

LISBON TREATY

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Abstract

The Treaty of Lisbon entered into force in 2009 as the result of the determination of EU Member States to continue with the institutional and political integration in order to overcome the failure of the project of a European Constitution. The aim of this paper is to describe the structure of the Treaty and its general principles. In particular, we focused on the new institutional framework of the EU, as revised by the Treaty. In the light of the wide intervention on the Main Policies of the European Union operated by the Treaty, we also examined the principal innovations in this field. We found that climate change and the environment are the spheres of main intervention. We concluded that the Treaty seems to be the ending point of a phase of expansion of the activities of the Union in new areas. However, the economic and financial crises can give impulse to further reforms, especially in the field of the Monetary Union.

Introduction

The **Treaty of Lisbon** (*Treaty*) is the result of the new push for European integration subsequent to the non ratification of the European Constitution in 2005. The Treaty was signed on 13 December 2007 and entered into force on 1 January 2009, after ratification from all 27 member States.

History. The project of a European Constitution

The **Nice Treaty** already contemplated a further study of the fundamental issues of a better definition of the competences of the Union and of the Member States, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of simplification of the Treaties and of the role of the national

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parliaments. With the Laeken declaration of December 2001, the **European Council** specified that the reform would develop through a Convention, in order to prepare an intergovernmental conference.

The Convention was composed of representatives from national governments and parliaments in the Member States and candidate countries and representatives from the European Parliament and the Commission. Its inaugural session was held on 28 February 2002 and work came to an end after 17 months of discussions. The Convention produced a draft Treaty establishing a European Constitution, which was presented to the Thessaloniki European Council. The draft Constitution served as a basis for the work of the inter-governmental conference, convened in October 2003. The draft finalized by the Conference was signed by the Heads of State and Government on 29 October 2004. The entering into force of the Constitution was conditioned to ratification by all Member States, in accordance with each one's constitutional rules. Due to the difficulties encountered in certain States, the Heads of State and Government decided, at the European Council meeting on 16 and 17 June 2005, to launch a period of reflection.

The drafting of the Lisbon Treaty

The debate following the European Council of June 2005 allowed to gradually clarify the aims of the European Union until the Member States, at the fifty year anniversary of the signing of the Rome treaties (in March 2007) reaffirmed their determination to continue with institutional and political integration (Berlin Declaration). This led to the decision, at the European Council meeting on 21 and 22 June 2007, to convene an intergovernmental conference to draft, instead of a Constitution, a reform treaty for the European Union.

The intergovernmental conference began its work on 23 July 2007, based on a very detailed mandate on principles and contents to be developed, with the goal of adopting a reform Treaty, instead of a Constitution, although it was specified that the profound innovations set forth by the 2004 intergovernmental conference were to

the taken into account. The result has been the Treaty of Lisbon, which entered into force on 1 December 2009 and is summarized below.

Description of the Treaty. Structure and general principles

The Treaty entered into force on 1 December 2009, after ratifications from all 27 Member States and includes relevant institutional and procedural reforms, aimed at addressing the enlargement of the current 27 Member States. The Treaty amends the Treaty on the European Union (TEU, also known as Maastricht Treaty) and the Treaty establishing the European Community (TEC, previously known as Rome Treaty), redenominated Treaty on the Functioning of the European Union (TFEU), without replacing them. Even after renouncing to the constitutional level, the Treaty reproduced many of the items included in the Constitution for Europe in 2004.

The basic principles introduced in the TEU and included in a specific Title denominated "*Provisions on democratic services*" are:

- equality of citizens toward the institutions of the Union (Article 9);
 - representative democracy, according to which citizens shall be represented within the institutions of the Union (directly in the European Parliament, indirectly in the European Council and in the Council of Ministers, through domestic governments which are accountable to their parliaments – Article 10);
 - democratic participation, contemplating that citizens and their organisations can actively participate to the Union, which has to interact with them (Article 11).
- Human rights have an important recognition, with regards to the Charter of Fundamental Rights of the European Union, annexed to the Lisbon Treaty, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which the Union adheres (Article 6).

