

UDC: 341.11:061.1

Review paper

Received: -

Acceptee: November, 01, 2020.

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THE EUROPEAN UNION TEN YEARS AFTER THE LISBON TREATY

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Abstract: *The Lisbon Treaty, which entered into force on 1 December 2009, made significant changes to the formal institutional structure of the European Union. Namely, the already existing system consisting of three pillars has been abolished and certain changes related to the formal institutions of the Union have been made, primarily by including the European Central Bank and the Council in the main bodies, introducing the function of High Representative for Foreign Affairs. Contracts are established by other institutions. Even today, ten years after the adoption of the Lisbon Treaty, accompanied by constant reform processes in a sense conditioned by regional and global crises, the European Union remains a “sui generis” organization with a tendency to constitute its own sovereignty to the extent necessary to be institutionally and operationally functional.*

Key words: *Lisbon Treaty, institutional architecture of the EU, European Parliament.*

INTRODUCTION

The process of institutionalization of European integration began in the early fifties with the formation of the European Coal and Steel Community (ECSC), an organization whose institutional system was characterized by features that were not often encountered or were not encountered at all in other international organizations (Knežević-Predić, 2010). . To this day, accompanied by ongoing reform processes, the European Union remains a “*sui generis*” organization with a tendency to transfer part of the sovereignty of nation states to the Union to the extent necessary to be functional in institutional and operational terms. The Lisbon Treaty is a reform treaty that amended the two EU Treaties that form the constitutional basis of the European Union. It was signed in Lisbon on 13 December 2007, but did not enter into force before 1 December 2009. The reason for this two-year delay is related to the ratification process of the Member States. Specifically, in a referendum held in Ireland on June 12, 2008, the popular verdict was against the adoption of the necessary constitutional reforms in order to carry out the procedure of adopting the Lisbon Treaty. Following the consultations, a second referendum was held in Ireland on 2 October 2009 when the citizens finally approved the necessary changes.

In institutional terms, the basic change brought about by the Lisbon Treaty is the abolition of the pillars of co-operation that consisted of: the European Community, the Common Foreign and Security Policy, and police and judicial co-operation in criminal matters. After the entry into force of the Lisbon Treaty, there is only the European Union, which has formally gained its subjectivity. The Treaty establishing the European Community was soon renamed the Treaty on the Functioning of the European Union (TFEU) and, together with the Treaty on European Union (TEU), formed the legal basis for the functioning of the Union. For the first time, a withdrawal mechanism is being legally established, which has been used in the case of the United Kingdom. The Lisbon Treaty additionally amended the provisions related to the organization and functioning of the EU institutions, which, among other things, proclaims certain goals and promotes values and determines the central bodies of the Union: European Parliament, European Council, Council, European Commission, EU Court of Justice, European Central Bank. and the Court of Auditors.

The process of constituting the community began much earlier, but the Lisbon Treaty represents an aspiration and a given moment, in which, based on global movements, whose creator is the Union itself, it creates the condition for forming a different, higher degree of integration of the European community. Much earlier, the

very creation of the European Coal and Steel Community created the preconditions for the gradual integration of states, primarily the creation of a single market and economic freedoms, which created the conditions for the Community to gradually integrate in stages. The first precondition is the establishment of an independent system of financing, ie the Community, unlike other international organizations, has established a system of its own financing, independent of the member states, and thus greatly strengthened the role of Parliament. The second direction in historical development is territorial expansion by creating a community of 28 member states (after the accession of Great Britain 27 member states) with about 450 million inhabitants, which for the most part completes the territorial integrity of the Union (several countries in the 'Western Balkans are in the process of integration). Finally, the third direction is to expand the material domain of European integration in order to connect it into a single functional framework. (Knežević-Predić, 2010).

Namely, the European Union is a special, *sui generis* legal structure in which the features of the confederal and federal system are intertwined. Hence, it is often, in a compromising way, but also contradictory, legally defined as a supranational international organization (Tanasijević, 2010). During the integration process, in accordance with the principles of community law, the member states developed their own legal order subordinated to the community law and transferred part of the sovereign legislative power to the supranational system of integration.

