# The Significance of the 2009 Lisbon Treaty for the Working of the European Union

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Since its enacting Treaty of Rome in 1957, the European Union has come a long way from its initial form as a group of six central European states. Its institutions have been constantly reshaped and its objectives, gradually redefined. Nevertheless, it is important to remember that this process was a subtly guided one. In hindsight, it is possible to see how the European Union followed Schuman's declaration pertaining to how "Europe will not be made all at once, or according to a single, general plan. It will be built through concrete achievements, which first create a de facto solidarity."[1] Although very advanced in the process, today we can still see that this process of creating and perfecting the European Union remains on the agenda. This can be seen through the Treaty of Nice in 2001 and the recent Lisbon Treaty in 2009. In this optic we may ask ourselves in what way the Lisbon Treaty significantly changed the working of the European Union? To provide a well-founded answer to this question we will divide our analysis into two areas. The first one will look into the changes made by the Lisbon Treaty in terms of high politics; beginning with the first paragraph on institutional changes and their impact on the European Union with regards to the Commission, the European Council and the Council of Ministers. Leading us to the second paragraph on legislative changes introduced by the treaty as our final part on high politics. We will then analyze impacts on aspects of low politics in the title of the Treaty on the Functioning of the European Union (TFEU) of the Area of freedom, security and justice (AFSJ) and the Charter of Fundamental Rights of the European Union.

In hindsight, it is now possible to deduce that the Lisbon Treaty, in all its respect, did not fulfil the majority of the expectations that were born with the Laeken Declaration of 2001; namely those of simplifying past treaties and advancing towards a federal, constitutional Europe. "The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential."[2] Although this being the case, nevertheless the Lisbon Treaty achieved a feat of a different scale, this one involved the consolidation of the "Institutional Architecture"[3] of the European Union. "It further develops and defines the Union's institutional framework and it clarifies the vertical distribution of competences."[4] These developments can be mainly seen in the institutional and legal domains (or titles) under the 'vertical' 'Union Method' of the Treaty of the European Union (TEU) that operate in a more transparent and clear fashion since the ratification of the treaty. The first considerable change made to the institutions involves the new measures regarding the nomination of the President of Commission. "The President of the Commission must now be nominated by the European Council […] the nominee is then 'elected by the European Parliament by a majority […]' rather than […], 'approved by the European Parliament."[5] Although not groundbreaking, this amendment represents the perpetual desire of the European Union to continue its search for a more democratic and efficient equilibrium. In this case, we can presume that they approach this objective by bringing about closer collaboration between the main institutions; thus strengthening the 'Union Method.' This can also be seen in the European Council where "a new permanent post, the President of the European Council, is created."[6] The creation of new positions stands as the second main institutional change and can be interpreted as an aspiration by the member states to have a more "stable and efficient institutional framework"[7] with interacting institutions. As said by Van Rompuy, the current council president: "the key things are dialogue, unity and action."[8] The second point can be reflected in the creation of the position of High Representative of the Union for Foreign Affairs and Security Policy where "he or she also holds the post of Vice-President of the Commission, and chairs the External Relations Council."[9] Thus, bridging the TFEU and the TEU together by drawing links between respective titles. The third key amendment to the institutions can be

seen in the Council of Ministers where the qualified majority voting (QMV) procedure was "changed from the Nice Triple majority formula to a double majority formula […] [where] majority must contain at least 55% of member states comprising at least 65% of the EU population"[10] from 2014 onwards. Alongside of rendering decision-making procedures more efficient, these amendments had a twofold affect that somewhat balanced it-self out; the first one consisted of providing more power to smaller states in the event of 'blocking minorities.' "A blocking minority will have to include four member states, thereby limiting the ability of the biggest states to block measures."[11] But the second effect was an overall "tilt in balance of power within the Council towards larger member states […] [which] should facilitate decision making in some policy areas, including very important JHA areas."[12] The fourth and final amendment pertaining to institutions examined involves the working of the European Parliament. Following the Lisbon Treaty, the European Parliament increased in number from 732 to 750 members as seats were distributed to members through digressive proportionality. This distribution favoured smaller member states' as they tend to be over-represented in the number of seats accorded to them. This played to the advantage of the member states with smaller populations and can once more show a firm desire to make member states more equal. Alongside of this, the European Parliament gained a considerable amount of power with its change in legislation, thus linking us to our second phase of analysis of the Lisbon Treaty, amendments to the legislative procedures.

