

# Lisbon Treaty

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## Abstract

Rejection of Constitutional treaty and enlargement of EU to 27 member states drew highlights for the need of institutional reform of the Union. These reforms were important for the functioning of the EU. So, leaders of member states prepared a new treaty which will fulfill needed reforms in order to achieve the goals. Thus, in order to avoid the referendums, they decided to take out those parts of the rejected treaty and to continue forward with reformation of European Union.

Lisbon treaty is designed to achieve these institutional reforms and to be more close to the citizens of EU member states. There are some institutional changes and other provisions that leads toward this goal. Also, it makes the Union more accountable and transparent. All these purposes are achieved through involvement of National Parliament, strengthening of European Parliament, giving to the citizens more involvement in EU decision-making through citizen's initiative. Now, we expect the positive results in practicing all these reforms that are included in the Lisbon Treaty.

## 1. Road to Lisbon

Before preparing the Lisbon treaty, in 2004, the EU attempted to ratify the treaty establishing the Constitution of EU. The aim of this treaty was the improvement of institutional structure of EU through the changes in the procedure of decision-making, balancing of votes between the member states, strengthening of European Parliament in specific areas, stressing of European citizenship, preparing of The Charter of Fundamental Rights and appointing of a foreign minister who will represent the Union. Signed in October 29th, 2004, the treaty didn't enter in force. Popular referendums in France and Holland said NO to the Constitution. Consequently, the national leaders of member states started to think about new alternative. Thus, in German presidency of EU, in 2007,<sup>1</sup> the chancellor Angela Merkel projected the plan of modifying the treaty, first by calling it a "Reform Treaty", and determining the terms of acceptance and ratification. After a year and a half of processing the treaty, the EU heads decided to sign it in the Portuguese presidency of EU, in December 13th, 2007 in Lisbon which gave the name "the Lisbon Treaty". Before signing preparing and signing the new treaty, chancellor Merkel had called the governments of member states to identify the parts of the treaty that puts it in front of referendum and to change or remove

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<sup>1</sup> The Law Society, "A guide to the Treaty of Lisbon", European Union insight, January 2008, pp: 6

this parts which consequently puts aside the need for referendum, except the Ireland which cannot avoid the Constitution.<sup>2</sup>

The treaty came as a result of the need for institutional change which would help in facing with the successful enlargement of EU and solving of issues and reforms which hindered the ratification of Constitutional Treaty in 2005. The Lisbon Treaty changed the Treaty of European Union (TEU) and the Treaty of Establishing the European Community (TEEC), TEU remains with the same name, whereas TEEC is named the Treaty on the Functioning of European Union (TFEU). Other aspects included in the treaty are of intergovernmental issues through which the member states act based on the principles of International Law, general principles, institutional regulations, treaty ratification, other changes and withdrawal from the EU.<sup>3</sup>

The purpose of the new treaty is to make the European Union of 27 member states a more effective, democratic and transparent. Also, it aims to provide the Union with the ways of political development which are especially important for the citizens in international level, about energy, climate changes, social issues, security and immigration.<sup>4</sup>

The Lisbon Treaty is hard to be understood; it has considerable changes comparing to other treaties. There are protocols and provisions included in it. Almost all the constitutional treaty proposal, which was not ratified, is included in the Lisbon Treaty.<sup>5</sup>

## **2. Institutional changes**

A number of changes included in the treaty, gives to the EU a more supranational role. European Commission, European Parliament and European Court of Justice has gained more power that gives them the opportunity to impact more in European politics in the member states. At the same time, the Council will have the right in more decisions through qualified majority voting (QMV).<sup>6</sup> These institutional changes should push the Union forward regarding the issues that has to do with the accountability, transparency and especially with legitimacy. Involvement of national parliaments directly in consultations about the decisions taken in EU shows a very serious step by considering these national institutions not just a spectator or hearer. Consequently, the new form of decision-making, qualified majority voting, and citizen's rights will strengthen input legitimacy – enabling the citizens to have a clear view on how the decisions are taken, and output legitimacy, achieving clear benefits in the areas of

