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THE REFORM OF THE INSTITUTIONAL AND LAW SYSTEM OF THE EUROPEAN UNION ACCOMPLISHED THROUGH THE TREATY OF LISBON

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Abstract. The Treaty of Lisbon represents a stage in the permanent progress of the European integration. The new treaty grants the European Union legal personality, consolidates its democratic legitimacy and makes it more transparent. Altghough, it does not clarify the legal nature of the Union. Beside the previous treaties, Lisbon marks only a new stage in the process of creation of a Union more reunited between the peoples of Europe and closer to the European citizens.

The Treaty confirms the tripartite institutional structure of the Union: *institutions, organs* (complementary organs) and *organisms* (subsidiary organs). The most important institutional reforms concern the European Council and the Commission. Lisbon also brings an important contribution to the *hierarchization* of the norms within the European Union, more precisely concerning the category of the derived law.

§1. General Aspects

1. The values and objectives of the Union. The Treaty recognizes, in the preamble, the religious inheritance of Europe, the historical importance of the cessation of the division of the continent and the necessity to establish solid bases for the future architecture of Europe. The attachment for the fundamental social rights is restated and consolidated by the promotion of a market social economy highly competitive, which tends to fully render profitable the work force, social progress, justice and social protection. The protection and improvement of the life quality are registered in the category of the objectives of the Union. This pursues the technical and scientific progress, fights against social exclusion and discriminations. It promises equality between men and women, solidarity between generations and protection of child`s rights. The Union respects the cultural and linguistic diversity and watches over the protection and development of the European cultural patrimony.

The Treaty of Lisbon introduced a new title, "The democratic life of the Union", which codifies and regroups legal practices and norms, which acquire thus the

"maximum conviction force and should contribute to the conscientization of the European citizen".[1] The two forms of democracy dedicated by the treaty are the representative democracy and the participative democracy. *The representative democracy* is materialized in the formation manner of the European Parliament, the indirect legitimacy of the European Council and of the Council of ministers and the role of the European parties. Each citizen has the right to participate at the democratic life of the Union, and the parties play an important role in this respect. The omission to mention the Commission in this chapter, taking into account the major role of the European Parliament in its formation, is in exchange a lack. *The participative democracy* reflects the permanent dialogue of the institutions of the Union with the citizens and representative associations of them. This dialogue must be open, transparent and regulated and although it manifests itself in multiple plans, has a special relevance within the social politic. The democratic equality between citizens is applied especially in the reports with the institutions of the Union, but not only. The treaty underlines the importance of transparency as a principle of good governing.

2. The fundamental rights. The Chart of fundamental rights of the European Union, proclaimed on 7 December 2000 and adapted on 12 December 2007, is invested with the same legal value as the treaties. Protocol nr. 7 recognizes a derogatory regime to Great Britain and Poland regarding the application of the Chart. At the same time, the Union can adhere to the European Convention of Defence of Human Rights and Fundamental Liberties. The adherence must preserve the specific characteristics of the European Union and of his right, the competences of the Union and the attributions of the institutions.

3. European citizenship. Truly new is the indirect right of legislative initiative, "ideal figure of the democratic practice"[2] which is given, in certain conditions to the European citizens. The new treaty provides that the citizens of the Union, in number of at least one million, nationals of a significant number of member states, can take the initiative to invite the Commission, within its attributions, to submit a proposal of legal act which it considers necessary in order to accomplish the purposes of the treaties. The right to indirect legislative initiative represents "a powerful means for welding the European peoples and for giving birth to a collective consciousness, fact that did not succeed to accomplish until present neither the direct choice of the European Parliament nor the European Citizenship".[3] The procedure, the conditions and the number of states from where these citizens must come are established by the European Parliament and Council, through regulation, according to the ordinary legislative procedure. The Innovation of the Treaty of Lisbon is not exempted however of the risk of embezzlement from the finality provided by the treaty, by different groups of interest. Especially for this reason, the Commission can comply with the citizenship initiative or it can deny it. The treaty does not state which the consequences are in this case. The facultative character and not the obligatory one for

