

THE TREATY OF LISBON AND ITS EFFECTS IN THE 10 YEARS OF EXISTENCE

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Abstract

The paper addresses the implications of the Reform Treaty, known as the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, starting with December 1st 2009, the time of its entry into force, and up to the present. The document signed in Lisbon complements the relatively long series of treaties adopted through the revision or amendment procedure, being concluded for an indefinite period. The provisions from the Treaty allowed the reform of the legal framework of the Union. At the same time, the Treaty of Lisbon marks an important progress in clarifying the distribution of competences between the European Union and the Member States. Despite the criticisms, the amendments made by the Reform Treaty offer a unified and visible framework for the international representation of the European Union.

Keywords: *reform, institutions, amendment, participative democracy, modernization, simplification*

Introduction

The Treaty of Lisbon represents the first agreement signed by the member states of the European Union after the waves of expansion towards the East, following which Romania and 11 other countries in the region joined the European Union in 2004 and 2007 respectively.

The official title is “The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community”[1], known as the “reform treaty”, intended to replace the Constitutional Treaty as a result of rejection and non-ratification by all Member States.

The legal act of functioning of the European Union was signed by the Member States on 13 December 2007 and entered into force on 1 December 2009, amending the Treaty of Maastricht (Treaty on European Union) and the Treaty of Rome (Treaty establishing the European Economic Community).

Considerations regarding the “birth” of the Lisbon Treaty

It can be stated that the document is the result of a longer process, a process through which the reform of the legal framework of the Union was intended. This was imperative under the conditions imposed by the transition from 15 to 27 Member States, a consequence of the fifth wave of enlargement. At the same time, the reform of the institutions of the Union, as well as of the decision-making process at its level, was required in order to increase the efficiency of the entire Community system. The previous treaties of Amsterdam (1997) and Nice (2001), although they represented prior steps preparing the Union for these transformations, did not contain sufficient and satisfactory changes.

The governments of the Member States have launched the idea of a broader debate on the future of the European Union, a debate focused on four key issues: a simplification of treaties, a clearer delimitation of competences between Member States and the European Union, the status of the Charter of Fundamental Rights and the role of national parliaments. At the end of 2001, the Member States adopted the Laeken Declaration, the basis of which was the need for the Union to become “more democratic, more transparent and effective”. On these considerations, in 2002 the works of the Convention on the Future of Europe were launched, which took place between February 2002 and July 2003.

The Convention brought together representatives of national governments and parliaments from both Member States and candidate countries, as well as representatives of the European Parliament and the European Commission. Following the debates, a Draft Treaty establishing a Constitution for Europe was drafted, a working document negotiated with the governments of the Member States at an Intergovernmental Conference starting in October 2003 and ending in June 2004 with a final version of the Treaty establishing a Constitution for Europe, also known as the Constitutional Treaty [2]. The Constitutional Treaty was signed on 29 October 2004, in Rome, and was ratified by 16 of the 25 member states (by Romania and Bulgaria also, candidate states at that time), but could not enter into force, as a result of the rejection of this document, in May and June 2005, at the referendums organized in France and the Netherlands. Following these, the European Council has decided to take a “reflection break” established between June

2005 and December 2006, the process of institutional reform being re-launched in January 2007.

Based on the Berlin Declaration of March 2007, the European Council of 21-23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference, the works of which ended in October 2007. The mandate provided for the future Treaty to amend the treaties in force at Union level, giving up the idea of replacing them by a single treaty, while the substance of the innovations provided for in the Constitutional Treaty being taken over. The final text of the Reform Treaty, drawn up at the Intergovernmental Conference, was adopted at the informal European Council in Lisbon on 18-19 October 2007.

The treaty was signed within the Lisbon European Council on December 13th 2007, its ratification was finalized on November 13th 2009 and entered into force on December 1st 2009. It was thus intended to achieve the great objective of a truly united European Union, with a political weight depending on the depth of its political integration and the degree to which it develops its own identity [3].

