

The European Construction - from Communities to a Genuine Supranational Union

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Abstract: The European Union is an entity having a unique way of construction. All started as a need to put the coal and steel resources together in order to avoid a new army conflict on the old continent and as a way to rebuild the European economies after the World War Two. The success of these strategies and policies but also the newly realities that appeared at the European and global level, encouraged the European leaders to dare for more. Hopefully, more and more European states embraced the idea of integration, thanks to all the advantages brought by the membership. Hence, new premises were created and the decision makers took advantage of them and used the treaties as mechanisms for a safe and stable development. Using the observation and the qualitative method by analyzing several researches on this topic and the reforms introduced through the treaties, we will finally be able to validate our research hypothesis that we can speak nowadays about a real union having its own identity, a union which has moved from an intergovernmental organization to a supranational one.

Keywords: European Union; evolution; international legal actor; identity; legitimacy

1. Introduction

The European Union is a very important actor at the global level nowadays.

It is an entity whose construction and existence itself can serve as a role model for the other existing unions or for the other unions that will be created.

The EU experienced a 60 years period of existence during which there were a lot of changes determined by the newly realities that appeared on the European continent and by the wish and the need of a deeper integration. Once all started and moved

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on, it was more complicated to go back to the previous status quo than to try and to make efforts to continue on the way of integration.

Certainly, the founders of the first communities did not predict the evolution that was about to happen over the years, nor the final product that is the European Union in the form we can see now.

Its scope of action moved from the establishment of a customs union to an internal market flanked by common policies in areas such as agriculture, competition, external trade and economic cohesion between its various regions. The policies were then extended in order to cover the protection of the environment, foreign policy, justice, home affairs and a monetary policy. (Piris, 2010, p. 4)

The construction also faced problems during all this time. It was not an easy process for the European leaders and decision makers as a lot of turning points arose all this time. Hopefully, an efficient and convenient solution was adopted and implemented at any time so that the European dream continued. Just as per Lucica Matei's assert (Matei& Matei,2010, 2011), "in a developing relation, we witnessed a permanent adaptation of the EU's administration to the needs arising from the achievement of the EU objectives".

Hence, we can still speak about a union after almost 65 years since the start of the first community, a union that will most probably not cease its existence in the immediate future. The states and more specifically, their economies, are now so much integrated that the collapse of the European Union will most probably mean such a big crisis that would be almost impossible to overcome for many of them.

2. Events Preceding the Birth of the European Communities

The end of the World War Two, brought back the wish of unification at the European level. This was firstly expressed in the period between the two World Wars. The leaders were sure that the only way of revival was to put all the forces together so they can create a more powerful entity.

The economic, social and political situation at the European level was unfortunately not a very good one in that period. This is the reason why the United States who did not suffer that much because of the war, but on the contrary, adopted a plan of economic reconstruction, the so called Marshall Plan.

In addition to this, in 1948, during a congress held in Hague, there were two paradigms set: the one involving intergovernmental cooperation and the one involving a federal integration. Through the decisions taken here, the European leaders committed to go with the federal integration. The two paradigms adopted at this congress, resulted in two very important decisions: on one hand, the establishment of the Council of Europe (London, 5th of May 1949) and on the other

hand, the green light for the French proposal to create the European Coal and Steel Community. (Bărbulescu, 2008, pp. 39, 40)

The next step was the establishment of the European Communities, whose main purpose was to reach a stronger cooperation than the existing one.

3. The First Formal Steps towards the European Integration

We can assert that the European construction started with the establishment of the European Coal and Steel Community (ECSC), on 18th of April 1951.

On 9th of May 1950, Robert Schuman, the French minister for Foreign Affairs, proposed the creation of a common coal and steel market, which was supposed to be regulated at a supranational level.

In order for it to become reality, France convened on 20th of June 1950, in Paris, an intergovernmental conference under Jean Monnet's leadership. Six states¹ attended the negotiations. They ended on 18th of April 1951, with the adoption of the Treaty of Paris, which entered into force on 10th of August 1952. This established the European Coal and Steel Community, whose existence was set to cease in 50 years.

The main purpose of it, was the avoidance of a new military conflict in Europe, knowing the fact that the coal and steel were the main war resources at that time. On the other hand, the European leaders intended to establish the free movement of coal and steel resources between the six contracting parties and to forbid any in and out taxes for them. Any state subsidies and discriminatory practices were forbidden as well. (Hen, & Leonard, 2002, p. 57)

In order to fulfil all the treaty's provisions, a number of 4 institutions were created: the High Authority, the Council of Ministers, the Common Assembly (a parliamentary organisation) and the European Court of Justice, each of them having specific and clear attributions.

