

European Institutional Developments and Evolutions Post-Lisbon Treaty

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Abstract

The current article aims at analysing the main difficulties the European institutions were confronted to and identifying the axes of urgent reforms of the European construction, which are claimed to be applied, immediately, after the recent parliamentary elections from 25 of May together with the installation of the new decision teams in Brussels. While the first part of the article examine the action of the various European institutions within the new constitutional architecture, the second part will cover some axes needed which could be followed by the Union starting with the new term. In the context of the economic and financial crisis, the first European institutional cycle under the terms of the Lisbon Treaty –2009-2014, became an important challenge for the application of the provisions concerning the functioning of the European institutions. An objective assessment of the ways regarding the practical implementation of the Treaty must take into consideration the negative influence of the economic crisis upon the decisions assumed by the high national and European responsibles.

Keywords

Lisbon treaty; European elections; European Parliament; euroskepticism; presidency; leadership; integration

- **The Functioning of the European Institutions According to the Provisions of the Lisbon Treaty**

The adoption of the Lisbon Treaty induced a NEW dynamic, difficult to be anticipated at the moment of its ratification. Therefore, the necessity of a rapid adaptation to severe constraints was hindered by several dysfunctions of the fundamental text. From the start of the new European cycle, two unknown basic issues regarded:

- 1). the duplications between the permanent European Council President and of the EU Council Presidency, dealing with the adoption of the European agenda at short and medium time, and,
- 2). the external action which is accomplished both by the European responsibles, above mentioned, and by the President of the European Commission and the High Representative.

We appreciate that the interdependence between the European functions have to take into account the current differences concerning, on one side, the Presidencies of the European Commission and European Parliament, directly emerging from the Euro-parliamentarian elections, and, on the other side, the positions of the President of the European Council and of the High Representative, appointed by the Heads of government and state.

I. The European Commission

The work of a Commission with 27 members (from July 2013 with the accession of Croatia, we have an European Union of 28) continued to be inefficient as before the adoption of the Lisbon Treaty. In this context, many opinions affirmed that the institution which gives the original impetus to the European project is losing speed with a view to the other institutions.¹ Although this trend is not simple to be explained, politicians and experts consider that a profound polarization is the main negative consequence of the Commission's decreased role. This assertion is based on the fact that the founding Treaties conferred upon the European Executive the power to impel the Union, being placed beyond the immediate interests of the Member States. Thus, a Commission working with 6-9 members was capable to initiating a huge volume of European legislation and to representing the European integration in a neutral way.² Notwithstanding, the successive enlargements of the EU led to a non rational repartition of the Commissioners mandates. in order to maintain the classical formula –one member state/one Commissioner or 5 big states - 2 commissioners/the other 10 having one commissioner.

Trying to reach a compromise, the Nice Treaty has limited the number of Commissioners at 18, corresponding to a Union of 27 states. Further, one of the most interesting innovations of the Constitutional Treaty focusing on this issue advanced the proposal of a reduction of the composition of the Commission to maximum 12 – 13 members, complying with its effective areas of action. The aim of this change was to avoiding not only the overlapping between the European policies, but the installation of veritable *feuds* having low interdependence in relation with the interests of the Member States.

It must also be underlined that within the period of the elaboration of the Convention's project, while the *big States* were those pleading in favour of a reduced Commission, the majority of the *small states* considered that their participation at the European institutional process could better guaranteed the existing formula.³ The Lisbon Treaty partially resumed the Convention's proposal in a *rendez-vous clause*⁴ stipulating that, starting with 1 November 2014, the European Commission will consist of member representing two thirds of the number of the Member States, President and High Representative included., on the basis of a equal rotationally system.⁵ Further, after the entry into force of the Lisbon Treaty, although the provision regarding a reduced Commission was less ambitious than it was made by the Constitutional Treaty, the high responsible of the national Member States, concerned in eliminating possible shortages of the Member States (ex. Ireland who initially rejected the Treaty), took the decision to prolongation of the current status of the functioning of the Commission-one State/one Commissioner.⁶

In this way, this decision accepts the *status quo* of an over dimensioned and not adapted Commission, until 2019 or in the case of a Union with 30 members. It is out of question that a reduced Commission could have strengthened the position of its President in the balance of institutional powers, having in mind that the Commission still possesses the „sole right of initiative“ to start the EU lawmaking process.

