

THE LISBON TREATY AND THE EU'S INSTITUTIONAL SYSTEM

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Abstract. *The European Union is in a constant evolution after the changes produced by the adoption of the Treaty of Maastricht in its founding rules. The six intergovernmental conferences that have been organized until 2007 produced a feeling of uncertainty and insecurity with respect to the EU strategies for the future. The last intergovernmental conference has made significant changes in the institutional structure of the Union and has finished with the adoption of the Treaty of Lisbon, which is applied since 2009, after the end of the ratification process by all the Member States¹³⁰. The objective of this study is to consider both the position of the Treaty related to the Functioning of the European Union, as a “Reform Treaty”, and also the changes brought in the institutional system of the EU, especially in the European Parliament, the European Council, the Council of the European Union and the European Commission. To accomplish this task we made reference both to the provisions of the Treaty on the European Union and to the ones of the “reform treaty”, and also to the relationship that is established between these two. Our main sources of reference were the consolidated versions of the treaties of the European Union.*

Keywords: reform treaty, the ordinary legislative procedure, the double majority, qualified majority, representative democracy

¹³⁰ Panos Kazakos, “Europe after the Lisbon Treaty”, in Arvanitopoulos, Constantine, Botsiou, Konstantina E. (edit.), *The Constantinos Karamanlis Institute for Democracy Yearbook 2010*, Springer, New York, 2010, p. 19.

1. The Lisbon Treaty - a “reforming” treaty of the European Union

The convention on the future of Europe which took place between February 2002 and July 2003 is a unique experience in the history of the European Union. This is because, unlike other reforms undertaken earlier, in which negotiations were held in secret intergovernmental conferences, at the Convention on the future of Europe it was established a new method more democratic and transparent. The result of this Convention was the Project of the Constitutional Treaty, which was accepted by many Member States in the 2003-2004 Intergovernmental Conference under the Irish Presidency. Despite this massive acceptance, negative results of the referendums in France and the Netherlands in the period May-June 2005 were interpreted as representing the beginning of the most serious crises of the European Union in the last 50 years. Predictions did not materialize, whereas the European Union has not only continued to function as before, but after a “period of reflection”, under the German Presidency, the debates were about to begin again. Following the Council in June 2007, a new Intergovernmental Conference was planned with the primer goal of drafting a “reform treaty”. In this context, on 13 December 2007, the Heads of State and Government of the 27 Member States of the European Union met in the capital of Portugal to sign the Treaty of Lisbon, and so to support the process of “constitutional politics” which officially began in December 2001 through the Laeken Declaration. The new treaty, which took the name of the town where it was signed, keep the majority of the provisions agreed in the Project of the Constitutional Treaty, removing though the constitutional and “state” references. In addition, many Member States have taken advantage of the new situation and were able to obtain different concessions¹³¹.

¹³¹ Maurizio Carbone, “Introduction: understanding the domestic politics of treaty reform”, in Maurizio Carbone (edit.), *National Politics and European Integration. From the Constitution to the Lisbon Treaty*, Edward Elgar Publishing Limited, Cheltenham, 2010, p. 1.

The failure of the referendum conducted by Ireland, in June 2008, as a method of ratification of the Lisbon Treaty was initially viewed as an obstacle to the European reform process¹³². However, after organizing a second referendum, the Irish population has opted for ratifying the “reforming” Treaty, on October 2, 2009. All other European Union member states have opted to ratify the Treaty in their national parliaments and although for some of these, the process spread over several days, weeks or even months, eventually, this process has proved to be useful as the Czech Republic was the penultimate state to ratify the Treaty, on May 6, 2009. Ireland was the last Member State which concluded the ratification of the Lisbon Treaty. In Table 1 we have summarized the ratification process of the Treaty on the Function of the European Union.

