LISBON TRETY - LEGAL FOUNDATION OF EU

Kosor, Marko

VELEUČILIŠTE U ŠIBENIKU

UPRAVNI ODJEL

STRUČNI STUDIJ UPRAVNI STUDIJ

Marko Kosor

LISBON TREATY – LEGAL FOUNDATION OF EU

Završni rad

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Zahvala:

Veliko hvala mojoj mentorici prof. Bratić na pomoći pri pisanju ovog rada.

Posebno hvala mojim sestrama, Branki i Josipi, bez kojih ovo ništa ne bi bilo moguće, a koje su mi bile podrška u svakom dijelu i segmentu mog života. Bez vaše podrške sve bi bilo uzaludno.

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Oče mili, dragi ćaća,
kroz život sve se vraća,
svaka tuga i svaka bol,
na kraju bude blagoslov.

Onaj dan od kad te nema,
svaku noć si moja tema,
bio si mi čvrsta ruka,
u životu punom muka.

Vjera naša, čvrsta i jedra,
zove nas i traži kroz srce jedno;
znamo i vjerujemo,
OPET ĆEMO BITI ZAJEDNO!

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Kolegij: Engleski jezik

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Contents

TEMELJNA DOKUMENTACIJSKA KARTICA

Veleučilište u Šibeniku Završni rad

Upravni odjel

Preddiplomski stručni studij javne uprave

LISBON TREATY – LEGAL FOUNDATION OF EU

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Sažetak rada

Svrha ovog završnog rada je shvatiti povijest i institucionalni okvir Europske unije kroz prizmu osnivačkih ali i daljnjih ugovora na kojima se Unija temelji. Lisabonski ugovor kao kamen temeljac i ugovor koji objedinjuje sve dotadašnje ugovore stavljene je u središte pažnje ovoga rada. Promijene koje je donio Lisabonski ugovor u funkcioniranje Europske unije su definitivno nemjerljive ako ih uspoređujemo sa promjenama dotadašnjih ugovora. Nadalje, rad je okrenut prošlosti, sadašnjosti, ali i budućnosti Europske unije, Hrvatske kao kandidata pa napokon i članice Europske unije, te nadalje, posljedicama politike Europske unije prema zemljama članicama. Brexit (Britain's exit) je jedna od posljedica polagane transformacije, ali i degradacije Europske unije, koji je obrađen u ovom završnom radu.

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LISBON TREATY – LEGAL FOUNDATION OF EU

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Abstract

The purpose of this final paper is to understand the history and institutional framework of the European Union through the founding treaties, but also on the other treaties on which the Union is based. The Treaty of Lisbon as the cornerstone of all the other treaties, and the treaty that brings together all the existing treaties has been placed at the spotlight of this paper. The changes brought by the Lisbon Treaty to the functioning of the European Union are definitely immeasurable if we compare them with the changes in the previous treaties. Furthermore, the paper is turned to the past, the present and the future of the European Union, Croatia as a candidate and ultimately member of the European Union, and further consequences of EU policy towards member states. Britain's exit is one of the consequences of slow transformation, but also the degradation of the European Union, which has been dealt with in this final paper.

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1. INTRODUCTION

1.1. Subject matter

More than a political project, Europe is a dependent product of its institutions. The European Union is an area of institutional coercion and games whose rules have changed and adapted in time. The problem of research is the following: Looking at the European Union in the time perspective of its existence, different interests and multifaceted aspects are detectible which, as an international organization at a supranational level, protect and promote, or perform its institutional function, but also affect the national goals of member states.

Within the aforementioned, the different forms of action that they accomplish their goals as well as the risks they face as an organization, differ. Bearing in mind the EU institutional status as well as the variability of the role and importance of the institutions in the time perspective of the organization, the paper will explain thechange of the institutions in the formal and contentious context as well as the political conditionality of their introduction due to the changes given by Lisbon threaty.

After a long period of suspense and many difficulties, the Treaty of Lisbon came into force on 1 December 2009. It has changed legal and institutional framework of the European Union to some degree. Thus, the Treaty is of constitutional importance for the Union. It has changed the previous Treaties on which the Union was based. The last pre-Lisbon version was the Treaty of Nice (2002).

Process dynamics and implementation results of the Lisbon Treaty (effective 1 December 2009), show that the traditional European compromise leads to outcomes that none of the actors really wanted, and that no one is satisfied with. The European Union is an arena of institutional coercions and games, the rules of which are occasionally readjusted. This occasional readjustment accounts for the survival of the system, which is a priori unstable, for each unsatisfied partner thinks and hopes that redefinition might provide him with an opportunity to gain a better position. The process is especially visible in negotiations regarding the Lisbon Treaty, above all in the institutional innovation which is the function of then the new president (of the European Council). The conclusive interpretation of the Lisbon Treaty depended on the outcome of the bureaucratic struggle right until 2011, and prior to a new definition of the rules in 2014. The new EU system testifies primarily to the fundamental

trait of European integration, which strongly favoured from the outset a repeated rethinking of its form (its institutions) in the light of considerations regarding its goals (its policies).The Treaty of Lisbon vested the national parliaments of EU Member States with the possibility of direct participation in the European legislative process, thus attempting to overcome the Union's democratic deficit. Earlier national parliaments only disposed with the possibility of indirect involvement in the EU affairs, through the scrutiny of governmental actions in the EU institutions. An option of both direct and indirect participation faces national parliaments with the choice of prioritized mode of involvement into the EU decision-making process. Croatian Parliament is the national parliament of a country that had become an EU Member State after entry into force of the Lisbon Treaty, which makes it an appropriate case for analysis of the effects of the Lisbon Treaty on national EU affairs management system. An analysis of formal rules concerning European affairs shows that a mandating system of parliamentary scrutiny is in place, indicating that indirect involvement is the priority of the Croatian Parliament. According to Briski this shows that, at least in the Croatian case, the Lisbon Treaty does not represent a sufficient enticement for direct participation of national parliaments in the European legislative process (2014).The new Treaty reflects the efforts of the Union to adapt to its new circumstances that occurred primarily due to a huge enlargement from 15 members in 1995 to 27 in 2007.

The aim of this paper is to give a brief outline of the most important changes the Treaty of Lisbon brings to the united Europe.

1.2. Methods of work

In the elaboration of this graduate thesis, comprehensive research on the problem and subject of research was used. Numerous studies have been studied in the area of European public law, the institutional basis of the European Union in the time perspective, as well as current political events in the Republic of Croatia. Collected findings are presented with this work and conclusions are finally drawn. As a source of data, domestic and foreign literature in the area of law, economics, professional and scientific journals, electronic databases, data of the Croatian Chamber of Economy and statistical data of the Central Bureau of Statistics were used.

2. THE CIRCUMSTANCES OF THE EUROPEAN UNION IN THE TEMPORARY PERSPECTIVE OF POSITION BY ECONOMIC AND POLITICAL ASPECTS

2.1. The idea of a united Europe

The idea of a united Europe began to be realized after the Second World War, the founding of the European Coal and Steel Community. The initial idea was to unite the French and German capacities to produce these raw materials, crucial for the management of wars (thus preventing any future armed conflict between these countries). The 1992 European Union Treaty, signed in Maastricht, was named the European Union for this a good part of the supranational international organization.

For centuries, the idea of a united Europe was occupied by philosophers and visionaries. Among them were Pierre Dubois, Pierre Joseph Prudhon, Claude Henri de Saint-Simon, Jean Jacques Rousseau, Giuseppe Mazzini, Victor Hugo and Immanuel Kant. However, only after the end of the Second World War, conditions for this dream were created. Robert Schumann, the French Foreign Minister, proposed on May 9, 1950, the founding of the European Coal and Steel Community (ECSC). The proposal was accepted and achieved by the Paris Treaty on 18 April 1951. The purpose was to create a common (single) coal and steel market so that by controlling the production and placement of these important raw materials (without which war can not be guided), the outbreak of the Fourth Franco - German armed conflict (after the wars of 1870-1871, 1914-1918 and 1939-1945.).

The community encompassed six countries - Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands, and the winners and defeated in the Second World War in this organization. The war materials have been transformed into a means of reconciliation of Western European countries and the preservation of peace.

Established by the successful co-operation of the 1951 Treaty of 1951, the Treaty of Rome established 1957 Treaty of Rome (the European Economic Community, EEC) and the European Atomic Energy Community (the European Atomic Energy Community). It was impressive. The United States has joined the new Member States: Denmark, Ireland and the United Kingdom (1973), Greece (1981), Spain and Portugal (1986), European neutralists

Austria, Finland and Sweden (1995), Czech Republic, Hungary, Poland, Slovakia, Estonia, Latvia, Lithuania, Slovenia, Cyprus and Malta (2004) .

The Treaty on European Union (Maastricht, 7 February 1992) has given this strong international organization a new title: the European Union. This agreement came into force on 1 November 1993. The European Union, by comparison with other regional organizations in Europe, has so far been the biggest trans-national move. In fundamental political functions, integration has not gone as far as in the economy. Nevertheless, the EU proves that economic integration can ultimately lead to political. The success of the European Union model is more and more an example for other, similar projects and experiments in the international community.

2.2. Presentation of EU founding treaties

Speaking of the founding treaties of the EU, it is important to mention the following:

1. 1951 = European Coal and Steel Community (expired in 2002)

2. 1957 = European Economic Community

= European Atomic Energy Community (EUROATOM)

3.1992. Year = European Union (Maastricht Treaty)

As far as inventory contracts are concerned, the following are key:

- 1986 = Single European Act - effective since 1987

- 1992 = Maastricht Treaty - effective since 1993

- 1997 = Treaty in Amsterdam - effective since 1999

- 2000 = Treaty of Nice - effective since 2003

- 2007 = Lisbon Treaty - effective since 2009. Year.

2.3. Significance of EU economic integration

The term "economic integration" refers to a number of different terms. It may refer to the takeover of the company by a larger group. It may have a spatial aspect, for example, if it involves the integration of regional economies into national. In our case, "economic integration" refers to international economic relations and indicates the inclusion of economies of several sovereign states into one entity. When used in a static sense, "economic integration" is a situation in which national parts of a larger economy are no longer separated by economic boundaries but act together as a whole. When used in a dynamic sense, it signifies the gradual abolition of economic boundaries between Member States (ie, the abolition of national discrimination), whereby previously separated national economies gradually merge into a larger entity.

Economic integration is not a goal for itself, but serves for higher goals. The immediate economic goal is to increase the prosperity of the cooperating units, and the more far-reaching goal is the policy of peacemaking.

The goals of economic integration are: 1) free movement of goods and services 2) free movement of production factors 3) approaching politics.