¹ Jean-Yves Bourlanges, *Audition within the European Affairs Committee*, National Assembly, France, 12 December 2012.

² The Commission of six has 9 members, each of the 3 big states having 2 commissioners.

³ Valery Giscard d'Estaing, *La cacophonie européenne*, Le Point, 06.06. 2013.

⁴ Cf. art. I-26, TUE.

⁵ Cf. art. 17 TUE. This change was taken with a view of a positive outcome of the second Irish referendum on 2 October 2009.

⁶ Decision of the European Council, 22 May, 2012.

As regards the portfolios' exercise, the Commission Barroso II confronted itself to the same problems devolving from the lack of convergence between the majorities at European and national level given the various electoral cycles, at term or anticipated. The first remark to be made is a duplication of a several expertise fields as a direct result of too many commissioners. For example, the external action of the Commission has been affected by the lack of coherence resulting from the activities of 4 Commissioner acting as High Representative for CFSP (the Common Foreign and Security Policy), Development and Human Aid, Enlargement and Commercial Policy. Duplications were evident with a view the portfolio for aid and answers in crisis situation and the Neighbouring Policy was transferred under the competence of the Commissioner for Enlargement.

The EU Council

According to the Lisbon Treaty, the EU Council gained in transparency while maintaining all the competencies regarding the setting up of the agenda and the achievements of political compromises. The changes of administrative matter has been generated by the functioning of the Council of General Affairs and Council of External Affairs, both replacing the former Council of General Affairs and External Affairs. Consequently, the EU Council Presidencies were the more exposed institutions with a view to the new disposals, because they had the task to put the change in application.⁷

In assessing the functioning of the Council Presidencies, whose main responsibility consists in fixing the agenda of the European summits, we are of the opinion that a lack of coherence prevailed in what could be considered as a Union in search of a political leadership.⁸ We agree with this conclusion if we are comparing the efforts made both by the German Presidency during the first half of 2007 and the French Presidency during the second half of 2008, succeeding in resuming and ratifying the new Treaty, to the results of the several Presidencies exercised by states having less motivation.⁹

Among the main causes, we could find the following:

- 1) Exercise of the EU Council Presidency by a state whose economy is in recession – Spain;
- 2) New members holding the EU Council Presidencies for the first time – Slovenia, Czech Republic, Poland, Lithuania. On one side, there are Member States having no experience in organizing a European agenda and, on the other side, Member States proving to be euroskeptical. At the same time, it was a country more concerned to change its internal constitutional mechanism, at to the limit of the political criteria of the EU, and here we speak about Hungary;
- 3) The Council presidencies were assumed between 2009 – 2012, when the economic crisis reached its highest peak, by states which are not members of the Euro Zone – Czech Republic, Sweden, Hungary, Poland, Denmark. As a particular case, Poland had a performing economy due to an intelligent devaluation of its currency but was less involved in the economic governance and Euro Zone crisis;
- 4) Absence of progress in promoting several internal European strategies, articulated around some political or economic general objectives supposed to be leading to the strengthening of the European cohesion (interconnection of the infrastructures, the Danube Strategy, Eastern Partnership). As regards the Eastern Partnership, Poland failed to position it as the top priority of its Presidency; Lithuania didn't come to sign under its term the Association Treaty with Ukraine in the prolongation

⁷ Art 9C, TUE

⁸ Arielle Thedrel, La présidence tournante de l'UE en perte d'influence, Le Monde, 31/12/2011.

⁹ Arielle Thedrel.

of the Eastern Partnership, which became effective only after the acceleration of the conflicts between Russia and Ukraine. Among the priorities of Polish and Hungarian Presidencies were the achievement of the Schengen space, especially with the problem of the accomplishment of the criteria by Romania and Bulgaria. Both rotational Presidencies couldn't, from a firm position, negotiate with the founding states –France, Germany or Netherlands, which show the limited powers they dispose thereupon;

5) Some Presidencies have privileged, some aspects related more to their own priorities, difficult to be treated within a difficult economic period.

Taking into account these aspects, it would be easier to understand why the biome Merkel –Sarkozy conducted the Unions' policies, at least until 2012, when Francois Hollande became President of France. As far as the negative effects prevail, it is hard to say if the European framework could be reinvented through a new Convention as it was in 2002/2003.