Table 1. The ratification process of the Lisbon Treaty (T.FEU)

State	Lisbon Treaty (T.FEU)	
	<i>Method of Ratification</i>	Date
Austria	Parliament	April 9, 2008
Belgium	Parliament	March 5, 2008 / July 10, 2008
Bulgaria	Parliament	March 21, 2008
Cyprus	Parliament	July 3, 2008
Czech Republic	Parliament	February 18, 2008 / May 6, 2009
Denmark	Parliament	April 24, 2008
Estonia	Parliament	June 11, 2008
Finland	Parliament	June 11, 2008

¹³² *Idem.*

France	Parliament	February 7, 2008 / February 8, 2008
Germany	Parliament	April 24, 2008 / May 23, 2008
Greece	Parliament	June 12, 2008
Hungary	Parliament	December 17, 2007
Ireland	Referendum (not approved)	June 12, 2008
	Referendum (approved)	October 2, 2009
Italy	Parliament	July 23, 2008 / July 31, 2008
Latvia	Parliament	May 8, 2008
Lithuania	Parliament	May 8, 2008
Luxembourg	Parliament	May 29, 2008
Malta	Parliament	February 6, 2008
Great Britain	Parliament	June 18, 2008
Netherlands	Parliament	June 5, 2008 / July 8, 2008
Poland	Parliament	April 1, 2008 / April 2, 2008
Portugal	Parliament	April 23, 2008
Romania	Parliament	February 4, 2008
Slovakia	Parliament	April 10, 2008
Slovenia	Parliament	January 29, 2008
Spain	Parliament	June 26, 2008 / July 15, 2008
Sweden	Parliament	November 20, 2008

Source: <http://europa.eu/>.

At a more detailed analysis of the provisions of the Lisbon Treaty we can see that it was not designed as a “constitution” of the European Union, but as a real treaty. Unlike the Constitutional Treaty Project which presented the aspirations of some Member States to make the European Union a “European state”, the terminology of the Lisbon Treaty is significantly different in order to remove any doubts about the persistence of this “state” aspiration. In order not to remain at a purely theoretical level, we must give an example to support the above statement. Thus, we can see that the denomination of “Minister for Foreign Affairs of the Union” – from the Constitutional Treaty Project, was replaced in the content of the “Reforming Treaty” with the old expression of “High Representative”. Another example would be that the plan to create a new set of legal instruments of the European Union as “laws” and “framework-laws” to replace the existing regulations and directives was dropped. While major institutional reforms have been implemented in the Constitutional Treaty Project, formal and symbolic revisions were made to justify the different method by which the majority of the Member States have chosen to ratify the Treaty on the Functioning of the European Union. It is important to emphasize that, as it can be seen in the research literature, although the treaty was depicted to the Member States and to their citizens as a “simplified treaty”, in reality it is more complex than the Constitutional Treaty Project¹³³.

Among the changes introduced by the Lisbon Treaty we recall: the elimination of the Pillar structure of the European Union; the enlargement of the powers of the European Court of Justice (now the Court of Justice of the European Union) in the trial of cases arising in the internal affairs (which was in the third Pillar of Justice and Home Affairs); the renaming of the “ordinary legislative procedure” as the “co-decision procedure” and the establishment of the exceptions regarding its application in matters pertaining to the former Pillar II (Common Foreign

¹³³ Thomas Christiansen, “The EU reform process: from the European Constitution to the Lisbon Treaty”, in Maurizio Carbone (edit.), *National Politics and European Integration. From the Constitution to the Lisbon Treaty*, Edward Elgar Publishing Limited, Cheltenham, 2010, pp. 25-26.

and Security Policy); the higher degree of involvement of the national parliaments – which will be notified with the European legislative proposals and which are granted a period of eight weeks to make objections and comments to them; the references to the aspect of EU founding on “representative democracy”; the reassertion of political parties at European level; including the Charter of Fundamental Rights, adopted by the European Council in Nice in 2000 in the Treaty, as its integral part. At European level, the Lisbon Treaty brings a number of key changes in the institutional system of the European Union. In the following we are going to present the changes made by the Treaty on the Functioning of the European Union in the institutional structure of the Union¹³⁴.