Romania was one of the first Member States to ratify the Treaty, the Romanian Parliament completing the ratification procedure on February 4th 2008. As mentioned in the doctrine [4], the national procedures for ratifying the Treaties have a decisive importance for the successful implementation of the European political projects. Europeans were thus successfully offered an appropriate tool, considered to face the complex challenges of the 21st century, such as immigration, organized crime, energy security, climate change, environment and sustainable development, globalization. The treaty rethinks the ways of addressing political, economic and social issues, so that the Union can reach the level of expectations of its citizens. However, there were successfully kept the constitutional elements of the Constitutional Treaty, which are reformulated in the Reform Treaty.

The question was also raised whether the document adopted in Lisbon represents a treaty to amend or one to reform the existing legal framework. In its translation into Romanian, the Treaty of Lisbon is, as the case may be, a treaty of amendment (French) or a reformatory treaty (English). The two terms can be considered synonymous, but, in

essence, the Treaty of Lisbon includes both: it amends the treaties of the European Union, and it also reforms the institutions of the European Union [5].

The Treaty of Lisbon complements the relatively long line of treaties adopted by the revision or amendment procedure, being concluded for an indefinite period, which signifies the intention of its signatories to grant it a firm and irrevocable commitment [6], without any way of denouncing the Treaty, but solely one concerning the withdrawal agreement.

The relevance of the Lisbon Treaty

The Treaty of Lisbon started as a project aimed at strengthening the Union's power and improving the bureaucratic mechanisms. The new Treaty has "recovered" much of the content of the Constitutional Treaty, but has excluded all the words derived from the term "constitution". The term "Community" was replaced by "Union" throughout the text: the Union took the place of the Community, becoming its legal successor, acquiring legal personality.

In fact, the Lisbon Treaty did not create state symbols for the Union, such as a flag or an anthem. Thus, the use of the flag and the anthem became optional, without forcing the states to give up their use. The statement that the EU was made up of the states and their peoples was not preserved, but a special role was still granted to the peoples, which represent the determining factor of the European decision-making process. Also, the elements related to the explicit supremacy of European law over the national one were eliminated, but the decisions of the CJEU that established this hierarchy remained valid.

Structurally, the Treaty of Lisbon comprises the preamble, 7 articles, protocols, an annex, the final act and the declarations. This document brings amendments to the Treaty on European Union and to the Treaty establishing the European Community according to the incidental provisions; The Treaty establishing the European Community became the Treaty on the Functioning of the European Union (TFEU), and the Treaty on the European Atomic Energy Community (EURATOM) was kept separately.

Although it no longer bears the name of a constitutional treaty, the new text retains the most significant achievements.

The Treaty of Lisbon sets out three fundamental principles: the principle of democratic equality, the principle of representative democracy and the principle of participatory democracy, and has made the Charter of Fundamental Rights a legally binding document. The Charter brings together all the personal, civic, political, economic and social rights of the citizens of the European Union.

A merit of the Lisbon Treaty can also be considered the fact that it has tried to standardize an institutional structure, removing the structure of the three pillars of Maastricht. Pillar II, the Common Foreign and Security Policy has become the subject of special rules and procedures, being implemented by the European Council, which can decide unanimously, but is excluded from the adoption of legislative acts. The Treaty settles an issue that has often been debated in the doctrine, clearly confirming the European Council's membership of the European institutional system. An important novelty brought to the European Council is the resignation of the rotating presidency system in favor of its president, elected by the European Council for a mandate of two and a half years, with the role of ensuring the preparation and continuity of the institution's work.

The coherence of the Common Foreign and Security Policy has been improved by the creation of the High Representative for Foreign Affairs and Security Policy. The position of High Representative with a five-year mandate has been strengthened by combining three previously existing independent positions: the Secretary General of the European Council, the President of the Foreign Affairs Council and the Vice-President of the European Commission.