European Parliament

Under the terms of the Treaty, the European Parliament is the institution which became stronger because it acquired important new powers. In particular, the co -decision has been extended to a substantially larger range of areas¹⁰ and has become co - legislator for most of the European law. Notwithstanding, Parliament continued to work for getting more competences, passing without convulsions over the crisis period.

If we shall take into consideration an intergovernmental issue - the external action of the Union – we observe that EP has pursued to have a major role, beyond it has received through the Lisbon Treaty. In this sense, it must be mentioned its firm preoccupation to exert a control upon the European Service for External Action (ESEA).¹¹

Thus, along the period 2009 – 2010, among the objectives of the EP was present the search of a compromise regarding the functioning of this structure. An agreement was, finally, achieved after some important concessions from the part of each Commission, Spanish Council Presidency and High Representative. The debates within the EP claimed a strengthened overview and democratic responsibilities exercise. In accordance with the compromise, European Parliament will have a say over the European funds for third countries and will control the budget of the ESEA.¹² As a direct effect of the right to exercise a politically control over the CFSP, the EP has also get the right to proceed to the hearing of the EU ambassadors, after their appointment. When the High Representative could not be present at a plenary session of the Parliament, she/he could be replaced by a commissioner or a national Foreign Affairs Commissioner (or Minister, as it's called, usually in the Member States).

European Council

After the significant changes introduced by the Lisbon Treaty, the European Council has become an European institution, *de jure* and not only *de facto*. The creation of a full-time European Council President is considered to be one the most major changes of the reformed Treaty.¹³ As regards the job description of the

¹⁰ Agriculture, Fisheries, energy, Transport, Structural funds. French Senate, EA Committee, Communication on the European Parliament and the institutional balance within the Union, 17 November, 2010.

¹¹ French Senate, *idem*.

¹² Elmar Brok, European Parliament, Report on the functioning of the European External Service, adopted on 22 October, 2009.

¹³ Cf. Art. 9 B, TUE.

permanent President, we remind that, within the European Convention debates, two opinions confronted: Executive President, similar to the French institutional pattern and, secondly, Chairman, conforming to the classical Parliamentary British system. Having in mind the permanent taunt esteeming that the Union has not a real political force, it would have been adequate that this new position could confer more coherence and clarity to the European action.

Generally, all through the last European term, the institutional framework has extended the same propensities observed over the last two decades: the taking over by the European Council of the Commission's integration role. Consequently, the main challenging issues have been settled due to the involvement of the European Council. The launching of the European semester and of the Pact on the Euro Plus were the most possible adequate answers trying to guide the surveillance and budgetary reform. The European Council's role was decisive in order to save the Euro Zone; it is true, always, in the last moment. In order to accelerate the necessary steps, the European Council decided to sit in supplementary meetings which held the European agenda all over the last 5 years.¹⁴

Nevertheless, an assessment on the role of the first permanent President has to conclude that he was, at least, equivocal. Even though at the beginning of his mandate, Herman Van Rompuy was aware of the need that Europe should stress on the political decisions, with a systematically approach to the sensitive topics, in order to deliver a clear and coherent message for the public opinion, his term didn't meet all expectations. While he firmly acted and succeeding in setting up a task force concerning the economic governance, Van Rompuy seemed to work more as a General secretary and not as top voice of the Union.

The lack of visibility of the political Europe

In installing a High Representative for CFSP, the Lisbon Treaty has conferred upon him strengthened competencies – vice-president of the Commission and President of the General Affairs Council in view to have a significant impact on the way EU formulates and implements its external policies. Therefore, it was presumed a change in the way Member States interact with the High Representative and contribute to EU policy – making in this area. Instead of allowing more flexibility to this function, the Heads of state and government preferred to appoint an honest person having no diplomatic experience. This person is a former commissioner, Catherine Ashton who finally achieved her tasks with less visibility than expected. Obviously, her charge was much complex since the EU still lacks an effective external and security policy, based upon a qualified majority vote, as it was proposed by the Franco - German contribution at the European Convention.¹⁵

In the field of defence, Europe has proved to be as inactive as 15 years ago by the time of the Balkans crisis, being unsuccessful to formulate a collective answer in the case of the Libyan crisis.¹⁶ This partial abandon of its security and defence objectives is more dramatic even though the Lisbon Treaty has introduced the arrangements in this scope. The main challenge for EU lies with its incapacity to rapid deploying the battle group as support of its missions. To this aim, Europe needs concrete achievements to regain in credibility on the international scene.

