

The charter of fundamental rights law european essay

Law



**ASSIGN
BUSTER**

Study-UnitECL3001 – EUROPEAN UNION LAW I

Treaty reform is a continuation of politics by other means. The Lisbon Treaty represents the culmination of a decade attempts at Treaty reform. In substantive terms the many complex Treaty changes should not mask the basic fact that each successive Treaty amendment has seen an increase in the areas over which the EU has competence.

Visiting student Massimo Petrocchi

The entry into force of the Treaty of Lisbon marks the passing of a long phase of the process of European integration which began in 1987 with the signing of the Single European Act. Its purpose was to carry out a revision of the Treaties of Rome in order to increase European integration and to create a single market. Later in 1992, the Maastricht Treaty established the European Union. From then Europe began the transformation from an economic community to a political union. The Union's competences were then increased by the Treaty of Amsterdam (1997), which formally consecrated the principles of liberty, democracy and respect for human rights, adding new sectors within the community. Subsequently, the Treaty of Nice (2001) potentiated the institutional reform already undertaken by the Treaty of Amsterdam. However, by this time, the law was based on eight treaties and therefore it became necessary a definitive institutional reform. This decision was taken by Laeken Declaration in December 2001, in which the idea to reform the EU through the creation of a single treaty, that would have been the only source of the European Union, was reached: the Treaty establishing a Constitution for Europe. However, despite the failure of the constitutional project^[1], the aim of institutional reform has been achieved by the Treaty of Lisbon. It was

<https://assignbuster.com/the-charter-of-fundamental-rights-law-european-essay/>

abandoned the idea of a single act (the Constitution) and it was decided to proceed through the instrument of the amendment to achieve a complete reform of the EU. The Lisbon Treaty, which entered into force on December 1st 2009, is composed of seven articles: the first two introduce the various amendments of the TEU and the TEC (which is called Treaty on the Functioning of the European Union-TFEU). This Treaty marks a turning point in the history of the European Union because, thanks to the changes introduced, has led numerous innovations which have greatly increased the powers of the Union. In addition, any amendment, which has resulted in an increase of EU's competences, is perfectly integrated in the transformation from a Union structured on the cooperation of individual Member States to a more complete European integration. The first innovation is the changing of the EU structure, formerly based on the three "pillars" established by the Maastricht Treaty in 1992. In the original system each "pillar" had its own procedure and legal instrument, the abolition of the distinction between the three "pillars" involves a harmonization of procedures and legal acts, helping to create a more linear and harmonious institutional architecture. For the first time the Treaty provides for the precise categorization of EU competences, thereby answering the question "Who is responsible for this?". This innovation has been an undeniable incentive in terms of democratization of Europe, establishing clearly the different levels of competence between the Union and the Member States. Nevertheless, in order to easily describe various types of jurisdiction, it is necessary to say that the Treaty, together with the clear description of each type of jurisdiction, has strengthened the "status" of the principles of conferral,

subsidiarity and proportionality. These principles, that were considered general and applicable to the entire EU, were included in Article 5 of the TEU which provides that:" 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States." In the first two paragraphs of Article 5 is stated the principle of conferral according to the Union is not an entity with general competences, it can only act in areas where this is expressly provided for by the Treaties, and only to achieve the objectives that Treaties indicate. The scope of this provision, however, is less rigid than it may seem, in fact, the Treaty of Lisbon, confirming the innovation already made to Article 308 of the EC Treaty, in Article 352 paragraph 1 of the TFEU, provides a partial derogation from the principle of conferral through a " flexibility clause". Article 352, paragraph 1:" 1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament." 3. Measures based on

this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation." This clause, which allows the Union to act in matters not expressly granted to it by the Treaties, is unquestionably a powerful tool extending competences. However, this clause in order to function requires the presence of certain conditions expressly set out in paragraphs 1 and 3. First of all EU action should appear necessary, and secondly the powers to act must not have been previously assigned by the Treaties (must then miss a " legal basis") and thirdly the exercise of the power of action may not allow institutions to bypass a limit to their competence expressly stated by the Treaties. The other two principles of subsidiarity and proportionality are regulated respectively by paragraphs 3 and 4 of Article 5 of the Treaty:" 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that Protocol. 4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and

proportionality." The choice of the Treaty of Lisbon, to raise these two principles to a general rank, tends to establish clearly the manner of exercise of powers ensuring a more noticeable and democratic EU action. Returning to the classification of competences, the Reform Treaty in Article 2 of the TFEU distinguishes three types: the Union's exclusive competences, the shared competences and the " support, co-ordination and complementary action". The Article 2 of the TFEU establishes:" 1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts. 2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence. 5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas..." The exclusive competence, i. e. those areas in which the power to adopt legislative acts belongs only to the Union, is regulated in the first paragraph. States can act only if authorized by the Union or in the case of acts intended to give effect to the Union acts. In the second section the shared competence is regulated, i. e. those areas in which the power to adopt legislative acts belongs to both the