[1] C. BLUMANN – L. DUBOIS: *Droit institutionnel de l'Union européenne.* Litec, 2005, 154.
[2] A. BERRAMDANE – J. ROSSETO: *Droit institutionnel de l'Union européenne.* Montchrestien, 2005, 67.
[3] BERRAMDANE–ROSSETO op. cit. 67.

the Commission of the initiative of citizens can be interpreted as a protection of the community interest, taking into account the profile of this institution. Anyhow, the pressure exercised on the Commission will be appreciable, and the "gun" of the democracy deficit will be certainly used." […] Nobody doubts that the initiative taken by one million European citizens is destined to know a special echo".[4]

The content of the European citizenship is *evolutive*, and can be completed with new rights by the Council, deciding officially in unanimity, at the proposal of the Commission. Such decisions are ratified by the member states according to their constitutional rules, in order to enter into force.

4. The principles of subsidiarity and proportionality. The functional principles of subsidiarity and proportionality are consolidated by the Treaty of Lisbon, and the *national parliaments* are called to play a much more important role. They receive at the same time with the legislative authorities of the Union, the projects of the legislative acts elaborated by the Commission. The European Parliament also transmits them its projects of legislative acts and the modified projects, and the Council communicates the projects of legislative acts issued by a group of member states, The Court of Justice, The European Central Bank or the European Investments Bank, as well as the modified projects. The legislative resolutions of the European Parliament and the positions of the Council are transmitted, immediately after adoption, to the national parliaments.

The chambers of the national parliaments and these institutions as a whole can formulate within an eight weeks term from communication, a *notification* containing the reasons for which they consider that a certain legislative project breaks the principle of subsidiarity. The notification is sent to the presidents of the European Parliament, Council and Commission. The President of the Council notifies the governments of the member states or the institutions / organs who initiated the act.

According to the Protocol no. 2 annexed to the treaty of Lisbon, each national parliament disposes of two votes. If the national parliamentary system is bicameral, the chambers dispose of one vote. In the ordinary legislative procedure, if the motivated notifications claiming the non observance of the subsidiarity principle represent at least a simple majority from the total votes assigned to the national parliaments, the legislative proposal must be re-examined. The Commission can decide its withdrawal or modification, on one side, or to maintain the proposal, through a notification motivated from the perspective of the subsidiarity principle, on the other hand. During the first lecture, the legislative authorities examine if the proposal respects the subsidiarity principle, paying attention especially to the notifications of the national parliaments.

The legislative procedure is concluded if the Council or Parliament decides with 55% of the votes, respectively the majority of suffrages expressed, that the legislative proposal does not comply with the subsidiarity principle.

In the other procedures, if the national parliaments which addressed a motivated notification regarding the non observance of the subsidiarity principle cumulate at

[4] Blumann–Dubouis op. cit. 154.

least one third of the total number of votes (respectively one fourth in matter of criminal and police cooperation), the legislative projects sanctioned must me re-examined by the initiators. After this stage, the legislative projects can be withdrawn, maintained or modified, through a motivated decision.

The national parliaments or their chambers can send actions to the Court of Justice, claiming the breaking of the subsidiarity principle. The subsidiarity principle is guaranteed through the organization of a political and jurisdictional control *a priori* and *a posteriori*. The Treaty of Lisbon consolidates the *a priori* political control, transforming it in the main prerogative of the national Parliaments and instituting thus "a precocious alert mechanism"[5]. "A kind of suspensive veto right but which does not paralyse the legislative process of the Union, since the Commission is not juridically obliged to initiate it".[6]

5. The budget of the European Union. The budget represents an instrument of the political, economic, social development of a structure, reflecting besides the technical aspects, extremely important political aspects. "In a general evaluation, we could say that the budget is that melting pot in which the political and economic visions mingle, each having something from the other one, up to a point beyond which the homogenization efforts (frictions) begin".[7]

For the European Union, perceived as a public power which acts in order to reach vast objectives, the budget is a very important element. Unfortunately, reported to these objectives, the community incomes are more than modest. Despite the system of own resources, "the Union did not succeed to create until present a financing with fiscal character, which could assure its stability, flexibility and independence".[8] Reported to the member states, the budget of the Union represents one third of the budget of France and gets closer to the budget of Denmark. For the period 2007-2013 the budget of the Union represents 864 billions euro, respectively 1,045% of the gross national income of the extended Union.