Economic integration is basically the integration of the market. However, the integration plans tend to follow political rather than the economic logic. The political reasons for starting the integration of the goods market are:

1. Permanent alliances between the sectors seeking protection and the consumer sector seeking less expensive imported goods are difficult to achieve.

2. Alternative instruments (such as industrial policy, non-tariff barriers and administrative procedures) can be used to intervene in the economic process.

3. Vital political interests such as policy development and redistribution of revenues remain in national competence. With regard to modern mixed economies, Tinbergen distinguishes between negative integration (barriers to abolition) and positive integration (creating equal conditions for the functioning of integrated parts of the economy). Integration of policies is information, consultation, coordination and unification.

1) Informing: The partners agree to inform each other about the goals and policy instruments they intend to implement.

2) Consultations: The partners agree to be obliged not only to exchange information but also to seek advice and advice from others on the policies they intend to implement.

3) Coordination: The partners undertake to reach an agreement on a greater number of activities needed to achieve a coherent policy for the whole group (often implying acceptance of regulations to ensure international consistency and may include harmonization and may lead to convergence of policy target variables).

4) Unifying: Abandoning national instruments and replacing them with the instruments of the alliance for the whole area or accepting identical instruments for all partners (here the national competence for the choice of regulatory instruments is abolished). Fully integrated goods markets imply free trade between Member States. People are pushing for free trade because they expect economic benefits like:

• greater production and greater prosperity through better allocation of production factors where each country specializes in products that have a comparative advantage

• more efficient production thanks to a quantum economy and a better market game

• better "trade conditions" (price level of imported goods in relation to export goods) for the whole group compared to the rest of the world

The obstacles to free trade are the following:

• Customs duties or import duties are the amounts that are charged on the import of goods, which makes it more expensive on the domestic market. Such fees may be based on values or quantities. They can be indicated in percentages or vary in relation to the price level on the domestic market.

• Fees of similar effect are import charges disguised as administrative costs, storage costs or testing costs incurred in the customs clearance.

• Quantitative restrictions (QR) are limitations on the amount of import of a particular good that is allowed in a particular country over a certain period of time (quota), which is sometimes expressed as a monetary value. It is a special so-called kin. The customs quota, which is the maximum quantity allowed for importation at a given tariff, while all quantities exceeding this customs limit at a higher customs rate.

• Valuation constraints mean that importers can not use foreign currency to pay for goods purchased abroad.

The other non-tariff limitations are all such measures or situations (such as fiscal treatment, legal regulations, safety standards, state monopolies, public tenders, etc.) which provide preferential treatment to domestic products of a country on the domestic market in relation to foreign products. The obstacles to free trade are most likely to protect national trade and industry from competition, and therefore represent protectionism. Protectiveism can be combined with free trade. For example, the Union customs prevent the freedom of trade with third countries on the basis of a common customs tariff and or other protectionist measures while at the same time permitting the freedom of intra-trade. Some of the reasons for the obstacles to free trade are: independence from other states, developing industries, protection against dumping, increasing employment, diversification of the economic structure, solving the problem of balance of payments.

Exports restrictions can also be heard. They rely on different ideas. The most common arguments are:

• Good things are strategically important and can not fall into the hands of other states, not only for military equipment (weapons), but also for incorporated knowledge (computers).

• Raw material exports mean consolidation of the colonial situation, export duties are going to increase the desire of the population to only process raw materials. If that fails, then export-duty revenues will be used to start another type of production.

• If an excessive quantity of a product is exported, the importing country may take protective measures against a number of other products, in order to avoid this, the State may accept "voluntary" restrictions on exports of a particular product.

The stages of economic integration are the following:

1. Free Trade Zone

2. Customs Union

3. Common market

4. Economic Union

5. Monetary Union

6. Economic and Monetary Union

7. Complete economic union

Economic integration is a key factor for the EU, and institutional action is multilaterally focused on protecting its legitimacy, and also, as the next chapter shows, the dynamics of the development of EU institutions has been directed towards the function of economic integration.

3. COMPARATIVE REVIEW OF EU INSTITUTIONAL MECHANISMS IN TEMPORARY PERSPECTIVES

3.1.Institutions of the EU under the Rome and Paris Treaties

In accordance with the Rome and Paris Treaties, the member states of the European Union have transferred part of their national sovereignty to the Union and its institutions, primarily:

1. The European Parliament (representing the citizens);

2. The Council of the European Union, represented by the Member States;

3. The European Commission, which is a politically independent body and represents common European interests (Rudolf; Vrdoljak; 2005.)[1].

In addition to these three EU institutions, the Court of Justice of the European Union, which provides for the establishment of a legal system, a Court of Auditor (Court of Auditors) overseeing the use of funds from the EU-calculated European Central Bank), which is the most important task of maintaining price stability.

3.2.European Parliament

The European Parliament is the body representing the citizens of the European Union member states (455 million) and expresses their democratic will. Parliamentarians elect citizens with immediate, universal voting rights every five years. Plenary sessions are usually held in Strasbourg, and additional in Brussels and Luxembourg. Seventeen committees carry out preparatory work for plenary sessions, and within Parliament there are also many political groups most commonly met in Brussels. The General Secretariat is in Luxembourg. Parliament and the Council of the European Union share the legislative power that consists of the following:

1. Cooperation procedure - Parliament gives its opinion on draft directives and regulations proposed by the EU Commission;

[1] Rudolf D., Vrdoljak I., Europska unija i republika Hrvatska, Adrias No. 12, travanj 2005.

2. Approval procedure - Parliament approves international agreements on which EU Commission negotiates, enlargement of EU, the change of electoral rules and others.

3. Appeals - Parliament and the Council shall jointly make decisions on important issues (free movement of workers, internal market, education, research, protection and preservation of the environment, health, culture, etc.).

The Parliament and the EU Council are jointly considering the Union budget (adopted at the end of Parliament's proceedings). The draft is proposed by the EU Commission. If Parliament rejects the budget, the procedure is repeated (in practice, such cases occurred several times).

The Parliament is the highest place for debates in the EU. Parliament conducts democratic oversight over the Union's activities. It can, for example, dispose of the EU Commission by declaring distrust (the decision is taken by a two-thirds majority of votes (Bušić; 2004, p. 342)[2].

3.3. EU Council

The Council of the European Union is the main body of the Union for the Making of Decisions (formerly known as the Council of Ministers). Each Member State shall be chaired by the Council for a period of six months, and each meeting of the Council shall be attended by one Minister from each Member State, depending on the subject on a daily basis. Preparations for Council meetings are made by the Coreper Standing Committee, made up of ambassadors from EU member states, and by officials from national ministries. The Council's administrative work is carried out by the General Secretariat, headquartered in Brussels.

The EU Council, together with the European Parliament, shares legislative power, budget together with the Parliament, concludes the international agreements with non-EU countries, international organizations negotiated by the EU Commission (officially signs contracts), improves EU's common foreign and security policy, harmonizes economic policies of the countries Member States and other Decisions are adopted unanimously (in sensitive areas

[2] Zdravka Bušić, Vijeće Europe i Konvencija o ljudskim pravima, u: Uvod u europsku uniju, Mate, Zagreb, 2004., p. 335

such as common foreign and security policy, tax, asylum and immigration policy) or by a qualified majority vote. In the voting process, not all countries have the same number of votes, and the number of votes needed is changing with each new accession of the states to the European Union.

The European Council should be distinguished from the Council of Europe, which was founded on May 5, 1949, on the basis of the agreement of ten European states concluded in London (today there are 46 states in the Council). The Council of Europe is not an EU institution. It is about an intergovernmental organization whose aim is to protect human rights, promote cultural diversity in Europe, and suppress social problems (such as racial prejudice and intolerance). The Council adopted an important European Convention on Human Rights and Freedoms (entered into force in 1953). In order to enable citizens to realize their rights under the Convention, the European Court of Human Rights, based in Strasbourg, was founded in 1959. Croatia is a member of the Council of Europe since 1996 (Bušić; 2004; p. 335)[3].

The European Council brings together presidents of states and presidents of governments from all EU countries to the so-called "Top summit meetings", and the Council of the EU Commission. It was founded in 1974 when political leaders of the EU began to hold regular meetings. They are now meeting four times a year, and they are chaired by the president of the state or the president of the government of the country who heads for the Council of the European Union. The European Council is the body that creates EU policy at the highest level, and is now considered a government of the EU. The first (most important) person in the Council is actually the High Representative of the EU for Common Foreign and Security Policy, who is at the same time the Secretary General of the Council.

3.4. European Commission

The European Commission has one member from each EU country. They are appointed for a period of five years, and they are usually called "commissioners" in our commissioners. Each member has a defined area of work. The Commission expresses interests common to all EU

[3] Zdravka Bušić, Vijeće Europe i Konvencija o ljudskim pravima, u: Uvod u europsku uniju, Mate, Zagreb, 2004., p. 335

Member States. It is the guardian of the EU treaty and defender of general interests (does not act in favor of the welfare of any state or interest group). It has the right to initiate legislation in the legislative process, it may propose laws, rules, instructions or decisions made by the Parliament and the Council of the EU. It is responsible for achieving a common policy (eg in the field of agriculture), realizes the budget (making payment orders) and manages EU programs. It is obliged to respect the principles of subsidiarity and proportionality (it may only propose laws that are more effective if adopted at EU level than in certain countries, regions or local level). The EU Commission represents the EU in international relations and organizations (eg in the World Trade Organization), negotiates on behalf of the EU on the conclusion of international treaties, etc. EU Fraudsters or Decisions may apply to the Court of Justice (the Court may enforce the StateTo comply with EU decisions and regulations). Decisions are taken by the ordinary majority of votes in the Commission. If the votes are divided, the President's vote is firm.

The work of the EU Commission is independent of the governments of member states. Suggestions and guidance to members of the Commission of individual Member States or their representatives (likewise political parties or interest groups) are forbidden. The EU Commission is accountable to the Parliament (if Parliament gives it a mistrust, all members are required to submit their resignations). The internal structure of the Commission consists of 26 general directorates-general of nine service departments, together with departments. The members of the Commission meet for one week in Brussels. The Commission also has offices in Luxembourg, representatives of EU countries and major cities of many other countries around the world (including Croatia) (Rudolf; Vrdoljak; 2010)[4].

Speaking of the right of the EU, before the Treaty of Lisbon it was divided into three pillars as shown in Figure 1:

1) The right of the European Communities (1st pillar)

2) Law II. column

3) Law III. column

[4] Rudolf D., Vrdoljak I., Europska unija i republika Hrvatska, Adrias No. 12, travanj 2005.