The next step of the European construction was the establishment of the European Defence Community, a new French initiative. Europe was at that time an easy target for the main two military global powers, United States of America and the Union of Soviet Socialist Republics.

Unfortunately, this idea did not become reality as the initiator state itself, opposed to it. The armies were a bit more difficult to be integrated and it was also raised the question of which of the states is going to lead the army. Once this idea was put away, the decision makers also abandoned the ongoing discussions of creating a Political Community. This can be practically considered the first turning point in the European construction.

¹ France, Germany, Italy, Netherlands, Belgium and Luxemburg.

Hopefully, soon after this failure, the integration process was re-launched with the Benelux countries proposal of integrating the European national economies in a unique European internal market.

This proposal was discussed for the first time within the Messina's Conference in June 1955, when the six ECSC member states governments proposed the establishment of a group of experts to discuss on this matter, under the presidency of Paul Henry Spaak, the Belgian minister for Foreign Affairs. (Bărbulescu, 2008, p. 46)

The discussions were concluded with a report that served as the base for the two treaties adopted in Rome in 1957, treaties through which the European leaders established two newly communities: the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM).

The EEC treaty, established the European common market, which could've only been put in place through the use of four liberties: free movement of goods, capital, services and people. Through this treaty, the European leaders also intended to make the economic policies more coherent, consistent and similar one to each other, using a step by step process. They aimed to increase the standard of living for the citizens, to enhance the common relations between the contracting parties and to reach the stability of the member states.

The second treaty, EURATOM, also aimed to enhance the standard of living through the use and development in a positive way of the nuclear energy.

Another important thing that worth mentioning here is that, unlike the first community, these two, were established for an indefinite period of time.

In order for the main targets to be accomplished, the decision makers created another four institutions for the two communities: one Commission and one Council of Ministers for each of them. The Parliamentary Assembly and the Court of Justice were common to them and to the first community. Thus, the decision making process was very complicated at that time but this ended soon after, in 1967, with the adoption of the third European treaty, in Brussels. It set a common institutional framework for all the three communities: one Commission, one Parliamentary Assembly, one Council of Ministers and of course, one Court of Justice.

After the two Treaties of Rome entered into force, everything seemed to be fine at the European level. The problem is that the vote with the qualified majority for some of the areas regulated at the supranational level, was not consistent with the France's vision and wish. Its position was that everything should be regulated using the unanimity as a general rule and in order to get this in place it refused to still be part of the decision making process, leaving its seat in the Council of Ministers but not also the communities. This was called the "Empty chair crisis". It

was the second turning point that could've ended the European dream. The French decision resulted in the blocking of the decision making process for 9 months. Hopefully, all the member states agreed on a solution, the so called Luxembourg Compromise, which made the unanimity the only voting rule until 1987, when the European Single Act introduced the vote with a qualified majority.

The success of the European leaders plan up until that point, made other countries on the European continent also willing to be part of it so that in 1973, 3 more countries, Denmark, Great Britain and Ireland became part of the communities. One decade later, 3 more embraced the European dream and were accepted to be part of it. It was Greece in 1981 and Spain and Portugal in 1986.

4. The First Step toward a Union per se

All these facts encouraged the European decision makers and made them confident that a deeper integration is possible.

This reason, but also the need of some changes due to the increased number of member states, led to the adoption of a new treaty, the Single European Act, in 1986. This treaty launched the project of a unique market. It was clear that the removal of the customs barriers was not enough and that the removal of all barriers having a physical, technical and fiscal nature was needed. The treaty also introduced the idea of cooperation between the member states in order to accomplish a European Economic and Monetary Union (Article 20). It also set new objectives and competences for the communities such as research and technological development (Article 130F), the cohesion policy or the environment policy (Article 130R, 130S and 130T)¹. Moreover, it enhanced the communitarian competences in what the social policy is concerned (Article 118A) and introduced for the first time the idea of a political European cooperation within the foreign policy - member states obligation to cooperate in order to reach a unique foreign policy. (Title III, Article 30).

But maybe the most important thing was the introduction of the cooperation procedure in the decision making process, through which the unanimity was replaced with the qualified majority in some specific areas. This, along with the newly assent procedure, granted the European Parliament for the first time with the possibility to act as a true decision maker. It got the possibility to amend the Commission's proposals, amendments that would've been rather accepted by the Council (qualified majority) than rejected (unanimity). The consultation procedure existing up until that point allowed the Parliament to only be visible but not also to count in the process.

¹ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_ro.htm.

