

**“NICOLAE TITULESCU” UNIVERSITY OF BUCHAREST
FACULTY OF LAW
DOCTORAL SCHOOL
EUROPEAN UNION LAW**

PHD THESIS

**"TREATY OF LISBON: LEGAL DIMENSION OF DECISION-MAKING
PROCESS IN THE FIELD OF EU EXTERNAL ACTION"**

- SUMMARY -

**THESIS COORDINATOR:
PROFESSOR DR. AUGUSTIN FUEREA**

**PHD STUDENT:
TOMESCU GHENEA-VIOREL**

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Abbreviations

AEA - European Defence Agency

AFET - Committee on Foreign Affairs

alin. - item

art. - article

AS - Association Agreement

BSECO - Black Sea Economic Cooperation Organization

C- - Case before the Court of Justice in Luxembourg

CAP – Common Agriculture Policy

CCG - Constitutional Court of Germany

CEA - European Defence Community

CEDO - European Court of Human Rights

CEEA - European Atomic Energy Community

CFI - Court of First Instance

CFR - Charter of Fundamental Rights of the European Union

CFSP – Common Foreign and Security Policy

CIS - Community of Independent States

CJ - Court of Justice

CJEU - The Court of Justice of the European Union

CoE - Council of Europe

COM – European Commission

COREPER – Committee of Permanent Representatives

CSDP – Common Security and Defence Policy

CST - Civil Service Tribunal

CT – Constitutional Treaty

DCFTA - Deep and Comprehensive Free Trade Area

DG ENLARG – Directorate General for Enlargement

DG RELEX - Directorate General for External Relations

DG TRADE - Directorate General for Trade

ECB – European Central Bank

ECJ - The Court of Justice of the European Communities

EEAS - European External Action Service
EFTA - European Free Trade Association
EPC - European Political Cooperation
ESDP - European Security and Defence Policy
EU – European Union
EP – European Parliament
EUROSTAT - Directorate General for European Statistics
ESCB - European System of Central Banks
EES - European Economic Space
FAO – Food and Agriculture Organization
GATS – General Agreement on Trade in Services
GATT – Agreement on Tariffs and Trade
GC - general Court
GDP - Gross Domestic Product
GSP - Generalized System of Preferences
ICJ - International Court of Justice
IGC – Intergovernmental Conference
JHA – Justice and Home Affairs
MENA - Middle East and North Africa
MEPP - Middle East Peace Process
MFA – Ministry of Foreign Affairs
OCDE - The Organization for Economic Co-operation and Development
OJEC - Official Journal of European Communities
OJEU - Official Journal of the European Union
OJ - Official Journal
p. cit. - paper cited
PACE - Parliamentary Assembly of the Council of Europe
pag.- page
par. - paragraph
pct. - point
PIL - Public International Law

PNA - Palestinian National Authority
PT - Petersberg Tasks
QMV – Qualified Majority Voting
SLP - Special Legislative Procedure
SLSJ - Space of Liberty, Security and Justice
SM - European Union Member State
TCEEA - Treaty establishing the European Community of Atomic Energy
TEC – Treaty establishing the European Community
TFEU - Treaty on the Functioning the European Union
TL - Treaty of Lisbon
TN - Treaty of Nice
TRIPS - The Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP – Transatlantic Trade and Investment Partnership
TUE – Treaty on the European Union
UNESCO - United Nations Educational, Scientific and Cultural Organization
UNGA - General Assembly of the United Nations
UNSC – United Nations Security Council
WEU - Western European Union
WTO - World Trade Organization

PLAN OF THE PHD THESIS

FOREWORD

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Section 3. British withdrawal from the European Union / BREXIT 3.1. General background 3.2 UK's participation in the European Community / European Union 3.3. Political and legal implications of the EU - UK Agreement from February 2016 aimed at a "new deal for the UK in the EU" 3.4. BREXIT implications for the EU 3.5. BREXIT implications for the UK 3.6 Conclusions and proposals *de lege ferenda*.

CHAPTER VII. GENERAL CONCLUSIONS AND PROPOSALS *de lege ferenda*

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Section 2. Proposals *de lege ferenda*.