Union and the Member States: moreover the fullness of the power to act belongs to the Member States until the EU remains inert. Finally, the fifth section describes the powers of the so-called "third type": the Union's competence in these areas shall be exercised in parallel with the competence of the Member States, through actions which support, coordinate or supplement those of the Member States, besides the exercise of competence of the Union can never supersede that of the Member States or lead to its gradual emptying. Along with the novelty introduced with this precise classification of powers the Lisbon Treaty also enlarges the number of subjects of shared competence and the "third type": in fact, within the shared competence it inserts the space and energy, while inside the "support, co-ordination and complementary action" it inserts the civil protection, intellectual property, tourism, administrative co-operation and sport. The result is a more agile system of defining the competence and a substantial expansion in the matters of Union's interest in which it can now direct its action. Another important change introduced by the Lisbon Treaty concerns the context of "decision-making" Council. On the one hand it has changed the criteria of a qualified majority, introduced by the Treaty of Nice, which was based on the weighting of votes on the strength of each state. The Treaty introduced the so-called "double majority"^[2](55% of EU States + 65% of the EU's population) which allows for greater democracy in decision-making. On the other hand, the Treaty of Lisbon plans for the extension of the qualified majority vote to 44 new articles, including the Administrative cooperation Within the area of freedom, security and justice after consulting the European Parliament (Article 70 TFEU) and the Measures Concerning

border checks (Article 77, paragraph 2 TFEU). The importance of this change is that, in a Europe of 27, a decrease where the Council decides by unanimity supports the decision-making process avoiding paralysis due to vote against even a single state. This represents an important step towards an ever fuller European integration. Another important novelty in the Treaty of Lisbon is that it increases the EU competence giving a more active and effective role in the international scene. The Treaty states some important innovations which give the EU the means to develop coherence and unit in the matters of foreign policy. First a High Representative of the Union for Foreign Affairs and Security Policy has been appointed, giving more coherence and visibility to the EU external action and promoting a common Foreign Policy. Catherine Ashton was appointed as this new figure, being both High Representative and Vice-President of the Commission, she joins the powers of High Representative for Foreign Affairs and Security Policy and the Member of Commission in charge of External Relations. This Representative is appointed by the European Council, jointly agreed with the President of the European Commission, and is in charge of coordinating the European activities and third countries. The representative has power over presenting proposals to the Council and presides at the Council for Foreign Affairs which is composed of all the Foreign Ministers of the Member States (Article 15 paragraph 2 and Article 18 of the TEU). Along with the establishment of a High Representative, the Treaty confers to the Union (Article 47 of the TUE) legal personality: "The Union shall have legal personality." This implies the faculty to sign agreements, above all to be part of an international agreement or to me a member of an international organisation. The importance of this

change can't be ignored: through this innovation the EU may increase its role on the international scene, acquiring better visibility, and may foster its values and interests about Foreign Commerce, development policy and humanitarian aids, creating international rules which regulate our global society. Directly related to the conferring of legal personality, there is another important innovation in the Treaty: in the past there was not a rule governing from one side the external competence of the Union and from the other side it was not specified if it were an exclusive or a joint competence with the Member States. The Treaty of Lisbon has put right this gap through two articles of the TFUE: Article 216, paragraph 1, and Article 3 paragraph 2. Article 216, paragraph 1 of the TFUE establishes: " 1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope" Thanks to this article the cases in which the Union is entitled to conclude international agreements is defined, i. e. all those situations in which an agreement is necessary to reach the objectives set in the Treaties, all those cases in which the conclusion of an agreement is expected through a legally binding Union act, and in those cases in which the agreement may affect common rules. Beside Article 3 of the TFUE establishes: " 2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal

competence, or in so far as its conclusion may affect common rules or alter their scope." Thanks to this innovation it is solved the problem of the competence of the Union in the conclusion of international agreements, the Article 3 of the TFUE defines the exclusive competence of the Union, a special rule about exclusive external competence. So the competence of the Union is enlarged in two aspects: first the cases of external competence of the Union are formally established, secondly it is established in which cases this competence is exclusively employed by the Union within the Member States. The Treaty enlarges the competence of the Union about security and common defence, it facilitates the development of European defence, creating a more supportive union and a better capacity of action. This purpose has been reached through three important choices: the introduction of a " clause of mutual defense", which provides for the military intervention in defense of a Member State that undergoes an armed attack on its territory. This obligation of mutual defence is binding for each Member State. However it does not compromise the neutrality of some Member States (Austria, Finland, Ireland and Sweden) or the belonging to NATO of the Member States. This clause is completed by another " clause of solidarity", introduced by the Article 222 of the Treaty on the Functioning of the European Union (TFEU), which commits the Union and the Member States to act jointly to prevent and repress terrorist attacks, natural calamities or those caused by men, along with the mutual support. Originally provided by the European Convention, the clause has been implemented and inserted in the TFUE, as expected after the terrorist attacks in Madrid in 2004. The Treaty introduces also the possibility, for some Member States, to strengthen