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<sup>2</sup> Henrik Clausen, "The Lisbon Treaty: The problem of democratic legitimacy", Draft for Review, pp: 2 <http://missioneuropakmarktell.files.wordpress.com/2008/05/the-lisbon-treaty.doc>

<sup>3</sup> Research and Library Service, "The Lisbon Treaty – Application of the Principle of Subsidiarity", Briefing Note 47/8, pp: 1

<sup>4</sup> The Lisbon Treaty, Information leaflet for the citizens of the European Union, [www.europaforum.lu](http://www.europaforum.lu), pp: 8

<sup>5</sup> Jonas Sjöstedt, "The Lisbon Treaty – Centralisation and Neoliberalism", Röda EU-tema, No. 10, pp: 3

<sup>6</sup> Jonas Sjöstedt, "The Lisbon Treaty – Centralisation and Neoliberalism", Röda EU-tema, No. 10, pp: 7

popular interests.<sup>7</sup> Also, citizen's rights that we will discuss later, has the same goal – strengthening the legitimacy. Moreover, according to the Lisbon treaty, the EU is constituted by these institutions:

- European Parliament
- European Council
- Council
- European Commission
- European Court of Justice
- European Central Bank
- Court of Audit<sup>8</sup>

Let us discuss separately these changes that are included in the new treaty.

## **2.1 European Commission**

European Commission initiates general interests of the Union; ensures implementation of the treaty and watches of EU law under the control of European Court of Justice. Except the Common Foreign and Security Policy (CFSP), the Commission ensures foreign representation of the Union. Union's legislative acts and it is approved only on the basis of Commission's proposals, except the cases determined with the treaty. Commission will have the President elected by the European Parliament, but proposed by the European Council with the QMV, taking in the consideration the result of parliamentary elections. After 2014, the number of commissioners will be reduced to 2/3 of the member states if the European Council won't take different decision. The High Representative of the CFSP will be vice president of the Commission.<sup>9</sup>

## **2.2 High Representative of Common Foreign and Security Policy**

Position of the High representative of the CFSP is the new institutional innovation; he/she is responsible for the CFSP and for the common defense policy of the European Union; he/she will lead the Council of Foreign Ministers and he will be vice president of the Commission responsible for international relations; he/she will represent the EU in international level, assisted by European service for international actions; he/she will be appointed by European Council through qualified majority voting in accordance with the President of the Commission.<sup>10</sup>

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<sup>7</sup> Edward Best, "The Lisbon Treaty: A Qualified Advance for EU Decision-Making and Governance", EIPASCOPE 2008/1, pp: 7

<sup>8</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Article 13, pp: 22

<sup>9</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Article 17, pp: 25

<sup>10</sup> The Lisbon Treaty, Information leaflet for the citizens of the European Union, [www.europaforum.lu](http://www.europaforum.lu), pp: 17

### **2.3 European Council**

European Council is constituted by the presidents or prime ministers of the member states; it determines the general political direction, but don't pursues legislative function; the High representative of CFSP have to take part in the work of the European Council; this institution have to gather two times in every six months – that means four times for a year; the decisions must be taken by consensus expect the cases determined with the treaties; the president of the European Council have to be chosen by QMV for a duration of two years and a half with the right of re-election only once.<sup>11</sup>

### **2.4 Council (of Ministers)**

The Council will be constituted by the representatives of member states; QMV will be at least 55% of members of the Council which represent at least 65% of Union's population; blocking minority must include at least four members of the Council; meetings of the Council will be open when debating and voting for a proposal; the Council of Foreign Affairs have to act on the basis of definitions of the European Council; Council's activities have to be prepared by the Committee of the Permanent Representatives.<sup>12</sup>

### **2.5 European Court of Justice (ECJ)**

The court will include the Court of Justice, General Court and specialized courts; one arbiter per each member state will constitute this court which will be assisted by the Chief Prosecutor; other members must be independent; ECJ will decide over the actions of a member state, institution or legal person; it will take preliminary decision with request of courts or member state's tribunals over the interpretation of the European Union Law or validity of activities approved by the institutions.<sup>13</sup>

