



LISBON TREATY AND ITS IMPACT ON EUROPEAN MARKET

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The Treaty of Lisbon has modified and enhanced the regulations and relations of the European Union. The European Union was fundamentally an Economic group. Presently, it has not only concentrated only on the market economy but has a mandate beyond that dimension. It created a much more centralized form of leadership and also regulated foreign policies. A uniform procedure was made for the member countries with regard to their entry and exit in and from the European Union. The formulations of enactment of new policies were also done under this Treaty. This treaty was basically to remove the defects which the earlier treaties of the European Union were possessing. It also played a very important role in the enhancement of the European market and the creation of an Open Market System. Treaty of Lisbon has been proved to be very effective to the objectives it aimed at. It has played a major role in expanding the European market economy. It has protected the rights of the member-states. It also has granted greater power to the directly elected representatives of the people. More legal rights have been granted to the member-states as they had before. The Author here will be discussing the major impact that the treaty had done in order to upgrade and enhance the European Market and has also tried to state the shortcomings of the treaty.

Keywords- European Single Market, Lisbon Treaty, European Union, Free and Fair Market

INTRODUCTION

The Lisbon Treaty began as a constitutional project undertaken toward the end of 2001 (European Council declaration on the eventual fate of the European Union, or Laeken statement), and was followed up in 2002 and 2003 by the European convention which drafted the treaty building up a Constitution for Europe (Constitutional Treaty). The procedure prompting the Lisbon Treaty is an aftereffect of the negative result of two referenda on the Constitutional Treaty in May and June 2005, because of which the European Board chose to have a two-year 'period of reflection'. Finally, on the premise of the Berlin Declaration of March 2007, the European Council of 21 to 23 June 2007 embraced a point by point order for a subsequent Intergovernmental Conference (IGC), under the Portuguese Presidency. The IGC finished up its work in October 2007. The treaty was signed at the European council of Lisbon on 13 December 2007 and has been approved by all member States¹.

BACKGROUND OF THE TREATY

In early 2007, there was a new round of discussion initiated by Angela Merkel, the then German Chancellor with regard to the reformation of the European Treaties. The Council of German Presidency aimed to find out a consensus regarding the necessary amendments with the existing treaties that would play a vital role in accommodating the political objectives of the member state which has prevented the European Union constitution from coming into force. On July 21 and 22, 2007 an IGC (Inter-Governmental Conference) was held after The Brussels European Council agreed upon it. This Conference was held in order to draft a Reform Treaty after amending the EC and EU Treaties and also the EU and EC was merged into one European Union with a Legal Personality. It was also stated that also the treaties will be amended and the EC and EU will be merged into one EU but still the treaties will not be given a constitutional nature.

A Precise as well as a detail mandate was adopted by the European Council to amend the treaties and also relying upon those mandates IGC was to draft the amendments to the existing treaties. IGC was started on 23 July, 2007 and on 18 October, 2007 they reached on an agreement on various modifications to the European Union Treaty and the European Council Treaty. Most of the proposed modification has been drawn from the texts of the EU Constitution. This agreement can be however reached only after certain derogations have been granted to Poland and United Kingdom with respect to the Fundamental Rights Charter of The European Union and, again, to the United Kingdom on the judicial enforcement of measures in field of Police and Judicial cooperation in the criminal mattersⁱⁱ.

It was thought that in order to ensure the smooth running and efficient functioning of the enlarged EU in the fast-changing and globalized world there was an urgent need to reform the European Union, European Council, and EA treaties. It is also provided an opportunity to enhance the European integration and to respond to the main concerns of the EU citizens.

Lisbon treaty is also known as 'Reform Treaty'. On December 13, 2007, European Council which was held in Lisbon that year approved The Reform Treaty. The treaty has been signed by the Heads of State or Government of the Member States amending the Treaty on European Union and the Treaty establishing the European Community. It was proposed that the Treaty will come into force on January 1, 2009, after it has been ratified by all the member states as per the constitutional requirements. When Ireland gave negative referendum in Ireland on June 12, 2008 it became evident that the treaty was not going to come into force from January 1, 2009. Then a case was filed before the Constitutionalism Court of the Czech Republic and Germanyⁱⁱⁱ and also delayed ratification by those member states. A new referendum in Ireland was organized 2, 2009, with a positive outcome this time, which allowed Ireland to proceed with ratification^{iv}. The second referendum was only held after Ireland received guarantees on a number of specific Irish concerns^v. However, Poland submitted its ratification on 12, October, 2009 and Czech Republic was the last member states to deposit their instrument of ratification on 13 November, 2009. Czech

Republic ratified the assurance only after receiving the assurance that it will be provided with exceptional treatment as Poland and UK with regard to the application of the charter of fundamental rights of the union^{vi}. So, in accordance with Article 6(2), the treaty of Lisbon entered into force on December 1, 2009.

OBJECTIVES OF THE EU

The Treaty of Lisbon will bring change to both the overarching and the specific objectives of the European Union^{vii}.