THE GOALS OF THE LISBON TREATY

The Lisbon Treaty is actually a set of amendments to two legal acts, the 1957 Treaty of Rome establishing the European Economic Community and the 1992 Maastricht Treaty establishing the European Union (RS National Assembly, 2011). Amendments to the texts of these treaties stipulate that the European Union is based on two legally relevant legal texts (treaties), namely the Treaty on European Union on the one hand and the Treaty on the Functioning of the European Union, on the other hand, thus creating the possibility for the Union to become a unique European product, absorbing the European Community, which has competences in the fields of economy, foreign affairs and defense as well as justice and home affairs (Zečević, 2015).

In terms of implementation itself, the Lisbon Treaty was a very difficult step and is essentially the result of a failed process of establishing an EU constitution and a reflection of increasingly diverse national interests in major policy areas. This

growing divergence has partly evolved as a result of the EU's continued enlargement first to 15 member states and then to 28 as part of enlargement to post-communist countries in Central and Eastern Europe, as a major step forward at the time. The EU-15 has struggled to prepare the Union for the accession of post-communist countries in Central and Eastern Europe. Repeated attempts to simplify the EU's institutional architecture and its procedural mechanisms following the Maastricht Treaty have yielded very limited results. The Amsterdam summit in May 1997 was to act as a major reform summit. The aim was to reach an audit agreement with a streamlined institutional framework that would allow the EU to continue to operate smoothly with a larger membership base. Amsterdam ended up in the shadow of disagreements over the political framework that will follow the single European currency in the form of economic and monetary union. Amsterdam also illustrated that the former Franco-German leadership team began to fall apart when German Chancellor Helmut Kohl openly disagreed with French Prime Minister Lionel Jospin's proposals to establish a jointly funded EU employment policy. Relations between Berlin and Paris further deteriorated in the following years. The bad point happened at an intergovernmental conference in Nice in December 2000, when German Chancellor Gerhard Schroeder teamed up with British Prime Minister Tony Blair to reject the institutional reform proposals put forward by the French EU presidency under President Jacques Chirac (Schweirger, 2019). In essence, the Lisbon reform should have focused on the efficiency of the Union, democracy, fundamental rights and they were meant to be a response to the global changes of the EU as a global actor.

THE INSTITUTIONAL ARCHITECTURE OF THE EU AFTER LISBON

It is still early to talk about the European Union as a state, but taking into account the historical achievement as well as the fact that we can sense its further development and as such it has the potential to take on the attributes of statehood. (Stanković, 2011) The Lisbon Treaty changed the EU architecture in many ways. Namely, it contained certain novelties when it comes to the independent capacities of the Union, as well as in terms of independent action, which effectively means that it gained its primacy and full scope in terms of the Union's foreign affairs. The breakthrough was made in particular by the creation of an EU diplomatic service made up of Commission staff and Member States' diplomats; there happened the "fusion" of the European Commissioner for External Relations with the High Representative for the Common Foreign and Defense Policy, who was previously part of the Council (Van Middelaar,

2019) and the possibility of disposing of funds that the Commission would use in its activities, e.g. for development assistance.

The European Parliament (Parliament) is a legislative body that performs this function together with the Council. Members of Parliament are elected by direct and general elections, by secret and free ballot and for five years, which ultimately means that the European Parliament consists of representatives of the citizens of the Union, not exceeding 751 members, including the President, elected from among its members. Citizens' representation must be directly proportional. There is the minimum threshold of 6 members per member state, ie a maximum of 96 members, and after the withdrawal of Great Britain, the number of total seats in the Parliament was reduced to 705 members.

