

ИСТОРИЯ МЕЖДУНАРОДНЫХ ОТНОШЕНИЙ

THE TREATY OF LISBON: FOCAL POINTS

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On 13 December 2007, the Heads of State and Government of the European Union signed the Treaty of Lisbon. Also known as the reform treaty, the document aims to pull the Union out of the institutional stalemate. It is obvious that a European Union of 27 countries with a total population of nearly 500 million cannot function effectively upon the legal foundations designed for a Union of 10 or 15 member-states.

Key words: The European Constitution, the European Union, the Treaty of Lisbon, national sovereignty, institutional reform.

The Treaty of Lisbon: Super-structural Document

What are the commonalities and the differences between the Lisbon Treaty and the botched Constitutional Treaty? At first glance, both documents share many commonalities. Yet, there are differences, which can hardly be passed over in silence. It is worth recalling the metaphoric simile shared by British MEP Richard Corbett: «The DNA of mice and humans is 90% the same but I would assume that the remaining 10% is rather important!»

The Lisbon Treaty contains the basic texts of the European constitution. However, the arrangement of the texts in the new treaty is very different from that in the European Constitution. The Treaty of Lisbon is drafted in the form of euro-legalese. The document makes plenty of references to the previous European Treaties. Roughly, 1000 amendments of two founding treaties, the Treaty establishing the European Communities (the Treaty of Rome, 1958) and the Treaty on the European Union (The Maastricht Treaty, 1993), have been made. Thus, the contents of the Lisbon Treaty could only be interpreted within the entire EU legal framework. This makes the new treaty a super-structural document. Had the Constitutional Treaty entered into force, the opposite would have taken place: it would have superseded all the previous European treaties, therefore, establishing a completely new legal outline for the European Union.

Nature of the European Union

The new treaty abandons the preamble to the constitution, and part of the article that articulates the principles of the EU. It carries out a major revision of the constitutional texts relating to the character of the European Union in mid-term perspective. The treaty intentionally omits the EU symbols and categories (flag and anthem, slogan, constitution, law, citizenship) as to avoid any analogy with a supranational European state. At the current stage, every effort to transform the European Union into a federal, quasi-state seems unrealistic. The Lisbon Treaty preserves texts expanding the powers of the European institutions in shaping and execution of the European policies (e.g. justice and home affairs, energy, ecology, etc.). Some analysts are inclined to regard in this a transfer of national sovereignty towards Brussels. However, it is more an illustration of pooling of sovereignty within the scope determined by the individual member-states in line with their specific national interests. In this respect the nation-states will continue to share sovereignty for collective tackling of those issues, for which all-European level brings greater benefits to them, than if they decide to tackle the same issues exclusively with national tools and resources. The new treaty creates prerequisites for the European Union to function as a union of nation-states. It also acknowledges the growing role of the EU institutions in European affairs.

Single Legal Personality

At present, the European Community (EC) concludes international agreements. It is a member of WTO, the UN Food and Agriculture Organization, and the Hague Conference. Under the Lisbon Treaty, the European Union will acquire a single legal personality. However, the practical realization of EU legal standing is arguable. It is not clear to what an extent the member-states would allow the European Union to act autonomously within the system of the international law. Will it be possible for the European Union, as the legal successor of the European Community, to be a subject of the international law and hold membership with other international organizations, or conclude international agreements on behalf of the member-states? Against the backdrop of an enhanced role of national sovereignty within the European Union, it can be assumed that the realization of the Union's legal personality will only be possible within the scope of competencies determined by the member-states.

Institutional Reform

The Lisbon Treaty removes the pillar structure of cooperation introduced by the Maastricht Treaty (common market, common foreign and security policy, justice and home affairs). The Council of Ministers, in its nine formats, continues to share law-making and executive powers (i.e. it takes decisions on the European directives and regulations, and commits itself to their implementation). Such a merger of legislative and executive functions is contrary to the principle of division of powers in a nation-state, as defined by Montesquieu, but is understandable in the context of the specific mechanisms of governance in this international integration community. The treaty makes a clear distinction between the cases in which Council acts as a legislative body and the cases in which it acts as an intergovernmental forum. The Council of Ministers preserves the principle of the rotating Presidency, except for the General Affairs and External Relations Council, chaired by an EU permanent high representative for foreign affairs.

A key innovation in the treaty concerns the number of policy areas: they have increased from 27 to 50. Decisions on those areas will be passed by the Council of Ministers by a qualified majority. This would reduce the possibility for individual member-countries irrespective of their weight or influence to use their veto in decision-making, and would force them when needed to promote their policy positions through coalitions with other member-countries. The Lisbon Treaty preserves the principle of consensus on budget, social policy, defense, foreign policy and security areas.

