AN ASSESSMENT OF THE LISBON TREATY IN LIGHT OF THE OBJECTIVES OF THE LEAKEN DECLARATION[1]

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ABSTRACT

The "Laeken Declaration on the Future of the European Union" stated four primary challenging issues namely, a better division and definition of competence in the European Union, simplification of the Union's instruments, more democracy, transparency and efficiency in the European Union and the constitution. In order to tackle these challenges, the Declaration introduced the "Convention on the Future of Europe" which paved the way for what we know as the Reform Treaty. Although the Reform Treaty received some criticisms from commentators there are several aspects that can be stated on behalf of the Treaty. Delimitation of powers, simplification of the Treaties and legal instruments and the merger of the pillars, the adoption of co-decision as ordinary law making process, the opening of Council deliberations to the public, the involvement of the European Parliament and national parliaments in law making process, and new changes in the voting system will enhance the democratic legitimacy, transparency and increase efficiency of the Union.

Key words: Lisbon Treaty, Leaken Declaration, transparency, legitimacy, efficiency,

ÖZET

Avrupa Birliği'nin geleceğine ilişkin Leaken Deklarasyonu, AB içinde daha iyi bir yetki tanımı ve yetki paylaşımı, yasama araçlarının basitleştirilmesini, daha fazla demokrasi, şeffaflaşma verimliliği sağlama zorunluluğunu ve anayasayı çözülmesi gereken başlıca dört sorunlu alan olarak tespit etmiştir. Bu sorunları çare bulmak üzere Deklarasyon, bu gün Reform Anlaşması olarak bildiğimiz süreci başlatan"AB'nin Geleceğine İlişkin Konvansiyon" u ihdas etmiştir. Pek çok eleştiri almasına rağmen Reform Anlaşması lehinde söylenecek pek çok husus vardır.

1 This article is not peer reviewed.

2 Judge. General Directorate of the European Union/ TURKEY.

Yetkilerin sınırlandırılması, AB anlaşmaları ve yasama araçlarının basitleştirilmesi, sütünlu yapının birleştirilmesi, ortak karar prosedürünün genel karar alma yöntemi haline getirilmesi, oylama sistemindeki yeni değişiklikler, Konsey müzakerelerinin kamuya açılması, AB Parlamentosu ve ulusal parlamontoların yasama sürecine dahil edilmesi AB içinde demokratik meşruiyeti, şeffaflığı ve kurumların verimli çalışmasını artıracaktır.

Anahtar Kelimeler: Lizbon Anlaşması, Leaken Deklarasyonu, şeffaflık, meşruiyet, verimlilik.

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INTRODUCTION

The European Union has a unique structure, which has been evolving since the 1950s. It is not comparable with any other existing states or international organisations. The formation of European integration and institutions does not stem from a democratic constitution; they take source from a diplomatically negotiated Treaty.[3] It is a union of States and nations whose competence has been conferred upon by the Member States via their national constitutional order. It has legislative, executive and judicial powers exercised by competent institutions. At the initial stage, institutions were designed to function with 6 Member States; it then functioned with 15 Member States until the Nice Declaration on the Future of Europe. Although reform was a debated issue for nearly a decade, it was the 2004 enlargement that brought the issue to the fore.

The main purpose of this article is to make a brief assessment specifically on the Reform Treaty in light of the objectives of the EU's constitutional reform as stated in the Laeken Declaration. With this aim I will make a brief summary of the reform process from the Nice Declaration to Laeken and from the Constitutional Treaty to the Reform Treaty (hereafter Lisbon Treaty, LT). After giving a chronological background of the reform process I will focus on the LT in light of the principles stated in the Laeken Declaration. Although the LT brought many changes, I will only deal with the above mentioned specific issues. Therefore I will not touch

3 Agustín José Menéndez,'Between Laeken and the Deep Blue Sea: An Assessment of the Draft Constitutional Treaty from a Deliberative-Democratic Standpoint' (2005) EPL11(1) 105-144.107.

upon some miscellaneous changes and compromises, or bargaining of the Member States in the text of the Treaty.