The role of the European Parliament is ultimately reduced to legislative, budgetary, political control and consultation. Following the Lisbon Treaty, the role of the European Parliament has been significantly strengthened in terms of substantive power, which is best illustrated in the ordinary legislative process. It is rightly noted in Article 294 of the TFEU¹ that the role of the European Parliament is equal to that of the Council in the ordinary legislative procedure at all stages of the procedure. What can be noticed is that the biggest objection to the Lisbon Treaty is the lack of "democratic capacity", ie the participation of citizens when it comes to decision-making in the new Union. Strengthening of the powers of the Parliament was crucial for the fight against the democratic "deficit" in the Union, given that the Parliament is the only directly elected EU institution, its position needed to be upgraded for reasons of democratic legitimacy.

The role of the European Parliament does not end with exclusive legislative competence, but in that sense it is an important body because it participates in a number of other procedural activities when, for example, it comes to the appointment of a European ombudsman, the approval of the European Council's proposal for the presidency of the Commission and the fact that Parliament can dismiss the commission by a two-thirds majority. This role is in line with the principles of a parliamentary republic in which the executive authority is accountable to the legislative authority. (Margaritis, 2020)

With the entry into force of the Lisbon Treaty, the European Council formally became an institution of the European Union, which replaced the hitherto informal gathering of heads of state or government. In addition to the formal establishment of the institution, further key changes in functioning happened through establishing

1 The Treaty on the functioning of the European Union

the European Council as a formal EU institution. Thus, the Lisbon Treaty combined in the same body the political and legal dimension previously pursued separately by EU leaders, meeting in the format of EU heads of state or government. (Anghel, Drachenberg, 2019).

The two most important functions of the Council within its activities within the European Union are the establishment of the agenda and active crisis management. The latter should be borne in mind if we take into account that the European Union has been in a constant state of crisis for the last 10 years, which has led to the European Council consolidating its institutional activities within the legal system. This confirms that after the Lisbon Treaty, the European Council significantly increased its competencies, especially when it comes to the decision-making process in crisis situations, and it was especially noticeable in the case of resolving the economic and migration crisis. The European Council, using its basis in the Lisbon Treaty, which has made a significant difference compared to the so far applied mechanisms but not sufficiently based on the different way of acting and the practice of unanimous decision-making by qualified majority in certain policy areas. It has applied a whole set of mechanisms but it was not enough, although it had its basis in the Treaty itself (establishment of European Defense Union or *de facto* constitution of the European Public Prosecutor's Office and the *de jure* extension of powers). (Anghel, Drachenberg, 2019)

Together with the European Parliament, the Council represents the legislative power in the system of the European Union, and in addition to the legislative function, the most important is the budget function as well as the function of creating and coordinating the policy of the Union. Each member state delegates one member of the council at the ministerial level, depending on the topic of the agenda, which in a sense resembles the so-called "upper house" of the bicameral parliamentary system. In its actions, it usually decides by a qualified majority in the manner and on the issues provided by the Agreement, but it decides on certain issues by a simple majority or unanimously. When it comes to a qualified majority, the rule is that at least 55% of the members of the Council, representing at least 65% of the citizens of the Union, vote on a certain matter.²

If certain member states want a proposal to fail, they must reach a blocking minority that must contain at least 4 members of the Council; if the blocking minority fails, the qualified majority is considered to have been reached. The special rules on qualified majority apply when the Council does not act on a proposal

2 Article 16 of the Treaty on European Union

from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy; in those circumstances, a qualified majority shall be defined as at least 72% of the members of the Council, representing the Member States representing at least 65% of the population of the Union³. When not all members of the Council are voting, a qualified majority is defined as at least 55% of the members of the Council representing the participating Member States, representing at least 65% of the population of these States, without the numerical precondition of the 15 Member States. An appropriate blocking minority requires at least a minimum number of Council members representing more than 35% of the population of the participating Member States plus one member. Apart from the representation, when it comes to general affairs and foreign policy affairs, the members of the Council decide in different compositions.⁴

In that sense, according to the TFEU, the role of the General Affairs Council is primarily in the organizational sense, which is most often reflected in the preparation of activities together with the European Council and the Commission, while the Foreign Affairs Council has a supervisory role when it comes to strategic action, according to the guidance by the European Council. In addition to general affairs and foreign affairs, the Council meets in the following configurations: Agriculture and fisheries, competitiveness, economic and financial affairs, environment, employment, social policy, health and consumer affairs, education, youth, culture and sports, justice and home affairs and transport, telecommunications and energy, ie when the competences of the Union and the Member States are shared.