The major innovation of the Lisbon Treaty was the involvement of national parliaments in the European decision-making process, so that Protocol No. 1, enclosed to the Treaty, is dedicated to the role of national parliaments. In fact, based on this document, the national legislatures directly receive all the draft legislative acts, as well as the amended projects, the resolutions of the European Parliament and the positions of the Council. Within eight weeks from the date on which a draft legislative act is made available to the national parliaments, the position of the respective state must be transmitted [7]. The principle of subsidiarity and proportionality ensure the functionality of the inter-institutional relationship of national parliaments - European institutions.

The practice has shown that the provision introduced by the Reform Treaty allowing national parliaments to present arguments against any proposal from the European Commission is extremely useful. When a third of the national legislations consider that a proposal does not comply with the subsidiarity principle, the Commission re-analyzes its proposal, with the possibility of maintaining, modifying or withdrawing it. However, even if the majority of national parliaments express the same opinion, which is contrary to the Commission proposal, it may decide to maintain its proposal, by reasoning, while the European Parliament and the Council decide on the continuation or interruption of the legislative procedure.

On the basis of Article 289 TFEU, the ordinary legislative procedure is carried out, which allows the European Parliament and the Council to jointly adopt a regulation, a directive or a decision proposed by the Commission. Through this procedure, both the European Parliament and the Council amend the Commission's draft legislation. As with the former co-decision procedure, three readings are used. The Treaty increases the number of areas in which the European Parliament has the right to approve European legislation, together with representatives of the member states of the EU Council.

It can be seen, therefore, that the European Parliament is the institution that has experienced the most pronounced evolution, becoming a real co-legislative and democratic control body, representing the interests of the citizens of the Member States internally and in relation with third parties [8]. Nonetheless, it has not reached and cannot reach the role given, by constitutional norms to a national parliament, the European Union being a construction between states, with the purpose of enhancing their resources and values [9].

Currently, the European Parliament, together with the Council, is a chamber of the Union legislature. Being directly elected by European citizens, the European Parliament is not only the most democratic institution, but in the light of its elective "appointment", it also represents the most supranational institution of the European Union [10]. The qualified majority vote has become the usual voting method within the EU Council. At the same time, the right to veto in many areas of EU action has been renounced, thus strengthening the capacity for union action.

The importance of the Union's neighborhood relations is enshrined in the Treaty as an integrated policy, as the EU has become a more credible international player. Through its structural changes, the reform treaty has come with a new EU dimension in terms of security and defense: a multisectoral approach that determines the integration of the states in the security framework defined in its contents.

December 1st 2019: a decade since the entry into force of the Lisbon Treaty

The leaders of the European Union participated on December 1st 2019, in Brussels, at the ceremony marking a decade since the entry into force of the Lisbon Treaty. Moreover, the celebration of the Lisbon Treaty coincided with the start of a new European institutional cycle.

The tenth anniversary of the Lisbon Treaty took place at the House of European History in Brussels, where the Presidents of the European Parliament, the European Commission, the European Council and the European Central Bank participated. Subsequently, during the months following the European elections, the European Parliament elected a new president in the person of David Sassoli, and Christine Lagarde was appointed the head of the European Central Bank, the new European Commission officially took over its tasks on December 1st, being led by Ursula von der Leyen, while Charles Michel taking the role President of the European Council.

"With the start of the mandate of the new Commission and the new President of the European Council, today we are starting a new European chapter. From addressing climate change to the increase in the cost of living, the Europeans are demanding answers. Now we must work together to fulfill the promises of the last few months"[11], said David Sassoli, the President of the European Parliament.

In addition, the President of the European Council, Charles Michel, spoke about the "common European identity" and the feeling of being European: "We have overcome many obstacles to be here, prosperous and free in the heart of Europe. The Treaty of Lisbon, which we celebrate today, identifies diversity as a crucial part of our European DNA". "Today, we can present to the world a united face", said Michel, who called for "transforming positive reforms into realities for every citizen"[12].