I. REFORM PROCESS: FROM LAEKEN TO CONSTITUTIONAL TREATY AND REFORM TREATY

The Declaration on the Future of Europe,[4] which was attached to the Nice Treaty, paved the way for what we know today as the Reform Treaty. After having welcomed the conclusion of the Nice Treaty, the Conference of Representatives of the Governments of the Member States expressed the need for a comprehensive debate on the future of the Union. The Declaration addressed the fact that, with the participation of all interested parties, including candidate countries, discussions would be held until the Laeken European Council, December 2001. In this process, four major issues were supposed to be dealt with, namely

- Delimitation of powers between the Union and Member States,
- Status of the Charter of Fundamental Rights of the European Union,
- Simplification of the Treaties,[5]
- Role of the National Parliaments in the European Architecture.[6]

Subsequently, the Conference emphasised the need to develop *democratic legitimacy and transparency of the Union and its institutions*.[7]

At the European Council meeting held in Laeken, December 2001, the above mentioned issues were confirmed by the "Laeken Declaration on the Future of the European Union".[8] Basically, a better division and definition of competence in the European Union, simplification of the Union's instruments, more democracy, transparency and efficiency in the European Union and constitution were referred to as the primary challenging subjects in the Declaration. In order to tackle these challenges,

4 Treaty of Nice, Declaration on the future of Europe, 23[2001]OJC80/1.

5 for a detailed discussion on the simplification, and previous efforts made toward simplification of treaties see Bruno Witte, 'Simplification and reorganization of the European Treaties' (2002) 39 CMLRev1255-1287.

6 ibid para5.

7 ibid para6.

8 SN300/1/01,http://ec.europa.eu/governance/impact/docs/key_docs/laeken_concl_en.pdf (22.11.2007)

the Declaration introduced the "Convention on the Future of Europe". It was composed of representatives from the EU Institutions, Member States, Candidate Countries and their Parliaments. The aim of the Convention was to debate the challenging issues and to come up with a final document before the Intergovernmental Conference. The main characteristic of the Convention was that all the sessions were held in public. Representatives met in plenary sessions every month in the Parliament building in Brussels. Additionally, in order to focus on the issues in detail, participants attended working groups,[9] which were established for each topic. At the end of several months of initial study, the Convention submitted the final draft version of the "Treaty Establishing a Constitution for Europe" to the Rome European Council on 18 July 2003.[10] Finally, it was adopted by the Intergovernmental Conference on 18 June 2004.[11] It consisted mainly of four parts: Part I covered the basic objectives of the EU, fundamental rights, competences and institutions; Part II covered the EU charter on human rights; Part III covered policies and functions of the EU, and lastly Part IV covered general and final provisions. The Draft Constitution was referred to as a very significant step, as it had, a symbolic and political importance, rather than (merely) a legal importance, throughout the European integration process.[12]

After the conclusion of the Treaty, the ratification process had great significance in relation to the Treaty's coming into force. During the process eighteen Member States ratified the CT, however France and the Netherlands rejected the CT in their referendums respectively. The remaining Member States then postponed their ratification process. There was a cooling period with discussions and assessments until the German Presidency of European Council, in 2007.

9 working groups were formed on subsidiarity, charter, legal personality, national parliaments, complementary competences, and economic governance.

10 CONV 850/03, Draft Treaty establishing a constitution for Europe, Brussels, 18 July 2003.

11 For details of the Convention process see Paul Craig, 'Constitutional Process and Reform in the EU: Nice, Laeken, Convention and the IGC'(2004)10(4)EPL, 653-675; For a critical assessment see Michael Dougan, 'the Convention's Draft Constitutional Treaty: Bringing Europe Closer to its Lawyers'(2003) ELRev 28(6) 763-793.

12 Julianne Kokott/Alexandra Rüth, 'The European Convention and Its Draft Treaty Establishing a Constitution for Europe: Appropriate Answers to the Laeken Questions?'(2003) 40 CMLR 1315-1345, 1320; also Witte(n3), 1282

The German Presidency articulated a time table and foresaw a compromise in June 2007 concerning the future of the process. Finally, on 22 June 2007 Member States agreed to draw up a new Treaty and then European Leaders reached an agreement in Lisbon, on 18-19 October 2007. Finally, Member States signed the new Reform Treaty (RT) in Lisbon, on 13 December 2007. The aim was to have it ratified by all Member States and take effect before the European Parliament elections in 2009. However, the ratification process failed in the Irish referendum in 2008 for the second time and Ireland had a second referendum in 2009. After the Irish referendum, the Czech Republic was the last Members State to ratify the Treaty on 13 November 2009. The Lisbon Treaty has been in force since 1 December 2009.