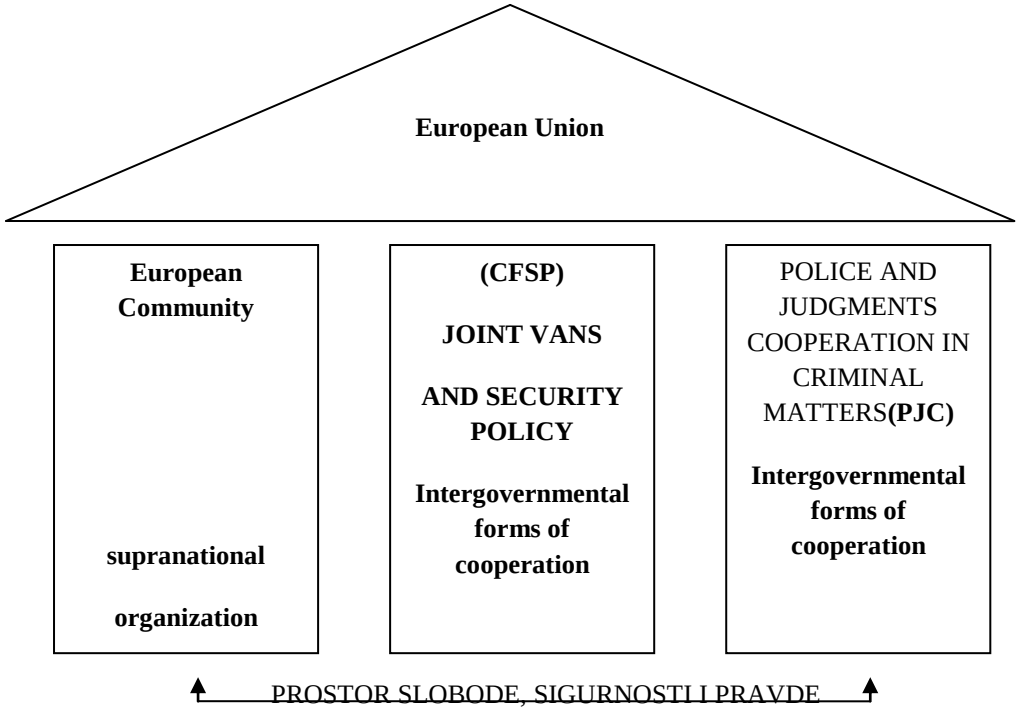


Image 1. The EU right before institutional reform under the Lisbon Treaty (Siniša Rodin, Tamara Ćapeta, Iris Goldner Lang (ur.): Reforma Europske Unije - Lisabonski ugovor; Politička misao, Vol.47 No.2 Prosinac 2010.;str.216)[5].

The following factors have been identified in the need for institutional reform: (Rodin et al., 2010, pg 217)[6].

1) Institutional deficiencies in terms of the need for institutional reform to expand and deepen the EU. Improvement of decision-making efficiency, EU outward appearance, transparency, EU legitimacy, EU achievement

2) Supranationalism against intergovernmental / intergovernmental methods, whereby the supranational method was entrusted to the Commission and for the intergovernmental / intergovernmental method the Council (Rodin et al.; 2010.)[7].

[5] Rodin S. et al., Reforma Europske unije- Lisabonski ugovor, Politička misao, Vol. 47 No. 2, 2010, p. 216
[6] Ibid, p. 217
[7] Ibid, p. 218

3.5. Part of the Treaty on the Constitution of Europe

In Rome, the Intergovernmental Conference on the Constitutional Treaty of the EU began on October 4, 2003. In the year, the Treaty itself was signed on October 29, 2004. However, since the referendum was rejected by citizens of France and the Netherlands (29 May and 1 June 2005) It was decided to change the name "Establish a contract" and to offer it under another name - The Reform Treaty known as the Lisbon Treaty, which was signed in 2007.

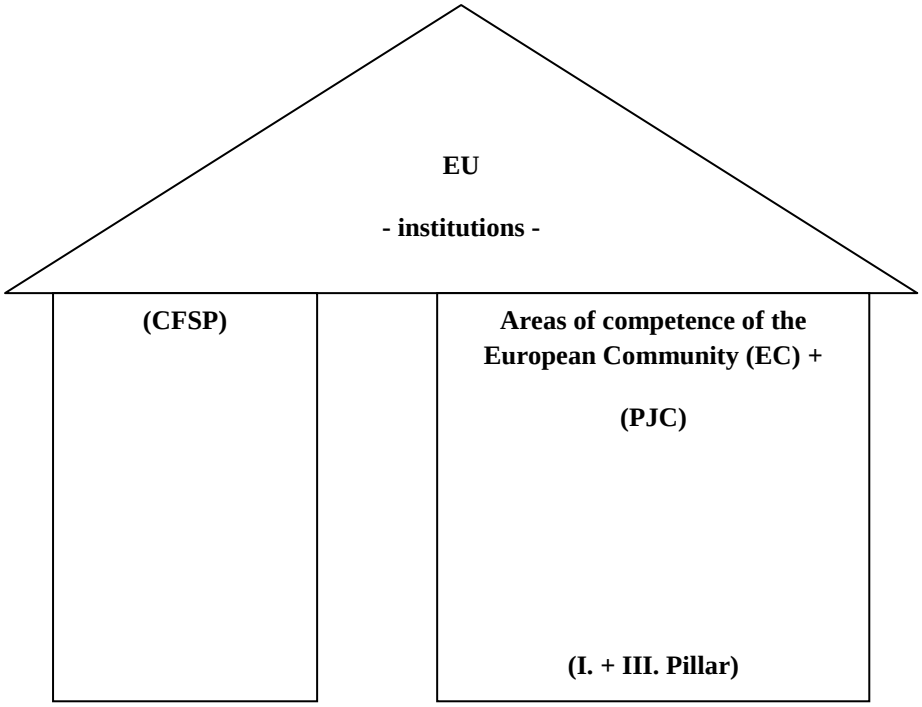
In content, 95% to 98% of the Constitutional Treaty has been taken over in the Treaty of Lisbon, but rhetoric has been ruled out, recalling that Europe is transformed into a state so that it is expelled: the anthem, the flag; Word constitution, laws, foreign minister. It can be said that the Lisbon Treaty has received a package of the same content that is less compelling than before, and was intended to enable States to ratify the Lisbon Treaty without a referendum.

3.6. Promises with the Lisbon Treaty

Thec changes to the Treaty of Lisbon have created a problem in Ireland, where, irrespective of certain changes, the Irish Constitution still defends the ratification of international treaties without a referendum, and on 12 June 2008, the Irish didn't sign the Treaty of Lisbon,. It was at that time that the Treaty had already been ratified in 24 countries, and Ireland repeated the referendum on 2 October 2009 and accepted the Lisbon Treaty with 67%, which came into force on 1 December 2009.

By comparing the Nice and Lisbon Treaty structures, it is apparent that the Treaty on European Union remains a Treaty on European Union but that the European Community Treaty is amended by the Treaty on the Functioning of the European Union and the Treaty on the European Atomic Energy Community by the Treaty on the European Atomic Energy Community.

Amendments to the Treaty of Lisbon collapse, and the European Community disappears, institutional reallocation is emerging, as well as institutional changes itself, as well as changes in decision-making.



CHANGES IN THE LISBON AGREEMENT

Picture 2.CHANGES IN THE LISBON AGREEMENT

Izvor: (Siniša Rodin, Tamara Ćapeta, Iris Goldner Lang (ur.): Reforma Europske Unije - Lisabonski ugovor; Politička misao, Vol.47 No.2 Prosinac 2010.;str.216)[8]

The amendments to the Lisbon Treaty can be seen by comparing Figures 1 and 2, there is a unifying I. and II. pillars, disappears European Community (the former European Economic Community), and it is a fact that the European Community disappears as a legal entity, which means that unlike before when it could conclude international agreements, now it no longer can. It remains that the EU gains legal capacity and becomes a new subject of international agreements.

III. The pillar is subjected to supra-national methods, and individuals at the court invoke supra-national law. As far as criminal law, introducing the European arrest warrant, which requires the extradition of its nationals to another Member State of the EU if there prosecuted. As regards II.pillar, ie common foreign and security policy, it depends on the constitutions of each member state.

[8] Rodin S. et al., Reforma europske unije – Lisabonski ugovor, Politička misao, Vol. 47, 2010, p.216

The EU Treaty states three principles of authority:

- The principle of allocated powers, which means that the EU can not itself create power, no original function, and they do basic constitutional bodies in the federal type of government.

Thus, the EU has only the powers granted to it by the Member States. The EU is a federal legal order, which means it decides on multiple levels, and the Constitution determines where the delimitation of powers is. The EU through the founding treaties gets all the powers, and every decision must have the foundation in the founding treaty.

The principle of subsidiarity, which means that when it has the power, the European Union can decide only when its decision is better than the decision of a Member State. The Lisbon Treaty inserts a national element into this principle by allowing national parliaments, for example, to say that some issues should not be addressed at European level, but at national level (they actually attribute this to decision-making), and therefore a newspaper was introduced in the sense that the European Commission. Now it should be justified that the EU can make a better decision, but here is the question of who can make a better decision.

The principle of proportionality applies if the EU decides to make a decision (on the basis of a doubt about the principle of subsidiarity), and the intensity that governs it must as far as possible limit other interests.

The three types of authority described in the EU Operation Agreement are as follows:
1. Excluding powers that imply that states delegate power to the European level by denying the possibility of their decision, which means that they completely give up decision-making issues, such as the EU Customs and Monetary Policy decisions, for example.

2. The shared powers that imply the greatest number of powers in this domain and are not overstated by the transfer of such powers. It is argued that the Member States retain the ability to make decisions on a particular issue, but only until the EU resolves that question, until then the state independently regulates Certain issues (eg. social ones).

Complementary powers imply that the EU can not make decisions that are transformed into legal norms regulating individual rights, the EU can take measures that regulate issues (eg financial assistance), complementary powers such as culture, and the EU has no influence on it.

It is important that Europe is founded on the powers that were granted (Ćapeta; Rodin; 2010)[9].

The Treaty of Lisbon is visible to the European Union, giving tools to achieve its main goals. These goals are not targeted only within the borders of the Union. The EU sees itself as an important player on the international scene and, accordingly, wants to expand its values. Consequently, the Treaty of Lisbon cites some of the EU's main EU-wide goals: "to highlight and promote the values of the European Union throughout the world and to contribute to peace, security, sustainable development of the planet Earth, solidarity and respect among peoples, free and fair trade and eradication of poverty, contribute to the protection of human rights, in particular the rights of the child, as well as to the strict implementation and development of international law, including respect for the principles of the Charter of the United Nations (EC 2011)[10]." The function of the Vice-President of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy , established under the Lisbon Treaty, plays an important role in achieving the goals beyond the Union's borders. Thanks to this function, the EU can now stand unanimously in the world today, which will certainly facilitate the implementation of the Union's foreign policy.