The first woman president of the European Commission, Ursula von der Leyen, mentioned that the European executive is also the “guardian of the European treaties” and delivered a speech full of optimism: “Europe is not just a treasure we have inherited. Europe is a promise. Europe is the future. Europe is something we all have to build, brick by brick, day by day. (...) We are the guardian of the treaties and protector of the spirit of Lisbon. It is a responsibility we have towards Europeans and the founding parents (n.r. - founding fathers and mothers)” [13].

Last but not least, Christine Lagarde, ECB president, wanted to point out the new situation according to which the leadership of the EU institutions was in a perfect gender balance. She requested “the transition to a stage of renewal and hope”, as “an extraordinary challenge awaits us”[14].

The newly elected Presidents David Sassoli, Charles Michel, Ursula von der Leyen and Christine Lagarde symbolically received a “copy” of the Treaty of Lisbon at the Museum of European History.

Conclusions

The Treaty of Lisbon was absolutely necessary for the re-establishment of the Union’s legal framework on new bases, generated by the European and international context. The conditions imposed by the transition from 15 to 28 Member States have made it necessary to reform the institutions of the Union, as well as the decision-making process at its level, in order to increase the efficiency of the whole Union system.

The Treaty of Lisbon urged the Union and the Member States to pay particular attention to reducing the disparities between the levels of development of the various regions and the lagging behind of the most deprived regions. The territorial cohesion has been foreshadowed as a dimension aimed at a more balanced and sustainable development, in accordance with the territory in which every citizen of the EU lives.

Despite the numerous challenges that have arisen over the 10 years since its entry into force, the Reform Treaty is the document that has conferred, for the first time, both the internal policy within the Union and its foreign policy, the same equal importance. Also, the consolidation and increase of the role of the European Parliament took place precisely to compensate for the apparent loss of democratic control it had. In addition, the

upward trend of supranationalism [15] was balanced by the increase of the powers of the European Council, and also of the national parliaments.

The amendments made by the Reform Treaty, despite the criticisms, offer a unified and visible framework for the international representation of the European Union. The Member States holding the Presidency of the Council of the European Union work closely together in groups of three, called “trios”. The trio sets long-term goals and prepares a common agenda, determining major aspects and issues to be addressed by the Council over an 18-month period, and based on this program each of the three countries prepares its own program, in more detail, for six months. The Presidency should act as a facilitator [16], being responsible for advancing the work of the Council on European law, ensuring the continuity of the European Union’s agenda, well-organized legislative processes and cooperation between Member States.

The democratic dimension of the Union has been strengthened by the increased involvement of national parliaments in European affairs. For the first time in European Union history, the Treaty of Lisbon has recognized the role of the national parliament in the process of drafting European legislation, which has the possibility to verify, directly and in each case individually, whether the action at Union level is more effective than the action at national level [17]. However, the measures must be continued. The involvement of national parliaments and the initiative of European citizens are not enough to speak of a complete democratization of the European decision-making process. The Commission can choose whether to take into account or reject the observations and proposals from European citizens or national parliaments. Theoretically, a powerful tool has been introduced through the involvement of national parliaments, but its effectiveness depends on the ability of national parliaments to coordinate their actions within the 8 week deadline.

The treaty has extended the Parliament’s full legislative powers to over 40 new areas, including agriculture, energy security, immigration, justice and EU funds, on an equal footing with the EU Council, also having the power to approve the entire EU budget together with the Council.

The Treaty of Lisbon has conferred the European Parliament new powers of regulation, placing it on an equal footing with the Council as regards the decision-making process related to what the Union has to do and how the funds are spent. This treaty has

changed the way in which the Parliament cooperates with the other institutions, strengthening the power of MEPs to influence appointments to EU leadership positions.[18]

It can be concluded that the Treaty of Lisbon has given the European Union and its Parliament a greater capacity to act and achieve results. All of these sustained efforts are the result of the Union's efforts to become a serious and effective global partner.

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