

# What are the main developments contained within the Treaty of Lisbon?

Written by Dumitrache Andrei

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The year 2005 has meant a rejection of a viable constitutional project for the European Union. The referendums in the Netherlands and France had given a decisive no to a future acceleration of the integration process. After a reconsideration and political stylization of the Constitutional Treaty the Treaty of Lisbon was put together and signed by all of the 27 member states on the 13<sup>th</sup> of December 2007. After having some troubles being adopted in the Irish Parliament the ToL has finally entered into force on the 1<sup>st</sup> of December 2009. The Lisbon Treaty is amending the Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC) renamed The Treaty on the Functioning of the European Union (TFEU). This new and highly debated treaty introduces a long series of innovations in the areas of institutional architecture, the breakdown of competences and the Union's policies for the new century (Tanugi, 2008:309). All these system updates will be modeling the future social, political and economic character of the European Union and will be influencing the efficiency with which the EU will be able to respond to the challenges of the 21<sup>st</sup> century, especially the ones raised by globalization. This paper will engage with the main developments contained within the Lisbon Treaty such as institutional reforms and cooperation in new policy areas, by underlining the relevance of each of the new provisions and their foreseeable effect on the European family. As within any state or international organization, the institutional dimension plays a vital role in the functioning of the official entity. That is why the first provisions of the Treaty of Lisbon that this paper will analyze, are those concerning the institutional framework of the EU.

To start with it is important to look at the foundations of any institutional framework, and we will observe the ubiquity of a series of mostly moral fundamentals. In the case of the European Union, these moral values are included in the Lisbon Treaty. Article 1a clearly states that:

*'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail' (The Lisbon Treaty, 2007:11).*

Further on Article 2 of the same Treaty states that the Union will uphold the principles of the United Nations Charter of Human Rights. The two articles clearly define the ideological and moral nature of the European Union, therefore actively constructing an identity of the Union.

Proceeding further into the core of this essay an important development can be found in Article 8B of the Treaty of Lisbon which introduces the notion of 'citizen participation' (Nugent, 2006:124). This new article provides the European Citizens with the right to:

*'invite the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the treaties' (The Lisbon Treaty, 2007:15).*

In order for the Commission to be able to consider such a proposal, it must gather the support of at least one million

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citizens from a wide number of Member States. The main effects of this legal update are the diminishing 'democratic deficit' (Dinan, 1994:290) the European Union allegedly suffered from, as well as the increase in transparency of the work the European Commission is undertaking.

Further on a new Article 9C sets the 'Qualified Majority Vote' (The Lisbon Treaty, 2007:18) as the voting system that is to be used by the European institutions such as the European Council or the Council of Ministers, in their proceedings, although in policy areas such as those of taxation and defense a 'unanimous vote will continue to be required' (Guide to the Lisbon Treaty, 2010:5). Through this new measure the 'decision-making procedures will be accelerated' (Tanugi, 2008:309) and consequently this will lead to a more dynamic process of European integration. A complementary provision, contained in the Lisbon Treaty is the one referring to the 'passarelle clause' (Kurpas, 2007:7), which allows the European Council to 'transfer matters covered by unanimous vote to a qualified majority vote' (Tanugi, 2008:311).

A fourth development and probably one of the most important ones, can be found in Article 13a of the Treaty which establishes the functioning of the new chair of High Representative of the Union for Foreign Affairs and Security Policy. The High Representative is to be assisted by an 'External Action Service' (The Lisbon Treaty, 2007:27) in carrying out his or her duties. This is a major step forward for the Common Foreign and Security Policy as it introduces new roles of the EU in the international arena. Such roles are those of 'disarmament operations, military advice and assistance and helping to restore stability after conflicts' (Guide to the Lisbon Treaty, 2010:7). Through the introduction of this article the Lisbon Treaty gives some homogeneity to the international discourse of the European Union. Although 'several-thousand-strong diplomatic corps' (Catherine Ashton, euronews) are already being dispersed all over the world, the current High Representative of the Union for Foreign Affairs and Security Policy, Baroness Catherine Ashton, believes the European Union still needs to improve its External Action Service mainly because the 'demand for global EU engagement is enormous' (Catherine Ashton, euronews).