The Reform Treaty did not replace the current Treaties with a single Treaty, but amended them and renamed the EC Treaty as the "Treaty on the Functioning of the Union". Any concept evoking federal characteristics, such as *"constitution, law, flag, anthem, motto etcetera"* were removed from the text[13] and the word "Community" was replaced by "Union" in the Treaties. As of 1 December 2009 the European Union has a single personality with a unified pillar structure.

A.THE MAIN CHARACTERISTICS OF THE LISBON TREATY

B. Delimitation of the Powers and Simplification of the Legal Instruments:

Since severe controversies had taken place throughout the Community's history, description of competence and competence areas of the EU and Member States is crucial with respect to sharing of sovereignty.[14] The first article of the Lisbon Treaty refers to the conferral of the competence

13 For compromise on the text, see Editorial Comments, CMLRev(2007) 1229-1236, 1231; for a general overview of the RT see Jean –Dominique Giuliani, 'Understanding the European Council in Lisbon and the Reform Treaty' www.robert-schuman.eu/doc/questions_europe/qe-76-en.pdf>(04.12.2007);the Reform Treaty for the European Union www.coalitionforreformtreaty.org.uk/research_articles/European _Movement_briefing.pdf> (04.12.2007)

14 Alan Dukes, 'What the Constitutional Treaty Means: Institutional Reform of the European Union' IAE 2005 available at www.iiea.com/images/managed/ publications_attachments/5_Dukes. pdf. (23.11.2007); for discussions on sharing sovereignty see Anneli Albi/ Peter Van Elsuwege, 'The EU Constitution, National Constitutions and Sovereignty: an Assessment of a "European Constitutional Order' (2004) ELRev. 2004, 29(6), 741-765.

by the Member States, which means a positive approach at the initial stage. It has been expressly stated that competences which are not bestowed on the Union will remain with the Members States and the execution of Union powers will be subject to principles of subsidiarity and proportionality.[15] Articles 2-19 stipulate the categories and areas of Union competence. Here it can be observed that the Union has exclusive competence in some areas, but shared competence in others. Finally, it is entitled to take supplementary actions, in order to support or coordinate the actions of Members States.[16] It is also stated that national security is an issue that has to be dealt with under the sole responsibility of each Member State.[17] In light of these provisions it may be argued that conflicts around sharing of sovereignty are likely to be decreased in the future.

With regard to the simplification of legal instruments the LT introduced several new rules,, which are satisfactory in comparison to the previous situation.[18] First of all, the LT renounced the instruments formerly peculiar to the second and third pillar and decreased the number of the legal instruments to five, namely regulations, directives, recommendations, opinions, decisions.[19] Additionally it introduces the distinction of legislative and non-legislative acts in European Union Law Doctrine. A legislative act may delegate some power to the Commission to adopt non-legislative acts, in order to amend a specific part of the legislative act. The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts.[20] The new category of delegated acts will increase the efficiency and flexibility in the Union.[21] When compared to the Constitutional Treaty, it is obvious that the LT has made a significant advancement in terms of simplification in this area.

C. Alteration in the Treaty System:

Simplification of the treaties was one of the subjects stated in both the Nice and Laeken declarations. While there were several ways to simplify

15 LT Articles 1- 5(1), 1- 6(1).

16 See LT Article 2-12.

17 Dukes(n12).

18 Kokot/Rüth(n 10), 1341, 1342.

19 LT Article 2-235(a, b):

20 LT Article 2-236.

21 Kokott/ Rüth(n10), 1342.

the Treaties, the Convention and the LT chose the way that unified the Community and Union under the same legal personality. The three pillar structure of the Union was established by the Maastricht Treaty. European Communities, judicial cooperation in civil matters and Schengen Acquis formed the first pillar; the second pillar consisted of common foreign and security policy; and police and judicial cooperation in criminal matters were included in the third pillar. Since EU institutions had no real competence in these areas, Member States very often had to act unanimously regarding measures concerning the second and third pillars. Therefore, delays occurred when Member States sought a compromise but the process failed. A mergering of the pillars- which themselves caused confusion and practical difficulties-will thus bring efficiency, transparency and practicality for Union Citizens.