The second important innovation concerns the voting system. The revision of the Treaty of Nice system was necessary to protect the Union against a possible institutional deadlock in the present enlarged composition. The new voting system will take full effect after 2017 because of the opposition put up by Poland. Under the new voting system, decisions will be taken by a majority of 55% of member-states (i.e. minimum 15 countries) which should represent at least 65% of the EU population. It is important to note that the double majority voting favours populous European countries. So, Turkey will benefit from its introduction if it becomes an EU member.

The Treaty introduces a number of organizational and structural changes to the European institutions. The European Council will become an EU institution, sharing an equal status with the other European institutions, such as the European Commission and the European Parliament. This seems logical, bearing in mind the Council's key role for functioning of the European Union. At the same time, the European Council will be held accountable for its decisions which can be challenged by the European Court of Justice. The competencies of the European Council include an election of a president (by qualified majority) for a period of two-and-a-half years, with a possibility for a second term. The new post will abolish the institution of the rotating presidency at the level of EU heads of states and governments. It is still difficult to envisage the real weight of the future president of the European Union. A lot will depend on the personality. One thing is certain — the president of the European Union will have the difficult task to prepare the summit agendas, to balance the interests of various member-countries, to ensure continuity of the Council's work, and promote the EU as a unified actor in international system.

The European Commission will preserve its status of an executive body with the right of initiative, but it will also undergo some structural and staff changes. The President of the European Commission will be nominated by the Commission, but approved by the European Parliament. This indirectly strengthens the role of the elections for European Parliament since the citizens of the member countries will know that MEP will decide the choice of the president of a key European institution. The size of the European Commission will be reduced, with only two thirds of member-countries having a commissioner. This aims to streamline Commission's functioning. Commissioners will be appointed on the basis of fair representation and rotation. However, it would be difficult to imagine a European Commission deprived of commissioners from large European states — Germany, France, the United Kingdom, Italy or Spain. The rotation is more likely to affect smaller countries, including Bulgaria. A new post of the High Representative of the Union for Foreign and Security Policy will be introduced in 2009. This will take place by merging the post of the Commissioner for the External Affairs

with that of the EU High Representative for Common Foreign and Security Policy. The unified post will have wider competencies in the area of EU foreign affairs and will act as a Vice-president of the European Commission.

From a purely advisory body, the European Parliament (EP) will become an important law-making body. It will have competences over the adoption of norms of the secondary law — regulations and directives. In tandem with the national parliaments, the European Parliament will supervise the European Commission's legislative initiatives. It is believed that the principle of subsidiarity will be better implemented through the introduction of additional accountability schemes. The deadline for motivated objections and opinions submitted by the national parliaments concerning the directives of the European Commission extends from six to eight weeks. The European Parliament will also enjoy greater powers in the areas of judiciary and home affairs. The European Court of Justice will obtain greater powers to interpret and rule on cases dealing with immigration policy, visas, the European judicial system etc. Denmark will use the right to opt-out from this area while rulings of the Court will become mandatory for the UK only for those policy areas it decides to join.

New Architecture of Foreign Policy

The Treaty of Lisbon introduces a new legal and organizational architecture for EU foreign policy. An important place in this architecture is for the EU High Representative of the Union for Foreign and Security Policy who will lead the European External Action Service (EEAS). The treaty briefly mentions that the EEAS will encompass officials from the EU institutions and foreign services officers seconded from the foreign ministries of the member-countries. The details over the organization and functioning of EEAS will be subject of consultations and agreement between the national diplomatic systems and EU institutions. It is relevant to consider several important points with related to the new diplomatic structure:

— shaping of common foreign policy is concentrated in a single body, and not spread over several institutions. In this way, the EU should overcome the friction resulting from the existence of three separate EU centres — the Rotating Presidency of an individual member-country, the High Representative for Common Foreign and Security Policy, and the European Commission, which often come up with different positions on the Union's foreign policy;

— the EEAS will be institutionally answerable to the Council of Ministers for General Affairs and External Relations and the European Commission. Occasional clashes are possible due to overlapping responsibilities. This could for instance take place if the future high representative for external affairs, who as a vice-president of the commission, decides to seize some of the sectoral competencies of the commissioners for trade and development, considering them areas of the foreign policy. Much work awaits to be done for fine-tuning the status and powers of the high representative within the overall architecture of the Union's external relations. This will help define the scope his/her powers and legitimacy;

— there is lack of clarity over the role of some 120 permanent European Commission's Delegations to third countries. The proposals for them to transform into kind of

«EU embassies» meet the resistance of some member-countries. For sure, the EU delegations will be a component of the new diplomatic service while retaining their representational and operational functions;

— the new foreign policy architecture of the European Union narrows the gap between the national diplomacies and the European diplomacy, but does not merge them. The Lisbon Treaty purposely replaces the phrase «foreign minister» laid down in the Constitutional Treaty, with «high representative», to emphasize that the new diplomatic service does not claim to seize the prerogatives of the national diplomatic systems;

— the EEAS will open opportunities for teamwork between professional diplomats and EU experts. It will help nurture new generation of diplomatic cadres with better knowledge and understanding of the European realities and distinctiveness. The Service will help shape a new European diplomatic vision and culture, and help EU diplomats advance in their professional careers.