3.7. New EU institutions by the Lisbon Treaty

The new institutions envisaged by the Lisbon Treaty are the following: (Ćapeta; Rodin; 2010, p.136)[11].

1. European President, led by the European Council, which becomes an institution

[9] Rodin S., Ćapeta T., Osnove prava Europske unije, Narodne novine, Zagreb, 2010., p. 136

[10] European Convention, 'Contribution from M. Robert Badinter, alternate member of the Convention "A European Constitution"', 2002.; CONV 317/02.

[11] Rodin S., Ćapeta T., Osnove prava Europske unije, Narodne novine, Zagreb, 2010., p. 136

2. High Commissioner for Foreign and Security Policy, acting between the Commission and the Council

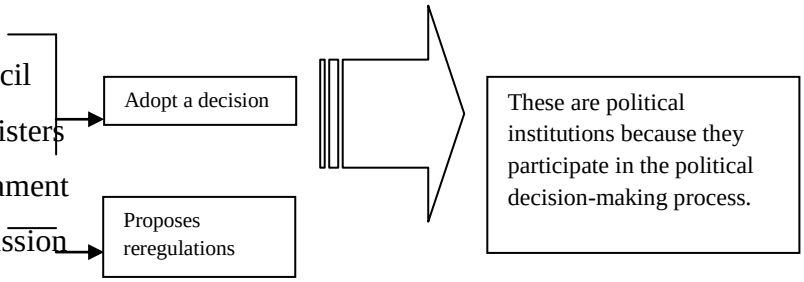
3. President of the European Commission

With regard to the possibility of leaving the EU there are no conditions, with the agreement, and if there is no agreement, it is possible 2 years after the intention of the Member State to get out of the EU

3.7.1. Current EU institutions

The EU institutions are:

1. European Council
2. Council of Ministers
3. European Parliament
4. European Comission
5. European Court
6. Court of Auditors
7. High Commissioner for Foreign and Security Policy



It is important to insist that the Council of Europe is not provided as an EU institution (Ćapeta; Rodin, 2010.)[12].

3.7.2. European Council

By the Treaty of Lisbon, the European Council was recognized as an institution for the first time, different from the Council of Ministers, which brings together the heads of state or government, or the highest level of politicians. For this body it is important to emphasize that it came from emergency, and the meetings were formalized in the 70s. It meets at least twice a year (in practice four times a year) and has no legislative powers, but only makes political decisions - it directs the regulation of European politics (the minister of agriculture will not decide what the government representative does not advocate). It is headed by a 30-month

[12] Rodin S., Ćapeta T., Osnove prava Europske unije, Narodne novine, Zagreb, 2010., p. 136

mandate for a re-election, elected by a qualified majority, representing the EU outward in foreign policy, and ruling on unanimity, unless the Treaty provides otherwise (Rodin et al., 2010; p.216)[13].

3.7.3. Council of Ministers

The Council of Ministers represents a legislative institution, where different formations are present:

- judicial and internal affairs, environment, education, culture, transport
- General Affairs and External Relations, Economic and Financial Affairs, Social Policy

The Council is tasked to adopt regulations together with the European Parliament, to coordinate the economic policies of the member States, to conclude international agreements between the EU and third countries, endorse the EU budget together with the European Parliament, develop a common foreign policy and security policy according to the guidelines of the European Council, Courts and police in criminal matters.

There are three approaches to voting in the council: (Rodin et al., 2010, p.217)[14]
- qualified majority
- ordinary majority
- unanimously

3.7.4. Parliament

The European Parliament is a legislative institution which brings laws, and it is referred to as the Assembly of European Integration. Initially, it had only an advisory role (up to the Maastricht Treaty), and gradually gained the power to take part in decision-making. The

[13] Rodin S. et al., Reforma europske unije – Lisabonski ugovor, Politička misao, Vol. 47, 2010, p.216
[14] Ibid, p.217

regulation can not become a right without the joint approval of the Parliament and the Council of Ministers (exceptions are decisions on a common foreign and security policy).

Towards the end of the 1970s, direct elections to Parliament (giving democratic legitimacy to the EU) are moving towards the following criteria:

- according to national quotas
- a minimum of 6 and a maximum of 96 representatives per Member State (depending on the size), with the inhabitants of the smaller countries being somewhat better because they have more votes
- elections every 5 years

Representatives of citizens sit in the Parliament, and when they are elected, they are grouped according to political orientation rather than national affiliation. The largest party is the EPP (European People`s Patry); The European Free Alliance (EDF), the European Free Alliance (ALDE), the European Free Alliance (ALDE), the UEN (Union for Europe of the Nations), the GUE (European Uited Left), the European Social Democrats There is also the Eurosceptic party

The Parliament oversees the European Commission and can only be dissolved as a collective body (not separately), oversees and brings the European budget, and is also extended to grant approval for the conclusion of international treaties.

The main powers of the parliament are the following:

1. Legislative power together with the Council of Ministers in the first pillar of the EU - the co-decision procedure
2. Advocacy in the legislative process in the third pillar of the EU
3.Days to make the EU budget and control its spending (Rodin et al., 2010)[15]

[15] Rodin S. et al., Reforma europske unije – Lisabonski ugovor, Politička misao, Vol. 47, 2010, p.217

3.7.5. European Commission

The European Commission's legislative function shows that it has the exclusive right to propose legislation, except for common foreign and security policy. Furthermore, the first pillar has the exclusive right of initiative in terms of proposing regulations to the European Parliament and the Council of Ministers, while in 2nd pillar shares this power with the Member States. The right initiative is in the hands of the European Commission and it can not be obliged to release a certain draft regulation in the process, but it depends on whether the decision will be made. It is a very strong institution that can withdraw the proposal as long as it is in the process of drafting legislative programs at the beginning of the year. Further, the role of the EC is that it is a policy maker, which means that it designs European policies, and also oversees whether Member States are implementing European law together with the European Court. For example, states must implement the directives into national law to be valid, and the Commission will monitor whether this is done because it would otherwise force the states to do so, and the infra-red procedure, in which the commission may bring the state before the court, even if Criminal shoot. Furthermore, the role of the EC is that it manages the EU policies and budget and implements them, and represents the EU at international level.

Regarding the election of the Commission, the Heads of State and the Government of the EU Member States within the Council reach agreement on the mandate for the President of the Commission, and the Parliament confirms the Mandate. Further, the Mandator, in consultations with the Governments of the Member States, shall determine the members of the Commission, and the Council shall accept the candidate list by qualified majority and submit it to the European Parliament for confirmation, and Parliament shall speak with each candidate and vote on the whole course together, and after the vote in Parliament the Commission is formally appointed by the Council Based on the qualified majority.
As far as the composition is concerned, there are one Commissioner from each Member State, and Commissioners are only protecting European law and must not be subject to the governments they are coming from, the mandate lasts for five years. A President and vice-president are elected automatically. The High Representative for Foreign Policy presides when the Council decides on foreign policy.

3.7.6. European Court in Luxembourg

This court is a multilingual court with twenty three official languages, while unofficially have one official language - French. All court decisions and regulations are translated into all languages causing a number of technical difficulties. The court decides in camera (behind closed doors) where only judges are present.

There are three institutions within one institution. As far as the composition is concerned, one judge from a member state plus eight independent attorneys is present, elected on the basis of a common agreement between the Member States, and the choice is implemented at the national level, while only the certificate is issued at the European level. The seven-member committee shall give its opinion on the suitability of the candidates proposed by the Member States and the members of the Board shall be elected by the Council and one member shall be proposed by the Parliament. Members are elected for six years with the possibility of re-election, and independent lawyers have the right to five permanent seats, but only from certain states, while the other three are selected from the remaining states by rotation system.

They are judged in councils (three or five members), the Grand Chamber (thirteen members). Regarding decision-makingjudges made, and before the decision is made, independent attorneys make decisions and opinions on what the previous case-law is concerned (not mandatory, but important). Because of the excessive amount of work the European Court does not know what kind of practice it is creating (therefore opinion), and there is a secret ballot. At the verdict, the judge reports the draft, the judges vote on it, and may agree with the decision, but not for a reason. The Lisbon Treaty introduced control of judges at the European level (Rodin et al., 2010)[16].

[16] Rodin S. et al., Reforma europske unije – Lisabonski ugovor, Politička misao, Vol. 47, 2010, p.216

3.8. Perspective features of the Lisbon Treaty

The leaders of the EU member states have stressed that the Lisbon Treaty provides the Union with a stable and long-term framework. Consequently, some changes are not expected in the near future, as the Union should now be able to concentrate on addressing the concrete challenges the Lisbon Treaty has brought. Still, the Treaty of Lisbon certainly will not be the last. The Union is changing and some new solutions will be needed in the future (Omejec, 2008)[17]. Once the Lisbon Treaty has been ratified and its entry into force, some issues remain unanswered. Perhaps the most important of all is related to the principles set out in the contract. One of the fundamental principles is more democracy and openness. The question that is raised is whether the Union will succeed in this way and become a more democratic organization open to its citizens. Whatever we can see, the Union institutions are pushing for this, calling on citizens to engage in decision-making processes, providing citizens with more and more information, and perhaps the most important thing is to facilitate the citizens' petition to the European Commission. The European Citizens Initiative has started filing petitions since April 2012. However, as mentioned above, there are some controversy with the Lisbon Treaty. The approach to the adoption of this contract, which was very closed to the public, is in contravention of the very principles laid down in the Lisbon Treaty. In accordance with all the above, we will have to wait for some time, for at least the entry into force of all the provisions of the Lisbon Treaty, for a more complete assessment of the situation. Here, with the aforementioned European Citizens Initiative, we are primarily thinking of a new voting system and the double majority that was introduced in 2014.

[17] Jasna Omejec: Vijeće europe i Europska unija – institucionalni i pravni okvir, Novi Informator, Zagreb, 2008.

4. THE BALANCE OF POWERS IN THE EU IN THE LIGHT OF THE LISBON TREATY

4.1. Subsidiarity in the Lisbon Treaty

In the Lisbon Treaty, subsidiarity is mentioned as an EU principle in Article 5 of the Treaty on the European Union, which approximately restates the provisions of the Article 5 EC. The novelty broughtby Lisbon is the Protocol on the application of the principles of subsidiarity and proportionality, which contains a legal framework for a reinforced control of subsidiarity. The Dutch government was particularly the one insisting on the introduction of an en-hanced control of subsidiarity through the involvement of national parliaments. For details on the positions taken by the Member States' governments on the negotiation of the Lisbon Treaty, see V Miller, 'EU Reform: An Old Treaty or a New Constitution', 2007, Research Paper No. 07/64, House of Commons Library (http://www.parliament.uk/commons/lib/ research/rp2007/rp07-064.pdf)[18].