One of the most significant consequences of this reform is that the area of "justice, freedom and security" will fall under the competence of the European Court of Justice. The LT provides that areas of *freedom, security and justice* will replace title IV on *visas, asylum, immigration, and other policies* related to free movement of persons.[22] This means that the Commission will take the initiative on these issues, and that decision making procedure will be subject to majority voting. Additionally, during the deliberations of a measure, Member States may opt out of that particular measure if they believe it threatens their national legal system, . However, with regard to the second pillar, the functioning of the Union will remain more or less the same as in the previous situation. The ECJ and the Union shall not have jurisdiction concerning *Common Foreign and Security Policy* and Union's general legislation process shall not be applied in this field; instead, unanimous action is required in definition and implementation of the policy.[23]

D. Democratic Legitimacy and Transparency in the Union:

1. Participative Democracy:

In the European Union, democratic legitimacy requires political accountability between European Citizens and elected European Parliament. It may also be named as a dual system of legitimacy. As Dashwood/Johston state, not only are MEPs responsible to their voters, but Heads of State or

22 LT Article 2-63.

23 LT Article 1-27(a.1/2).

Government and ministers in the Council are also responsible to their national parliaments and voters.[24] The Reform Treaty recognises this situation and in Article 1-12 provides that functioning of the Union is based on representative democracy. Under the above mentioned article citizens are directly represented at the Union level in the European Parliament and following sub-article stresses on the democratic accountability of the head of states and governments to their national parliaments or to their citizens.

With a view to maintaining the demands of the Union Citizens as raised in the Laeken Declaration, it is a good starting point that the LT provides for participatory democratic principles under a separate title. After emphasising participatory democracy and accountability, Article I-12(article 8a) states that *decisions shall be taken as openly and closely as possible to the citizen.* Another further step is that institutions shall give citizens the opportunity to make known and publicly exchange their views regarding all Union actions. The necessity of having an open, transparent and regular dialogue with the representative associations and civil society has been emphasised explicitly. Additionally, citizens who gather at least one million signatures are entitled to take the initiative to invite the Commission to submit a "draft law". Without doubt, it can be concluded that the LT will enhance legitimacy and transparency in the Union.

In the following stage, the LT aims to describe the functions and limits of the competences of each institution. Likewise, legal acts of the Union and their adoption procedures are stipulated explicitly.[25] In this regard, discrimination between the legislative acts and non-legislative acts of the Union enables a better judicial review of the acts. Concerning democratic legitimacy, another reinforcing development is that co-decision procedure will be the ordinary legislative procedure of the Union.[26] Finally, the Council is obliged to meet in public while deliberating and voting on a draft legislative act.[27] Transparency and the public nature of the work of the Council will facilitate both civil society's and citizens' participation in the process. Journalists will also have the opportunity to inform citi-

24 Alan Dashwood/Angus Johnston, The Institutions of the Enlarged EU Under the Regime of the Constitutional Treaty'(2004)41CMLR,1481-1518,1482-1483.

25 LT Article 2-235, 2-237.

26 LT Article 2-236.

27 LT Article 1-17(8).

zens about deliberations at the Council or about minutes of the deliberations expected to be publicised through the media and press. It is obvious that this revolutionary provision will contribute to enhanced transparency in the legislative process.

The election process of the Commission's president is a new development that entails the initiative of the Parliament and increases democratic legitimacy. Under Article 1-18(7), after having held appropriate consultations, the European Council proposes a candidate by a qualified majority and the Parliament elects the president by a qualified majority. If this fails another candidate is nominated by the same process. The process has three distinctive features; the first feature is that, the European Council takes the outcome of the Parliamentary elections into account prior to proposing a candidate. The second feature is that the European Parliament elects the President of the Commission in the final stage of the process. The final feature is that in the case of failure the Council is prohibited from nominating the same person again. Some commentators argue that the Parliament is not given a real choice regarding the selection of a candidate; they claim that the Council should be entitled to nominate more than one candidate, whereupon the Parliament could make the final decision. [28] Regarding the above mentioned features of the process, despite some criticisms, I am of the opinion that it does not constitute a real obstacle to democratic legitimacy.