The innovation brought by the Lisbon Treaty is focused on building the formula of the “decision triangle” that covers three community institutions participating in the decision-making process: the Commission - which has legislative initiative proposals for directives, regulations or decisions; the European Parliament and the Council of the European Union - which adopt these Community legal acts¹³⁵.

2. The European Parliament

The founding Treaties of the European Parliament perceived it as a deliberative assembly composed of the representatives of the national parliaments, with advisory functions¹³⁶. After the Lisbon Treaty in accordance with Article 14 (2) TEU, the number of MEPs will be reduced to a maximum of 751; about 750 MEPs, plus the President of the European Parliament. These places will be allocated to the Member States in accordance with the principle of “regressive proportionality” with a minimum of six and a maximum of 96 seats. According to the second sentence of the paragraph 2 of Article 14 TEU, the European Parliament’s composition is determined by the European Council, at the initiative of

¹³⁴ *Ibidem*, pp. 26-27.

¹³⁵ Jean – Luc Sauron, *Comprendre le Traité de Lisbonne. Texte consolidé intégral des traités. Explications et commentaires*, Gualino éditeur, Paris, 2008, p. 46.

¹³⁶ *Ibidem*, p. 42.

the European Parliament and with its consent, shall unanimously adopt a decision to that effect in accordance with the principles set out in the first part of paragraph 2 of Article 14 TEU and mentioned above¹³⁷.

Among the new areas of competence of the European Parliament there are: agriculture, in which the EP's power in making decisions will be equal to the one of the Council; budgetary procedures - in which it is planned to be necessary, the approval from both the EU Council and the European Parliament. In addition to these responsibilities, the political control of the European Parliament on the European institutions is increasing. It should be noted here that, based on the proposal of a candidate by the the European Council - under Article 17 (7) TEU - for the position of President of the European Commission, the European Parliament is the one that designates - as required by Article 14 (1) TEU - this president. In the research literature there were opinions which expressed concern regarding the power growth of the European Parliament, on the grounds that this increase in power could jeopardize the quality of work of the institution. To this regard, the suggested solution was to undertake internal reform on the operation of the European Parliament, especially in terms of legislative committees that operate within it¹³⁸.

The ordinary legislative procedure laid down in Article 294 of the TFEU involves the application of the qualified majority within the European Union Council and the one of the co-decision in the process of adopting legislative acts by the Council and the European Parliament. We must also mention two other important aspects, namely: the suppression of the "cooperation" procedure -, the procedure of the "assent" is renamed becoming the procedure of the "approval", and the "consultation" procedure remains unchanged. In this context, the

¹³⁷ *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *Comprendre le Traité de Lisbonne. Texte consolidé intégral des traités. Explications et commentaires*, Gualino éditeur, Paris, 2008.

¹³⁸ Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 83/47, since 20.03.2010; *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*; Alina Kaczorowska, *European Union Law*, Routledge-Cavendish, New York, 2008, p. 55; Thomas Christiansen, *op. cit.*, p. 27.

procedure of the “approval” requires an assent of the European Parliament, without which the EU Council cannot move forward in adopting legal acts. In turn, the “consultation” procedure requires the Council the need to obtain the opinion of the European Parliament on the Commission’s proposal before it makes a decision. The specific of the “consultation” procedure is that the Council is not obliged to follow the advice of the European Parliament. When the special legislative procedure applies, the Council of the European Union decides either unanimously or by qualified majority after the approval or after consulting the European Parliament¹³⁹.