### **2.6 European Parliament (EP)**

Lisbon treaty strengthens the legislative and budgetary function of the Parliament. Also this institution has forced its role in the direction of monitoring the activities of the European Commission. Another important aspect of strengthening the legislative function of EP is incorporation of the co-decision procedure with which the Council and Parliament decide together. Co-decision will be standard procedure of the legislative and it is enlarged in areas of freedom, security and justice, but also in approving of international agreements. Through election of the President of Commission, it is created a link between the direct elections of the EP and the European Council that

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<sup>11</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Article 15, pp: 23

<sup>12</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Article 16, pp: 24

<sup>13</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Article 19, pp: 27

proposes the candidate.<sup>14</sup> Number of members of EP is 751. Number of delegates is determined at maximum of 96 and minimum of 6 members for a member state of the EU.<sup>15</sup>

### 3. Decision-making

Lisbon treaty clearly determines a category of legal acts separating them according to the procedure of approval. One of these procedures is the co-decision procedure. So, as mentioned above, EP wins equal right with the Council in more than forty new cases, especially in agriculture and lots of third pillar.<sup>16</sup> Comparing to the co-decision in USA, member states with larger population has more influence. Two rooms of American congress, the Senate is constituted of two members for each country, and in the House of Representatives the states are represented by the proportion of population, whereas in EU, greater states dominates in Council and EP.<sup>17</sup> Another procedure is of “emergency braking” in different ways that has to do with criminal aspects, police operational cooperation, customs and other specialized services for law enforcement. In this case, the procedure can be suspended till four months and to be referred to the European Council.<sup>18</sup> Qualified majority voting is another form of decision-making. As mentioned above, the decisions in Council have to be taken by 55% of member states (15 of 27 members of EU) that represents a minimum of 65% of the general number of EU’s population; blocking minority have to obtain at least four member states. European Council has agreed that this form of voting to enter in force in 201, while till 2017, some of the states could ask the QMV to be used as it is determined with the treaty of Nice. Same as co-decision, also QMV is enlarged in use in a lot of spheres like climate changes, securing of energy and humanitarian emergencies, whereas the unanimity will remain in spheres like taxes, foreign policy, defense and social security.<sup>19</sup>

### 4. Role of National Parliaments

For the first time in history of treaties of EU, National Parliaments is included directly in decision-making in EU level. The new treaty clearly determines the rights and obligations of National Parliaments that has to do with information, valuation mechanisms and principles of subsidiary.<sup>20</sup> All these rights and obligations are included in Protocol No.1 of the treaty from the article 1 to the 7. The Protocol does not exclude cases when National Parliaments are constituted by two rooms. Consequently, the same applies to

<sup>14</sup> The Lisbon Treaty, Information leaflet for the citizens of the European Union, [www.europaforum.lu](http://www.europaforum.lu), pp: 19

<sup>15</sup> [http://europa.eu/lisbon\\_treaty/faq/index\\_en.htm](http://europa.eu/lisbon_treaty/faq/index_en.htm)

<sup>16</sup> Edward Best, “The Lisbon Treaty: A Qualified Advance for EU Decision-Making and Governance”, EIPASCOPE 2008/1, pp: 9

<sup>17</sup> Jonas Sjöstedt, “The Lisbon Treaty – Centralisation and Neoliberalism”, Röda EU-tema, No. 10, pp: 10

<sup>18</sup> Edward Best, “The Lisbon Treaty: A Qualified Advance for EU Decision-Making and Governance”, EIPASCOPE 2008/1, pp: 9

<sup>19</sup> [http://europa.eu/lisbon\\_treaty/faq/index\\_en.htm](http://europa.eu/lisbon_treaty/faq/index_en.htm)