THE TOPIC UNDER RESEARCH

The in-depth knowledge of legal procedures and decision-making mechanisms within the institutions, bodies, offices and agencies of the European Union (EU), in the context of the entry into force of the Lisbon Treaty in 2009, is assessed as an objective having a special importance both from the theoretically and practically point of view.

Moreover, throughout the evolution of the European Communities and later on of the European Union, the imperative of ensuring the efficient functioning of the Community / Union institutions has constantly represented a key objective of the legal and institutional reform process. This objective has gained much greater significance with the requirements imposed by the EU enlargement process.

At the same time, the objective of ensuring an increased weight for the EU on the international scene, while protecting the interests of EU companies and European citizens in front of the challenges of globalization obviously requires further efforts aimed at adapting the EU legal framework and not the least its decision-making procedures and mechanisms.

In this respect, the research aims at a better understanding of the legal framework of the European Union, of the current dynamics, directions and prospects of the European project.

Simultaneously, we intended to highlight the close link between the Union's institutional and legal structure and the dynamics of its decision-making processes within its institutions.

In this context, we paid a special attention to the main legal and institutional issues on the agenda of the 2003/2004 Intergovernmental Conference (IGC) and later on of the 2007 IGC, with special reference to institutional issues (establishment of the European Council as an EU permanent institution; creation of the post of EU foreign minister, respectively EU High Representative for Foreign Affairs and Security Policy; separation of the activity of General Affairs Council from the activity of Foreign Affairs Council; size and composition of the European Commission); legal issues, including the legal support of EU decision-making processes (greater weight to the European Parliament within the legislative process; reweighting of votes within the Council;

introducing the double majority voting system; extending the areas of applicability of the ordinary legislative procedure and hence the areas to apply the qualified majority voting system; improved procedures for decision-making in Common Foreign and Security Policy / CFSP and the Common Security and Defence Policy / CSDP, along with the introduction of new procedures for cooperation and decision-making to the former 2nd EU pillar (such as the Permanent Structured Cooperation and the enhanced cooperation) and respectively 3rd EU pillar III (broadening the area of civil cooperation, formalization the principle of mutual recognition; extending the powers of the Court of Justice of the EU).

Issues relating to the EU legal procedures and decision-making mechanisms - which are at the core of the thesis - are found both within the Treaty on European Union (TEU) (Title III - Institutional provisions; Title IV - Provisions on enhanced cooperation; Title V - General provisions on the EU external action and specific provisions on CFSP/CSDP) and the Treaty on the Functioning of the EU (TFEU) (Part III, Title V, Area of freedom , security and justice; Part V, EU external action; Part VI - institutional and financial provisions).

THE IMPORTANCE AND UTILITY OF THE SCIENTIFIC ENDEAVOR

The importance of research goes along with the need for an in-depth knowledge of the new EU legal framework provided by the Lisbon Treaty, which marks a significant adjustment of both the Union's institutional framework and its decision-making processes.

In this context, understanding the legal procedures and mechanisms for the adoption of EU decisions is an integrated gnoseological approach, able to offer a relevant perspective on the profound dynamics of EU project.

Although at a first assessment, the proposed research topics - "Treaty of Lisbon: the legal dimension of decision-making process in the field of EU external action" - can be considered to be rather theoretical, it offers the opportunity to address the above-mentioned issues within a wide perspective, including a legal and an institutional approach, without trying to exhaust, however, the multitude of aspects with legal significance brought by the Lisbon Treaty, as a modifying Treaty.

An important weight in the structure of the paper is devoted to identifying the legal bases of decision-making process within the EU external action, aspects having a particular importance in the context of EU demarches aimed at strengthening its profile at global level, while promoting the peace, security and stability, in full compliance with the provisions of international law, as well as with the principles of effective multilateralism in international relations.

The research paid a particular attention to procedural aspects of decision-making process in terms of strengthening the area of freedom, security and justice.

Not the least, the research brought in discussion some sensitive issues related to Romania's status as EU member state with full rights and obligations. In this context, we put forward some concrete suggestions aimed at promoting the national interest and positions at the level of EU institutions.