¹⁴ The Stability Pact reform, the 6 legislative package and the Surveillance, coordination and governance Treaty are major interventions of the European Council.

¹⁵ European Convention, French-German Contribution on the external action of the Union, 15 January 2003.

¹⁶ Nicolas Baverez, „L'Europe orpheline”, *Le Point*, 01/05/2014.

II. Short Time Challenges

The application of the Lisbon Treaty in an economic crisis period, significantly, raised citizens' interrogations with respect to the functioning of the European institutions. If, in normal conditions, the people's interest towards the decision-making mechanism in Brussels regarded general aspects, at present, the effective measures taken by the EU became much more important for the public opinions. Therefore, a comparative perception between the European institutional coordination and their transposition at national level must converge in relation with a reformed dynamic.¹⁷

Five years since the entry into force of the Lisbon Treaty, it is difficult submit a definite answer regarding the effects on the balance of influence between the various EU institutions, the general impression being that of a recess of the general interest.

There is a danger that within the reformed institutional framework, the Commission couldn't fulfil its founding role.

At what extent will the results of the last European elections influence upon the repartition of the positions of Presidents of the Commission and European Parliament as the Treaty of Lisbon stipulates? As it is acknowledged, the Treaty states that the EU Council will proceed to the nomination of the President of the Commission on the basis of the European elections.¹⁸ At its turn, the European Parliament should decide if it agrees or not with this candidate. One consequence emerging from the Treaty, mandatory, is true, only in practice, is that the party who won the elections has to propose the Commission President. Notwithstanding, the European Council will locking for preserving their former practices, by continuing to nominate him in accordance with political negotiations.¹⁹ Even the practical arrangements of the Treaty provisions are not very clear, it is hard to believe that the European Council will try to go round without a solid motivation. Moreover, federalists argue that not electing an Executive with real powers represent the main reason ordinary Europeans do not identify with the Parliament. It is hard to believe that a European responsible could have an effective role without a strong domestic experience in the matter.

The main challenge this institution is currently facing results from the acceptance of its representativeness based on degressive proportionality. Referring to the representativeness of the EP, the European Council called²⁰ for the completion in 2017 of the review of the repartitions of the EP mandates by demographic evolutions and number of Member States.

During the 5-year term, the EP's role as representative of European opinions may coincide or not with the ruling majority in the Member States. Considering the fact that in the Member States, local or national elections are conducted under schedules different than the European one, the issue of the legitimacy of decisions taken in Brussels at national level becomes, in the context of economic crisis, extremely sensitive. Likewise, if until now, assuming the EP political projects implied an agreement between the MEPs of the left and those of the right, the assertion of a strong Eurosceptic movement will require a different strategy from 2014²¹.

The election of the EPs President, results from a political arrangement between the EPP and the PES, completed through two mandates for 2 and a half years

¹⁷ Nicolas Baverez, „L'Europe“.

¹⁸ Art. 17 UE

¹⁹ Jean-Louis Sauron, Atlantico Read more at <http://www.atlantico.fr/decryptage/europe-face-au-casse-tete-renouvellement-ensemble-dirigeants-jean-luc-sauron-947200.html#hod4m1X9lrGUDZJ.99>

²⁰ European Councils Decision from 23.06.2013

²¹ Alain Franco, L'extrême droite peut-elle bloquer l'Europe? Le Point, 15 May 2014

by two successive presidents nominated by the two political groups. The need for compliance with the new provisions of the Treaty, according to which two main positions (President of the Commission and High Representative) shall be exercised for a period of five years, may also lead to the abandonment of this practice, which does not correspond to an increased need for transparency²².