A fifth relevant innovation enshrined in the Lisbon Treaty is the one increasing the power of national parliaments in the decision-making process of the European Union. According to the Treaty, if one third of the national parliaments consider a proposal by the European Commission to be in breach of the subsidiarity principle the latter has to reconsider it (Nugent, 2006). An additional power given to the national assemblies is the veto they can raise to change the European Council's decision-making in a given area from 'Qualified Majority Vote' (Christiansen and Reh, 1999:272) to unanimity (Nugent, 2006). By increasing the importance of national parliaments in the EU's decision-making process, the Lisbon Treaty is bridging the democratic gap between the European citizenry and the European Institutions, this way increasing the legitimacy but also the visibility of the decisions taken at the level of the European Union. But the national parliaments are not the only ones who have gained some extra prerogatives. It is also the European Parliament that has been empowered by the amendments done under the Lisbon Treaty. With the number of its members increasing from 732 to 750 (Nugent, 2006), the European Parliament now has 'equal decision-making powers' (Tanugi, 2008:312) with the Council in the areas in which the QMV is applied and with regards to the annual budget, as well as a recognized right to intervene in domains so far restricted, such as 'diplomatic and consular protection of Union citizens, the linguistic regime of intellectual property titles, passports and other identity documents' (ibid.).

The amendments the Lisbon Treaty introduces with regards to the institutional structures of the EU are many and consistent, this being one of the reasons why the treaty can be considered a 'constitution by the back door' (Kurpas, 2007:4). An example of further institutional reform is the fact that the European Council as well as the European Central Bank, become official institution of the European mechanism of governance. Further on the European Council is led by a permanent President, a position also created under the Lisbon Treaty (Nugent, 2006). To outline other institutional developments, the Commission President is now elected by a majority of the European Parliament and the Commission itself will be reduced to a mere 2/3 of the number of states (Kurpas, 2007).

With the phenomenon of globalization intensely impacting on the economic and social life of the European Union, the Lisbon Treaty establishes within it new sectors of cooperation such as energy, scientific research and space exploration (The Lisbon Treaty, 2007). The cooperation in the energy area is clearly set out in Title XX of the Treaty. Within the title itself a legal basis is given for the productive functioning of the energy market, as well as provisions for

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the securitization of energy supply to the Union and the development of renewable forms of energy (Kurpas, 2007).

The amended Articles 179 and 189 (Foreign and Commonwealth Office, 2008:15) of the Treaty Establishing the European Community renamed Treaty on the Functioning of the European Union, clearly depict the future European strategies in the fields of space and scientific research:

*'The union shall have the objective of strengthening its scientific and technological bases by achieving a European Research Area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other chapters of the Treaties' (The Lisbon Treaty, 2007:85).*

Overall, the foundation of a European space policy, the intensification of collaboration with the European Space Agency (ESA) and the creation of a European Research Area are the main proposals included in the Treaty of Lisbon.

Human rights are a vital element of any constitutional attempt. Surprisingly the Charter of Fundamental Rights is not directly incorporated into the Treaty and countries such as Poland and the United Kingdom have obtained opt-outs from the Charter (The Lisbon Treaty, 2007) if its application would contradict with national laws and practices (Kurpas, 2007:3). An additional important aspect of the Treaty is the fact that the supremacy of the EU law over national law is no longer mentioned (The Lisbon Treaty, 2007). This could cause serious problems if member states start questioning the principle of primacy (ibid.). Remaining in the area of law, it is compulsory to mention the 'legal identity' (Tanugi, 2008:315) the Treaty provides to the European Union. What the Lisbon Treaty does is compress the 'three pillars, that is the Common Foreign and Security Policy, the European Community and the Home Affairs and Justice policy' (Barbour, 1996:16) into one single structure, the European Union. This is of extreme importance as it will provide the EU with the possibility to speak with one voice at the international level and therefore better represent the interests of its Member States. Having encountered the concept of seeing the EU as one coherent structure it is now time to draw attention to some very intriguing issues contained by the Lisbon Treaty. The identity of any political structure is given by symbolic elements such as a flag, an anthem or a national day. This was also the case for the European Union before the Constitutional Treaty was amended into what came to be known as the 'Lisbon Treaty of Compromise' (). In the ToL the symbols of the EU are no longer mentioned, signaling that the intergovernmental explanation of European Integration might be the correct way to look at the project. This also shows that 'European leaders have renounced the attempt to provide the European Union with any kind of social legitimacy or emotional attachment' (Kurpas, 2007:3). Further on Kurpas (2007) correctly suggests that even though these symbolic elements are no longer included in the Treaty they will not cease to exist, and as proof of this stands the declaration submitted and attached to the Lisbon Treaty by 16 of the 27 member states which express their further allegiance to the symbols of the European Union (The Lisbon Treaty, 2007:267). Another interesting and important clause embodied in the Treaty is the one under Article 50 of the amended Treaty of the European Union, introducing the possibility for 'voluntary withdrawal' (ibid.) of a state from the union with 'the consent of the European Parliament and under an agreement that has to be concluded by the Council' (Foreign and Commonwealth Office, 2008:5).

