

Lisbon Treaty

Subjects: **Political Science**

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The Lisbon Treaty has brought significant changes to the institutional structure of the European Union. The traditional three pillar system has been abolished and provisions regarding formal Union institutions have been amended. The aim of this encyclopedia entry is to briefly describe the functioning of each of the formal EU institutions after the Lisbon amendment. More specifically, their main tasks and powers will be shortly presented, whilst more extensive bibliography will be provided. In this regard, the reader will be in position to understand the fundamentals of the EU institutional structure and also find valuable sources for further research.

Treaty of Lisbon

EU Institutions

European Parliament

European Council

Council

Court of Justice

European Commission

European Central Bank

Court of Auditors

INTRODUCTION

The Treaty of Lisbon is a reform Treaty which amended the two EU Treaties that form the constitutional basis of the European Union (hereinafter: Union, EU). It was signed in Lisbon on 13 December 2007, but did not come into force before 1 December 2009. The reason for that two year delay is related to the ratification process by the member states. More specifically, in the referendum held in Ireland on 12 June 2008, the people's verdict was against the adoption of the necessary constitutional reforms in order to implement the Lisbon Treaty. After consultations, a second referendum took place in Ireland on 2 October 2009, where the electorate finally approved the necessary changes.

The basic institutional reform that the Lisbon Treaty has brought is the abolishment of the pillar system. Before the Lisbon amendment, the EU was comprised of three pillars: the European Communities, the Common Foreign and Security Policy and the Police and Judicial Co-operation in Criminal Matters; under the new institutional structure there is only the European Union which has formally granted legal personality. Subsequently the Treaty on the European Community was renamed to Treaty on the Functioning of the European Union (TFEU) which along with the Treaty on the European Union (TEU) forms the institutional foundation of the Union. Finally, the Lisbon Treaty introduced a specific procedure for withdrawal from the Union specified in article 50 TEU, which has been applied for the first time in the case of the United Kingdom.

The Lisbon Treaty has additionally amended provisions regarding the institutions of the Union. According to article 13, par. 1 TEU the institutional framework of the Union shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the member states and ensure the consistency, effectiveness and continuity of its policies and actions. In particular, the institutional framework comprises the European

Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.

The aim of this encyclopedia entry is to briefly describe the functioning of each of the above mentioned EU institutions after the Lisbon amendment. More specifically, their main tasks and powers will be analysed in short, whilst more extensive bibliography will be provided. In this regard, the reader will be in position to understand the fundamentals of the EU institutional structure and also find valuable sources for further research.

THE EUROPEAN PARLIAMENT

The European Parliament (Parliament) is the Union's co-legislative (along with the Council) institution. Its members are directly elected for a term of five years by direct universal suffrage in a free and secret ballot; thus the European Parliament is composed of representatives of the Union citizens, not exceeding 751 members, the President included, who is elected from among its members. Representation of citizens shall be degressively proportional, with a minimum threshold of 6 members per member state. No member state shall be allocated more than 96 seats.

After the withdrawal of the United Kingdom, the number of total seats in the European Parliament is decreased to 705 in accordance with article 3 of the European Council Decision 2018/937, distributed to the member states as follows: Germany (96), France (79), Italy (76), Spain (59), Poland (52), Romania (33), the Netherlands (29), Belgium, the Czech Republic, Greece, Hungary, Portugal, Sweden (21), Austria (19), Bulgaria (17), Denmark, Finland, Slovakia (14), Ireland (13), Croatia (12), Lithuania (11), Latvia, Slovenia (8), Estonia (7), Cyprus, Luxemburg, Malta (6).

The European Parliament co-exercises legislative and budgetary functions and functions of political control and consultation. In terms of essential power, the role of the European Parliament has been increased after the Lisbon amendment (Corbett, Jacobs & Neville 2016) as demonstrated in the ordinary legislative procedure (de Ruiter 2013). As may be observed in article 294 TFEU, the role of the European Parliament is equal to that of the Council in the ordinary legislative procedure in all stages of the process. The reinforcement of the Parliament's powers was crucial in order to combat the democratic deficit within the Union. Since the Parliament is the only directly elected EU institution, its position should be upgraded for reasons of democratic legitimacy.

Apart from its legislative competences, the European Parliaments has also significant powers over the executive (Chalmers, Davies & Monti 2019). The Parliament is solely responsible for the appointment of the European Ombudsman. In addition, the Parliament must approve the proposal by the European Council for the President of the Commission as well as provide a vote of confidence to the Commission as a body. The Parliament can also dismiss the Commission by voting on a motion of censure with a 2/3 majority of the votes cast, representing a majority of the component members of the Parliament. This role is in line with the principles of parliamentary republic where the executive is accountable to the legislative.