The TEU – composed of 55 Articles – includes a description the institutions and an ample section (Title V) on the external action of the Union and on common foreign and security policy. Finally, adhesion procedures to the Union and the right of

National parliaments to be informed on submitted requests are described, as well as the right for a Member State to leave the Union.

Institutional reform

The Treaty intervenes on the whole institutional framework of the Union, both reallocations power and introducing new institutions. The new framework, as revised by the Treaty and now detailed in Title III TEU, "*Provisions on the institutions*" (articles 13-19) and in the TFEU (consisting of 345 articles), is described below.

European Parliament. Based on the principle of representative democracy, the role of the Parliament is strengthened by widening recourse to the co-decision legislative procedure. The Parliament's role is also strengthened in its budgetary functions. The Parliament will also have a role political control through election of the President of the **European Commission**, which will confer to the latter institution more democratic legitimacy. The Parliament now consists of 751 members, excluded the President, with each State having between 9 and 96 seats.

Council of Ministers

This institution, which was formerly denominated Council, is formed by ministerial representatives from the Member States and has competences in the legislative, balance and definition of coordination politics. The council is no more presided based on a six months rotation, but instead by a group of 3 Member States for 18 months terms. As for voting, qualified majority is extended versus unanimity. A new system of qualified majority is introduced, inclusive of 55% of the States (i.e. 15) representing 65% of the Union population.

European Council

This body, which has also previously gathered the heads of State and government in order to agree on the general political lines of action of the Union, now becomes an institution. Presidency will last 2 and an half years, renewable once.

European Commission

The Commission remains the institution holding the power of legislative initiative, it promotes the general interest of the Union and is the watchdog of the respect of the Treaties and of European union law. Until 1 November 2014, the Commission will consist of a representative for each Member State. Subsequently, its composition will be reduced to 18. The President will be elected by the Parliament.

High Representative of the Union for Foreign Affairs and Security Policy

The Treaty introduces this new institution, which unifies the functions previously held by the Commissar for external relations and the High Representative for the Common Foreign and Security Policy (CFSP). The High Representative is appointed by the European Council, presides over the Foreign Affairs Council and acts as Vice-president of the Commission. The High Representative uses the European diplomatic service, composed of officers from the Council, the Commission and the National diplomacy services.

Allocation of competences between the Union and the Member States

Title I (Artt. 2-6) of the TFUE better clarifies the allocation of competences between the Union and the Member States, now organised in three categories:

- exclusive competences of the Union in the sectors where it has the power to legislate²;
- concurrent competences, on which Member States can legislate where the Union decides not to³;

²Such as customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine biological resources under the common fisheries policy; common commercial policy.

³Such as internal market; social policy, for the aspects defined in this Treaty; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy area of freedom, security and justice; common safety concerns in public health matters, for the aspects defined in this Treaty.

- sectors on which competence belongs to Member States and the Union can only act in support⁴.

The Treaty does not confer new exclusive competences to the Union, but introduces new concurrent competences and support actions. Title I also specifies that the allocation of competences is based on three principles:

- attribution, according to which the Union cannot expand its competences further to the Treaty attributions;
- subsidiarity, providing that the Union, where its competence is not exclusive, can intervene only to the extent that the aims set in the Treaty cannot be adequately pursued by the Member States;
- proportionality, which ensures that the actions by the Union do not exceed what is necessary for achieving their goals. National parliaments oversee the respect of the subsidiarity principle.

Legislative process

Procedures are described at Articles 288-299 TFEU. Codecision⁵, which ensures equal relevance to the role of the Parliament and the Council, is extended to several subjects. This procedure is now extended to fifty areas⁶. Only for the more politically sensitive matters – such as defence and security – unanimity by the Council remains the rule. The Treaty also allows the Council, by a unanimous decision, to move some areas from unanimous to majority decision. The Council can also decide to subject to codecision matters that would not belong to such procedure. The Treaty also attributes i) to the National parliaments to raise objections to proposals by the Commission, determining its review, and ii) to the citizens a right of initiative, with the right to have the Commission adopt a legislative proposal when a million

⁴ Such as protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation.

⁵ Article 294 TFEU, formerly 251 of TEC.