Within the “decisional triangle” introduced by the Lisbon Treaty, the European Parliament has an equal vote with the European Union Council on all draft legislation. The Treaty on the Functioning of the European Union provides that for the adoption of legislation by the European Parliament with the Council under the co-decision procedure as a rule of the Community law. That is why this procedure was renamed by the TFEU as the “ordinary legislative procedure” and was extended to other areas where the Council shall adopt measures by a qualified majority. For these reasons, the research literature concluded that, quantitatively, the European Parliament has become, following the adoption of the Lisbon Treaty, a co-legislator along with the Council in 41 new fields¹⁴⁰. Among all of these, of a particular importance is the application of the ordinary legislative procedure for the adoption of the measures concerning the establishment of the area of freedom, security and justice. This importance lies with the fact that the European Parliament has turned into co-legislator regarding the measures concerning border control, asylum, immigration, judicial cooperation in criminal matters, rules defining minimum sanctions in the areas of increased crime and crime prevention measures, Eurojust, police cooperation, Europol and civil protection¹⁴¹.

¹³⁹ Consolidated version of the Treaty on the Functioning of the European Union.; Jean – Luc Sauron, *op. cit.*, p. 46.

¹⁴⁰ Jean – Luc Sauron, *op. cit.*, p. 47.

¹⁴¹ Alina Kaczorowska, *op. cit.*, p. 55.

In budgetary matters, the Treaty on the Functioning of the European Union removed the distinction between compulsory and non-compulsory expenses, and ordinary legislative procedure will apply to both categories of expenses. This aspect will have the effect of increasing decision-making power of the European Parliament, which will have the final say regarding all categories of EU budgetary expenditure¹⁴². Within the special legislative procedure, under Article 314 TFEU, the European Parliament has obtained equal rights with the Council on the adoption of the annual budget of the Union¹⁴³.

Regarding international agreements under the new procedure of “approval” (the new denomination given to the notice procedure), the approval of the Parliament will be required for all areas where international agreements are concluded and that are subject to the ordinary legislative procedure of co-decision. According to the research literature, this means that if the ordinary legislative procedure applies to the adoption of measures relating to the asylum policy, the international agreements in the field of asylum concluded with third countries or international organizations then, in such cases, the consent of the European Parliament must be obtained¹⁴⁴.

Moreover, in this ordinary procedure, the future revisions of the Treaties can be initiated by the European Parliament by submitting a proposal to this effect to the approval of the European Council, in accordance with Article 48 of the TEU, in the same conditions as the governments of the Member States and the European Commission. In addition, the European Parliament's consent will be required in those instances where the European Council decides to convene a conference of representatives of national governments instead of a convention for the revision of the treaties¹⁴⁵.

¹⁴² *Idem*.

¹⁴³ The consolidated version of the Treaty on the Functioning of the European Union.

¹⁴⁴ Alina Kaczorowska, *op. cit.*, p. 55.

¹⁴⁵ *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*; Alina Kaczorowska, *op. cit.*, p. 55.

The remaining areas were left outside the co-decision field of the European Parliament, although its powers were enhanced in these areas. Among them we recall: the power of initiative and the “last word” on legislative acts are defining the ways for the exercise of the right of inquiry available to the Parliament under Article 226 TFEU; the procedure which establishes the measures to accomplish of the system of “own resources” under Article 311 TFEU; the procedure for approving the extension of citizenship rights under Article 25 TFEU; the consultation power in the fields in which it had previously no right to intervene under Article 23 TFEU; the measures concerning the advance repayment of capital destined or originating from third countries under Article 64 (2) TFEU; the approval procedure in the new database or in the new action fields of the Union under Article 48 (7) TFEU¹⁴⁶.

3. The European Council

The European Council has an important role in the Union's institutional system. However, the institutional status of the Council it has always been a subject of dispute¹⁴⁷. On the one hand, it represents the ultimate degree political decision-making institution, but on the other hand, it can be perceived as “a body that can stimulate and initiate”¹⁴⁸. The role and the voting procedure of the Council decisions have not been defined along with its establishment, but subsequently, through Article 4 TEU, in an evasive manner. Under Article 13 of the TEU, the European Council has become a “full time” EU institution. Based on these provisions, the Council may adopt decisions, may vote, and its acts are subject to the control of the Court of Justice. Despite this Article 15 (1) TEU states that the European Council does not exercise a legislative function but it “provides the Union with the

¹⁴⁶ Consolidated version of the Treaty on the Functioning of the European Union.; Jean – Luc Sauron, *op. cit.*, p. 47.