This protocol opens up access to the European law-making process for national parliaments, which are given the role of controlling the compliance of legislative proposals with the principle of subsidiarity. Until then, the ex ante protection of subsidiarity was left to the governments and their ability to defend the national regulatory competences. The new framework provides for an ex ante role for national parliaments. The relevant provisions on subsidiarity can be found in the text of the Lisbon Treaty and in three Protocols attached to it: Protocol on the role of national Parliaments in the European Union, Protocol on the application of the principles of subsidiarity and proportionality, Protocol on the exercise of competence (http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML)[19].

As a first step, the EU institutions have to transmit their draft acts to the national parliaments, which will be entitled to send reasoned opinions within an eight week early warning system on the legislative proposals received. The EU institutions have to take account of the reasoned opinions issued by the national parliaments and, where non-compliance with the principle of subsidiarity represents at least one third of all the votes allocated to the national parliaments, the draft act must be reviewed. The institutions can decide to maintain, amend or withdraw

[18] http://www.parliament.uk/commons/lib/ research/rp2007/rp07-064.pdf
[19] http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML

the act and they have to give reasons for the decision. In the case of draft proposals issued within the ordinary legislative procedure, if the proposed legislative act is contested by a simple majority of the votes allocated to national parliaments,the Commission will have to review the respective act. The Commission can maintain, amend or withdraw the act. If maintained, the Commission will have to give a reasoned opinion for its decision. In such a case, the Council and the Parliament will have to consider the reasoned opinion of the Commission and those of the national parliaments within a special procedure and decide on compatibility with the principle of subsidiarity. The legislative proposal considered under this procedure can be rejected for incompatibility with the principle of subsidiarity only with a majority of fifty-five percent of the members of the Council and a majority of the votes cast in the European Parliament. The ex post protection of subsidiarity is left to the competence of the European judiciary, which will be empowered to hear cases alleging breaches of subsidiarity. Such actions can be introduced by the Committee of the Regions or by the Member States on behalf of their national parliaments. As a consequence, the effect of the new framework on subsidiarity depend at last resort on the stance taken by the ECJ as regards the legal review of this principle. For Koopmans this is a reason to fear that the principle of subsidiarity will be depoliti-cised and considered as a rather technical and legal aspect, instead of a matter of policy, which in his view would increase the gap between citizens and politicians, as the former want more visible political implication (Koopmans; 2005.)[20].

4.2. Interpretation and criticism on strengthening the control on subsidiarity

By strengthening the control on subsidiarity, the new mechanism provided by the Lisbon Treaty seems to intend an increased scrutiny of this principle. The weak ex post control of subsidiarity has been rein-forced with an ex ante one. That is why some authors maintain that subsidiarity came back in force in the Constitutional Treaty.

The essential added value of the new protocol is the association of the national parliaments in the process of law-making at EU level. One author argued that it is indeed for the national parliaments to take an active role, as '…national Parliamentarians are the ones whose law-making powers are liable to be curtailed by a decision that a certain matter be regulated at the

[20] Koopmans R. et al, Contested citizenship – immmigration and cultural diversitiy in Europe, 2005, Amsterdam, p. 208

Union level, so they ought to be alert to possible infringements of the principle' (Dashwood; 2009.; p.368)[21].

Nevertheless, there has been criticism in the literature as regards the real power of scrutiny which national parliaments have. It has been argued that the influence which national parliaments will have under the Lisbon Treaty is a limited one and '...we should be very careful not to expect national parliaments, or, more, accurately, parliamentary majorities, to turn suddenly and publicly into assertive and powerful policy influencers in the EU affairs.'

In this line, when analysing the role of national parliaments in European matters, Raunio concludes that most national parliaments are not suitably equipped to scrutinise EU legislation. Two improvements are suggested: national parliaments need more resources in order to deal with EU matters, and the scrutiny of subsidiarity should be extended to all specialised standing committees, not only to the ones explicitly in charge of EU affairs. These improvements would have an important role in acquiring expertise in EU affairs (Ondelj; Markanović; 2011.)[22].

The framework for national parliaments' involvement is also criticised by Weatherill as being only a limited power attributed to them (Mangenot; 2010.)[23].

A true assessment of compliance with subsidiarity would imply giving technical expertise on substantive aspects, and the period prescribed in the Protocol does not allow enough time in this respect. The eight week timetable and the difficulty of know-ing the views of other national parliaments have been put forward within a test run in the framework of the Conference of Community and Euro-pean Affairs Committees of Parliaments of the European Union (COSAC) as regards the early warning mechanism proposed in the Constitutional Treaty.The subsidiarity check included in the Lisbon Treaty has also been tested. The test is conducted within COSAC for the Council Framework Decision amending Framework

[21] Dashwood A. et al, European Union Law, 2009, Bloomsbury publishing, London, p. 368
[22]Ivona Ondelj, Dragana Markanović, O institucijama Europske unije, 2011, Zagreb, p.125

[23]Mangenot Michael, Lisabonski ugovor i nove institucije Europske Unije, Politička misao, p. 47, br. 1, 2010

Decision 2002/475/JHA on combating terrorism COM(2007) 650 final. (http://www.cosac.eu/en/info/earlywarning/Test/ reldoc/pdf/)[24].

Moreover, broadly speaking, subsidiarity is not just an eight-week issue, but a continuous one, as it relates to the balance of powers between the Union and its Member States, and to the continuous disposal of interests. It may be said therefore that more efficient control of the content of the legislative proposals could be done during the preformal negotiation process in the Council when views from the national parliaments could be upheld by the government representatives; before having a draft proposal, national parliaments could influence their governments to negotiate and scrutinise in a certain way, as at a formal level it is more likely that the subsidiarity test will only be able to answer whether the procedural criteria have been met.

Several other aspects add to the view that the new role attributed to national parliaments will be a difficult one. As yet, there have been no fully, formally established structures at the level of national parliaments responsible for the control of subsidiarity. As a result, one of the problems raised by the new framework relates to aspects of coordination. It has also been said that 'introduction of the ex-ante system could undermine efforts to enhance the efficiency of EU decision-making, since national parliaments consultation would need to be coordinated and overseen.' (Mangenot; 2010.)[25].

This critique translates into the fear that the mechanism for controlling subsidiarity could hinder the European integration process. Furthermore, it has been observed that a conflict might arise between the positions adopted by the national parliaments when checking subsidiarity and the positions held by the corresponding governments in the Council. The political architecture and representation at national level will thus play an important role (Follesdal; 2006.)[26].

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[24] http://www.cosac.eu/en/info/earlywarning/Test/ reldoc/pdf/

[25]Mangenot Michael, Lisabonski ugovor i nove institucije Europske Unije, Politička misao, p. 47, no. 1, 2010

[26]Follesdal, A., Why is There a Democratic Deficit in the EU? A Response to Majone and Moravcsik (2006). Journal of Common Market Studies, Vol. 44, No. 3, pp. 533-534,2006.

As afore-exemplified, the new role attributed to national parliaments in the ex ante scrutiny of subsidiarity has already received a lot of criticism in the literature. Kiiver even concluded that '…putting false hopes in the national parliaments would mean to accept far less than what we are entitled to in terms of representative democracy in the European Union.' (Kiiver; 2008)[27].

As mentioned in the Lisbon Protocol, subsidiarity seems to have followed again the shield rationale, as intended at its introduction in the Maastricht Treaty.

The Lisbon Treaty also reinforces the ex post control of the principle of subsidiarity. The Committee of the Regions is offered the right to introduce actions for the annulment of 'legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted', if it considers that a certain act is breaching subsidiarity. These areas are: economic and social cohesion, trans-European infrastructure networks, health, education, culture, employment policy, social policy, the environment, vocational training and transport.Moreover, national parliaments have an indirect right to introduce actions on grounds of infringement of the principle of subsidiarity via their national governments.

Although not containing an exhaustive list of criteria, it can be said that the Amsterdam protocol gave more guidance in applying subsidiarity than the Lisbon protocol, as some of these criteria have not been kept in the latter. This choice might be motivated by the fact that since Amsterdam, the Commission has developed its impact assessment process, defining more specific criteria for applying the principle of subsidiarity. Another element of novelty in the Lisbon Treaty is that there is a clearer demarcation of competences. Nevertheless, problems might still arise due to their special content and phrasing in several policy areas.It can be observed that in the Lisbon Treaty subsidiarity continued to focus on questions of competences and not sufficiently on questions of content and policy lines. One author even claimed that 'subsidiarity remained the vague and elusive norm it has always been' (Kersbergen; Verbeek; 2008.)[28].

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[27] Kiiver, P.,Sources of Constitutional Law: Selected Provisions from Constitutions and Fundamental Legislation of the United States, France, Germany, the Netherlands and the United Kingdom, Europa Law Publishing, 2008., p. 59.

[28]Kersbergen, C.J., Verbeek, J.A., The politics of international norms., EuropeanJournal of International Relations, 13 (2), p. 217-220, 2008.

Yet, the importance of this new legal framework has been acknowledged, especially as regards its contribution towards reducing the democratic deficit of the Union. Moreover, the control mechanism for subsidiarity, although not having real power of scrutiny, in practice act towards raising the awareness of EU institutions that they should pay due attention to subsidiarity as it will be exposed to a broader assessment.

It can therefore be suggested that the new legal framework helps towards increasing the culture of subsidiarity at the level of EU institutionsIt can be said that over the years, the Commission started to develop a certain culture for subsidiarity which is reflected in instruments such as better regulation reports, impact assessments, etc, and that the Commission is more inclined to take account of subsidiarity if it wants its pieces of legislation to be adopted (Constantin; 2008.)[29].