SCOPE AND OBJECTIVES OF THE RESEARCH

This thesis aims to analyse the legal dimension of decision-making process in the field of EU external action. Therefore, in our scientific research, we pursue as main objectives, the following:

- a. Establishing the relevant legal provisions, by assessing the EU legal and institutional framework provided by the Lisbon Treaty;
- b. The conceptual delimitations of the issues identified during the research;
- c. Assessment of institutional and legal reform processes of the European Union that led to the Treaty of Lisbon and its impact in terms of EU external action;
- d. Analysing the implications of the principle of conferral of competences as regards the coherence and effectiveness of EU external action;
- e. Identifying the legal bases of the decision-making process in the field of EU external action;
- f. Considering the legal bases of the decision-making process in the area of freedom, security and justice;
- g. Identifying of possible areas, insufficiently used, in terms of EU legal procedures and decision-making mechanisms in order to increase the coherence and

effectiveness of EU external action in general and of its foreign policy in particular.

METHODOLOGICAL SUPPORT OF THE PHD THESIS

During the research, we are using, separately or correlated, several methods of investigation and assessment which are specific to the juridical field, as follows:

- The historical method;
- The logical method;
- The comparative method, and
- The quantitative method.

As regards the **historical method**, we used this method in order to present the historical context and the evolution of legal and institutional reform process at EU level, including the dynamics of decision-making.

Logical method presents a relevant role in deepening the understanding of the EU legal framework and the specific rules governing the organization and functioning of the EU.

At the same time, the **logical method** is used throughout the whole scientific approach for the presentation of legal solutions proposed by the Lisbon Treaty aimed at streamlining and legitimating the decision-making processes of the EU, while highlighting their implications for the logic of European construction.

Not the last, the logical method facilitated and provided a constant support in order to synthesize the results and highlight the conclusions of the research, as well as to elaborate the proposals aimed at improving the existing regulatory framework.

The **comparative method** has proven, in association with the logical method, an indispensable tool in terms of understanding the organization and functioning of the EU institutions, as well as the interaction of EU law with the provisions of national and international law.

Meanwhile, the comparative method in conjunction with other scientific methods of investigation, already mentioned, allowed us a critical evaluation of the main doctrinal opinions at national, European and international level in terms of the legal texts of reference in the field.

Quantitative method has helped us to identify and efficiently seize, in line with the overall objectives of the research, the case law of the Court of Justice of the EU. Finally, the entire research required the use of IT technologies, both in terms of data storage and drafting the work, including elements of graphics, along with issues related to accessing and consulting databases, legislation and jurisprudence at EU and national level, as well as various dictionaries, encyclopaedias and works relevant to the research. Our work is based on the existing regulations in the field at national, EU and international level, as well as the legislation and case law published until 1st of June 2016.

PHD THESIS STRUCTURE

The thesis is entitled "Treaty of Lisbon: the legal dimension of decision making processes in the field of European Union's external action" and has the following structure:

- The list of abbreviations;
- Plan of the PhD Thesis
- Introductory assessments related to the relevance of the topic under research for the current context, the importance and usefulness of research, research methodology, work structure, presentation of the main bibliographic references that led to the conception and elaboration of the thesis, different stages of research and conceptual delimitations.
- Foreword
- Six chapters, including a chapter on case studies, with several sections and subsections, each chapter being concluded with specific conclusions concerning the specific topic addressed, plus the 7th chapter encompassing general conclusions and proposals de lege ferenda.
- Bibliography, and
- Contents.

OVERVIEW OF THE PhD THESIS

Chapter I has an introductory part and is dedicated to the evolution of EU legal and institutional reform process, highlighting the successive steps taken by the European project, the entry into force of the three Treaties establishing the European Communities¹, continuing with the Treaty of Brussels², the Single European Act³, the Treaties of Maastricht⁴, Amsterdam⁵ and Nice⁶.

