;sup>3</sup> Points (e), (g) and (h) of paragraph 2 of this article contain new legal bases; the other points were already covered by Article 65 TEC. Paragraph 3 of the same Article 81 TFEU also allows the Council to adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure.

<sup>&</sup>lt;sup>4</sup> An 'emergency brake' mechanism is provided for in paragraph 3 of this article: if a Member State considers that the measures concerned would affect fundamental aspects of its criminal justice system, it may request that the matter be referred to the European Council. In that case, the legislative procedure is suspended. If consensus is reached after discussion in the European Council within four months, the draft is referred back to the Council and the suspension is terminated. In case no agreement is reached, at least nine Member States may request that enhanced cooperation be established on the basis of the draft proposal.

<sup>&</sup>lt;sup>5</sup> An 'emergency break' mechanism is provided for in paragraph 3 of this article. See footnote 47.

- 35. Implementation of the common transport policy (Article 91, paragraph 1, TFEU) (Article 71 TEC)
- 36. Sea and air transport (Article 100, paragraph 2, TFEU) (*Article 80, paragraph 2, TEC*)
- 37. Measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market to promote the objectives of Article 26 (Article 114, paragraph 1, TFEU) (Article 95, paragraph 1, TEC)
- 38. <u>Measures to eliminate distortions in the internal market</u> (Article 116 TFEU) (Article 96 TEC: qualified majority in the Council without participation of EP)
- 39. <u>Intellectual property except language arrangements for the European intellectual</u> <u>property rights</u> (Article 118, first paragraph, TFEU)<sup>6</sup>
- 40. <u>Multilateral surveillance</u> (Article 121, paragraph 6, TFEU) (*Article 99, paragraph 5, TEC: cooperation procedure*)
- 41. <u>Modification of the Protocol on the Statutes of the ESCB and ECB</u> (Article 129 paragraph 3, TFEU) (*Article 107, paragraph 5, TEC: unanimity in the Council or, depending on the case, qualified majority after assent of EP*)
- 42. <u>Measures necessary for the use of the euro</u> (Article 133, TFEU) (*Article 123, paragraph 4, TEC*)
- 43. Incentive measures for employment (Article 149 TFEU) (Article 129 TEC)
- 44. Social policy (Article 153, paragraphs 1, except points (c), (d), (f) and (g), and 2<sup>7</sup>, first, second and last subparagraphs, TFEU) (*Article 137, paragraphs 1 and 2 TEC*)
- 45. Social policy (equal opportunities, equal treatment and equal pay) (Article 157, paragraph 3, TFEU) (*Article 141, paragraph 3, TEC*)
- 46. European Social Fund (Article 164 TFEU) (Article 148 TEC)
- 47. Education (excluding recommendations) (Article 165, paragraph 4, point (a), TFEU) (*Article 149, paragraph 4, TEC*)
- 48. Sport (Article 165, paragraphs 2, point (g), and 4, TFEU)
- 49. Professional training (Article 166, paragraph 4, TFEU) (*Article 150, paragraph 4, TCE*)
- 50. Culture (excluding recommendations) (Article 167, paragraph 5, first indent, TFEU) (Article 151 TEC: codecision unanimity in the Council)
- 51. <u>Public health</u> measures to tackle common safety concerns in the health sphere<sup>8</sup> (Article 168, paragraph 4, TFEU) (*Article 152, paragraph 4, TEC*)

<sup>&</sup>lt;sup>6</sup> In the absence of a specific legal basis, the Union previously took action in this area on the basis of Article 308 TEC (now Article 352 TFEU): *Unanimity in the Council and simple consultation of EP*.

 $<sup>^{7}</sup>$  In the areas covered by these points, the legislation is adopted by the Council unanimously, after consulting the EP. However, the second subparagraph of paragraph 2 contains a bridging clause whereby the Council may decide, unanimously, that the ordinary legislative procedure will be applied to points (d), (f) and (g) of paragraph 1.

<sup>&</sup>lt;sup>8</sup> The measures provided for in points (a) and (b) of paragraph 4 of this article were already provided for in Article 152 TEC. The measures provided for in points (c) and (d) are new.