¹⁴⁷ Alina Kaczorowska, *op. cit.*, pp. 136-137.

¹⁴⁸ R. H. Lauwaars, “The European Council”, *CML Review*, 14, 1977, p. 26.

necessary impetus for its development and it defines its political directions and priorities”¹⁴⁹.

Regarding the Member States, the Treaty on the Functioning of the European Union brings significant changes, especially with regard to their vote in the Council. First, there is an extension of the qualified majority voting in other fields¹⁵⁰. In Section II from Part VI of the Lisbon Treaty there can be found provisions about the voting procedure within the European Council. Thus, in the second part of paragraph 1 of Article 235 TFEU it is provided that when the European Council shall act by a qualified majority, it shall be made under Article 16 (4) TEU - referring to the Council of the European Union - which states that as of November 1, 2014, the qualified majority voting system will be replaced with a new voting system - specific to the Council - based on the principle of the “double majority” which means that a vote is valid if 55% of the Member States are “for”, and if these countries represent 65% of the EU’s population¹⁵¹. Also in this case it will be made the application of Article 238 (2) of the Lisbon Treaty, according to which, notwithstanding Article 16 (4) TEU, all as of November 1, 2014, under the reserve of the provisions set out in the Protocol concerning transitional provisions, in those situations in which the Council does not act on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority represents at least 72% of the members of the European Council, representing the participating Member States, which must meet 65% of the Union’s population. This is likely to increase the population of the Member States¹⁵². Article 236 of the Lisbon Treaty establishes two specific cases in which the European Council makes decisions by a qualified majority: establishing the list of the Council’s configurations, other than that of the General Affairs and the one of Foreign Affairs - in accordance with Article 16 (6) TEU, but

¹⁴⁹ *Traité sur l’Union Européenne*, in Jean – Luc Sauron, *op. cit.*

¹⁵⁰ Thomas Christiansen, *op. cit.*, p. 27.

¹⁵¹ Consolidated version of the Treaty on the Functioning of the European Union.

¹⁵² Thomas Christiansen, *op. cit.*, p. 27.

also with regard to the Presidency of Council's configurations, other than that of the Foreign Affairs - in accordance with Article 16 (9) of the TEU. Regarding the simple majority, the voting procedure is used by the Council on matters of procedure and in adopting the rules of procedure - as provided in Article 235 (3) TFEU ¹⁵³.

In the research literature, however, it has been noted a relevant particularity, that the political role of the European Council and its exclusive competence to decide on the revision of the EU treaties were left unchanged¹⁵⁴.

Regarding the Presidency of the Council, it will preserve its rotating character, and its importance will be quantified in the number of undertaken reforms. The Lisbon Treaty provides that the President of the Council will be elected by the Heads of State or Government of the Member States for a period of two years and a half, with one option to renew the mandate¹⁵⁵. Article 15 (6) of T.EU provides the powers of the President of the Council, but also the fact that he must be independent and not in the pursuit of a national office¹⁵⁶. Therefore, its main tasks are to prepare the work of the European Council, to chair the debates of this institution, to facilitate the consensus within the Council, to ensure the continuity of the Council's work and to solve foreign policy problems started at the level of Heads of State, but without violating the powers of the High Representative for Foreign Affairs.

4. The Council of the European Union

Regarding the Council of the European Union, the Treaty on the Functioning of the European Union brings four essential changes. First, it is the major change of the procedure of qualified majority within the Council. Thus, under Article 16 (4) TEU, as of November 1, 2014, the current voting system of the Council will be abolished, TFEU

¹⁵³ Consolidated version of the Treaty on the Functioning of the European Union.

¹⁵⁴ Alina Kaczorowska, *op. cit.*, p. 55.