At the same time, we reviewed the results of the Convention on the Future of Europe and of the Intergovernmental Conference 2003-2004, having as outcome the draft Treaty establishing a Constitution for Europe; later on the Intergovernmental Conference 2007 - that led to the elaboration and approval of the Reform Treaty⁷ - followed by its ratification and entry into force of the Treaty of Lisbon on 1 December 2009. We then presented the main elements of institutional and legal reform provided by the Lisbon Treaty.

In the conclusions of the chapter I, we highlighted that the entire evolution of the European integration process, developed over the last seven decades, aimed mainly at identifying the most appropriate solutions for achieving a united and prosperous Europe, thus confirming the aspirations of the founding fathers of the European Communities, in the early 50s, namely the idea of deepening the European integration process.

The conclusions are followed by proposals *de lege ferenda*.

Chapter II is focused on the legal nature of European Communities and, respectively, the European Union. In structuring this chapter, we paid special attention to the conceptual legal boundaries on the legal personality of European Communities, on the one hand and of the European Union, on the other hand.

¹ Treaty establishing the European Community of Coal and Steel (1951/1952), Treaty establishing the European Community (1957/1958), Treaty establishing the European Community of Atomic Energy (1957/1958).

² Treaty of Fusion (1965/1967).

³ Signed in 1985, in force since 1987.

⁴ Signed in 1991, in force since 1993.

⁵ Signed in 1997, in force since 1999.

⁶ Signed in 2001, in force since 2003.

⁷ Former name of the Treaty of Lisbon

At the same time, we analysed the legal nature of EU law, the relation between the EU law and the national law, as well as aspects related to legislative pyramid of the EU legal instruments and to the new legal order of the Union after the entry into force of the Treaty of Lisbon. Lastly, we evaluated the competences of the Court of Justice of the European Union in terms of EU legal acts.

In the conclusion section of Chapter II, we highlighted the importance for EU to get legal personality in international law in terms of the strengthening its role on the international scene. We emphasized, at the same time, the importance of clear division of competences between the EU institutions, completed by a mutual control between them, in accordance with "checks and balances" principle. At the same time, we underlined the need to strengthen some structural principles as regards the functioning of the EU legal and institutional framework, with special reference to: preservation of the institutional balance; loyal cooperation; ensuring transparency in terms of the functioning the EU institutions. We have also stressed the importance of strict implementation of the principles of subsidiarity and proportionality in the conduct of the EU decision-making processes and actions at all levels.

The Conclusions of Chapter II are followed by proposals *de lege ferenda*.

Chapter III analyses the legal dimension of EU external action. A special attention has been paid to the EU legal capacity to act on the international scene, including in terms of implicit - explicit competences. In the same logic, we analysed the legal basis of the external dimension of some internal policies having a significant international impact, with special references to the area of Freedom, Security and Justice, environmental protection and energy.

We highlighted the role of the Court of Justice of the European Union in setting up the existence, nature and coverage of EU competences in the field of EU external action, presenting some relevant cases of the Court 's jurisprudence.

At the same time, Chapter III focus on the principle of conferral and the specific features of the three types of competence (exclusive competence, shared competence, competence to support, coordinate or supplement Member States' actions).

Not the least, we analysed the legal basis of the Union's competences in the "union area" and the "intergovernmental area" within the field of EU external action, with

direct reference to Common Foreign and Security Policy / Common Security and Defence Policy.

The section dedicated to conclusions encompasses evaluations regarding the relation between the union method and the intergovernmental method in managing the EU external activity, and the key issue of identifying the most appropriate legal basis.

Chapter III is completed by formulating proposals *de lege ferenda*.

Chapter IV focuses on analysing the main aspects related to the legal and institutional reform in the field of CFSP/ CSDP. In this context, we assessed the most significant changes in the field completed, successively, by the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty and the Treaty of Lisbon. In addition, we presented the main EU institutions having competences in the field of CFSP / CSDP and, generally, within EU external action.

In the conclusions of this chapter, we evaluated both the legal limitations that have accompanied the evolution of CFSP/ CSDP and the insufficient use of the tool-box in this field provided by the Lisbon Treaty.

We present some proposals *de lege ferenda* aimed at improving the use of the legal and institutional framework of the EU on such matters, and its adaptation to the current challenges the EU is facing with on the international scene.