4.3. Subsidiarity as an ideological concept in the EU

The review of subsidiarity in the previous section revealed that so far the demarcation of competences between the EU and the Member States has been mainly discussed with reference to the principles of attribution and subsidiarity. This has shaped a rather theoretical and abstract approach, which considers the demarcation of powers in the EU from a top-down perspective. But subsidiarity is not only an ideological concept in the EU; it is also an institutionalised instrument. This is why there is a need to look at the interinstitutional interaction during the law-making process, and not only at the final outcome which is scrutinised in terms of subsidiarity. Attention is drawn here to investigating the process beyond the legal framework of subsidiarity which might shed more light on how the balance of powers between the two legal worlds is maintained in practice. In this view, this part of the article proposes a change of perspective by looking at the daily interaction between the two legal worlds and at how the frictions between them are resolved in practice. This translates into a more practical bottom-up approach.The criticism attributed to subsidiarity and the stated approach of future research suggest that another theory may have more explanatory

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[29]Constantin, S., Rethinking subsidiarity and the balance of powers in the eu in light of the lisbon treaty and beyond, Croatian yearbook of European law and policy, 2008., p. 151-177

potential for understanding the actual balance of power between the EU and its Member States and for defining the scope for legitimate protection of national interests. In this context, the following hypothesis is put forward: the competences between the EU and the Member States are demarcated in daily practice by negotiating and balancing national discretionary powers, rather than defined through the legal framework of subsidiarity.

One aim of future research would be to chart the use of discretionary powers for protecting national interests in order to explain how competences between the two realms, the EU and its Member States, are balanced in practice in the law-making process. A second aim would be to assess the normative reliance on and efficiency of the discretionary powers left to the Member States in the law-making process as a tool for protecting national interests and reconciling the national and European legal orders (Constantin; 2008.)[30].

4.4. One level of analysis and three perspectives

From a vertical perspective, the research beyond subsidiarity would analyse the use of discretionary powers at the level of the EU law-making framework. A broad understanding would be adopted for law-making, covering legislative action and judge-made law. Two practical research perspectives are proposed for this view. The first one concerns an analysis of the ex ante law-making process in the EU in order to assess the room for manoeuvre left to the Member States in protecting their national competences and interests. More specifically, it concerns the use of national discretionary powers in the negotiation process which leads to the adoption of EU legislation. The second practical perspective concerns an ex post protection of national interests as occurring at the level of the European judiciary in the process of balancing national discretionary powers. A third perspective regarding the concepts of discretion, interests and unity would underlie and connect the two practical perspectives. Several general arguments, drawn forth by reviewing existing research or based on this author's own assessment will be offered in order to motivate the choice of the three perspectives and to substantiate their operationalisation throughout the proposed research.

[30]Constantin, S., Rethinking subsidiarity and the balance of powers in the eu in light of the lisbon treaty and beyond, Croatian yearbook of European law and policy, 2008., p. 151-177

4.4.1. Ex ante law-making

Since national interests are represented in the EU institutional architecture at the level of the Council, this institution will therefore be our platform for analysis. In prior Lisbon Treaty's EU institutional architecture, the Council held the central position in the law-making process, although in the majority of areas it shares this power with the European Parliament within the codecision procedure. The importance of this institution in the EU law-making process has been extensively acknowledged in legal and political sciences literature. Its role has been highlighted not only regarding formal aspects of the institutional mechanism for decision-making, but also in connection to the process taking place beyond the formal rules. At the very initial stage of the European Communities, Haas pointed out the importance of people's perceptions and attitudes for the cooperation process, underlining the difference between formal agreement and the real power structure. He drew attention to the importance played by the Council within the integration process, observing that: (Constantin; 2008.)[31].

It is impossible to assess the role of the Council in European integration merely on the basis of treaty texts.The focus of future research should be placed on a less visible institutional actor, but which holds a key position within the Council. Designed as a body to support the work of the Council, as provided for in Article 207 EC, Coreper plays at present a de facto role in the EU law-making process. It functions as an intermediary between the national governments and the EU institutions. The importance of this committee has not yet been sufficiently acknowledged in the existing legal literature and there is a clear need for more and renewed study of its functioning due to the fundamental changes in the legal and political spectrum of the Council with the last accessions, and to the novelties introduced by theTreaty of Lisbon.

Since its early establishment Coreper was designed as a body to support the work of the Council. Gradually, it developed more and more decision-making power. ECJ clarified the role of Coreper in the decision-making process by interpreting the provisions of Article 207. It stated that the de jure power rests with the Council.

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[31]Constantin, S., Rethinking subsidiarity and the balance of powers in the eu in light of the lisbon treaty and beyond, Croatian yearbook of European law and policy, 2008., p. 151-177

Nevertheless, the de facto role of Coreper in the decision-making process at Council level has been acknowledged in practice and in the literature.

This has mainly been argued on the basis of the A-points practice, where decisions are already taken at the level of Coreper and there is only a formal approval in the Council. At present, Coreper is a key player in the everyday decision-making process. This is due on one hand to the peculiar features of its own institutional setting and internal functioning, and on the other hand to the fact that this body operates within the bigger institutional architecture of the EU, at the crossroads of the main decision-making actors: the European Commission, the European Parliament and the Council.

So far, Coreper has been the object of study of several articles and book chapters, and even a limited number of books are entirely or partly dedicated to this EU body. Nevertheless, legal scholarship has not yet fully acknowledged the importance of this body. The most discussed aspects in the literature regard the following: the negotiation process undertaken at this level; the decision-making process in a rather broad context and the underlying issue of efficiency; delegation and the role of bureaucrats. Less attention is given to aspects of political accountability, to specific decision-making procedures, such as codecision, and to the effect of the political process on legal outcomes. Moreover, most of the literature on Coreper takes a social and political sciences approach and less a legal one. In a recent rich empirical study, Larue concludes that additional research on both the roles and power of the bureaucrats working in Brussels is necessary. For Lewis, the community method is partially produced and maintained through the institutional channel of Coreper.

This body is also the most relevant one for examining how national interests advocate in the EU decision-making process.

The present context offered by the changes introduced by the Lisbon Treaty, as well as in view of the past enlargement and future prospects, together with its specific institutional features, makes Coreper a relevant context to study the use of discretionary powers for the protection of national interests in the ex ante EU law-making process. For the purpose of the proposed research, Coreper would therefore be employed as a barometer for assessing the use of national discretionary powers. Since it operates very much out of sight, its actual influence

on the decision-making process in the EU could therefore be made more visible in future research (Constantnin; 2008.)[32].

4.4.2. Ex post law-making

The second perspective proposed for an approach beyond subsidiarity targets the ECJ as a relevant context for performing the research. The role played by the Court in the EU's constitutionalisation has already been widely acknowledged in the literature. The barometer for testing the use of discretionary powers would here be the principle of proportionality, which represents a more efficient criterion for assessing the balance between the powers of the EU and those of the Member States. On proportionality, the Court has engaged into a much more solid case law. Since subsidiarity is dependent on proportionality as regards the kind of action envisaged, it has been suggested by Davies that it is a more suitable criterion for assessing the exercise of competences. The principle of proportionality is an easier point of assessment as it observes that the burdens of a certain action will not be disproportionate to the objectives of the Community.

At the level of ECJ law-making, discretion is left to the Member States when invoking the grounds of derogation provided by the Treaty, for example in the area of the internal market. An in-depth analysis of the discretion left by the Court to the Member States when assessing compliance with EU legislation vis-à-vis the application of the principle of proportionality would therefore build towards a better understanding of how the competences are balanced between the European and national realm; it would consequently show how the interests are being reconciled at this level (Constantin; 2008.)[33].

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[32]Constantin, S., Rethinking subsidiarity and the balance of powers in the eu in light of the lisbon treaty and beyond, Croatian yearbook of European law and policy, 2008., p. 151-177

[33]Constantin, S., Rethinking subsidiarity and the balance of powers in the eu in light of the lisbon treaty and beyond, Croatian yearbook of European law and policy, 2008., p. 151-177

5. REVIEW OF SOCIALLY AND POLITICALLY ACTUALIZED ARTICLES OF LISBON TREATY

5.1. Article 42.7 of the Lisbon Treaty

France has invoked the EU article after the attacks on Paris. Article 42.7 is the solidarity clause that states that if a member of the European Union is the victim of armed aggression on its territory other states have an obligation of aid and assistance by all the means in their power. This article was first invoked at the request of the French government following multiple terrorist attacks on Paris. EU countries voted unanimously in favor.

This article does not require members to take military action. Members that have traditionally been neutral, such as Ireland, Austria and Sweden, are not required to undermine this status. The article also states that it does not undermine commitments under the North Atlantic Treaty Organisation (NATO), which some, though not all, EU member states are also part of.

It was originally included in the Treaty on the insistence of Greece, which wanted to have some kind of collective defense protection outside of NATO because Turkey, its biggest military adversary, is also covered by NATO but not an EU member.The Lisbon Treaty also includes a "solidarity clause," Article 222 of the Treaty on the Functioning of the European Union (TFEU). This article mentions the European Union specifically whereas Article 42.7 just mentions member states. By choosing to invoke Article 42.7, France has chosen a more inter-governmental approach.

Article 42.7 is similar to NATO's Article 5, which states that an attack against any member of NATO is considered to be an attack on all members. This was first invoked after the 9/11 terrorist attacks on the United States (http://www.politico.eu/article/what-is-article-42-7-of-the-lisbon-french-government-terrorist-attacks-paris-treaty/)[34].

According to one source in the ministerial meeting, the explanation was needed. "Some of us had never heard of Article 42," the source said.

[34] http://www.politico.eu/article/what-is-article-42-7-of-the-lisbon-french-government-terrorist-attacks-paris-treaty/

Before the beginning of the meeting on Tuesday, EU defense ministers were already talking about intelligence gathering as first form of support for France.

"I do not expect any contribution as far as troops are concerned for France because is a big powerful country and it has its own capacities," said Czech Foreign Minister Martin Stropnický.

France asked EU countries to step up background check controls at the bloc's external borders. Before that date, at border controls authorities could verify only whether passports were valid, but didn't have no access to police databases to check criminal records. (Barigazzi; 2015.)[35].

5.2. Article 50 and Brexit

It is often said that the Article 50 was never intended to be used and that it was hastily drafted; yet its drafting process shows that it was seriously considered and debated. Whereas it was the Lisbon Treaty that ultimately brought this provision into EU law, Article 50 (or, rather, Article 59, as it then was) was negotiated within the Convention on the Future of Europe and formed part of the Constitutional Treaty (http://www.express.co.uk/news/world/692065/Article-50-NEVER-to-be-used-Europe-Brexit-Italy-Prime-Minister)[36].

5.2.1. A constitutionalist interpretation of Article 50

A constitutionalist interpretation of Article 50 requires that we go beyond an instrumental, textual or functional understanding thereof, and that we consider it as a whole and in the light of its organisational significance in the EU constitutional landscape. To do so requires: firstly, an assessment of the goals and nature of Article 50 in the EU integration process, which can be gleaned from its travaux préparatoires and, secondly, respect for existing constitutional

[35] http://www.politico.eu/article/eu-agrees-to-french-request-for-military-help/, Barigazzi; 2015

[36] http://www.express.co.uk/news/world/692065/Article-50-NEVER-to-be-used-Europe-Brexit-Italy-Prime-Minister

standards, as highlighted in the Court's case law. The latter emphasises respect for the rule of law; democratic standards of decision-making; and the protection of fundamental rights and the principle of equality. Last but not least, it requires an understanding of the constitutional bases for the new relationship between the UK and the EU. These issues are discussed in turn.