¹⁵⁵ Thomas Christiansen, *op. cit.*, p. 27; Alina Kaczorowska, *op. cit.*, p. 54.

¹⁵⁶ *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*

establishing a double majority. If at the voting process all members are present, the majority must encompass: first, at least 55% of the Member States - this means that from the 27 Member States, at least 15 must vote "for"; and secondly, the total population of the Member States forming the majority must represent at least 65% of the EU's population. Within the same text it is also provided that in order to prevent a small number of Member States, with a large number of people to block the adoption of the measures, the majority necessary for blocking them must include at least four Member States. Otherwise, the measures in question are adopted even if the requirement referring to the population is not met nationally¹⁵⁷.

TEU establishes that other ways concerning the qualified majority are laid down in Article 238 (2) TFEU. In the light of these provisions, notwithstanding the provisions of Article 16 (4) TEU, "as of November 1, 2014 and subject to the provisions laid down in the Protocol on the transitional provisions", if the proposal does not come from the Commission or from the High Representative Foreign Affairs, the qualified majority shall include at least 72% of the Member States representing at least 65% of the population of those Member States. In case not all the members of the Council are present to the voting process, the qualified majority shall consist of at least 55% of the members of the Council representing the participating Member States, encompassing at least 65% of the population of those Member States. In this case, the majority that can block the adoption of a measure must include at least the number of the Council members representing more than 35% of the population of the participating Member States, plus one member¹⁵⁸.

Also, according to Article 16 (5) TEU starting with the 1st of November 2014 until the 31st of March 2017, it will be created an alternative to the double majority of voting. To this respect, the text

¹⁵⁷ *Idem*; Consolidated version of the Treaty on the Functioning of the European Union; Alina Kaczorowska, *op. cit.*, p. 55.

¹⁵⁸ *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.* ; Consolidated version of the Treaty on the Functioning of the European Union.

states that in terms of the transitional provisions relating to the definition of the “qualified majority” that will be applicable until the 31st of October 2014, and also in regard to the ones applicable from the 1st of November 2014 to the 31st of March 2017, special protocols will be adopted. Moreover, for the sensitive political issues it was stated the possibility for the Member States to require that the measure which affects them to be voted with the preexistent qualified majority. In order to support the new provisions introduced, the Lisbon Treaty preserved the “Ioannine” clause in the following terms: if in the Council the significant majority is existing in the terms of the number of Member States, but insignificant in terms of the ability to block the adoption of a measure, then the Council will try to find a satisfactory solution, reserving the right to vote at any time. It should be noted that this clause is not a “veto”. Its purpose is to give the Council time to find “resources” to support the measure. The research literature has noted that, in relation to the appearance of the voting consensus within the Council, this new voting system will not have a tremendous impact on the Council’s activity. There are also supporters of the significant impact of this new voting system that will have upon the decision-making process within the Council, which unlike the current voting system, will force the Member States that are dissatisfied with the measure submitted for adoption to join the majority from the beginning of the negotiation process hoping to change the final outcome in a favorable way¹⁵⁹.

A second major change brought by the “modifying Treaty” is that the qualified majority voting procedure will be extended to 21 new areas and to 23 areas that before adopting TFEU required a unanimous vote in the Council. However, unanimity vote will be kept with respect to the direct taxes, to the common foreign and security policy (former Pillar II), to the social and cultural issues¹⁶⁰.

¹⁵⁹ *Traité sur l’Union Européenne*, in Jean – Luc Sauron, *op. cit.* ; Alina Kaczorowska, *op. cit.*, pp. 55-56.

¹⁶⁰ Alina Kaczorowska, *op. cit.*, p. 56.

A third major change is the fact that the Foreign Affairs Council will be chaired by the High Representative for Foreign Affairs¹⁶¹. It should be noted that under Article 16 (6) TEU there are mentioned the two formations of the Council of Ministers: the General Affairs Council and the Foreign Affairs Council. The General Affairs Council is the one that “ensures the coherence in the work of the various formations of the European Council, ensuring the relation to the European Council and the European Commission”. The Council of Ministers formations are numerous and are established under the provisions of Article 236 TFEU, by qualified majority. On the other hand, the Foreign Affairs Council “elaborates the Union's external action in accordance with the strategic guidelines set by the European Council, ensuring the coherence of the Union”¹⁶².