Alongside of institutional amendments, the Lisbon Treaty did achieve in bringing significant legislative amendments to the TEU (agreed upon in Maastricht, 1992) and the TFEU. The first major change occurred in the renaming of the Treaty Establishing the European Community (TEC) to the TFEU. This modification leads us to the main change to legislative structure where the third pillar of the TEU, the Police and Judicial Co-operation in Criminal Matters (PJCCM) is moved to the TFEU, thus uniting most matters of Justice and Home Affairs (JHA) together. Consequently, the 'third pillar' was abolished as it was "incorporated in a single part of the TFEU"[13] under the title: Area of Freedom, Security and Justice (AFSJ). These amendments may seem structure-oriented in nature but are truly legislative as their impact mainly concerns the decision-making mechanisms of the European Union. This can be seen in the way the TFEU stands as the treaty uniting areas that have supranational dimensions under a set of accepted decision-making procedures in the 'Union Method.' While the TEU can be seen as the treaty working towards further integration of areas where issues are decided on a more inter-governmental scale. As elaborated in the first statement of the preamble of the TEU, member states are "resolved to mark a new stage in the process of European integration."[14] Thus linking our analysis of amendments to the decision-making procedures under the 'Union Method' of the TFEU. In order to promote greater transparency and enhance democracy's values to the institutional infrastructure, the Lisbon Treaty brought about a major change to the ordinary legislative procedures, with the main beneficiary being the European Parliament. These substantial amendments to the ordinary legislative procedure can be interpreted as the member states' desire "to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out."[15] The first major amendment can be seen in the 'co-decision procedure' that was renamed the 'ordinary legislative procedure'. In this modified procedure, the European Parliament became co-equal decision-maker with the Council of Ministers as its opinion on legislation became significant and in no way could be ignored anymore. "Under the OLP, the EP is able to block legislation altogether […] [making] it difficult for the Council to ignore amendments proposed by the EP."[16] This links us to the second change in this procedure with the increased powers of national parliaments who can now block legislation proposed by the Commission if they believe it infringes their subsidiarity. Thus meaning: "under the principle of subsidiarity […] the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States."[17] In this procedure there are two possible options, the yellow and orange card. With the yellow card procedure, "if a draft legislative act […] is contested by a third of the votes allocated to national Parliaments [in a period of eight weeks] […] the Commission has to review the proposal."[18] This leads to the orange card procedure when "a simple majority of national parliaments continues to challenge the proposal […] the 'orange card' can be played as a further challenge […] their challenged is upheld if either the council or the EP agrees with the breach in subsidiarity and the proposed legislation falls."[19] Upon this, it is possible to deduce that both modifications reflect the intentions of the member states' to work towards a greater democratic equilibrium between institutions and member states, which would in turn also enhance the efficiency of the union. Having now understood the general disposition of institutional and legislative changes, we can now look into several modifications to domains of low politics within the AFSJ.

Although many simplifications to policy areas have been made in the Lisbon Treaty, it is right to affirm that the AFSJ

(created during the Amsterdam Treaty, 1997) is the title that has undergone most change. Moreover, as it is a policy area and objective that's seeks to create "free movement across internal borders; […] protection against cross-border crime; and […] judicial cooperation"[20] it can be seen as the TFEU title that encapsulating key aspects of low politics. Upon this, the move of the PJCCM under the title of the AFSJ and the consequent unison of most matters of JHA had a significant impact with a range of exceptions. This impact is first reflected through the PJCCM, as it will be incorporated into the 'union method' after its transitional period ending in 2015. Moreover, it is also reflect within the 'union method' as the European Union and ECJ will inherit unprecedented power, and become the sole legislator under this policy area. Following this amendment are two other noteworthy modifications with downsides when analyzed from a supranational context. The first one being the emergency brake procedure concerning the certain types of AFSJ decisions where "member state[s] can declare a matter to be of national interest through appeal to the European Council."[21] Furthermore, this downside is followed with the secured possible opt-outs of Denmark, Britain and Ireland from the AFSJ "in measures designed to strengthen the Schengen system and […] new measures concerned with the creation of the AFSJ."[22] The presence of these two exceptions reflect the gradual nature of the European Union as certain member states take time to relinquish such important powers to its supranational-oriented bodies especially in the domain of justice. Closely related to the AFSJ is the Charter of Fundamental Rights of the European Union, proclaimed at Nice in 2000. This charter went about outlining a set of six principles of the citizens' rights and their freedoms. During the Constitutional Treaty, the charter was to obtain 'treaty status' but when came the Lisbon Treaty negotiations it was agreed that it "shall have the same legal value as the Treaties."[23] While being somewhat a drawback achieving greater stature for the charter, the Lisbon Treaty did make it legally binding, thus reinforcing its progress towards the creation of an AFSJ.

While the Lisbon Treaty did not bring about a pioneering achievement such as in the Maastricht treaty with the European Monetary Union and the Single European Act with the Single Market, it did have amending properties that were indispensible in helping the European Union advance closer towards higher efficiency, transparency and democracy. This can be seen through its amendments to aspects of the institutions, legislative procedures, namely the Ordinary Legislative Procedure and policy with the unison of most areas of JHA (under the AFSJ) via the abolition of the third pillar. With the analysis elaborated, it is now possible to affirm, "The Lisbon Treaty is a consolidating rather than a radical document. […] The latest in a line of treaties that have since the mid-1980s amended and extended the EU's founding treaties. "[24] In this optic the Lisbon Treaty does hold considerable importance as the treaty making process is indispensible since it incarnates Europe's constant journey towards a more federal and efficient united Europe. This can be reflected in today's Euro-zone debt crisis with French president Sarkozy and German Chancellor Merkel who have recently 'called upon' a new treaty with very much the same objectives as that of the one that took place in Lisbon. "Mr Sarkozy and Mrs Merkel released a statement saying they […] aimed at strengthening co-ordination and so boosting stability and growth."[25] Thus, showing the European Union does not have a set path and that treaties are decided in relation to the complex *'concours de circonstances'* and issues surrounding them.

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[10] Nugent, (2001), P.84.

[11] Bache et al. (2011), P.233.

[12] Nugent (2001), P.84.

[13] Bache et al. (2011), P.474.

[14] Preamble 1 Treaty on European Union (TEU).

[15] Preamble 7 TEU.

[16] Bache et al. (2011), P.234.

[17] Article 5 TEU.

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[19] Bache et al. (2011), P.240.

[20] Pinder and Usherwood. (2007), P.107.

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