In view of the European elections in 2019, it would be welcomed to review an idea expressed by the European Convention that could be beneficial for the re-launch of Europe - permanent presidential elections based on universal suffrage by citizens, or, at least, in a first stage by European and national parliamentarians. This could give an increased visibility to the Union, proposing, after the model used by most federal states, a legitimated President.²³

In the extension of this idea, the President of the Commission, together with the whole College would be appointed by the European Parliament. Such initiatives may lead to a more credible Union that finds itself in a pronounced drift.²⁴

Conclusions

The constraints of the last institutional cycle emphasize the deadlock of Union. More than in other period of the European construction, the one which just ended seemed to be dominated by the intergovernmental logic, European leaders taking over in Brussels engagements difficult to be put in practice at home. Also, the lack of coordination between the leading couple of the Union, the President of the Commission, and the President of the European Council was manifest. In the next period, it would be difficult to have French-German driving force to give orientation to the Union.

Further to the European elections, the current absence of an agreement between the European leaders is subjects of concern. One of the bigger lessons after these elections is that an ever-increasing role of the EP does not seem to be increasing legitimacy. Instead of positive arrangements, this might be the beginning of the return of the nation states and their role in the EU. The European leadership has to work in the direction of a less technocratic Commission which, jointly with the European Parliament, should reformulate an identity on common values and projects, focusing on a transparent set of priorities for the next five years.

In this sense, the new persons in charge in Brussels should be as competent as possible and not the result of a shadowed negotiations.²⁵

As it is known, at the start of the 2014 euroelections, the main political family parties appointed and launched their candidates: Martin Schulz, from Party of European Socialists (PES) and Jean-Claude Juncker, from European People's Party (EPP). From 751 seats in the European Parliament, according with the Lisbon Treaty, the European Populists gained 221 mandates and the European Socialists 191.²⁶

In spite of tough negotiations, more or less transparently, finally, the provision from Lisbon Treaty regarding the respect of the results of the European elections, that is the political configuration, is found in electing as President of the European Commission of a representative proposed by EPP. Jean-Claude Juncker,

²² Jean-Luc Sauron, <http://www.atlantico.fr/decryptage/europe-face-au-casse-tete-renouvellement-ensemble-dirigeants-jean-luc-sauron-947200.html#hod4m1Xg1rGUDZJ.992>

²³ Corinne Delay, *Les élections européennes 2014: un scrutin aux multiples enjeux*, www.robert-scumann.eu

²⁴ Pierre – Henri Reymond, Rapport d'information sur les perspectives de l'Union européenne, nr. 407, Senat français, 26 fevrier 2014.

²⁵ Anne Bauer, „Les dossiers urgents de l'Europe”, *Les Echos*, 22 mai 2014.

²⁶ <http://www.euractiv.com/sections/eu-elections-2014/voter-participation>

the first permanent President of the Eurogrup from 2005 to 2013, was nominated, on 27 June, officially, by the European Council, for the position of President of the European Commission. The European leadership is completed with Martin Schultz as president of the European Parliament, starting with July.

Therefore, we can conclude that the process to decide on and adopt the innovations of the Lisbon Treaty was already characterized by what the reform intends to accomplish such as joint leadership and partly enforcing compliance through clearly emphasising the will of the majority.

BIBLIOGRAPHY

- Bauer, Anne, „Les dossiers urgents de l'Europe », *Les Echos*, 22 mai 2014.
- Baverez, Nicolas, „L'Europe orpheline », *Le Point*, 01/05/2014.
- Deloy, Corinne, „Les élections européennes 2014:un scrutin aux multiples enjeux”, www.robert-scumann.eu.
- D'Estaing, Valery Giscard, « La cacophonie européenne », *Le Point*, 06.06. 2013.
- Franco, Alain, „L'extreme droite peut-elle bloquer l'Europe?” *Le Point*, 15 mai 2014.
- Reymond, Pierre – Henri, « Rapport d'information sur les perspectives de l'Union européenne », nr. 407, *Senat français*, 26 fevrier 2014.
- Sauron, Jean – Luc <http://www.atlantico.fr/decryptage/europe-face-au-casse-tete-renouvellement-ensemble-dirigeants-jean-luc-sauron-947200.html#hod4m1X9lrGUDZJ.99>
- French Senate, Meeting of the EU Affairs Committee, 16 February, 2010, pp. 3-4.
- French Senate, Committee for EU Affairs, Communication – European Parliament and the institutional balance within the Union, 17 November 2010.
- Thedrel, Arielle, La presidence tournante de l'UE en perte d'influence, *Le Monde*, 31/12/2011.
- <http://www.euractiv.com/sections/eu-elections-2014/voter-participation>