The resources truly own of the Union resulted from the application of the principles of the customs union present at the present "a marginal role"[9], mainly due to the liberalization of the international commerce. On the other side, these resources are not directly perceived by the Union from the tax payers, being transferred more probably by the states to the budget of the Union. "In other terms the European tax payer does not directly participate, through a special tax, at the financing of the Community".[10] A political union needs a genuine *community tax*, a significant *fiscal resource* and even an *autonomous fiscality*. "The best means to establish a solid connection between citizens and the European construction is to associate the citizens

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[5] P. DOLLAT: *Droit européen et droit de l'Union européenne.* Dalloz, 2005, 189.

[6] BLUMANN–DUBOUIS op. cit. 333.

[7] O. BIBERE: *The European Union between real and virtual.* All, 1999, 150.; C. DELON DESMOULIN: Existe-t-il un droit budgétaire communautaire? In *Mélanges en hommage à Guy Isaac*. Presses de l'Université de Sciences Sociales, 2004, 907.

[8] P. MANIN: *Droit constitutionnel de l'Union européenne*. A. Pedone, 2004, 181.

[9] DOLLAT op. cit. 212.

[10] J. P. JACQUÉ: *Droit institutionnel de l'Union européenne.* Edition III. Dalloz, 2004, 190.

to the financing system of the Union, creating an own resource which would be supplied by a direct tax substantiated on the incomes of the persons, regardless of their nationality"[11]. The European tax would confirm at the same time the existence of a community budgetary law, as "original, specific and autonomous law"[12]. *The states vigilance toward such an evolution expresses in essence a hostile attitude to a Union of federal type, but also different visions of the European project.*

The Treaty of Lisbon cancels the distinction between obligatory expenses and non obligatory expenses, subsequently granting to the adoption procedure of the budget also a unitary character. The treaty generalizes the co-decision procedure in budgetary matter.

6. The revision of the treaties. The treaty of Lisbon dedicates two procedures for the revision of treaties: an ordinary procedure and a simplified procedure. The ordinary procedure distinguishes itself through an increased complexity and through the intervention of a *Convention* (practise inaugurated on the occasion of the elaboration of the Chart of fundamental rights), benefiting of an increased legitimacy. The convocation of a Convention is not compulsory, the European Council pronouncing in this respect according to the amplitude of the modifications proposed. Unlike the ordinary procedure, the simplified procedure can be used in a conditioned manner.

In the *ordinary procedure,* the initiative right belongs to the governments of the member states, to the Parliament or Commission. The modification projects are sent to the Council, who transmits them to the European Council and notifies them to the national parliaments. The President of the European Council convokes a Convention in order to examine these projects, if the institution he leads pronounces favourably in this sense, with a simple majority, after having consulted the Parliament and the Commission. The Convention is composed of the representatives of the national parliaments, of the states and governments chiefs, of the Parliament and European Commission. The Convention adopts by consent a recommendation toward these projects, which is subsequently transmitted to a CIG.

If the amplitude of the modifications proposed does not impose the convocation of a Convention, the European Council pronounces with a simple majority, after having consulted the Parliament and establishes directly the CIG mandate. This is convoked by the president of the Council and adopts the modifications commonly agreed brought to treaties, which become valid after the ratification by the member states. A specific clause is applied in case of difficulties upon ratification, the European Council being the one who decides in such circumstances.