2. Increasing Involvement of the European Parliament

Introduction of the "cooperation procedure" was the initial step for the involvement of the European Parliament in law making procedure in the EC. The Maastricht Treaty initiated co-decision procedure for enactment of internal market measures. In the following stage, the Treaty of Amsterdam enhanced the procedure by conferring a power of veto to the Parliament which was a positive requirement in adopting draft laws. Following this, both the Amsterdam and Nice Treaties extended the scope of the co-decision procedure. [29]

The ordinary legislative procedure means joint adoption of a regulation, directive or decision by the European Parliament and the Council (Article 2-236). If, in some specific instances, the Treaties require participation of

28 Kokott/ Rüth(n10), 1332,1333.

29 Dashwood/Johnston (n22), 1484.

the Parliament or the Council, then it may be referred to as a special legislative procedure (Article 2-236). Special legislative procedures are explicitly stated by the LT and their scope has been reduced to some sensitive issues such as taxation, creation of new forms of sources for the Union. Now, the European Parliament is entitled to have equal rights with the Council regarding decisions on the EU budget, common agricultural policy, and judicial cooperation in criminal matters, migration and asylum policy, etcetera. As stated above, involvement of the European Parliament in the law making process will strengthen legitimacy in the EU.

There will be great scrutiny of the European Parliament with regard to the agencies of the Union (such as Europol) and the Parliament will be asked for its consent rather than simply consulted when taking initiatives on combating discrimination or strengthening rights of the Union's citizens. (Article 25, TFEU)

Composition of the European Parliament has been a controversial issue between the large and small Member States. Allocation of seats should be done in a way that keeps the Member States in equilibrium but does not distort proportional representation of the Union's citizens.[30] The European Parliament shall be composed of seven hundred fifty members in total. Each Member State is allocated a minimum of six and a maximum of ninety six seats.[31]

3. Involvement of National Parliaments:

The involvement of national and regional parliaments in the law making process of the EU is one of the most well-known characteristics of the LT. Previously; the roles of national and regional parliaments on the EU level were indicated by their national constitutions. National and regional parliaments had supervisory powers on national governments while they were acting as national representatives in the European Council. Due to both the lack of specialized committees in the parliaments and more detailed provisions, their initiatives have weakened throughout time. [32]

In order to play a crucial role on the EU level, national and regional parliaments should be informed with respect to the legislative process. Article 1-12(8c) of the LT states that national parliaments shall contribute

30 Dashwood/Johnston,(n 22), 1487.

31 LT Article 1-15.

32 Menéndez,(n1),135.

actively to the good functioning of the Union by being informed of legislative process under the principles of subsidiarity and proportionality. Under the principle of subsidiarity, the EU is only entitled to use its legislative power in such areas that an action could not be taken effectively at the national level.

There are two protocols attached to the LT, one is Protocol (No 1) on The Role of National Parliaments in The European Union (hereafter Parliaments' Protocol) and the other is Protocol (No 2) on The Application of The Principles of Subsidiarity and Proportionality (hereafter Subsidiarity Protocol). Parliaments' Protocol states that draft legislative acts originating from the Commission and the European Parliament shall be submitted directly to the national parliaments by the Commission and the Parliament respectively. The other legislative acts originating from the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall also be submitted to national parliaments by the Council.[33] In addition to this, Article 5 stipulates that the agendas, outcomes of Council meetings-including the minutes of the meetings where draft legislative acts were deliberated- shall be forwarded to the national parliaments at the same time as the national governments. Furthermore, Commission consultation documents, annual legislative programmes, planning or policies shall be submitted to the national parliaments.[34] Another novelty brought by the Parliaments' Protocol is that there shall be an 8 week period between the notification of the national parliaments and the replacement of the issue on the agenda of the Council. Similarly, in case of any Treaty changes, national parliaments shall be notified at least six months before any initiative has been taken.[35] Article 9 provides inter-parliamentary cooperation between the European Parliament and the national parliaments. Under the new provisions, national parliaments have the opportunity to take necessary actions and communicate their views to the members of the government and MEPs.[36]Such actions depend, however, on the powers of the national parliaments over the