For the executive role of the European Commission, the Lisbon Treaty formally meant more continuity than change. The Commission needs the public support of the European Council as the Union's highest authority for its major political initiatives, while the European Council and its leaders cannot operate without the expertise and procedural legitimacy provided by other EU institutions, in particular the Commission. In the formal sense, the Commission represents the executive authority, performs management and executive functions and has the right of legislative initiative. The executive power constituted in this way within the European Union is incomparable with the executive power as we know today within the nation states, because the European Council still has primacy when it comes to defining general executive functions and defining general political goals and priorities.

The complex structure and mechanism of executive power is the product of the

3 Article 238, paragraph 2 of the Treaty on the Functioning of the European Union

4 Article 238, paragraph 3 of the Treaty on the Functioning of the European Union

political determination of the nature of the Union and the establishment of a balance between the Member States and the Union. The main tasks of the Commission in general are the promotion of the general and the undertaking of appropriate initiatives in ensuring the implementation of the Treaty and the measures adopted by the institutions in accordance with the normative framework of the Union together with the European Court of Justice. Budget execution remains the most important function as well as other activities provided for in the Treaty, except for the common foreign and security policy assigned to the EU High Representative for Foreign Affairs and Security Policy. Ensuring the consistent application of the Treaty, the Commission may in certain cases take appropriate actions and initiate proceedings against Member States which the Commission considers to have failed to fulfill their obligations under the Treaty in accordance with the general principles of the community law, in which case it can initiate the case before the Court of Justice.

THE STRENGTH OF THE LISBON TREATY

In crisis situations that require the ability to respond adequately and in a timely manner to events in conditions of time pressure, the European Union has departed, especially after the Lisbon Treaty, from its originally conceived concept which regulates predominantly economic relations within its area of operation. In general, the original forms of integration into the Community were not intended for the newly created supranational entity to “act” but were given only a regulatory function, the main goal of which was to create a stable economic framework for the exchange of goods between economic entities.

During the first two decades of institutional development of the original European Communities, the institutional balance of power was essentially bipolar in nature, as only the Council and the Commission were institutions with real powers (Monar, 2011), which was later amended in 1970 and 1975 when Parliament received the first budget authorization. These powers have resulted in the entity itself being able to manage certain events - segments.

The Lisbon Treaty has changed the architecture of the European Union in the past decade, under the pressure of events (crisis) from the regulatory body to the body to participate with its own capacities in policy making and active participation in political events. The Lisbon Treaty as a certain turning point in this context should be interpreted as the completion of the process in a certain period of time and the necessity of the transformation of the Union due to the changes in the Union itself

but also on a global level.

The construction and management of a common market such as the EU, in which Member States continue to retain most of their sovereignty, especially that relating to the monopoly of physical force, and the inability to adequately enforce sanctions in the event of breaches of Union law have conditioned that the idea of economic integration alone is not enough and that political coercion in certain situations is not a sufficient and adequate mechanism.

The mechanism established in such a way that it creates the policy of the entities on the basis of consensus and voluntariness can have results only within certain assumptions of the policy of the ideal system. In contrast, in events and politics, it is important to legally regulate and react to extremely unpredictable events, because political events do not take place in a static environment of a certain time frame. The solution to the unforeseen situation may, of course, lie in creating a new regulatory framework (then we see the interaction between events - politics and rules - politics), but certain political decisions can only be translated into one-off acts (for example in the military domain). (Middelaar, 2019)

The other side of the Lisbon Treaty is that, after ten years, it has managed to reduce disparities between regions and create territorial cohesion in terms of great territorial diversity, including historical heritage. The territorial cohesion thus established aims at a more balanced and sustainable development.