The simplified procedure is triggered only regarding the modification proposals of the dispositions from the third part of the treaty on the functioning of the European Union, which are not of the type to extend the competences of the Union. The initiative belongs to the governments of the member states, to the European Parliament and to

[11] Jose-Maria Gil-Robles, speech from 24. 10. 1998, cited in Vincent Dussart: Le financement de l'Union européenne: nouvelles problématiques à l'orée du XXI-ème siècle. In *Mélanges en hommages à Guy Isaac.* Presses de l'Université de Sciences Sociales, 2004, 895.

[12] Desmoulin op. cit. 924.

the Commission. The proposals are submitted to the attention of the European Council, qualified to take decisions regarding them with unanimity, after having consulted the Parliament, the Commission and, if it is the case, the European Central Bank. The national parliaments are informed about the decision adopted by the European Council, and the opposition of a national parliament formulated in term of six months hinders the adoption of the respective decision. The decisions of the European Council enter into force only after the ratification by the member states.

7. The withdrawal from the European Union. In premiere in the history of the community construction, a treaty provides the possibility of withdrawal of the member states. The irreversible character of the European construction will continue to be assured however by the "amplitude of the concrete effects of the participation of states on their economic and social life, which appears as the genuine factor of irreversibility of the community commitments"[13].

The state which decides to withdraw notifies its intention to the European Council. The withdrawal is negotiated by the Union with the respective state and makes the object of a treaty. This is concluded by the Council, with a qualified majority, after having consulted the European Parliament.

§2. The institutional reform

The institutional system and the decision procedures make reference to a genuine study of "watchmaking […] The institutions form a whole whose pieces, thoroughly polished, do not exist and do not work but ones through the others".[14]

1. The Parliament. To the European Parliament is recognized the status of legislative and budgetary power besides the Council. Its attributions grow considerably regarding the formation of the Commission, due to the elective role vis-à-vis its president. Unlike the previous treaties, according to which the Parliament represented the peoples of the states reunited in the Community, the Treaty of Lisbon makes reference to the representation of the European citizens.

The European Union integrates the former European Community, the external, security and common defence policy and the police and judicial cooperation in criminal matter in a structure which is desired to be unitary. The common law or special decisional procedures make the difference between matters, according to the integration degree.

The treaty dedicates two types of legislative procedures: the ordinary legislative procedure and the special legislative procedures. The ordinary legislative procedure is, in essence, the co-decision procedure. Its stages, supposing in extremis three lectures, are widely described in the art. 294 TFUE. The special legislative procedures group all the other procedures of adopting the legislative acts, provided by the treaty. In this case, the Council decides with unanimity (rule), after having consulted the Parliament/the expression of a veto right by it/without consulting the Parliament, etc.

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[13] J. RIDEAU: *Droit institutionnel de l'Union et des Communautés européenne.* L.G.D.J., 2006, 116.

[14] R. MEHDI: Institutionnes europeennes. Hachettes Superieur, 2007, 79.

2. The European Council. The treaty introduces the position of *president of the European Council,* position that cannot be cumulated with a national mandate. The president is elected by the members of the European Council with a qualified majority, for a two years and a half mandate, which can be renewed one time only. TL does not provide eligibility conditions for this position and nor the consulting of the European Parliament (consulting which we believe should have been accomplished). The European Council reunites four times a year, so more often in comparison with the actual situation, aspect that denotes an acceleration of the development of the Union.

Beside this major innovation, TL redefines the competences of the institution. The European Council gives the necessary impulses for the development of the Union and defines its orientations and *general political priorities* (completion introduced on this occasion). The treaty explicitly excludes from the activity of the European Council the legislative position. TL includes beside the consent as a traditional modality of adopting the decisions of the European Council also the qualified majority in certain situations. This reform has "a symbolic and political significance".[15]

3. The Council. For deliberations that need a *simple majority*, the Council decides with the majority of the members that compose it. The abstentions do not hinder the formation of the *unanimity*. The *qualified majority* represents the adoption procedure of decisions of common law. The Treaty of Lisbon redefines it, preserving however the criteria emitted by the Treaty of Nice. The Council works in more formations. *The Council of general affairs* assures the coordination of the works of the Council, prepares the meetings of the European Council and their development, in collaboration with its president and of the Commission. *The Council of external affairs* elaborates the external action of the Union, according to the directions adopted by the European Council and assures the coherence of the action of the Union. The presidency of the Council of external affairs is assured by the High Representative of the Union for the external and security policy, and the presidency of the Council of general affairs reverts to the member states, according to a system of equal rotation.