33 Article 2 of Parliaments' Protocol Annexed to the LT.

34 Article 1of Parliaments' Protocol Annexed to the LT.

35 Articles 4 and 6 of Parliaments' Protocol Annexed to the LT.

36 Dukes (n12), 4.

executive bodies. Due to the complexity of the EU, legislation may have a negative effect on this mechanism.[37]

On the other hand, for the first time Subsidiarity Protocol bestowed some prior supervisory competence on national parliaments in order for them to take part in the EU legislative process actively. In this regard, national parliaments are entitled to contribute in correct application of the subsidiarity principle on the EU level.[38] Within eight weeks of the date of transmission of a draft legislative act, national Parliaments or chambers of national Parliaments send a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity to the Presidents of the European Parliament, the Council and the Commission.[39] The respective institution is obliged to take this opinion into consideration. If the draft is referred to as inconsistent with the subsidiarity principle by the 1/3[40] votes allocated to all national parliaments then the draft shall be reviewed. After the review, the respective institution may maintain, amend or withdraw the draft legislative act. All actions shall be reasoned.[41]

With regard to the ordinary legislative procedure, if a simple majority of the votes are against the draft legislative act, then it must be reviewed. After the review, the Commission may maintain, amend or withdraw the draft. If the Commission chooses to maintain; then it will have to justify why the proposal complies with the principle of subsidiarity. Afterwards, the justifications of both the national parliaments and the Commission are submitted to the Union legislator. If the 55% of the members of the Council, or a majority of votes cast by the members in the Parliament, are of the opinion that the proposal is not in conformity with the principle of subsidiarity then the proposal shall not be given any consideration.[42] Finally, Member States are entitled to bring an action before the Court of Justice of the European Union concerning legislative acts infringing on the principle of subsidiarity.

37 Menéndez(n1), 137.

38 Kokott/ Rüth(n10), 1334. see also also House of Lords:The Treaty of Lisbon: an Impact Assessment,Volume I:Report , HL Paper 62-I, 2008, 236,

39 Article 6 of the Subsidiarity Protocol Annexed to the LT.

40 it shall be ¼ in freedom, security and justice. ibid, Article 7.

41 ibid Article7.

42 ibid Article 7.

To sum up, firstly Subsidiarity Protocol entitles national parliaments to express their views as to whether a legislative proposal complies with the principle of subsidiarity or not. Secondly, with a certain majority, national parliaments ask for the legislative act to be reviewed. Finally, they can bring a file in front of the Court of Justice of the European Union.

4. A Clearer and Fairer Voting System:

In the pre-Lisbon period the Council of Ministers took decisions based on the Nice Treaty's triple majority voting system. Put simply, it consisted of a 50% majority of the Member States, representing 2/3 of the Union's population. However, the LT provides that a qualified majority requires 55% of the Member States representing 60% of the EU population. Under the new system, a weight is assigned to each Member State. In order to prevent the dominance of large Member States over small ones or vice versa, the LT inserted the blocking minority in the text. The blocking minority is simply a group of Member States whose votes prevent other Member States from finding the majority necessary to pass a proposal. It should include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one Member State.[43]

In cases where the Council does not act upon a proposal from the Commission or the High Representative, then the qualified majority will be composed of 72% of Member States representing 65% of the EU Population.[44] The new voting system attributes more weight to larger populations, seems more transparent than the previous system and reinforces democratic elements of the EU.[45]

5. A Legally Binding Charter and an Extended Role for the ECJ

The status of the EU Charter of fundamental rights was another controversial issue in the preparation process of the LT. Unlike the Constitutional Treaty, the LT did not include the Charter in the text of the Treaty. Nonetheless, there is not a significant difference between the provisions