their reciprocal collaboration in the military sector, creating an organized and durable cooperation (Article 42, paragraph 6 of the Treaty on European Union (TUE). For this reason, the Member States interested shall fulfill two main conditions provided for in the protocol n. 10 attached to the Treaty: developing the defence capacity intensively through their participation to multinational forces, to the main European programs of equipment and to the activities of the Agency in the sectors of developing defence capacities, research, acquisition and armaments, and supplying, within 2010, combat units and logistic support within a time limit from 5 to 30 days in case of necessity, and for a period from 30 to 120 days. Besides, in the field of common security and defence policies, it is confirmed the existence of the European Defence Agency, to develop a true European armament policy and to coordinate the work of equipping the various national armed forces. It has also been introduced an important innovation, the Treaty of Lisbon enlarges the field of activity of the Union to industrial and commercial matters in the field of armaments. The Treaty of Reform also extends the competence of the Union in the fields of internal security and justice, being able to answer to the needs of citizens in these two sectors. In the first sector we should underline the esteem of various means of action to ensure internal security. First of all the Treaty of Lisbon improves the efficiency of the decision-making process about matters of liberty, security and justice. In this area the Council of Ministers will use the qualified majority vote and the European Parliament will have the power of "codecision".[3] Secondly there will be the creation of an "integrated system for the management of external borders" and the reinforcement of the powers of "Frontex", the European Agency for

the management of operative cooperation to secure the external borders, and the strengthening of the EU means to fight illegal immigration and human beings trade: in this field too, resolutions will be made by qualified majority or possible "codecision" with the European Parliament. This will entail the creation of a common policy between the Union and the Member States, whose aim is establishing clearly the rules and conditions of immigration. The last innovation is about penal matters, according to this the adoption of basic rules which define crimes and punishments for a certain number of crimes between borders (terrorism, drug and weapons traffic, money laundering, sexual exploitation, etc.) will be decided by the European Parliament and the Council of Ministers by a qualified majority. About the creation of a European justice the Treaty of Lisbon supports greater civil and penal judiciary cooperation, through the principle of "mutual recognition", by means of, each legal system acknowledges that the decision adopted by other legal systems are effective and relevant. Besides, the possibility of establishing a European Prosecutor's Office has been introduced; it will have the aim of recognizing, prosecuting and conducting on trial, the authors of crimes which damage the Union financial interests. The European Council will be able to extend the competence of the European Public Prosecutor office against serious forms of criminality between nations (such as terrorism, human beings trade, drug smuggling, etc.) by unanimously vote. This office shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences. The Treaty of Lisbon reinforces the European social dimension with the introduction of new elements about rights, aims, and the content of policies and the means of the decision-

making process. Notwithstanding we should notice that in this field the enlargement of competence has been less relevant if compared to the other points already debated: even after the Treaty this field of action is still and largely a Member State competence. Anyway we should point out some innovation. The first is surely that the Charter of Fundamental Rights acquires a legal quality, i. e. the same legal value of Treaties, which affects the Union acts, assuring the binding legal value of these rights, which will be defended not only by the national judges but by the communitarian ones too. The European Union is also given social aims, between them: the European sustainable development, the fight against social exclusion and discrimination, social justice, solidarity between generations, protection of the right of the child, scientific and technological progress promotion, poverty removal, free and fair trading, territorial cohesion, safeguard and development of the European cultural heritage, etc. Finally the Treaty of Lisbon establishes public services ("services of general economic interest") with a legal basis which entitles the Union Institution to define the principles and condition which govern their establishment and functioning. As we said the innovations didn't have a range of extension comparable to those previously illustrated, anyway thanks to them it has been possible to lay the basis for a future development. Economy is the last field in which we may notice the improvement of the competences of the Union. First we should underline that the Treaty confirmed the previous innovation produced by the Treaty of Nice in 2001. About the monetary policy it has not been changed the competence of the European Central Bank (ECB). About the budgetary and fiscal policies, the Member States are the only ones responsible for, they

are also obliged to coordinate their policies to those of other Member States and they are obliged to respect the Growth and Stability Pact. In addition to maintaining all these matters, the Treaty officially establishes the existence of a Eurogroup inside which relationship between Member States, which adopted the Euro, has been clarified to give a better coordination about economical, budgetary and financial policies. Eventually the Commission gains the right to issue opinions about the Member States which have an excessive deficit and the sanction procedure of the states will be now adopted by the Council of Ministers, on the basis of a commission proposal (and not on a simple recommendation, as it happened before the Treaty of Lisbon). This brief analysis leads to a fundamental consideration. The Treaty of Lisbon has been able to accomplish, with the instrument of " amendment", the institutional reform, which was the objective of the Constitutional Treaty. In doing so it has provided the European Union with a set of competences most complete, alternating changes to earlier reforms (such as the " double majority") and entering many new features (such as the Union legal personality). The end result is definitely that of a more integrated European Union of 27 Member States, with the appropriate skills to meet the challenges of the twenty-first century.