<sup>20</sup> The Lisbon Treaty, Information leaflet for the citizens of the European Union, [www.europaforum.lu](http://www.europaforum.lu), pp: 20-21

the lower room.<sup>21</sup> Regarding subsidiary, the right of National Parliaments to challenge a draft law – which is known as the system of yellow card – means presenting of their remarks through a proposal that have to be examined and analyzed by respective institutions of EU. Thus, the institution has to decide in order to keep, change or withdraw the proposal, but it must provide the reason of its decision. The new treaty gives to the National Parliaments of member states a time of eight weeks to examine and submit their remarks about a draft law. Also, the Protocol adds a new mechanism of subsidiary control by simple majority with which National Parliaments causes or initiates a procedure. This system is known also as the orange card is more limited in effect comparing to the yellow card.<sup>22</sup> However, there is another provision similar to red card which can be used by any single Parliament for the cases that has to do with cross-border issues.<sup>23</sup>

## 5. Citizen's rights and their role

The rights of citizens of EU member states are included in Lisbon treaty. The main issue here is citizenship. Maastricht treaty established EU citizenship by complementing national citizenship, while Lisbon treaty also establishes EU citizenship as additional to national citizenship.<sup>24</sup> This means that in order to have EU citizenship, first citizens must have their national citizenship of one of EU member states.

The principle of EU citizenship clearly determines these citizen's rights:

- the right of free movement and residence;
- the right of voting and running the local elections and EP elections;
- the right of diplomatic and consular protection;
- the right of submitting a petition to the EP and appeal to the Ombudsman;
- the right to write to the institutions in one of languages of the Union and receive response in same language.<sup>25</sup>

Lisbon treaty has provided citizens with a new dimension. EU member state citizens are provided with a citizen's initiative which forces European Commission to take into account a request submitted by this citizen's right. Thus, in order to submit an initiative, EU member state citizens have to gather one million signatures. Also, the initiative should be within the frames of Commission's powers. However, the treaty gives the right to EP and the Council to determine a Regulation for procedures

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<sup>21</sup> Official Journal of European Union, "Consolidated version of the Treaty on European Union", Protocol No. 1, Article 1-8, pp: 204-205

<sup>22</sup> Research and Library Service, "The Lisbon Treaty – Application of the Principle of Subsidiarity", Briefing Note 47/8, pp: 6-7

<sup>23</sup> Edward Best, "The Lisbon Treaty: A Qualified Advance for EU Decision-Making and Governance", EIPASCOPE 2008/1, pp: 11

<sup>24</sup> Christa Tobler, "The Lisbon Treaty", Europa Institute, March 2008, pp: 36

<sup>25</sup> The Lisbon Treaty, Information leaflet for the citizens of the European Union, [www.europaforum.lu](http://www.europaforum.lu), pp: 20-29

and conditions of how a citizen's initiative will function in practice.<sup>26</sup> Commission's proposal, EP Regulation and the Council's Regulation on citizen's initiative, determines 1/3 of member states to represent an Union's interest. Also, the proposal determines citizen's number for each member state.<sup>27</sup> On the table are number of signatures that a citizen's initiative have to gather in each member state of the Union:

Austria	14250
Belgium	16500
Bulgaria	13500
Cyprus	4500
Czech republic	16500
Denmark	9750
Estonia	4500
Finland	9750
France	55500
Germany	72000
Greece	16500
Hungary	16500
Ireland	9000
Italy	54750
Latvia	6750
Lithuania	9000
Luxembourg	4500
Malta	4500
Netherlands	19500
Poland	38250
Portugal	16500
Romania	24750
Slovakia	9750
Slovenia	6000
Spain	40500
Sweden	15000
United Kingdom	54750 <sup>28</sup>

<sup>26</sup> European Commission, "Proposal of a Regulation of the European Parliament and the Council on citizens' initiative", 2010/0074 (COD), {SEC(2010)370}, pp: 2

<sup>27</sup> European Commission, "Proposal of a Regulation of the European Parliament and the Council on citizens' initiative", 2010/0074 (COD), {SEC(2010)370}, pp: 4-5

<sup>28</sup> European Commission, "Proposal of a Regulation of the European Parliament and the Council on citizens' initiative", 2010/0074 (COD), {SEC(2010)370}, pp: 19