It can be asserted that the first decades of communities existence were characterized by a decision making rather similar to a classic international organisation, through negotiations and unanimous decisions of the representatives of the governments of its Member States, meeting as a Council of Ministers (Piris, 2010, p. 3).

Another thing that worth mentioning in regards to the Single Act is that the European Commission was entrusted with an exclusive right of initiative and that the European Council was formalized. The decision makers practically started the process of getting the communities closer to a supranational entity.

Soon after the moment when the Single European Act entered into force, the European decision makers adopted new reforms in their way of getting a supranational union, through the adoption of the Treaty of Maastricht, in 1992.

From that moment on, the whole world started to speak about the European Union, a political, economic and monetary entity. It was the moment when the decision makers made one of the most important steps in the whole European construction history. It was a risky but a needed and a well prepared step. The decision was also based on the geo-political context on the continent, right after the communism fall. It was obvious that in order to represent something on the newly European map, the member states needed to constitute themselves into a political union that could've granted them with identity.

Just as mentioned above, the treaty established the European Union, an entity built on three pillars, the European Communities, the Common Foreign and Security Policy and Justice and Home Affairs. For the moment, EU was not invested with legal personality. Moreover, the treaty introduced the concept of the European citizenship and added new entities to the institutional framework of the Union. Hence, it was established the European Central Bank (Article 4a of the Treaty establishing the European Community (TEC)), the European Court of Auditors (Article 4 of the TEC) and the Committee of the Regions. Moreover, the European Council was institutionalized. (Article D of the Treaty establishing the European Union (TEU))

Another important step made by the European decision makers was the formalization of the subsidiarity principle (Article A of TEU), which states that "the European Union adopts decisions at the closest level to the citizens". This principle also states that in those areas where it has no exclusive powers, the EU only interferes if it is obvious that the common objectives can be better achieved at the supranational level than at the national one.

But maybe the most important step is that the treaty enhanced the power of the European Parliament and its influence over the Council of the European Union within the decision making process. Through the new procedure of co-decision, it got the right to reject the Council's decision, if not consistent with its opinion.

Moreover, the Parliament's involvement was further increased through the extension of areas where the cooperation procedure and the assent one were to be applicable.

Another thing that we need to mention here is that the four existing decision making procedures were only applicable to the first pillar, the other two being intergovernmental ones.

We can conclude that the Treaty of Maastricht was so important for 3 main reasons. It established the European Union and set the European citizenship, formally granting the construction with identity. It made the decision making process similar to a national one: the European Commission and the member states were the executive power, the Council of the European Union and the European Parliament were the legislative power (it can be seen as a bicameral legislator) and the Court of Justice represented the judicial power. The condition of the existence of the three powers was met. Last but not least, the Foreign Affairs policy was formalized.

5. Further Reforms, Further Integration

In 1995, a new group of 3 states, Austria, Sweden and Finland, officially became part of the European Union.

Being now an even bigger entity, it was clear that further reforms were needed. Hence, soon after the Treaty of Maastricht entered into force, it was adopted the Treaty of Amsterdam (1997).

The new treaty enhanced the areas that were to be regulated through the communitarian law and simplified the decision making process, making once again the Parliament the winner of the process. There were though also a lot of areas where this institution had no power of decision.

Moreover, the treaty included the will of a progressive creation of a liberty, security and justice area throughout the European Union. This is why part of the third EU's pillar was completely communitarised and part of it only partially communitarised.

Very important in the way of reaching the supranational status quo, is the creation of a new position inside the European Union, the one of a High Representative for Foreign Affairs and Security Policy, with the role of assisting the Council in the matters related to the foreign affairs policy. Hence, we can assert that the European Union got the required continuity in what this policy is concerned, continuity that couldn't have been granted by the existing rotating presidency. Moreover, the treaty established the possibility for the European Union of initiating Pettersberg

Missions, granting this way the entity with a very important role in managing the global crisis.

The European Union moved toward having a more and more important role as an international actor.

The problem was that even after this treaty, there were a lot of pending issues.

In the first decade of 2000, a new wave of accessions was expected, a big one this time. Ten states were about to become member states in 2004 and two more in 2007. Therefore, the institutional framework needed to be adjusted in order for the European Union to be able to continue its existence and to properly address all the matters that could've appeared.

Hence, in 2001, a new treaty was adopted, in Nice. It made the first significant reform of the European institutions. It also increased the role of the European Parliament by increasing the number of areas where the co-decision was to be used.

Last but not least, once this treaty entered into force, the European Coal and Steel Community ceased to exist.

6. Overcoming the Identity and Legitimacy Problems and Becoming a more Supranational Actor

The next steps made by the European decision makers were the adoption of the European Constitution and then of the Treaty of Lisbon.