The council deliberates and votes the projects of legislative acts in a *public* way. The Treaty of Lisbon provides the replacement of the vote principle wih simple majority with that of the qualified majority. According to the Treaty of Lisbon, a decision is considered adopted with a qualified majority, if it gathers at least 55% of the votes from the Council, coming from at least 15 states and representing at least 65% of the population of the Union.

The manner in which the qualified majority is defined reflects the dual nature of the European Union, of a Union of states and of citizens. Unlike the Treaty of Nice, the demographical criterion becomes compulsory. These rules will enter into force from 1st November 2014. Starting with 1st November 2014, in the cases in which the Council does not decide on the basis of a proposal of the Commission and of the High representative for external affairs and security policy, the qualified majority is defined as at least 72% of the votes of the members of the Council, coming from member

[15] J. Pertek: *Droit des institutions de l'Union européenne.* Presses Universitaires de France, 2004, 148.

states whose population is of at least 65% from the total population of the Union. At the same time, starting with 1st November 2014, in the situations in which not all the members of the Council take part in the voting process, the qualified majority represents at least 55% of the votes coming from the participating states, whose population is of at least 65% from the total population of the member states. If the Council does not decide on the basis of the proposal of the Commission or of the High representative, the qualified majority will be formed from at least 72% of the votes of the participating states, and the population of the states which voted favourably must represent at least 65% of the population of the member states. The treaty also creates *bridge-clauses* which offer the possibility to the Council to pass from unanimity to qualified majority (less in case of decisions that have military implications or that are connected to the field of defence), and to the Parliament, the possibility to pass from the special legislative procedure (in which it does not hold decision power) to the ordinary legislative procedure (the co-decision procedure).

In order to materialize this possibility, the European Council pronounces with unanimity, after the approval of the Parliament. Any initiative in this respect is transmitted to the national Parliaments, which can hinder such an evolution through a single opposition formulated in term of six months. In certain fields the European Council or the Council of ministers can, with unanimity, decide on the application of the vote with a qualified majority or the ordinary legislative procedure, without the national Parliaments to have a veto right: the pluri-annual financial background, certain measures regarding social politic, environment, judicial cooperation in matter of family law, certain decisions regarding the external policy.

4. The Commission. The President of the Commission is proposed by the European Council with a qualified majority, based on the results of the elections for the European Parliament. The person thus appointed must obtain the favourable vote of the majority of the members of the European Parliament. If this majority is not reunited, the European Council proposes in term of one month a new candidate, who follows the same procedure. The list of the commissioners is commonly established by the Council and by the elected president of the future European Commission. The Treaty of Lisbon includes among the conditions that must be fulfilled for the appointment in the position of commissioner, the *European commitment*. The High representative of the Union for external affairs and security policy becomes one of the vice-presidents of the Commission. The Commission, in its ensemble, is submitted to an approval vote from the European Parliament. Based on this approval, the Commission is appointed by the European Council, with a qualified majority. The entire college is submitted to an approval vote in the Parliament, after that will be appointed by the European Council (and not by the Council) with a qualified majority.

5. The Court of Justice. The Court of Justice of the European Communities became after its entering into force the Court of Justice of the European Union. The Treaty of Lisbon suppresses the pillars and gives expressly to the European Union legal personality, fact that, theoretically, should determine a general competence of the Court of Justice. The common external and security policy and the common security and defence policy continue however to represent the exceptions from this rule. The Court checks only that the limits between intergovernmental cooperation specific to these fields and the community integration be observed.