43 LT Article 2-191(3)(a).and see Article 3. of Annexed Protocol on the transitional provisions.

44 LT Article 2-191

45 Hugo Brady/Katinka Barysch, 'the CER Guide to the Reform Treaty' available www.opendemocracy.net/article/democracy_power/europe_constitution/lisbon_reform_treaty (30.11.2007); Dukes (n12), 9.

of the Constitution and the LT concerning the legal effect of the Charter. There is a cross reference in Articles 1-8 of the LT which provides that the Charter has the same legal effect as the Treaties. The main objective of the Charter as stated in the preamble is to make the rights of the Citizens more visible.[46] A legally binding Charter will be an explicit message to the institutions and citizens of the Union, for a commitment to uphold the rights stated in the Charter.[47]

Article 1-8(2) provides a slight difference compared to the Constitutional Treaty. It provides that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The LT expresses decisiveness on the accession to the ECHR, which was a debated issue in the Laeken Declaration.

Transfer of the third pillar to the first pillar means that the EU will gain competence over these policy areas and the ECJ will have judicial power to review instruments on immigration, asylum, visa and criminal law policy. The Treaty grants citizens the right to challenge not only the European Parliament, the Council of Ministers, and the Commission but also the European Council, the European Central Bank and other Union institutions, agencies, offices and bodies relating to their application or misuse of power (Article 263 TFEU). Furthermore, the Treaty slightly extended the scope of the protection of individuals. Individuals can bring an action against an act which has direct and individual concern to him. However, sometimes "individual concern" makes it difficult or almost impossible to bring the file before the Court. The Treaty states that when regulatory acts, which do not entail implementing measures, are at stake "individual and direct concern" is no longer required to initiate proceedings. Instead, existence of a "direct concern" meets the criteria to challenge those measures.

Sir Francis Jacobs states that these changes will bring substantially greater judicial protection against EU measures and will strengthen the

46 For detailed information on the Charter see, : Menéndéz José Agustin, "Chartering Europe; The Charter of Fundamental Rights of the European Union" Arena Working Papers, WP 01/13, www.arena.uio.no/ publications/wp01_13.htm (13. 12.2007); Young Alison L., 'The Charter, Constitution and Human Rights: is this the Beginning or the End for Human Rights Protection by Community Law', (2005) 11(2) EPL, 219-240

47 See also House of Lords: The Treaty of Lisbon: an Impact Assessment, Volume I: Report , HL Paper 62-I, 2008, 233. 85, 98, 253.

rule of law in the Union.[48] It is beyond doubt that the above mentioned issues concerning the protection of fundamental rights of the Union's citizens will strengthen confidence in the Union and bring additional legitimacy.[49]

E.Providing for Efficient Functioning of the Institutions:

1.The European Council and Its President

Until Lisbon, the presidency of the European Council rotated every six months. On the one hand, a six month periods was very short for efficient performance of the duty; on the other hand, each Member State held the presidency once in thirteen years. In addition to this, the President of the Council was a head of government or state at the same time s/he was holding two posts. Insofar, meetings of the Council were held in an informal way without keeping any record or minutes. There was not any rule governing the decision making process and the Council made its decisions by common accord only. This structure was thus a significant obstacle to an efficiently functioning Council.

The LT created a permanent president for a period of two and a half years, which is renewable once with the same conditions. The President shall be elected by the European Council by a qualified majority, and the president shall not hold any national post. Decisions shall be taken by consensus. With the introduction of the new provisions, the Council became an autonomous institution and the president of the Council gained a more powerful post than s/he had in the pre-Lisbon period. Nevertheless, it has received some criticism on the basis that the President of the Council is not accountable to any parliament, which is not in conformity with democratic legitimacy.[50]

The Council of Ministers, where ministers for transport, agriculture, finance, etc. decide on more specific matters, will not be chaired by the president of the European Council. The rotation system will remain in force and three EU members will chair the meetings.

48 House of Lords: The Treaty of Lisbon: an Impact Assessment, Volume II: Evidence, HL Paper 62-II, 2008, S150 (467). Also stated at House of Lords: The Treaty of Lisbon: an Impact Assessment, Volume I:Report , HL Paper 62-I, 2008, 78.