A. Article 50 and its travaux: shedding light on Article 50(1)

While there is no explanatory memorandum or official guide to Article 50, the debate about its terms can be meaningfully reconstructed from the proposed amendments. These do not answer all interpretative questions, but at a minimum constitute evidence of some of the main concerns and political intentions that surrounded the provision's creation. Indeed, the travaux are particularly useful in shedding light on the meaning of one of the most debated questions in the context of the Brexit debate: what constitutes a Member State's valid decision to withdraw from the Union in accordance with its own constitutional requirements, and to what extent should the Union care about it? At the same time, they further highlight that issues concerning rights, legal bases, and institutional balance were also considered important (http://european-convention.europa.eu/docs/Treaty/pdf/46/global46.pdf)[37].

The right of voluntary withdrawal from the Union was initially envisaged as Article 46 in Chapter X of the first part of the Constitution, entitled 'Membership of the Union.' The withdrawal clause was inserted into the Constitutional Treaty in light of the fact that the UK disagreed with the political aspiration of closer union that the Constitution set in motion. In turn, Member States that supported the constitutionalising project at the time, such as Germany (represented in the negotiations by then Foreign Minister Joschka Fischer), had actively opposed its insertion.

That opposition was shared by most of the other founding states, as well as by the EU institutions. Notably, a group of representatives from the European Parliament had proposed that, if the provision were maintained, further safeguards should be added to ensure that it does not privilege the withdrawing state. They had suggested, for example, that the article should balance the ability of a Member State to leave with a power for the Union to expel a Member State. Their reasoning was that 'such a parallel right of the Union to expel Members would also reduce the risk of political blackmailing through the means of exit threats.'

[37] http://european-convention.europa.eu/docs/Treaty/pdf/46/global46.pdf

A series of other amendments intended to render withdrawal more cumbersome had been proposed by Dominique de Villepin, who represented France. He had suggested that withdrawal be made conditional on a form of 'irreconcilable differences' between the withdrawing state and the EU after a Treaty change and that it should be required that a solution be sought within the Council first. He also asked that a limitation period be introduced before re-accession. Although he only suggested a two-year period, this seems to have been inspired by Alain Lamassoure's vision of the Constitutional Treaty, which had a federalist character, strictly regulating withdrawal and including a 20-year limitation clause before re-accession. Instead, of the initial accounts of Article 50, most delegates seemed to favour Robert Badinter's proposal. As Tatham notes, this was one of the most pragmatic views on withdrawal expressed in the drafting process and was closest to its final text. Nonetheless, the more onerous clauses Badinter had proposed, such as the payment of damages to the Union by the withdrawing state for any losses incurred through the negotiations, were not adopted (European Convention; 2002.)[38].

Furthermore, the travaux confirm that to say that a Member State can withdraw in accordance with its own constitutional requirements is not to leave it up to that Member State to do as it pleases – the inclusion of that requirement in Article 50(1) suggests that only a decision to withdraw in accordance with a state's constitutional requirements is valid. During the negotiations of Article 50, the question of what should amount to a decision to withdraw was discussed extensively.

Not only had there been proposals to qualify the possibility of taking that decision by making it dependent on Treaty change or compliance with EU values, as discussed above. It had also been suggested that the phrase 'in accordance with its own constitutional requirements' should be removed altogether as it was not in the EU's interest, as it entrusted it with the oversight of national constitutional requirements. Its retention is therefore significant. It suggests that respect for the constitutional requirements of a withdrawing state, whatever these may be, must underpin the withdrawal process, even if it is less expedient and more costly for the Union. That position is further supported by the inclusion of a clause of respect

[38]European Convention, 'Contribution from M. Robert Badinter, alternate member of the Convention "A European Constitution"', 2002.; CONV 317/02.

for national constitutional identities in Article 4(2) TEU, which in turn renders that respect part of its own constitution.

Other important concerns had been the maintenance of individual rights, the protection of Union values and respect for international law. One of the most interesting suggestions made was the introduction of an Article 50bis, which would create an alternative form of membership of the Union, for those members that wished to remain closely linked to the EU but did not share the political ambition of further unification, such as the UK. The proposal, which was made by Andrew Duff, Lamberto Dini, Paul Helminger, Rein Lang, and Lord Maclennan, would essentially have allowed for associate (rather than full) membership of the Union, entailing economic cooperation without ever closer union in other fields. However, none of these amendments were adopted.

From a constitutional perspective, the intentions of the drafters are significant and are likely to play a role in the interpretation of this provision, should it come before the Court of Justice. In the past, the Court made use of a teleological methodology that did not make reference to the drafters' actual intentions. As Lenaerts has explained, this was largely the case because the travaux of the Treaties were not available. However, as a conscious effort was made to render the consultation and drafting process of the Constitution for Europe as open and transparent as possible, references to the travaux are justified and constitutionally welcome (Lenearts et al.; 2013.)[39].

A reading informed by the travaux contributes to ensuring that the subjects of law meaningfully identify as its authors through the representative process. Indeed, in light of the fact that many provisions of the Constitutional Treaty were copied into the Lisbon Treaty, the Court of Justice has become more receptive to interpretations arising from preparatory documents and these are likely to play an important role in the future. Thus, particularly since the Article 50 process is unprecedented, an adequate constitutional analysis must take account of the information regarding the content and goals of this provision that emerges from its drafting context.

[39]Lenaerts P., Gutiérrez-Fons J.A., 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice', 2013.

The latter reveals that the insertion of a unilateral right to voluntary withdrawal was far from uncontroversial. It is interesting that, while a series of very cumbersome clauses were not inserted into the provision, they had been voiced in the negotiations and enjoyed some support. As such, it is only to some extent true that Article 50 privileges the EU and its remaining members, as opposed to the withdrawing state. In fact, the version of the withdrawal clause that was retained was one of the most lenient (no limitation clause) but also the most vague.

The vagueness that characterises Article 50 today was clearly linked to the delegates' inability to reach agreement concerning the strictness of the withdrawal process and, hence, on a more precise wording for the provision itself, which can be attributed to very different perspectives on the goals and nature of the Constitutional Treaty. Still, as we have highlighted, the travaux of the Convention clarify two important issues: firstly, that respect for the constitutional requirements of the withdrawing state is a key component of an EU-constitutional-law-compliant reading of Article 50. Secondly, the broad discretion allowed in respect of Article 50(1) was intended to be counterbalanced by stricter conditions under Article 50(3) in order to prevent the withdrawing state holding the Union hostage in the negotiations.

5.2.2. Article 50 and the Need to Respect Existing Rights

In addition to the information that can be gleaned from the travaux, a constitutional interpretation of Article 50 requires engagement with the settled features of the EU constitutional order, the most relevant of which relate to respect for individual rights, as highlighted earlier. That is so particularly insofar as agreement on the status of existing rights was not reached during the drafting process.

The withdrawal of a Member State from the European Union creates significant possibilities of regression in terms of fundamental rights, and of a panoply of other rights of persons and companies. While the Great Repeal Bill may not immediately repeal UK legislation implementing EU directives and framework decisions; a) these rights will be removed from their parent legislation and the jurisdiction of the CJEU, resulting in reduced possibilities of judicial review; b) they will lose the primacy of EU law over inconsistent UK legislation; and c) there is no safeguard against future repeal. Arguably, this has implications not only for the UK but also for the Union, whose commitment to these rights and freedoms remains in place.

As noted earlier, during the Constitutional Convention, a number of delegates had proposed amendments that safeguarded existing rights, which were not adopted. Furthermore, insofar as there is a basis in the Treaties for a Member State to exit the Union and the maintenance of existing rights has not been made a precondition for such exit, it is reasonable to assume that withdrawal can entail the loss of rights attached to membership. In turn, Article 50 does not provide any necessity of guarantees of the status of EU citizens in the withdrawing state and vice versa. However, none of this means that the Union's institutions are constitutionally unconstrained in their actions during the negotiations in respect of these vulnerable populations (Lazowski; 2016.)[40].

Furthermore, Article 3(5) TEU provides that human rights must be ensured in the Union's relations with third countries. The question of what level of protection for existing rights must be guaranteed is, therefore, crucial to the constitutionality of the negotiations and agreement, from the perspective of the EU. The main issues at stake concern the rights of EU citizens in the UK and UK citizens in the EU as well as the EU citizenship status of UK nationals.

Insofar as the rights of EU citizens in the UK are concerned, EU institutions are of course likely to strive to maintain the application of the EU Treaties to them to the fullest possible extent. However, it is necessary to examine whether there is a constitutional obligation to do so, beyond political intentions. In our view, there clearly is: Union institutions and remaining Member States will be bound by the Treaties and the Court's case law both during the negotiations and after the UK's withdrawal (Eeckhout; Frantziou; 2017.)[41].

[40]Łazowski, L., Unilateral Withdrawal from the EU: Realistic Scenario or a Folly? (2016), Journal of European Public Policy, DOI: 10.1080/13501763.2016.1174529, accessed 1/12/2016, p. 5-7.

[41]Eeckhout P., Frantziou E.,Brexit and Article 50 TEU: A Constitutionalist Reading, 2017.

5.2.3. Brexit

Brexit is the greatest disaster to befall the European Union (EU) in its 60-year history - but the referendum in which British voters opted to leave the bloc does not automatically signal the country's exit. That is the job of the Article 50. Article 50 of the Treaty of Lisbon gives any EU member the right to quit unilaterally, and outlines the procedure for doing so. It gives the leaving country two years to negotiate an exit deal and once it is set in motion it can not be stopped except by unanimous consent of all member states (Habermas et al.; 1996.)[42].

No country has ever left the EU before, and there was no way to legally leave the EU before the Treaty of Lisbon was signed in 2007.

The Lisbon Treaty, which became law in December 2009, is designed to make the EU more democratic, more transparent and more efficient and is an agreement signed by the heads of state and governments of countries that are EU members.Prime Minister Theresa May triggered Article 50 shortly before 12:30pm on March 29 2017. This means Britain should officially leave the EU no later than April 2019.

For the next two years, Britain will thrash out a deal for leaving the EU, a process that's likely to be lengthy and complicated (Wilkinson; 2017.)[43].