The citizens of the European Union

The preservation of the EU's Charter of Fundamental Rights is undoubtedly a success for the EU citizens, since the charter is called upon to guarantee their economic, social and civil rights at pan-European level. The charter is legally binding but has been relegated to an Annex to the treaty. The UK and Poland with a total population of 99 million are not tied to its implementation. The UK fears the charter may threaten its liberal economic model (mainly in the area of taxation, social security, strike action), while Poland is concerned that the charter may undermine its conservative statehood founded on the Catholic system of values.

In order to bring the European institutions closer to the EU citizens, the treaty introduces the right for «European citizens' initiative», whereby one million citizens, from several member-countries will have the right to submit proposals (on various issues falling within the EU competences) to the European Commission for consideration.

Unlike the constitution, the Lisbon Treaty is more difficult to understand by the ordinary Europeans whose interests it is called upon to defend. This is why the European Parliament appealed to the national governments to prepare adapted versions of the Treaty containing the necessary explanatory notes.

Possibility for Voluntary Withdrawal from the European Union

For the first time, a withdrawal clause is included in an EU treaty, which opens the possibility for a member state to leave voluntarily from the organization. The clause is necessary, since there has already been a precedent in the history of the Union. On 23 February 1982, Greenland, which at that time was a territory of Denmark but enjoyed large autonomy, took a decision to leave the European Economic Community on the basis of a nation-wide referendum. Greenland's action was economically motivated. The Greenlanders did not want German or other European trawlers to fish in their territorial waters.

Irish «No» and Ways of Overcoming the Crisis

After the rebuff of the European Constitution, the Lisbon Treaty was likely to offer new hope for speeding the institutional reform. The procedure envisaged parliamentary debates and ratification in the 26 member-states. Ireland was the only country to hold a national referendum to decide the fate of the new Treaty. However, the Irish «no», trapped the EU in a very complex situation. Overall streamlining of the institu-

tional system was again asked into question. The Irish government's poor explanatory campaign may have contributed to the disapproving vote, while the issue of immigration from the East European countries did not appear to be a decisive factor. However, the majority of Irish people remain very sensitive with regard to issues of national identity, military neutrality, tax system and abortion.

Current situation makes it very difficult to hold elections for EU Parliament in 2009 if the distribution of parliamentary seats has to be in observance with the articles of the Lisbon treaty. Reverting to the legal basis of the Nice Treaty would require renegotiation of this aspect.

What are the short-term options for overcoming the crisis? A heightened debate over the core of the problem is taking place in the Irish socio-political domain. The Irish government might decide to go for a second vote of the Lisbon Treaty in September 2009, if the EU makes a concession to keep the old rule allowing each member-country to have a permanent EU Commissioner, thus not to introduce the rotation principle as stipulated by the Lisbon Treaty. Most probably Ireland would insist on commitments to be taken concerning the key issues. Simultaneously Irish efforts must be directed towards creating positive public environment for «yes» referendum, because the latest opinion polls indicate the majority of Irish are against the idea for a second vote.

As for Dublin, a demand for exemptions over sensitive issues would require renegotiation of particular texts of the Lisbon Treaty. Such a demand remains unlikely for the moment, although the Irish «no» camp supporters attempt to launch it into the public domain. Most of the member-countries that have gone through ratification process are unlikely to accept this option following the hard drafted document.

The strategy of the French rotating presidency of the EU (June-December 2008) envisages a continuation of the ratification procedures notwithstanding the Irish vote. With successful ratifications in the 26 member-state parliaments, the pressure over the Irish to repeat the referendum would be great. Despite that the EU leaders' pressure over the Irish government and public might prove counterproductive. There is a risk of double rejection which may then finally bury hard accomplished agreements in Lisbon. In this context, the decision of the European Council to give time to Ireland to come up with own proposals for a way out of the stalemate during the next EU summit in October 2008 seems relevant.