The context at the European level seemed to be appropriate so that the leaders dare dreaming about a new step that could've made the EU a rather federal organisation, hence adopting the Treaty establishing a Constitution for the Europe, in 2004.

Unfortunately, this step was not accepted by all the member states citizens so it has not been put in place due to the Dutch and French opposition. This two countries could not accept the existence of a constitution, of a motto, flag and anthem for the entity nor the prevalence of the communitarian law.

The European dream was not vanished though and 3 years later, in 2007, the decision makers made another try, this time learning from the past experience. They adopted the Treaty of Lisbon, which eventually entered into force on 1st of December 2009.

This treaty contains 95% of the Constitution's provisions having this way the wish of those states that ratified the Constitution and also the view and the wish of the Dutch and French citizens respected. The word "constitution" was removed from the treaty and so for the anthem, motto, flag and the provision of the communitarian law prevalence. (Bărbulescu, 2008, p. 455)

The very similarity between the Lisbon Treaty and the Constitution, should not be a surprise. The realities at the EU level had not dramatically changed between 2002 and 2007 and one would expect any reform treaty to address them in a similar way. (Ashiagbor, Countouris&Lianos, 2012, p. 3)

In their way of saving the other Constitution provisions, the decision makers used the veil strategy. They hid under the veil of the classic treaties the main elements of a constitution so that the reform to be perceived as new and the treaty to be ratified through the national parliaments and not through referendums. (Luzarraga&Llorente, 2011, pp. 29-30).

The treaty granted for the first time, the Union with legal personality (Article 47 of TEU)), from that point on, the EU being able to take part as a real subject and actor within the meetings of the international organisations.

In addition to this, the formal position of a foreign minister was kept but under a different name: the High Representative for Foreign Affairs and Security Policy (Article 18 of TEU) and it was established a permanent presidency for the European Union. Moreover, the treaty established the European Service for External Action, a real European Diplomatic Service (Luzarraga&Llorente, 2011, p. 30)

Starting that moment on, the EU Charter of Fundamental Rights became legally binding and the EU joined the European Convention of Human Rights.

All these made the European Union a real international actor and put away the so called crisis of identity. It was entrusted with all the necessary means to act at the international level.

The treaty also made the European institutions more representative and made the European Parliament the equal of the Council within the decision making process. We dare say though, that even if all the researches call it equal to the Council, the Parliament is now the main decision maker according to the treaties provisions, taking into consideration the fact that it has the last word at any time within the ordinary legislative procedure.

Moreover, the EU got closer to the statute of a supranational union, through the reshaping and the renaming of the decision procedures. We now have only the so called ordinary and special legislative procedures. In addition to this, almost all the areas are now regulated through these procedures and the national Parliaments involvement is required at the beginning of the procedures so they can check the compliance of the initiatives with the subsidiarity principle.

Another thing that worth mentioning is that the Lisbon Treaty included for the first time in the treaties explicit provisions on democratic principles (Title II. Article 10 of the Treaty on European Union) and incorporated the most important democratic statements which are complemented by a whole set of new provisions that increase

the power of the most democratic institutions (Mayoral, J., 2011, p.1). On the other hand, it also introduced the European citizen's initiative (Article 10.3 of TEU). It was thus established for the first time the right of the citizens to directly participate in or to influence the EU's decision making process. (Mayoral, 2011, p. 4).

7. Conclusion

The European construction has gone through a period of 60 years of changes. The decision makers proved tenacity at any moment. There were never brutal changes but only well prepared ones. We witnessed a baby steps process of adjustments that finally led to a completely different entity from the first communities, a supranational organisation per se.

The basis of the current entity were the communities established in the 1950s, which lack the identity at the global level and also the legitimacy of their decisions.

This was changed over the years. The European Union became more and more visible and important and it got more and more powers. In addition to this, we saw how the European Parliament, the only institution whose members are directly elected by the European citizens, was entrusted all this time with more and more powers within the decision making process. Hence, this process moved from a purely intergovernmental to a rather supranational one.

All these being said, we can assert that the crisis of identity and legitimacy that the European construction faced for a long time are now past, thanks to the reforms introduced through the treaties. Hence, the treaty can be seen as a managerial mechanism used to overcome the crisis but also to reach a statute far beyond the greater expectations of the communities founders.

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****Single European Act, Treaty of Maastricht, Treaty of Amsterdam, Treaty of Nice, Treaty Establishing a Constitution for the Europe and Treaty of Lisbon* - consolidated versions.

***http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_ro.htm, date 04.30.2015.