Chapter V analyses the EU legislative procedures, while assessing the implications of the double majority voting mechanism. We presented more detailed the ordinary legislative procedure and the special legislative procedures, highlighting their role and importance in the EU legislative process.

At the same time, we evaluated the differences between the decision-making process within the intergovernmental sector of the EU foreign policy and others sectors of EU external action namely: the trade policy; the development cooperation; the economic, financial and technical cooperation; the international agreements. We also paid particular attention to the external dimension of the Space of Liberty, Security and Justice.

Chapter VI illustrates through case studies the functioning of the decision-making mechanisms in areas having relevance for the coherence, effectiveness and credibility of EU's external action. The case studies focus on: the Mechanism for Cooperation and

Verification; crises and conflicts in the EU neighbourhood; British from the EU / BREXIT.

In the last section of this chapter, we put forward some proposals de *lege ferenda* and concrete suggestions directly linked to the case studies.

Chapter VII contains general conclusions and proposals de *lege ferenda*. Our contribution is aimed at improving the EU legal and institutional framework with the objective of strengthening the coherence and effectiveness of EU external action.

This approach is based on the idea that the legal rules in general and the EU Law in particular are characterized by the fact that they are constantly evolving and adapting to the real needs and demands of society.

Amongst the concrete proposals de *lege ferenda* presented, we mention:

- better use of the legislative and legal instruments provided by the Lisbon Treaty, with the objective of improving the coherence in the field of CFSP / CSDP;
- further simplification of decision-making procedures applicable to the sector CFSP / CSDP as well as to the external dimension of EU internal policies;
- the need to remove the inconsistencies in implementing the existing regulatory framework in the sphere of EU external action;
- ensuring the balanced implementation of all principles and values enshrined in the Lisbon Treaty, with direct impact on the EU's profile as a global player and of the the credibility of EU foreign policy;
- providing the Treaty with concrete provisions aimed to ensure a convergent position of the EU Member States and a unique representation of the EU within the international organizations, at least in areas of its exclusive competences;
- in the same logic, the relevant provisions of the Treaties should be completed in order to facilitate the objective of getting by the EU the membership of international organizations with global coverage; such a strategic goal should be based on: specific decisions of the European Council; general guide-lines and /or "common strategies"; assuming a greater role in the EU foreign affairs by the HR of the Union;

- explicitly defining the CFSP / CSDP sector as an area of EU shared competence;
- supplementing the provisions of Article 275 TEU by mentioning a general explicit competence of the Court of Justice of the European Union in the field of CFSP aimed at ensuring the full compliance and compatibility of EU foreign policy with the values, purposes and principles of the European Union;
- enhancing the prerogatives conferred on the President of the European Council, as the main exponent of the EU political leadership with the objective of strengthening the legitimacy of the holder of this post, and the EU capacity to act in crisis situations;
- further strengthening the role of European Parliament in the field of EU external action in terms of monitoring the Union's external policy;
- further consolidating the democratic legitimacy of the Union, while further simplifying the decision-making procedures applicable to CFSP / CSDP and to the external dimension of the EU's internal policies, by:
 - increasing the prerogatives of the European Parliament in all sectors of EU external action, including in matters of EU exclusive competence, for example in the field of international agreements focused on Common Commercial Policy issues, where the European Parliament is only and not associate to the negotiation and conclusion of the respective international agreements;
 - enhancing the role of national parliaments in managing European affairs in general and the external dimension of internal policies, in particular by reducing the current threshold for the number of national parliaments raising objections to a draft legislative act submitted by the European Commission ("reasoned opinions" presented by the national parliaments on non-compliance by a draft legislative act with the principle of subsidiarity");
 - the need to organize a new Convention on the Future of Europe, and subsequently a new Intergovernmental Conference, with the objective of rethinking and improving the current EU legal and institutional framework;

with the strong challenges that the European project is facing at present in terms of political leadership and coherent management, while improving the responsiveness of the Union to different crises;

○ the need to strengthen the coherence of European construction through concrete measures, aimed at mitigating the differences in economic and social development between the Member States.

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