49 Kokot/Rüth(n10), 1328.

50 Kokott/ Rüth(n10), 1337.

2.A Stronger High Representative of the Union for Foreign Affairs and Security Policy

The role of the High Representative of the Union for Foreign Affairs and Security Policy is very significant in its field. Nevertheless, it has always been criticised that the EU did not play an active role in several global issues such as conflicts in the middle-east, Iraq, Iran, the Balkans and the Caucasus. This is because coordination of the foreign policy of the EU was not designed effectively. Briefly, the foreign policy was determined by the Council and there was lack of coordination between the Council and the Commission. Therefore, the LT tried to find a solution and strengthened the position of the High Representative. Under the new provisions of the LT, Council appoints the High Representative by a qualified majority and s/he shall be one of the Vice-Presidents of the Commission.[51] Nevertheless, it has been criticised that s/he may not perform his/her duties properly having two different posts.[52] Serious reservations may be raised against this idea. First, the High Representative undertakes the responsibility in this field and the president of the Council will have the opportunity to focus on other issues. Second, performing as the Vice-President of the Commission simultaneously will increase the effectiveness and efficiency in the decision making process. Thus, it may not create a disadvantageous position.

The High Representative conducts the common foreign and security policy of the Union upon the unanimous decision of the Member States. He chairs the foreign affairs council, participates in the international organizations and conferences, and represents the Union. In addition,, an external action service shall provide administrative and advisory support to the High Representative. External service consists of officers from foreign affairs departments of the Council and the Commission.

3.The European Commission

Since the election process of the President of the Commission was dealt with under title 3 above, I will not focus on this issue again. Apart from this innovation the LT states that until 2014 each Member State will have one Commissioner. After 2014, the numbers of the Commissioners will

51 Article 1-19(1).

52 Dashwood, 'the Draft EU Constitution-First Impressions'(2002)5CYELS, 414-415(expressed by Dashwood/ Johnston, above n 22, 1503 n 62)

be reduced to 2/3 of the total number, which is estimated at 18. The Commissioners will be chosen among nationals of Member States on the basis of an equal rotation system, by taking demographic and geographical features into consideration. The system will be established by the unanimous decision of the European Council.[53] It is obvious that the new system will increase the efficient functioning of the Commission. However, Member States may raise concerns about this system,[54] as they usually have the opportunity to communicate their views to Brussels via Commissioners under the current system Also; Commissioners brief their national countries with respect to the Commission's activities.[55] Another argument that could be raised against the simplification of the Commission is the absence of a few countries (or the big countries) might lack political legitimacy[56]

CONCLUSION

After emphasising the challenging issues, the Laeken Declaration formulated the achievements of the Constitutional reform as "more democracy, transparency and efficiency in the EU". There are several aspects that can be stated on behalf of the Reform Treaty. First of all, delimitation of powers, simplification of the Treaties, legal instruments and the merger of the pillars will increase efficiency and transparency in the Union. Secondly, the adoption of co-decision as ordinary law making process, the opening of Council deliberations to the public, the involvement of the European Parliament and national parliaments in law making process, and new changes in the voting system will enhance the democratic legitimacy and transparency of the Union.[57]

Next, in order to increase the efficiency of the institutions, the LT has taken necessary steps which have received some criticism from commentators.[58] I nevertheless believe that with a permanent president for the Council, a smaller commission and a stronger High Representative for Foreign Affairs and Security Policy the Union will function more effi-

53 Article 1-18.

54 Kokott/ Rüth(n10),1338 and for some other criticisms see, Dashwood/ Johnston, n22, 505.

55 Brady / Barysch(n45).

56 ibid.

57 also Dashwood/Johnston(n22).

58 see. Dougan(n9); Menéndez(n1).

ciently. The cross reference to the EU Charter on the Fundamental Rights and the competence conferred to accede to the ECHR will strengthen the confidence in the EU and will also bring additional legitimacy.[59]

Since the implementation of the Reform Treaty will depend on the future approach of the Member States, EU Institutions, national parliaments and Union citizens, it is rather difficult to estimate the future of the Union. Nonetheless, when compared to the previous treaty changes one should admit that the LT is a potential success, particularly when bearing in mind the objectives of the Reform Treaty, as stated in the Laeken Declaration.

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59 Kokott/Rüth(n10), 1328.

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