Regarding the former CJAI, although communitarized, the Court is not competent to verify the validity or proportionality of the police operations or of other repressive services developed in the member states, in order to maintain public order or the interior security.

The name of Court of Justice of the European Union means, "in a quite surprising *a priori* modality"[16], the Court of Justice, the Law Court and the specialized law courts. All these jurisdictions assure the observance of the right in the interpretation and application of treaties, and the quality of institution applies to the Court of Justice of the European Union.

The Treaty of Lisbon sets up a committee, composed of seven personalities chosen from the former members of the Court and of the Law Court, of the supreme national jurisdictions as well as of the jurists who possess notorious competences, of whom one is appointed by the Parliament. The Committee will give a notification on the qualities that the members of the jurisdictions of the Union should possess, before the member states resort to nominalizations. This procedure consolidates the independence of magistrates in the reports with the member states and increases the professional exigencies that they must fulfil. In our opinion, it should have been more indicated that the persons appointed by the states receive the favourable notification of this committee, as a previous condition to their appointment in function.

6. The European Central Bank and the Court of Accounts. The Treaty of Lisbon confirms the quality of institution of the Court of Accounts and assigns this quality also to the European Central Bank.

The Treaty establishes the Eurogroup, a formation that already exists in practice. It designates the informal meetings of the ministers from the member states that adopted Euro, meetings organized whenever necessary, in order to discuss matters specific to the policies connected to the unique currency. The Commission and BCE are invited to participate to the meetings.

§3. The reform of the law system

1. The categories of legal acts. The law of the European Union knows, at present, no less than fifteen different instruments: regulations, decisions, directives, notifications, recommendations (community pillar), general principles and orientations, common strategies, common positions, common actions, decisions (external and common security policy), common positions, frame-decisions, decisions, conventions (police and legal cooperation in criminal matter), decisions without a recipient (atypical acts). From this total, only five instruments are compulsory from the legal point of view (regulations, decision and directive, on one hand, frame-decisions and decisions, with certain limitations, on the other hand). The heterogeneous charater of the legal order of the Union is amplified both by the high number of the categories of acts, by their profoundly different regime and by the proliferation of atypical acts. To these lacks an even more serious situation is added: the absence of the hierarchization of the norms by the treaties.

[16] MANIN op. cit. 363.

A first contribution of the Treaty of Lisbon supposes the reduction of the number of legal instruments to five, regardless of the matter in which we position ourselves: regulations, directives, decisions, recommendations and notifications (art 288 TFUE). The attenuation of the distinction in pillars of the Union and the legal personality offered to this structure will certainly contribute to the homogenization of the categories of legal acts.

The difference between the type of act adopted reported to the integration degree reached in a certain field, will be made by the legislative procedure used for its elaboration. In this sense, TL dedicates an ordinary legislative procedure and special legislative procedures (art. 289 TFUE). The ordinary legislative procedure supposes the adoption of a regulations, decision or directive, at the proposal of the Commission by the Council with a qualified majority, in co-decision with the Parliament, eventually following certain consultative notifications from the complementary authorities. The special legislative procedures group all the other procedures of adopting legal acts, provided by the treaty. In this case the Council decides with unanimity (rule), after consulting the Parliament / expressing a veto right by it / without consulting the Parliament, etc.

The Treaty of Lisbon brings an important contribution also to the hierarchization of the norms within the European Union, more precisely concerning the category of the derived law. This will follow to be accomplished according to the distinction between the three categories of acts: legislative acts (regardless of the procedure by means of which they were adopted), acts that complete or modify non essential aspects from a legislative act (adopted by the Commission, under the control of the legislative authorities of the Union, based on a competence delegation from them) and the execution acts of the legislative acts.

The treaty tends to reduce the sphere of the atypical acts, disposing, in the cases in which the Parliament and the Council are informed about the adoption of a legislative act, their obligation to "abstain from adopting acts not provided by the legislative procedure applicable to the respective field (art. 296 TFUE)". By virtue of this disposition, a legislative act can only take the form of a regulations, decision or directive, not being capable of being "disguised" in a facultative act (and/or atypical).