Regarding this second Council in the research literature it has been noted the existence of a triangle formed by the Council of Foreign Affairs – the European Commission - and the European External Action Service. The presidency of the Foreign Affairs Council will be provided, according to the “Reforming Treaty” by the High Representative for Foreign Affairs. This latter function will change significantly, meaning that he will be the Vice - President for the External Relations at the European Commission (see Article 17 (4) and 18 TEU). The double duty of the High Representative for Foreign Affairs, in the two EU's institutions was regarded as “the bridge” among these institutions, designed to prevent the institutional division and to give coherence to the European foreign policy. All in pursuit of this goal, the Lisbon Treaty has laid the foundation of the European External Action Service (EEAS) which will assist the High Representative for Foreign Affairs in fulfilling its dual duties. Although details of EEAS were not yet established by the Lisbon Treaty, we must remember that this service will bring together various

¹⁶¹ *Idem*.

¹⁶² *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.* ; Consolidated version of the Treaty on the Functioning of the European Union.

general directors of the European Commission and the Council's Secretariat, and also officials of the Member States¹⁶³.

Finally, according to Article 16 (8) of the TEU, the Council's deliberation and voting on the draft legislation will take place publicly. This is especially justified by the fact that under the Protocol on the role of national parliaments, they are the directly affected by the Council's agenda and processes - minutes of the Council of Ministers' meetings. Also under the provisions of this paragraph of Article 16 TEU, the Council's sessions are divided into two parts, dealing respectively with deliberations on the Union's legislative acts and on its non-legislative activities¹⁶⁴.

5. The European Commission

The Treaty on the Functioning of the European Union brings two major changes for the European Commission. First, the President of the European Commission will be elected by the Parliament on the basis of the European Council's proposals. When choosing the candidate, the European Council will take into account the outcome of the elections to the European Parliament. In the research literature it is considered that this is likely to increase the influence of the European Parliament, but at the same time it is meant to strengthen the democratic legitimacy of the institution that has always been criticized for its nature of "undersigned body". Regarding the legitimacy of the European Commission, some authors believe that it has its origins before the Lisbon Treaty, and it consists in the fact that each Member State had its own commissioner in the College, who could act as an intermediary in the communication flow between national and European interests. The consequence of choosing the President of the Commission by the European Parliament has a double meaning. On the one hand, the Commission is winning a new source of political legitimacy, and on the other hand, it calls into question the objectivity

¹⁶³ Thomas Christiansen, *op. cit.*, pp. 27-28; *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*

¹⁶⁴ *Idem*; Alina Kaczorowska, *op. cit.*, p. 56.

and independence of the elected President of the Commission, in the context of the existence of some close links between him and a more consistent political group within the European Parliament¹⁶⁵.

A second major change brought by the Lisbon Treaty is to reduce the number of the members of the Commission until 2014. Starting with 2014, the number of Commissioners will be equal to two thirds of the Member States. Regarding this aspect, the Treaty on the Functioning of the European Union upheld a provision that was also found in the Constitutional Treaty Project, namely that beginning with 2014, the size of the College will be reduced to a number of Commissioners which is inferior to the number of the Member States. Thus, since 2015, only two thirds of the Member States will have a commissioner at a time, with a rotation system of five years, aiming to ensure the equal representativeness of the Member States in the College. Hence, in accordance with Article 17 (5) of TEU, in 2014, the European Commission will be composed of 18 Member States, meaning that a Member State will be represented in two colleges of three, based on a rotation system designed to ensure and to guarantee the equality of the Member States. For this innovation to be accepted by the Member States, all except Ireland have decided to resort to the parliamentary ratification of the Lisbon Treaty. Moreover, to the extent that, as of 2014, some Member States will be represented within the European Commission, Declaration no. 10 on Article 17 of TEU states the need to ensure absolute transparency of the relations between the Commission and the Member States, providing that the Commission is obliged to take all “useful measures” to “ensure the political, social and economic realities of all Member States, including those whose nationals are not represented by the members of the Commission”¹⁶⁶.

