European Institutions
After the Lisbon Treaty

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Two institutional issues

1. The executive power after the Lisbon Treaty
2. Legislation and legislative procedures after the Lisbon Treaty
The Executive Power after the Lisbon Treaty
Five main novelties in the structure and functioning of the EU executive power:

a) the Lisbon Treaty takes a very first step towards the establishment of a Presidency of the Union;

b) it reinforces the legitimacy of the Commission;
• c) it reinforces the composite nature of the executive power;
• d) it recognizes the role and the significance of European agencies;
• e) it reduces the role and the significance of comitology.
A) Towards the establishment of a Presidency of the Union

• A controversial issue in the Convention process

• (i) a ‘single hat’ for the Union: the President of the Commission
(ii) a ‘double hat’ for the Union: the Commission President and the President of the European Council
• The choice done by the Lisbon Treaty: the establishment of an office of President of the European Council

• (a) Article 15/1 TEU: The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.
• Article 15/6 TEU: The President of the European Council: (a) shall chair it and drive forward its work; (b) shall ensure the preparation and continuity of the work of the European Council; (c) shall endeavour to facilitate cohesion and consensus within the European Council; etc.
• Article 15/5 TEU: The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once.

• The differences with the Presidency of the Council: the so called ‘team presidencies’; 18 months; the criterion of equal rotation among the Member States
• The link between the President of the European Council and the Council
• To sum up: the office of President of the European Council as an embryonic form of President of the Union
• Will such office be fully developed? How will the problem of the co-existence with the Commission President be solved?
B) The Reinforcement of the Legitimacy of the Commission

- The debate on the method of choosing the Commission President
- The Lisbon Treaty as an exercise of political realism: an indirectly elected Commission President (Article 14 TEU + Article 17/7)
• A mechanism reinforcing the legitimacy of the Commission President and of the Commission as a whole
• But: will indirect election of the Commission President affect the *modus operandi* of the Commission? The Commission between business as usual and parliamentarization.
C) The Reinforcement of the Composite Nature of the Executive Power

• A highly contentious issue in the Convention process
• (i) The argument against a shared and composite executive power in the EU: institutional efficiency, clarity and transparency
• (ii) The argument in favour
• The Lisbon Treaty: a shared executive power
• A first example: the setting of the priorities for the EU and the planning of the overall agenda as functions jointly carried out by the European Council, the Council and the Commission
• the problem: will the European Council and the Commission co-operate or conflict?
• A second example: the reform of the High Representative of the Union for Foreign Affairs and Security Policy
• Article 18/1 TEU: “The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy”.
• The powers of the High Representative: his/her responsibility within the Commission; his/her participation to the European Council; his/her position within the Foreign Affairs Council

• The problem: an institutional bridge or a case of institutional schizophrenia?
D) The Recognition of the Role and the Significance of European Agencies
• A rather uniform organizational framework

• (i) European agencies as bodies aimed at establishing and managing a plurality of cooperative relationships involving both the Commission and the Member States’ administrations.
• (ii) The relationships with the Commission
• (iii) European agencies normally operate as co-ordinator of sectoral administrative networks
• (iv) European agencies are granted administrative powers that are mainly instrumental to the exercise of decision-making powers conferred to national and European authorities
• European agencies as the result of a political compromise between the Commission and the Member States

• The differences between European agencies and EU independent authorities
• In what ways does the Lisbon Treaty touch European agencies?
• The general strategy of the Lisbon Treaty is to revise all the relevant provisions so as to make express reference to agencies
• For example, Article 15 TFUE
• These adjustments are to be welcomed
• Yet, the Lisbon Treaty fails to get the real issues concerning European agencies: the unresolved issue of European agencies’ powers
E) The Reduction of the Role and Significance of Comitology

- What is comitology?
- A delegation from the Council to the Commission
- An institutional mechanism to guarantee control
- A mixed composition
- An instrument oriented both to control and co-operation
• The Treaty of Lisbon affects comitology in one very fundamental way: it reduces its position and relevance

• Article 290/1 TFEU: “A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.”
• Article 291/2 TFEU: “Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council”.
• Does the new framework of delegated and implementing acts, and the silence of the Treaty in relation to comitology, mean that comitology is no longer admitted? Or will comitology survive?

• Two opposite views

• The official answer (regulation No. 182/2011)
To sum up:

• Five incomplete developments in the EU executive power:
  
• a) the Lisbon Treaty takes a very first step towards the establishment of a Presidency of the Union; but will this very first step be followed by further steps in this same direction?
b) it reinforces the legitimacy of the Commission; but it is not clear whether the indirect election of the Commission President will really affect the way of functioning of the Commission, and in what sense;

c) the Lisbon Treaty reinforces the composite nature of the executive power; but it is not clear whether the European Council and the Commission will co-operate or conflict;
• d) the Lisbon Treaty recognises the significance of European agencies; but it fails to address the issue of their position in the EU institutional architecture
• e) the Lisbon Treaty reduces the role and the significance of comitology.
Legislative Acts and Legislative Procedures
• Article 289/1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.
• Four main elements of the legislative procedure
  • (a) legislative initiation
  • (b) the position of the European Parliament
  • (c) the role of the Council
  • (d) the role of national Parliaments
The overall rationale: to increase inter-institutional balance within the ordinary legislative procedure; and to enhance the legitimacy of the Union legislation by reinforcing, in the legislative process, the democratic voice of the Union.
A) Legislative Initiation

• The legal framework prior to the Lisbon Treaty:
  • the ‘gold standard’ of the Commission;
  • the reality: the power of the European Council, the Council and the European Parliament in relation to legislative initiation
• The Lisbon Treaty: only minor amendments (Article 17/2 TEU, Article 241 TFEU, Article 15, Article 225 TFEU)

• The rationale: inter-institutional balance of power: the exercise of legislative initiative is substantially shared among the supranational institution, the intergovernmental institutions and the multinational institution
B) The Position of the European Parliament

- The legal framework prior to the Lisbon Treaty: inter-institutional balance
- The Lisbon Treaty reinforces the position of the European Parliament:
  - (i) the co-decision procedure is now the ordinary legislative procedure
  - (ii) the extension of its scope of application
• A development coherent with EU history
• A welcomed development? Lights and shadows of the stronger position of the European Parliament
C) The Role of the Council

- (i) The formations of the Council: fragmentation
- (ii) The voting rules: the shift from unanimity to qualified majority
D) The Role of National Parliaments

• Article 12 TEU: National Parliaments contribute actively to the good functioning of the Union

• The Protocol on the Role of National Parliaments in the EU (Protocol 1)

• Protocol on the Application of the Principles of Subsidiarity and Proportionality
The Overall Rationale

• a) the ordinary legislative procedure provides a framework for deliberative dialogue on the content of the legislation between the European Parliament, Council and Commission

• b) enhancing the legitimacy of the Union legislation by reinforcing, in the legislative process, the democratic voice of the Union

• A successful development?