Besides Ireland, the positions of Czech Republic and Poland remain tricky not so much on the point of substance but on the point of procedure. The eurosceptic Czech president Vaclav Klaus reiterated his intention not to sign the Lisbon treaty before Ireland ratifies it. The Czech response depends on the pronouncement of the country's constitutional court on the matter. The Polish president Leh Kachinski, on the other hand, holds an evasive stance. He will not stand against the ratification of the treaty in the Polish Seim, but believes that the Irish vote has rendered further ratification meaningless. Prague and Warsaw holds wait and see position until the Ireland clarifies its own stance.

It is worth mentioning two important points, which tip the balance towards reduced Irish fears. Firstly, Dublin has long accomplished an exemption right over the abortion policies. In accordance with a legally binding protocol of the Maastricht Tre-

aty, the European law does not supersede Irish constitutional texts on abortion. Secondly, Dublin accepts the Nice Treaty after a second vote too. Its approval follows an important debate in the Irish Parliament resulting in an amendment of the Irish Constitution — exclusion of the country in participation of any future European military union. Irish government should not in principle object the development of the European Security and Defense Policy, because in its current format this policy does not undermine the Irish military neutrality.

The Enlargement Process

France intertwines enlargement process with the ratification of the Lisbon Treaty at any rate despite the objections coming from some new EU member-states. The latter find French position erroneous, arguing that the enlargement should not be held hostage of the treaty crisis outcome. The fact is, those new member-states that shared reservations after 'no' vote are at the same time fervent supporters of the enlargement process. Five enlargement waves tend to be a geopolitical success for the EU. The accession negotiations with the candidate countries (Croatia and Turkey) continue. At present, however, in the view of doubling of the number of EU countries, the Union more than ever needs to pause and consolidate. Further enlargement strategy ought to include new institutional instruments. Despite the attractiveness of the EU membership, it should not be an exclusive instrument for influence. The key reports of the European Parliament consider the notion for the European Commission to utilize the European Neighbourhood Policy more effectively as an instrument of pressure. In this respect, the enlargement should not be perceived as a forgone conclusion, an automatic process.

It is also argued that a on-going enlargement would lessen the effectiveness and manageability of the European integration project. Without defining its final political, cultural and geographic borders, the Union will have to be in a constant need of institutional reforms in order to be able to function well under the weight of growing number of member-countries.

European Referenda and the Future of the European Union

The Irish rejection of the Lisbon Treaty is not an isolated case. During the greater period of its 50-year history, a series of referenda concerning the issues of membership, the single European currency, the European Constitution etc. have been conducted. Negative referendum outcomes, regardless of the issues at stake, have always enhanced Euroscepticism. The negative Irish vote on a key EU treaty has a discouraging effect on the future of EU integration project. A solid wall stands between EU elites and citizens. There is a need for realistic assessment of the internal community processes especially after the 5th wave of enlargement. The enlargement remains an important trump-card in the hands of Brussels but it has to be skillfully and rationally used and not at any cost. The EU is need of clarifying its identity, current place and future vision. It is also in need of striking balance between its aspirations and capacity for their realization.

Conclusion

The Treaty of Lisbon broadens the institutional framework of the EU. The European Council and the Central European Bank join the family of the EU institutions: the European Commission, the European Parliament, the Council of Ministers, European

Court of Justice and the European Court of Auditors. The Treaty reaffirms the national sovereignty by assigning national parliaments the right to evaluate European directives proposed by the European institutions. The Treaty pays considerable attention to the powers of European institutions at the expense of lesser attention to the issues related to adoption and implementation of common policies. The Treaty of Lisbon reiterates the ambitious goal for the Union to be a global player in world politics, which has been laid down in the Treaty of Maastricht. However, at present the implementation of a unified foreign policy is more of a good intention rather than a reality.

The EU will continue to develop in accordance with the principles of functionalism, (i.e. making small steps forward). In this respect, the legal framework will be the function of the incremental European integration processes. (e.g. common coal and steel market; customs union; introduction of Euro) and not visa versa.

Coming into force of the Lisbon Treaty is of vital importance for the Union. If rejected, then the EU may be trapped in a state of prolonged institutional crisis with highly negative consequences for the European integration project.

ЛИССАБОНСКИЙ ДОГОВОР: ФОКУСНЫЕ ТОЧКИ

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13 декабря 2007 года главы государств и правительств Европейского Союза подписали Лиссабонский договор. Известный также как договор о реформах, этот документ нацелен на преодоление государствами — членами Европейского Союза институционального тупика. Очевидно, что Европейский Союз, объединяющий 27 государств с населением около 500 миллионов человек, не может эффективно функционировать на правовых основаниях, предполагаемых для 10—15 государств — участников Союза.

Ключевые слова: Европейская Конституция, Европейский договор, Лиссабонский договор, государственный суверенитет, институциональная реформа.