The principles of the rotation system were established unanimously by the European Council in accordance with Article 244

¹⁶⁵ Thomas Christiansen, *op. cit.*, p. 28 ; Alina Kaczorowska, *op. cit.*, p. 57; Jean – Luc Sauron, *op. cit.*, p. 52.

¹⁶⁶ Thomas Christiansen, *op. cit.*, p. 28 ; Alina Kaczorowska, *op. cit.*, p. 57; *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*; Jean – Luc Sauron, *op. cit.*, pp. 49-51.

TFEU, according to which both the order of rotation among the Member States and the period of time of the presence of their representatives in the Commission will be established in an “absolutely equal” manner - in compliance with the principle of equal representation between Member States -, so that the difference between the total number of seats held by the nationals of the two countries shall never be more than one; the representation of the Member States in the successive Commission will reflect, in a satisfactory manner, the demographic and geographical diversity of the Member States - hence in compliance with the principle of demographic and geographic diversity of the Member States ¹⁶⁷.

Although the research literature did not focus on Article 17 (8) of the TEU, we consider that it is mandatory to remind its provisions, especially as the text refers to the provisions of the Treaty on the Functioning of the European Union. Under these provisions, the Commission is accountable to the European Parliament, which in order to determine the resignation of the Commission, may adopt a motion of censure against it in accordance with Article 234 TFEU. The consequence of adopting this motion of censure by a majority of two thirds of the votes of the majority of the component members of the European Parliament – the members of the Commission are required to resign from their jobs, and the High Representative of the Union for Foreign Affairs and Security Policy will have to resign, as well, from the functions that he performs within the Commission. Their replacement will be made but in accordance with Article 17 TEU ¹⁶⁸.

6. Conclusions

Although some authors believe that the Lisbon Treaty has failed to achieve its original objectives of the reform process, raising since its adoption the need for some future revisions¹⁶⁹, we

¹⁶⁷ Consolidated version of the Treaty on the Functioning of the European Union.

¹⁶⁸ *Traité sur l'Union Européenne*, in Jean – Luc Sauron, *op. cit.*; Consolidated version of the Treaty on the Functioning of the European Union.

¹⁶⁹ Panos Kazakos, *op. cit.*, p. 30.

consider likewise other authors that the entering into force of the Lisbon Treaty put an end to the long debates on the institutional reforms, which often distracted attention from the Europe's relevant problems¹⁷⁰. This does not mean that the evolution of the European Union will stop here, because we cannot say yet that it was consumed or that it has fulfilled the purpose for which it was established by its founding "fathers".

We still have to mention the fact that the Lisbon Treaty contains a number of amendments to the Treaty on the European Union (TEU) and on the Treaty on the European Communities (TEC) - which becomes the Treaty on the Functioning of the European Union (TFEU). Following the adoption of the Lisbon Treaty, it is established that this is the one which organizes the functioning of the Union, establishing the areas, limits and conditions for the exercise of its powers. According to Article 1 (2) TFEU, the Treaties on which the Union is founded are: Treaty on the Functioning of the European Union and the Treaty on the European Union, both Treaties having the same legal value¹⁷¹.

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¹⁷⁰ Maurizio Carbone, "Conclusion: preference formation, inter-state bargaining and the Treaty of Lisbon", in Maurizio Carbone (edit.), *National Politics and European Integration. From the Constitution to the Lisbon Treaty*, Edward Elgar Publishing Limited, Cheltenham, 2010b, p. 231.

¹⁷¹ Consolidated version of the Treaty on the Functioning of the European Union.

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