Therefore, the Lisbon Treaty in these 10 years has aimed to give the institutional mechanisms of the European Union and the Member States special attention to reducing inequalities between the levels of development of different regions. All actors had a special duty to pay attention to rural areas as well as areas with serious consequences of industrial transition and others (in any sense, backward regions), creating an integrated approach and coordination of sectoral policies of different levels of government from local to European. The main instrument of the European Union in the policy of improving territorial inequalities is various forms of financing both direct (when it comes to certain geographical areas that include several member states - river basins, mountain ranges) and indirect through member states. Even ten years after the adoption of the Lisbon Treaty, EU policy in this area will be based on regional cohesion.

In the first ten years of the Lisbon Treaty, it also established some significant changes when it comes to the Union's external relations. In the formal legal sense, the EU has become a global actor and an active participant in the creation of international

instruments of legal regulation. Within the Union itself, legal mechanisms for foreign policy action have been created, taking into account and harmonizing it with the foreign policy action of the member states, and thus increasing its factual power when it comes to global direction in the broadest sense. In that sense, its formal legal subjectivity gives it the opportunity to actively participate in international forums, directing the policy of its actions towards internal and external goals. In that sense, the EU institutions and the member states asked the Court of Justice (which has jurisdiction to interpret the provisions of Community law) to clarify the provisions of the treaties relevant to the functioning of the European Union's foreign policy and the conclusion of international treaties. As a result, the Court of Justice has been able to further develop the European Union's external relations law, strengthening the legal basis for EU "actions" and responsibility on the global stage as well as in the area of the EU's common foreign and security policy. (Thies, 2019)

The Lisbon Treaty stipulates, and this has been largely done in the past 10 years, that the Union establishes and implements common policies and actions and seeks to achieve a high degree of cooperation in all areas of international relations in order to: security, independence and integrity, (b) strengthening and supporting democracy, the rule of law, human rights and the principles of international law, (c) preserving peace, preventing conflict and strengthening international security in accordance with the purposes and principles of the United Nations Charter, the Helsinki Final Act and the objectives of the Paris Charter, including those relating to external borders, (d) to support sustainable economic and social development and the development of environmental protection in developing countries, primarily for the eradication of poverty, (e) to encourage the integration of all countries into the world economy, including and the phasing out of restrictions on international trade; (f) providing development assistance to international trade national measures to preserve and improve the quality of the environment and the sustainable management of the world's natural resources, to ensure sustainable development, (g) to provide assistance to populations, countries and regions affected by natural or man-made disasters, and (h) to promote an international order based on stronger multilateral cooperation and good global governance.⁵

The Court of Justice has been enabled to arbitrate between the Union and the Member States when it comes to a dispute resolving jurisdiction. Based on the principles contained in the Treaty on European Union and the Treaty on the Functioning of the European Union, the Court of Justice set certain restrictions on

5 Article 27 Paragraph 2 of the Treaty on European Union

member states on the one hand, focusing on the European Parliament as a form of institutional decision-making. As the dominant body in the interpretation of commutary law, it has in a specific way established a balance by reducing tensions between the Member States and the bodies of the Union.

Ten years after its entry into force, the Lisbon Treaty has established a certain coherent balance in the European Union, and this can be called a success in a sense. A balance has been struck between law and the division of competences between Union bodies and nation states. Through this, the goal has been achieved of adopting the Treaty to the extent that there are almost no requests from nation states aimed at reducing the competences of the Union. The establishment of chairpersons as permanent bodies has changed the previous practice in the discontinuity of the rotating presidency, as in the case of the European Council.

The Lisbon Treaty marked the success of discussions that lasted for almost a decade on the direction in which the reforms of the European Union institutions should be carried out. From this distance, we can say that the treaty has certainly introduced certain reforms in order to strengthen democracy in the Union as a greater participation of citizens in decision-making in the regular legislative procedure in the European Parliament. Emphasis should be placed on decision-making within the Union institutions, which is a decisive step towards improving decision-making and effective governance, in particular by lowering the threshold necessary for decision-making in decision-making processes. The Treaty established a greater initiative for the participation of national parliaments in the procedures of adopting laws within the EU, but we can rightly say that this mechanism did not actually reach its full capacity due to the lack of interest of national parliaments in creating the EU legislative framework.