Citizen's initiative is submitted to the Commission which in accordance with Article 10, have to publish it in website without any delay. The other step is examination of the initiative within a four month time informing the EP, the Council and those who proposed it. This announcement has to be public.<sup>29</sup> But, there are some skeptical voices about the success of an initiative because it has to be within the frames of Commission's powers.<sup>30</sup>

## 6. Avoiding referendums

Democracy is understood as rule of the people and as such, it should offer to the EU citizens to have approach to certain issues. Such a right takes the form of referendum which gives the legitimacy to the system.<sup>31</sup> Thus, taking in account the French and Holland NO answers to Constitutional treaty, European heads looked for a solution that the new treaty will not face referendums. Regarding this issue, in a speech in London School of Economics, in February 21st, 2007, Giuliano Amato said:

"The good thing about not calling it a Constitution is that no one can ask for a referendum on it".

Also, former president of France, Valéry Giscard d'Estaing in October 27th, 2007, said:

"The treaty of Lisbon is the same as the rejected constitution. Only the format has been changed to avoid the referendum".

But, citizens of EU member states have different view about avoiding referendum. Survey with citizens done by British think-tank Open Europe regarding this issue, shows results as in the table:

	Yes for Referendum	No for Referendum	Don't Know
Ireland	87%	11%	1%
Greece	83%	14%	3%
United Kingdom	83%	15%	3%
Czech Republic	82%	15%	3%
France	81%	16%	3%
Latvia	80%	11%	10%

<sup>29</sup> European Commission, "Proposal of a Regulation of the European Parliament and the Council on citizens' initiative", 2010/0074 (COD), {SEC(2010)370}, pp: 7

<sup>30</sup> Christa Tobler, "The Lisbon Treaty", Europa Institute, March 2008, pp: 39

<sup>31</sup> Henrik Clausen, "The Lisbon Treaty: The problem of democratic legitimacy", Draft for Review, pp: 3 <http://missioneuropak-martell.files.wordpress.com/2008/05/the-lisbon-treaty.doc>



Germany	77%	23%	1%
Malta	77%	17%	6%
Cyprus	76%	21%	3%
Estonia	74%	16%	11%
Luxembourg	74%	23%	3%
Poland	74%	16%	10%
Belgium	73%	25%	2%
Denmark	73%	22%	4%
Spain	73%	22%	4%
Finland	72%	25%	3%
Bulgaria	71%	13%	16%
Austria	71%	25%	4%
Italy	70%	23%	8%
Sweden	68%	30%	4%
Lithuania	67%	15%	18%
Hungary	66%	30%	4%
Romania	66%	11%	23%
Portugal	64%	21%	15%
Slovakia	64%	20%	16%
Netherlands	62%	29%	9%
Slovenia	55%	40%	4%

The question that arises here is what about EU legitimacy if the citizens will not be asked.<sup>32</sup>

## 7. Conclusion

From the discussion and analyses we can conclude:

- The need for reform of EU with 27 member states was obvious and inevitable. In this direction, the Lisbon treaty offers solution that affects the thrift of the Union.
- Institutional reforms included in the Lisbon treaty are a step forward better functioning of the EU. Thus, accountability and transparency inside EU institutions affects in strengthening the legitimacy of EU.
- Lisbon treaty strengthens the European Parliament which makes it a kind of controller of the Commission and the Council in some areas determined with the treaty.

<sup>32</sup> Henrik Clausen, "The Lisbon Treaty: The problem of democratic legitimacy", Draft for Review, pp: 13-14 <http://missioneuropakmartell.files.wordpress.com/2008/05/the-lisbon-treaty.doc>

- Double majority in the Council strengthens the transparency of the EU. Consequently, small states cannot be voted by greater states, but at the same time small states cannot be a barrier in taking an important decision.
- Strengthening the role of National Parliaments in the EU decision-making means strengthening of national level toward supranational level of EU. This increases the accountability of decisions taken in the supranational level.
- Lisbon treaty strengthens the impact of the citizens in EU decision-making through citizen's initiative. This is a step forward more legitimate EU.
- Avoiding the referendums for the treaty dims democratic purposes. Consequently the legitimacy of EU is put on question.

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