The members of the European Parliament are organized in political groups on the basis of political criteria. At least 25 Members are needed to form a political group, and at least one-quarter of the member states must be represented within the group. The current political groups represented in the Parliament are the following: Group of the European People's Party, Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, Renew Europe, Group of the Greens/European Free Alliance, Identity and Democracy Group, European Conservatives and Reformists Group, The Left Group in the European Parliament; several members are not attached to any political group.

THE EUROPEAN COUNCIL

The European Council (shall not be confused with the Council, see below) is an institution of political nature. It does not exercise any legislative power. The central responsibility of the European Council is to provide the Union with the necessary impetus for its development and to define the general political directions and priorities. This highly political role of the European Council may be easily understood given its composition; the Heads of State or Government of the member states participate in the European Council, along with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work. The ordinary method for taking decision is by consensus.

The President of the European Council is elected by the European Council itself by qualified majority for a period of 2.5 years renewable once and shall not hold any national office. He/she chairs the European Council with his/her main task being to ensure cohesion and consensus within the institution and continuity of its work. The President also convenes the European Council for its formal meetings every 6 months.

In the aforementioned institutional framework, the powers of the European Council include determining the existence of a serious and persistent breach of the EU values on behalf of a member state, which may lead to the suspension of certain of the latter's rights (article 7 TEU), setting the conditions of eligibility for a possible accession to the Union (article 49 TEU) and of course participating in the amendment procedure of Treaties (article 48 TEU) (Chalmers, Davies & Monti 2019). Nevertheless, the decisions of the European Council have a high political impact due to its composition.

THE COUNCIL

The Council is, together with the European Parliament, the legislative branch of the Union. Jointly with the European Parliament, the Council exercises legislative and budgetary functions. It also carries out policy-making and coordinating functions. Members of the Council are a representative of each member state at ministerial level depending on the topic of the agenda. The composition of the Council resembles to the so called "upper house" of a bicameral national federal system. For example, article 51, par. 1 of the Federal Constitution of Germany states that the *Bundesrat* (federal council) shall consist of members of the *Land* (federal state) governments which appoint and recall them.

The Council usually decides by a qualified majority except where the Treaties provide otherwise; the alternative methods are by simple majority or by unanimity. The general rules for qualified majority demand at least 55% of the members of the Council, comprising at least 15 of them and represent member states comprising at least 65% of the population of the European Union. If certain member states wish a proposal to fail, they must achieve a blocking minority which must include at least 4 Council members; if the blocking minority fails, the qualified majority shall be deemed attained. Specific rules on qualified majority apply when the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy; under those circumstances, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union. When not all members of the Council participate in voting, a qualified majority is defined as at least 55% of the members of the Council representing the participating member states, comprising at least 65% of the population of these States, without the numerical prerequisite of 15 member states. The respective blocking minority demands at least the minimum number of Council members representing more than 35% of the population of the participating member states plus one member.

The Council meets in different configurations which are established by the European Council, except from the General Affairs Council and the Foreign Affairs Council which are prescribed in article 16, par. 6 TEU. The role of the General Affairs Council is organizational; it ensures consistency in the work of the different Council configurations and prepares the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission. The Foreign Affairs Council is assigned with a more supervisory role; it elaborates the Union's external action on the basis of strategic guidelines laid down by the European Council and ensures that the Union's action is consistent.

Apart from the General Affairs and the Foreign Affairs, the Council meets in the following configurations: 1) Agriculture and Fisheries, 2) Competitiveness, 3) Economic and Financial Affairs (not to be confused with the Eurogroup), 4) Environment, 5) Employment, Social Policy, Health and Consumer Affairs, 6) Education, Youth, Culture and Sports, 7) Justice and Home Affairs and 8) Transport, Telecommunications and Energy.

THE EUROPEAN COMMISSION

The European Commission (Commission) is arguably the Union's executive branch (Hix 2008). It exercises coordinating, executive and management functions and has the legislative initiative. Nonetheless, the Commission's executive power is hardly comparable to that of the executive branch in national level (government). An important competence of the executive, the definition of the general political directions and priorities is at the hands of the European Council as seen above. Therefore, at the current level of European integration, despite the novelties that the Lisbon Treaty has brought towards that direction, the nature of the executive power in the Union remains composite (Curtin 2009), seeking to achieve a political balance between the national and EU component.

According to article 17, par. 4 and 5 TEU, the Commission appointed between the date of entry into force of the Treaty of Lisbon (1 December 2009) and 31 October 2014 consists of one national of each Member State,

including its President and the High Representative of the Union for Foreign Affairs and Security Policy who is one of its Vice-Presidents. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number. In practice, the number of the Commissioners remains one per member state.