Besides the major developments mentioned above there is a series of minor innovations that although less relevant to the general picture, they remain important to mention as they also affect the future evolution of the EU. One such provision is the 'principle of solidarity' which as adopted under Title VII, Article 188R of the Lisbon Treaty, provides the legal environment for:

*'The Union and its Member States to act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including military resources made available by the Member states' (The Lisbon Treaty, 2007:100).*

This specific provision could be interpreted as a simple element of diplomatic courtesy between the Member States, although baring in mind the latest troublesome developments of Greek and Irish economies affecting the Eurozone has proven that this principle is a healthy one and it is of most importance for the survival of the European family.

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Article 174 of the Lisbon Treaty introduces new developments of EU legislation in the environment sector, with a special focus on climate change:

*'The Union and its Member States shall embark on promoting measures at an international level to deal with regional or worldwide environmental problems, and in particular combating climate change' (The Lisbon Treaty, 2007:87).*

This provision of the Treaty clearly sets the future role of the European Union as one entity, one that 'will be taking the lead in combating global warming' (Guide to Lisbon Treaty, 2010:9) and therefore promoting the idea of a 'civil identity' for the European Project. An even more daring innovation is the one embodied within Articles 65 and 69D of the Treaty concerning judicial cooperation which state that:

*'The European Judicial Network or Eurojust shall seek to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol' (The Lisbon Treaty, 2007:62-66).*

These two articles provide some of the basis for increasing the European Union's ability to 'fight international cross-border crime, illegal immigration, trafficking of people, arms and drugs' (Guide to the Lisbon Treaty, 2010:7) therefore a significant decrease in cross-border crime rates is expected to follow the adoption and thorough implementation of the Lisbon Treaty. A final important development found in the Treaty of Lisbon is contained in the new Article 97a:

*'In the context and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralized Union-wide authorization, coordination and supervision arrangements' (The Lisbon Treaty, 2007:71)*

Having analyzed most of the provisions embodied within the Lisbon Treaty it is now time to draw the conclusive arguments. Structurally, the Treaty adds one more layer of legal innovations to the European acquis (Kurpas, 2007). Symbolically it fails to uphold the consecrated symbols of the EU by not mentioning them and this might be interpreted as a first sign that the intergovernmentalist theory is the one explaining correctly the very nature of the European Union. This theory seems to fit also with the opt-outs of the United Kingdom and Poland from the application of the Charter, opt-outs which further add to the 'existing variable geometry among member states' (Kurpas, 2007:8). The development of extra powers for the national parliaments is an issue though that can be interpreted in two ways. The capacity of the national parliaments into the decision making process of the EU can either mean a further blurring of the separation between the institutions of the member states or a victory which will lead to an imminent stop of the deepening of European integration. Although so far the intergovernmentalists seem to win with regards to the validity of their theory there are several other developments which clearly oppose their view and support the federal theory. The provisions confirming the federal theory is correct range from the newly created External Action Service or the new 5 year elected chair of permanent President of the European Council, to the expanding of cooperation in the areas of energy, climate change, scientific research, tourism or civil protection. The expansion of the Qualified Majority vote is also a strong signal of the rapidness with which the integration process will be carried forward from now on, a process that through legislative overspill might result into what Altiero Spinelli or Joshka Fisher have called for, that is a 'European Federation' (Nelsen and Stubb, 2003:69-70). To conclude with I will add that the adopted Lisbon Treaty contains most of the provisions envisaged in the initial Constitutional Treaty, and if some have been removed it is because there was a fear the Lisbon Treaty will not pass successfully through the national parliaments, and not because of an intergovernmental tendency of European leaders. I will end this essay by saying that although the Lisbon Treaty has not provided the European Union with a 'capital-C constitution' (Christiansen and Reh, 2009:271), in my opinion the federal theory is stronger than the liberal neo-functional and the intergovernmental ones, and this is proven by the ever greater legislative overspill experienced by all the governments the 27 member states. As I am a fan of federalism myself it is correct to give an unbiased, conciliatory conclusion. Therefore I will agree with Tony Blair when saying that the European Union 'will remain a unique

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combination of the intergovernmental and the supranational' (Nelsen and Stubb, 2003:80).

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