Certain professional and scientific circles are of the opinion that, despite all these reforms, in the decade since the adoption of the Lisbon Treaty, the European Union as a whole has become less democratic and less efficient compared to the period before its adoption. This by no means means that the European Union has become weaker or is in gradual disintegration. On the contrary, in response to the crisis, the European Union has managed to face it, given the fact that European leaders have given it new powers - for example, in the field of banking regulation and fiscal supervision, in response to the eurozone crisis, or in border security in response to the migrant crisis. However, the fact remains that even in the midst of these moves that have strengthened the EU, in some respects one of the basic goals of the reform has been derogated from, precisely to establish a higher degree of democracy through reform. And when it comes to its efficiency, this principle is largely undermined,

relying mostly on solving challenges in a way that bypasses the regular legislative procedure and thus the participation of Parliament.

CONCLUSION

When the Lisbon Treaty entered into force on 1 December 2009, the new legal rules created the possibility for a new era in the European Union. The previous co-decision procedure for rules with the force of law has been replaced by a decision-making procedure by a qualified majority within the Council and the partnership participation of the European Parliament. The earlier pillar cooperation was abolished and the European Union finally gained its full subjectivity, which greatly increased the strength of the union itself, primarily as a global actor, but also internally. The Charter of Fundamental Rights has been elevated to the status of a primary law. The fact that should be emphasized here is that the previous cooperation of the member states in the field of justice and home affairs was incorporated into the Treaty on the Functioning of the European Union (TFEU). In this way, an opportunity has been created for the development of independent legal and institutional capacities of the Union in this area.

One of the main goals of the adoption of the Lisbon Treaty was to speed up the legislative process. In more than forty policy areas, voting was changed during the adoption of texts with legal force. In practice, this has resulted in a modest but significant increase in the efficiency of the Union as earlier slow and blocking decisions and a mechanism of political pressure on the state and / or member states in the decision-making process have been avoided. When it comes to the democracy of the Union, the Council and the growing advocacy of certain parliamentary groups for greater participation of citizens in the decision-making process and strengthening the role of the European Parliament remain the main obstacles. It seems that the establishment of the Parliament as a partner body in the legislative procedure has meant a step backwards in the decision-making process, but the effects have been made in strengthening the institution of Parliament as the highest form of participation when it comes to the common interests of all citizens. Frequent conflicts of competence between the Council, on the one hand, advocated by its members, and the Parliament, on the other, resulted in a number of European parties advocating the idea of transforming the European Union into a kind of parliamentary system of government with the Prime Minister. This idea was rejected by almost all the leaders of the member states, emphasizing the argument that this kind of legitimacy

has already been given to the Council. No less important is the increasing role of national parliaments in the legislative process, which was highlighted as one of the main shortcomings of the functioning of the Union before the entry into force of the Lisbon Treaty. To this end, national parliaments have found their place in the text of the treaty (TEU) in order to improve the functioning of the Union with certain powers when it comes to legislative procedure and oversight of certain EU institutions (Europol and Eurojust).

Although the European Council has existed since 1974, it was only institutionalized with the adoption of the Lisbon Treaty. In order to make more efficient decisions and through the abolishing of the rotating presidency of the EC, the function of president with a two-and-a-half-year term has been established.

In the end, many open questions remain, among others, the most important question: in which direction will the EU be further transformed at the already announced Conferences on the Future of the EU at the initiative of the European Parliament. Its basic commitment to the reform of the EU institutions and the strengthening of EU democracy remains in force, but there is also the growing advocacy of some member state leaders on the need for overall institutional reforms. The fact remains that some institutions, especially when it comes to the criminal and legal matters of the EU, have not *de facto* established their functionality, although the treaty explicitly provides for them, and their constitution was established *de lege* before the entry into force of the Lisbon Treaty.

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