The election procedure for the President of the Commission may be found in article 17, par. 7 TEU. According to that provision, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission, after taking into account the elections to the European Parliament and after having held the appropriate consultations. In principle, as long as the verdict of the people expressed through the European elections, the European Council shall propose the candidate of the party who took the majority of the seats in the European Parliament in line with the elections' results (Margaritis 2019; Margaritis 2014), a practice that was not followed in the case of the 2019 European elections. Consequently, this candidate is elected by the European Parliament by a majority of its component members. Regarding the other members of the Commission, the Council, by common accord with the President-elect, adopts the list of the other persons whom it proposes for appointment as members of the Commission. They are selected, on the basis of the suggestions made by member states. All members of the Commission including the President are subject as a body to a vote of consent by the European Parliament. On the basis of that consent the Commission shall be appointed by the European Council, acting by a qualified majority. The Commission is also responsible to the European Parliament which may vote on a motion of censure. The Commission's term of office is 5 years.

The main tasks of the Commission include to promote the general and take appropriate initiatives to that end, to ensure the application of the EU Treaties and the measures adopted by the institutions pursuant to the Treaties, to oversee the application of Union law under the control of the Court of Justice of the European Union, to execute the budget and manage programmes, to exercise coordinating, executive and management functions, as laid down in the EU Treaties, to ensure the Union's external representation, with the exception of the common foreign and security policy (which is assigned to the High Representative of the Union for Foreign Affairs and Security Policy) and other cases provided for in the EU Treaties, to initiate the Union's annual and multiannual programming with a view to achieving inter-institutional agreements. As discussed above the Commission has the legislative initiative and participates in the decision making procedure in accordance with the relevant Treaty provisions.

As guardian of the Treaties, the Commission may take action against member states who constantly violate EU law. This procedure involves many steps in accordance with article 258 TFEU. More specifically, if the Commission considers that a member state has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the state concerned refuse to comply with the opinion, the Commission may bring the case before the Court of Justice of the European Union.

THE ORDINARY LEGISLATIVE PROCEDURE

The ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a Regulation, Directive or Decision on a proposal from the Commission. After the Lisbon amendment, the co-decision procedure was renamed “ordinary legislative procedure” in order to emphasize that it should be the usual decision making process in the Union (Blasi Casagran, 2019). Eventually, the ordinary legislative procedure has become the general rule for adopting legislation at European Union level. It puts the European Parliament and the Council of the European Union on equal footing and applies in 85 defined policy areas covering the majority of the EU's areas of competence.

The ordinary legislative procedure is further elaborated in article 294 TFEU. The procedure follows several stages. First, the Commission submits a proposal to both the European Parliament and the Council. The European Parliament adopts its position at first reading and communicates it to the Council. The Council either approves the European Parliament's position, which makes the act concerned adopted in the wording, which corresponds to the position of the European Parliament, or does not approve, where it adopts its own position at first reading and communicates it to the European Parliament. The Council informs the European Parliament fully of the reasons, which led it to adopt its own position at first reading. The Commission shall also inform the European Parliament fully of its position.

Within three months of such communication, the European Parliament has the following options. First, to approve the Council's position at first reading or to take no decision. In both cases the act concerned is adopted in the wording, which corresponds to the position of the Council. Second, to reject, by a majority of its component members, the Council's position at first reading, where the proposed act is not adopted. Third, to propose, by a majority of its component members, amendments to the Council's position at first reading, where the amended text is forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

Now, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority may approve all those amendments and the act in question is adopted or may not approve all of them. In the latter case, the President of the Council, in agreement with the President of the European Parliament, within six weeks, convene a meeting of the Conciliation Committee. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

The Conciliation Committee is composed of the members of the Council (or their representatives) and an equal number of members representing the European Parliament. Its task is to reach an agreement on a joint text, by a qualified majority of the members of the Council and by a majority of the members representing the European Parliament within six weeks of its being convened, based on the positions of the European Parliament and the Council at second reading. The Commission takes part in the Conciliation Committee's proceedings and takes all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. If the Conciliation Committee does not approve the joint text, the proposed act is not adopted.

Finally, if the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast and the Council, acting by a qualified majority, each have a period of six weeks from that approval in

which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act is not adopted.

All the aforementioned periods of three months and six weeks referred to the procedure can be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union represents the judiciary within the Union. It comprises the Court of Justice, the General Court and specialized courts. Its primary task is to ensure that in the interpretation and application of the Treaties, the law is observed. The Court of Justice consists of one judge from each member state. It is assisted by 11 Advocates-General. As of September 2019, the General Court consists of two judges per Member State. The Judges and Advocates-General of the Court of Justice and the General Court shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are lawyers of recognized competence, in accordance with articles 253 and 254 TFEU respectively.