Any deal must be approved by a “qualified majority” of EU member states and can be vetoed by the European Parliament.The process is supposed to take two years but many people believe that it could take longer. The timescale can be extended, but only by the unanimous consent of the European Council, so every other member state Government would have to agree.

By triggering the Article 50 starts the clock running. After that, the Treaties that govern membership no longer apply to Britain.

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[42]Habermas, J.; Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (Polity Press 1996); p. 321.

[43]http://www.telegraph.co.uk/news/0/what-is-article-50-the-only-explanation-you-need-to-read/; Michael Wilkinson, Political Correspondent, 2017.

The terms of exit will be negotiated between Britain's 27 counterparts, and each will have a veto over the conditions. It will also be subject to ratification in national parliaments, meaning, for example, that Belgian MPs could stymie the entire process.

Two vast negotiating teams will be created, far larger than those seen in the British renegotiation. The EU side is currently headed by Michel Barnier.

Untying Britain from the old membership is the easy bit. Harder will be agreeing a new trading relationship, establishing what tariffs and other barriers to entry are permitted, and agreeing on obligations such as free movement. Such a process, EU leaders claim, could take another five years.

Business leaders want the easiest terms possible, to prevent economic harm. But political leaders say the conditions will be brutal to discourage other states from following suit.Theresa May plans to transpose EU laws onto the British statute books as part of her "Great RepealBill", allowing her Government to later analyse and dump whatever laws it sees are not fit for purpose.

It means that the Government would have to perform three acts simultaneously:

- Negotiate a new deal with Brussels
- Win a series of major bilateral trade deals around the world
- Revise its own governance as EU law recedes

David Davis will be supervising the process as Secretary of State for Exiting the European Union.

Officials expect the scrapping of EU law could result in an avalanche of new legislation in every corner of Whitehall – perhaps 25 Bills in every Queen's Speech for a decade.

Hundreds of Treasury lawyers and experts would have to be hired for areas – such as health and safety, financial services and employment – where Britain had lost competence to Brussels. Meanwhile, a Trade Ministry will be required, with hundreds of new negotiators, to establish new deals around the world.The focus in Brussels now turns to holding the project together, which means they could drive a hard bargain in negotiations with Britain.

Jean-Claude Juncker, president of the European Commission, has called for tighter integration and has previously laid out plans for integration of the Eurozone, including a treasury, in order

to prevent a recurrence of the Greek crisis. Member states have not been ready for that conversation – but the crisis of Brexit could push it up the agenda.

At the same time, leaders fear that Brexit could trigger a domino effect as the bloc without Britain becomes less attractive to liberal, rich northern states such as Denmark and the Netherlands, where demands are growing for copy-cat plebiscites.

The Dutch elections held in March saw the fiercely Eurosceptic Geert Wilders gain seats, while Marine Le Pen is gaining ground in France as the April and May elections edge ever closer. The German elections will be Angela Merkel's biggest test in the autumn. If an independent Britain proves to be a success, the bloc could quickly unravel.

On March 25, 2017, European leaders marked the sixtieth anniversary of the signing of the Treaty of Rome, the EU's founding document, in what was a fraught celebration due to the Brexit elephant in the room.There are five elements to Article 50 of the Treaty of Lisbon: (Wilkinson; 2017.)[44].

- Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

[44]http://www.telegraph.co.uk/news/0/what-is-article-50-the-only-explanation-you-need-to-read/; Michael Wilkinson, Political Correspondent, 2017.

- For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
- If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

5.2.4. Revocability of the Decision to Withdraw

The last important question that has arisen in respect of Article 50 from the Miller litigation relates to the revocability of a notification under Article 50(2). Before the Divisional Court, the parties to the Miller case had accepted that the notification is irrevocable. As noted elsewhere, though, the question of revocability is largely irrelevant to the outcome of the case, which turns on the question of whether parliamentary sovereignty is prejudiced – and as we have already suggested, that may be so even if the decision is revocable. The case for the involvement of Parliament in the UK withdrawal process is strong, regardless of whether the notification can be revoked at a later stage or not. Nevertheless, the question remains alive, and of critical legal and political importance. To what extent is a duly notified decision to withdraw revocable insofar as EU constitutional law is concerned – or, to use Lord Pannick's now famous analogy in Miller, must the bullet, once fired, necessarily reach its target? (https://www.judiciary.gov.uk/wp-content/uploads/2016/10/20161013-all-day.pdf)[45].

The wording of Article 50 is not clear on the point of revocability. While, as Jean-Claude Piris has put it, 'intentions' can change,151 Article 50(2) does not concern the notification of a mere political intention, but of a decision to withdraw taken in accordance with a Member State's constitutional requirements. In turn, an intention of this kind has a clear legal meaning and constitutional implications for the European Union, as laid down in Article 50(3), namely the commencement of a two-year process for exit.

[45] https://www.judiciary.gov.uk/wp-content/uploads/2016/10/20161013-all-day.pdf

The possibility of a withdrawing state changing its mind about leaving can be read into this provision in two ways: instead of an agreement to leave the EU, an agreement not to leave the EU can be reached amongst the parties. The future relationship with the EU of the state-no-longer-wishing-to-withdraw following the negotiations would then be merely a reaffirmation of the application of the Treaties to that state. This would be a legally intricate solution but nonetheless imaginable. Alternatively, the state-no-longer-wishing-to-withdraw and its counterparts could unanimously agree to extend the negotiations indefinitely and, eventually, to insert a protocol into the Treaties to the effect that the notification of withdrawal under Article 50 has been revoked. As such, even on a strict reading of Article 50, there are some possibilities for changing the course of action during the process.

However, neither of these options amounts to a possibility for a state unilaterally to revoke its notification. We fully agree with Paul Craig's point that if a Member State bona fide changes its mind about leaving, it would be absurd for the European Union – and indeed for other Member States – to force it to withdraw based on the assumed irrevocability of Article 50 (Craig; 2016.)[46].

The Article 50 can certainly be stopped if everyone believes that that would be in their common interest. The problem is that it becomes far less straightforward if that is not the case. Indeed, it is only meaningful to discuss revocability of a duly notified decision to leave the Union if the withdrawing state can legally compel everyone else to accept the revocation.

In our view, the distinction between the decision to withdraw and its notification is again critical. A Member State is entitled to decide, in accordance with its constitutional requirements, to withdraw from the EU. If that Member State reconsidered that decision, within the two-year timeframe, it would not only be absurd but also unconstitutional for the Union not to accept a bona fide revocation of the notification. The reference to constitutional requirements in Art 50(1) suggests that, in order to revoke the notification, the withdrawing state would simply need to show that the decision to withdraw is no longer compatible with its constitutional requirements, in that a new decision has been taken. Depending on what the constitutional requirements are, that could mean the rejection of the decision to withdraw by Parliament only, by Parliament and referendum, or by the Government following a

[46]Craig,P.; 'Brexit: A Drama in Six Acts', European law review, 2016., p. 221

referendum, as the case may be. A vote in the Commons or a second referendum may therefore be required. It must be emphasised, though, that in order for a new decision not to withdraw to reverse the withdrawal process, that decision would need to be about withdrawal altogether and not about the rejection of a specific agreement (Eeckhout; Frantziou; 2017.).

6. CONCLUSION

The European Union is an association of member states that have transferred their sovereignty to European institutions in order to make decisions in a common, European interest. By the Lisbon Treaty, the process of adopting joint decisions encompassed three fundamental institutions: the Council of the European Union, the European Commission and the European Parliament. In the European Union, there were still many bodies, agencies or committees, particularly important for the functioning of the Union, primarily the European Council and the European Court of Justice. Five of these institutions seemed to be the core EU institutions. The institutional structure of the European Union (EU) consists of seven institutions. Initially, each of the three Communities had their own executive bodies, jointly with the Assembly of Representatives (later the European Parliament) and the Court of Justice. Only in 1967, on the basis of the merger agreement, the same bodies of the Community were merged. The Lisbon Treaty has brought about substantial changes in the institutional structure.

According to Article 13 of the Treaty on European Union, the institutions of the European Union are:

• The European Parliament,

• European Council,

• The Council,

• The European Commission ("the Commission"),

• The Court of the European Union,

• The European Central Bank,

• Court of Auditors.

There are other bodies and institutions:

• Economic and Social Committee as an advisory body of the EU, composed of 317 members. It has its headquarters in Brussels.

• The Committee of the Regions is also an EU advisory body composed of 317 members delegating local and regional authorities of EU states to represent the interests of regions of local self-government units at the Union level. It has its headquarters in Brussels.

• The European Investment Bank is set up by the Treaty of Rome on the Establishment of the EC, with the aim of contributing to the European Community's economic development through economic integration and social cohesion. The Bank provides long-term financing of certain capital projects in the Union and in other countries around the world. It has its headquarters in Luxembourg. The European Bank for Reconstruction and Development was established in 1991 to help the former communist states in their transformation into market economies. The Bank is investing in private companies, either alone or with other partners. The headquarters of the bank are in London. There is also a large number of specialized agencies.

The three most important institutions are involved in the decision-making and decision-making process at the European level:

• The European Parliament, representing EU citizens and whose representatives are elected in direct national elections,

• The EU Council, representing the interests of each of the member states individually.

• The European Commission, which represents the interests of the Union and has the role of "guardian of the Founding Treaties".

Deciding and adopting new laws in the EU takes place within three procedures: co-decision, consultancy and assent. In principle, the Commission is proposing new legislative acts, while the Parliament and the Council decide on their acceptance or rejection. Two institutions founded on the Founding Treaties are also key: the European Union Court which ensures and supervises the implementation of European law, and the Court of Auditors, which monitors and verifies the regularity And the transparency of financing Community activities.

In addition to the mentioned institutions, there are a number of other bodies and agencies in the Union that have been assigned specific tasks: the European Council. With the amendments to the founding treaties introduced by the Lisbon Treaty, the European Council was given the status of an institution. The European Council was established in 1974 and brings together the heads of state and member states, with foreign ministers and a member of

the European Commission. The scope of the European Council covers the political issues of major importance in the area of European integration, as well as high-level political discussions in resolving crisis situations, ie to remove disagreements between Member States.

The European Ombudsman is an institution that protects citizens and businesses from possible administrative irregularities in the work of European institutions. European Data Protection Supervisor (EDPS) provides the right to privacy when transferring personal data of Union citizens to the Union institutions or bodies. The European Central Bank is responsible for creating and managing European economic and monetary policy; Manages a single currency with the EU and ensures the functioning of the payment system The European Investment Bank finances EU projects, with the assistance of small businesses through the European Investment Fund. The European Union's financial institutions are subject to certain regulations that adapt to the process of European integration.

Fact that EU development can make indicative returns is proved by the activation od article 50 TEU and consequent Brexit.

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