⁶ Some of the main policies are: structural funds, agriculture, matters of freedom, safety and justice, control of external frontiers, illegal immigration, judiciary cooperation in the civil and criminal field.

signatures are collected from a relevant number of Member States. Moreover, the meetings of the Council of Ministers where legislative proposals are discussed will be public.

Main policies of the European Union

II Treaty, in updating the policies within the TFUE, deals with subjects of great interest for the XXI° century, such as climate changes, globalisation, and security. Moreover, in developing policies in favour of citizens, the Union shall also consider, besides growth of competitiveness, the effects of social protection. These policies shall also include with employment, social protection and fight to exclusion. The Policies of the Union represent the widest part of Section Three of the TFEU, with about 200 articles. Below are some issues on the main changed or new policies:

Climate change and environment. The Treaty strengthens the action of the Union in these sectors, introducing the goals of fight to climate change and promoting International measures on environment issues.

Civil Protection. The Treaty acknowledges that climate change causes natural disasters, which require cooperation between Member States. A specific legislative foundation is introduced for this cooperation, so to improve prevention and protection from natural and man-made disasters.

Energy. The Treaty provides the Union with a specific policy on Energy and energetic supplies, defining principles such as the functioning of the Energy market, efficiency and safety of supplies. The principle of solidarity in case a State has supply difficulty is introduced.

Research and technological development. A space policy is introduced by the Treaty, with the aim of supporting research and coordinate efforts for the use of space, coherently with the goal of setting up a European space for research, where researchers, knowledge and technology can freely circulate.

Economic and monetary policy. The Treaty introduces the possibility, for the Commission, to address a warning to a Member State, in case there is a risk of

excessive deficit, rather than a recommendation by the Council under a proposal by the Commission, as it was previously the case. Solidarity is also expressly mentioned. The so called "Eurogroup" is also officially introduced in the Treaty. *Economic, Social and Territorial Cohesion.* A special attention is dedicated to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross- border and mountain regions. Public services, such as schools and health assistance, play an important role. A specific Protocol establishes the principles for ensuring adequate and sufficient services of general interest.

Health. The Treaty deals with wellbeing and health of citizens and extends the competence of the Union on serious transborder threats. The States need to cooperate to improve complementarity of their border health services. Measures can be adopted to protect health with regards to tobacco and alcohol.

Social policy. The Union confirms its aims of supporting employment, improvement of the working and living conditions, social dialogues, fight against emargination and encourages cooperation between member states in all fields of social policy.

Freedom, safety and justice. The Treaty will facilitate decision in this field, as most of them will no longer require unanimity, since they will pass to codecision procedure with qualified majority. The Union's endeavour to implement a space of freedom, safety and justice is based on the judicial systems of the Member States. The Union will fight criminality, racism, xenophobia through coordination and cooperation of police and judiciary authorities. Europol is recognised as an investigative body. Judicial cooperation is strengthened in criminal and civil policies, through reciprocal recognition of decisions.

External action. The Treaty confirms the juridical personality of the Union (Article 47), which has negotiating power for adherence to international conventions and organisations. External actions will be strengthened by the appointment of the High Representative of the Union for Foreign Affairs and Security Policy.

Common commercial policy. The Treaty refers to the interest of the Union for

development of world commerce, end of restriction to International trade and direct investment and to reduction of customs barrier.

Cooperation with third countries. Assistance is contemplated in the field of finance, also for countries different from developing countries. A specific reference is made to humanitarian help for third countries victims of natural or human caused disasters, with the constitution of a specific voluntary body.

Conclusions

The Treaty has been approved at the end of a complex process, which has been characterised by the failure of the project of a Constitution. It seems to be the conclusive point of a phase of expansion of the activities of the Union in further areas, besides the economic issues that characterised the original architecture of the **Rome Treaty**. This phase also saw the adapting of the institutional framework and functioning to the rapid expansion toward east subsequent to the end of the Cold War. While several observers thought that the new framework would have made new relevant updates unnecessary, the difficulties arising from the economic-financial crises, which hit, particularly from 2010, some Member States have brought about discussions on possible reforms of the parameters of the Monetary Union and on the powers of the European Central Bank.