2. The issue of hierarchization of community law. The hierarchization of the norms represents, in essence, a request of any legal system. The hierarchization takes place before the validity of the system, which supposes the correspondence of the inferior norms to the superior ones. The community legal order is characterized by a hierarchization which is not expressly confirmed by treaties, but is the result of jurisprudence and implicitly of the dispositions of the treaties.

The treaties, the general principles of the law, the conventional law and the derived law represent the unanimously accepted hierarchy by the doctrine and jurisprudence (CJCE, 11 December 1973, Gebr. Lorenz GmbH c. Germany and Land Renania-Palatinat, cause 120/73, Collection, 1973, p. 1471). Beside the major lack of explicit non regulation at the level of treaties of a vital aspect for any legal system, the hierarchy of community norms appears problematical in the context of multiplication of atypical acts, some of them having a compulsory legal force.

The "constitutional" matter of hierarchization of norms should correspond to a "rationalization of the decision procedures and to the establishment of a separation of

powers in the community law".[17] The treaty project establishing a Constitution for Europe established a hierarchy of the community norms, starting from the fundamental distinction between the legislative acts and the execution acts. To the first category belonged the European law and the European-frame law while the second category contained the European regulations and the European decision. The Treaty of Lisbon renounced to these obvious federal terms but partially retained innovation.

3. The primacy of the European law. The treaty project establishing a Constitution for Europe seemed to exceed this stage, announcing: "The Constitution and the law adopted by the institutions of the Union in the exercise of the competences which are assigned to them have priority on the law of the member states" (Article 10 of the Treaty Project establishing a Constitution for Europe, CONV 820/1/03 REV 1; CONV 847/03, CONV 848/03, Bruxelles, 18. 06.2003). The progress obtained correlated with an annex statement ("Statements regarding the dispositions of the Constitution"), according to which "the priority reflects the existing jurisprudence of the Court of Justice of the European Communities and of the Law Court of first instance" (art. 1 of the Statement). The purpose of the Statement was to prevent the development of new competences of the European Union.

The Treaty of Lisbon no longer dedicates the priority of the community law in its body (not even at protocols level). Only an annexed statement ("Statement regarding priority") retakes this fundamental principle of the functioning of the Union. The intergovernmental conference retains on this occasion: "according to a constant jurisprudence of the Court of Justice of EU, the treaties and law adopted by the Union on the basis of the treaties has primacy on the law of the member states, in the conditions defined by the respective jurisprudence". CIG decided to annex to the Final Act the notification of the Legal Service of the Council on the priority from 22 June 2007, contained in the document 11197/07 (JUR 260). It shows: "It derives from the jurisprudence of the Court of Justice that the priority of the community law is a fundamental principle of this law. According to the Court, this principle is inherent to the specific nature of the European community, On the occasion of the first decision from this constant jurisprudence (the decision from 15 July 1964 issued in the cause 6/64, Costa against ENEL) the priority was not mentioned in the treaty. This situation has perpetuated until present day. The fact that the principle of priority is not written in the future treaty, does not modify at all the existence of this principle and the jurisprudence in force of the Court of justice". We are in the presence of "a (shy!) attempt to compensate the absence of an essential provision, which should have been established both by the Treaty regarding the European Union and by the Treaty regarding the functioning of the European Union, in their reformed variant".[18] The importance of the principle imposes its express establishment by treaties. States are reticent though, because such a decision would assimilate the treaty with the federal Constitutions.

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[17] Jacque op. cit. 494.; P.–Y. Monjal: *Recherches sur la hiérarchie des normes communautaires.* LGDJ, 2000.; A. Tizzano: La hiérarchie des normes communautaires. *Revue Marché Unique* 1995, 319.

[18] S. Scăunaş: *The European Union. Construction, reform, institutions, law.* Bucharest: C. H. Beck, 2008, 200.