- 52. Public health incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse (Article 168, paragraph 5, TFEU<sup>9</sup>)
- 53. Consumer protection (Article 169, paragraph 3, TFEU) (*Article 153, paragraph 4, TEC*)
- 54. Trans-European networks (Article 172 TFEU) (Article 156 TEC)
- 55. Industry (Article 173, paragraph 3, TFEU) (Article 157, paragraph 3, TEC)
- 56. Measures in the area of economic and social cohesion (Article 175, third paragraph, TFEU) (*Article 159 TEC*)
- 57. <u>Structural Funds</u> (Article 177, first paragraph, TFEU) (*Article 161 TEC: unanimity in the Council and assent of EP*)
- 58. <u>Cohesion Fund</u> (Article 177, second paragraph TFEU) (Article 161 TEC: qualified majority in the Council and assent of EP)
- 59. European Regional Development Fund (Article 178 TFEU) (Article 162 TEC)
- 60. Framework Programme for Research (Article 182, paragraph 1, TFEU) (Article 166, paragraph 1, TEC).
- 61. Implementation of European research area (Article 182, paragraph 5, TFEU)
- 62. Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results (Articles 183 and 188, second paragraph, TFEU) (Article 167 TEC)
- 63. Supplementary research programmes for some Member States (Articles 184 and 188, second paragraph, TFEU) (Article 168 TEC)
- 64. Participation in research programmes undertaken by several Member States (Articles 185 and 188, second paragraph, TFEU) (*Article 169 TEC*)
- 65. Space policy (Article 189 TFEU)
- 66. Environment (Community measures to achieve environmental objectives except measures of a fiscal nature) (Article 192, paragraph 1, TFEU) (*Article 175, paragraph 1, TEC*)
- 67. Environment Action Programme (Article 192, paragraph 3, TFEU) (Article 175, paragraph 3, TEC)
- 68. <u>Energy</u>, excluding measures of a fiscal nature (Article 194, second paragraph, TFEU)<sup>10</sup>
- 69. <u>Tourism</u> measures to complement the action of the Member States in the tourism sector (Article 195, second paragraph, TFEU)
- 70. <u>Civil protection</u> against natural and man-made disasters<sup>11</sup> (Article 196, second paragraph, TFEU)
- 71. <u>Administrative cooperation</u> in implementing Union law by Member States (Article 197, second paragraph, TFEU)

<sup>&</sup>lt;sup>9</sup> All the legal bases provided for in this paragraph are new, with the exception of that for incentive measures for the protection of human health, which was already covered by Article 152 TEC.

<sup>&</sup>lt;sup>10</sup> In the absence of a specific legal basis, the Union previously took action in this area on the basis of Article 308 TEC (now Article 352 TFEU): *unanimity in the Council and simple consultation of EP*.

<sup>&</sup>lt;sup>11</sup> See footnote 53.

- 72. <u>Commercial policy implementing measures</u> (Article 207, second paragraph, TFEU) (Article 133 TEC: qualified majority in the Council without consultation of EP)
- 73. Development cooperation (Article 209, paragraph 1, TFEU) (Article 179 TEC)
- 74. <u>Economic, financial and technical cooperation with third countries</u> (Article 212, second paragraph, TFEU) (*Article 181 A TEC: qualified majority in the Council and simple consultation of EP*)
- 75. General framework for humanitarian operations (Article 214, paragraph 3, TFEU)
- 76. European Voluntary Humanitarian Aid Corps (Article 214, paragraph 5, TFEU)
- 77. Regulations governing political parties and their funding (Article 224 TFEU) (*Article 191 TEC*)
- 78. <u>Creation of specialised courts</u> (Article 257 TFEU) (Article 225A TEC: unanimity in the Council and simple consultation of EP)
- 79. <u>Modification of Statute of Court of Justice</u>, except Title I and Article 64 (Article 281 TFEU) (*Article 245 TEC: unanimity in the Council and simple consultation of EP*)
- 80. <u>Procedures for monitoring the exercise of implementing powers</u> (Article 291, paragraph 3, TFEU) (Article 202 TEC: unanimity in the Council and simple consultation of EP)
- 81. European Administration (Article 298, second paragraph, TFEU)
- 82. <u>Adoption of financial rules</u> (Article 322, paragraph 1, TFEU) (*Article 279, paragraph 1, TEC: qualified majority in the Council*)
- 83. Fight against fraud affecting the Union's financial interests (Article 325, paragraph 4, TFEU) (*Article 280, paragraph 4, TEC*)
- 84. <u>Staff Regulations of officials and Conditions of Employment of Other Servants of</u> <u>the Union</u> (Article 336 TFEU) (Article 283 TEC: qualified majority in the Council and simple consultation of EP)
- 85. Statistics (Article 338, paragraph 1, TFEU) (Article 285, paragraph 1, TEC)