The Court of Justice of the European Union has jurisdiction in accordance with the Treaties to rule on actions brought by a member state, an institution or a natural or legal person, to give preliminary rulings at the request of courts or tribunals of the member states, on the interpretation of Union law or the validity of acts adopted by the institutions and to rule in other cases provided for in the Treaties. However there are fields where the competence of the Court of Justice of the European Union is limited, the Common Foreign and Security Policy being a perfect example (Hillion, 2014).

More specifically, the General Court has jurisdiction to hear and determine at first instance actions or proceedings regarding acts or omissions of any EU institution, agency or body. In addition, the General Court has first instance jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law. Decisions given by the General Court may be subject to a right of appeal to the Court of Justice only on points of law.

A specialized court within the EU legal order had been the Civil Service Tribunal. Its special field was that of disputes between the Union and its servants, at first instance. The decisions of the Civil Service Tribunal might be subject to an appeal, limited to questions of law, to the General Court whose decisions might in turn be re-examined before the Court of Justice, in exceptional circumstances. The Civil Service Tribunal ceased to exist on 2016 and its area of jurisdiction has been transferred to the General Court.

Apart from its above mentioned competences, the Court of Justice mainly gives preliminary rulings concerning the interpretation of the Treaties or the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union, at request of a national court or tribunal. Traditionally, the preliminary reference is the most popular

procedure before the Court of Justice reflecting the judicial dialogue between EU and national courts at the highest level (Lenaerts, Maselis & Gutman 2015).

Throughout the course of European integration, the role of the Court of Justice has been vital for the development of the process. Fundamental principles of EU law have been established and further evolved by the Court. Examples of landmark decisions are the cases of *Van Gend en Loos* (1963) and *Costa vs. ENEL* (1964) where the autonomy of the Communities (at the time) was emphasized and the principles of direct effect and supremacy of EU law were respectively established. Given the absence of provisions regarding fundamental rights protection in the founding Treaties, that protection was also a story of judge-made law (Colneric 2003).

THE EUROPEAN CENTRAL BANK

The European Central Bank (ECB) was established in 1998 as the central administrator of the common monetary policy within the Union, which led to the common currency, the Euro (Smits 1997). Along with the central banks of the member states whose currency is the Euro, the ECB constitutes the European System of Central Banks (ESCB). The European Central Bank is totally independent in the exercise of its powers and in the management of its finances. All institutions, bodies, offices and agencies of the Union, the Court of Auditors included (see below) and the governments of the member states respect that independence.

The Executive Board of the ECB consists of its President, the Vice President and four members which are all appointed by the European Council acting by a qualified majority, among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB, for a non-renewable period of 8 years. The Governing Council of the ECB consists of the members of the Executive Board and the Governors of the national central banks of the member states whose currency is the Euro.

The primary objective of the ESCB is to maintain price stability. In addition, the ESCB supports the general economic policies of the Union for distributing to the achievements of the Union's general objectives as specified in article 3 TFEU. Those two fundamental tasks are interrelated; the stability oriented monetary policy within the Union creates a stable and therefore friendly environment for other policies to be carried out as effectively as possible (Scheller 2004). In particular, the basic tasks of the ESCB can be summarized as follows: define and implement the EU monetary policy, conduct foreign exchange operations, hold and manage the official foreign reserves of the member states and promote smooth operation of payment systems (article 3 Protocol on the statute of the ESCB and of the ECB).

It is easily understood that the role of the ECB is crucial in the functioning of the Union and its further economic integration, especially in dealing with the Euro crisis. The ECB had responded to the crisis by adopting standard, such main refinancing operations and non-standard measures of monetary policy, for example the purchases of government bonds on the secondary market through the Securities Market Programme and the programme of Outright Monetary Transactions (Henning 2015). In addition, through the European Banking Union, the supervision

of banking policy is transferred from national to EU level for members of the eurozone and is substantially vested to the ECB. As a result, the ECB has emerged as a very powerful political actor, abolishing its mere economic role.

THE COURT OF AUDITORS

The Court of Auditors is an institution of the European Union that carries out the auditing work within the EU independently and autonomously (Morrison & Mann 2004). The provisions regarding its functioning and competences may be found in articles 285-287 TFEU. It consists of one national of each member state, completely independent in the performance of their duties. The members of the Court are appointed for a period of 6 years which may be renewable; during this period, they shall not be appointed to any governmental or any relevant position of any kind. They also refrain from any other occupation, either gainful or not. The President of the Court is elected among its members for a period of 3 years and may be re-elected.

The Court of Auditors examines the accounts of all revenue and expenditure of the Union, including the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination and refers in details to the European Parliament and the Council with a statement of assurance regarding the reliability of the accounts and the legality and regularity of the underlying transactions. It also examines whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound and assists the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The audit is based on records and is performed on the spot in the other institutions, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the member states, including on the premises of any natural or legal person in receipt of payments from the budget in co-operation with national auditing bodies.

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