- 1- **Overreaching objectives**- the overarching objectives of the EU has changes a lot. As listed under the Article 3(1) TEU lists as overarching objectives such as “PROMOTION OF PEACE, of the EU’s values and of the well-being of its people.
- 2- **Specific objectives**- the Treaty of Lisbon has extended the list of the specific objective that the EU will aim and strive to achieve. The objectives are concerned in four major areas. They are:-

- The creation of an Area of Freedom, Security, Justice.
- The establishment of the Internal Market.
- The establishment of the EMU (ECONOMIC AND MONETARY UNIT).
- Relations between the European and the Wider World.

IMPACT ON LISBON TREATY ON EUROPEAN ECONOMY

In its beginning times, the European Union was fundamentally an Economic group. Presently, it has not only concentrated itself only on the market economy but has mandate beyond that dimension. The Lisbon Treaty, which came into force on 1 December 2009, contains new standards for an all the more socially oriented Europe: a social condition, a reference to a social market economy and furthermore another skill base for the arrangement of administrations of general economical interest (telecoms, energy, transport, and so on.). Moreover, the fundamental or the basic social rights are presently guarded by the European Charter of Fundamental Rights that has been proclaimed official and also has a binding effect. By and large, these measures could serve as a basis on which to build up a European (multilevel) welfare framework and in this way a more grounded, firm European social identity will be established^{viii}.

1- CREATION OF EUROPEAN SINGLE MARKET

The ‘European Single Market’, ‘Internal Market’ or ‘Common Market’ is a single market which tries to ensure the free movements of ‘Capital’, ‘Goods’, ‘Labor’, ‘Services’ – the "four freedoms" – inside the European Union (EU). The market consists of the EU's 28 member states, and has been stretched out, with exemptions, to Iceland, Liechtenstein and Norway through the Concurrence on the European Economic Area and to Switzerland through treaties of bilateral nature^{ix}.

The market is expected to be helpful for increased or expanded competition, increased specialization, bigger economies of scale, enabling factors or production and goods to move to the territory where they are most valued, accordingly enhancing the effectiveness of the resource allocation. It is also planned to drive economic integration whereby the once isolate economies of the member states end up being incorporated within a single EU-wide economy^x. The legislation harmonized by the EU covers half of the trade in goods in EU. The making of the inner market as a consistent, single market is a continuous procedure; with the incorporation of the service industry still has certain gaps. It has an expanding global component, with the market represented as one in International Trade Negotiations^{xi}.

The formation of a “Single European Economic Area” which has been based on a common market was the “Fundamental Objective of the Treaty of Rome”. Article 2 states the objective as:

“The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it”^{xii}. Clearly the common market was not an end in itself, but rather a way to accomplish financial and political objectives.

It is valuable to characterize and define here the concept of "common market", "single market" and "internal market" which is synonymously used yet which have noteworthy differences in the meaning. The common market is a phase in the multinational incorporation process, which, in the words of a Court of Justice administering, intends to expel and remove the boundaries or the trade related barriers to intra-Community trade with a view to the merger of national markets into a single market offering ascend to conditions as close as conceivable to a genuine national market. It is significant that the Treaty of Lisbon overlooks the ideas of the "single market" and of the "common market". It replaced the words "common market" (of the Treaty of Nice) by the word “Internal Market” at the end of the integration process, which as indicated by Article 26 of the Treaty on the functioning of the EU (ex Article 14 contains "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties"^{xiii}.

The formation of a common market looking like an internal market not only implies the liberalization of trade among all the states who are the members but also facilitates the Free Movement of Production Factors: Capital, Services and Labor. It additionally involves the free establishment of companies and persons in all the region of the member states, to practice their business or professional activities. Subsequently, keeping in mind the end goal about the establishment of common market, we need the existence of the Four Fundamental Freedoms between the member states:

- 1- Freedom of movement of goods, it is because of the end of all exchange hindrances;
- 2- Freedom of movement of salaried and Non- salaried workers, it was made possible by the removal of all the restrictions related to the entrance and residence of the people in other member states.
- 3- Freedom of establishment of Companies and Persons in the territory of the member states and also the provisions of services by them in the host country;
- 4- Freedom of movement of capital for either personal purpose or business.

So from this it is clear that in order to establish a Common Market Freedom is required. Hence, Freedom can be termed as the keyword of the Common Market^{xiv}.

2- THE INTERPRETATIVE VALUE OF THE PROTOCOL ON THE INTERNAL MARKET AND COMPETITION

The Lisbon Treaty has repealed Articles 2 EC and 3(1) EC. At the point when the Lisbon Treaty came into force on December 1, 2009, it subsumed the EC into the EU. Since the EC lost its existence, it was important to characterize the objective of the reformed EU. A single arrangement of "common principle" is presently applicable and material to both the TFEU and the TEU. The present treaty provides with several means (Articles 3 to 6 TEU) to achieve the targets doled out to the EU in Article 3 TEU. The objective and activities list in Article 2 and 3 have been integrated partially in the new catalogue of objectives. In contrary to the corresponding provision in the DTCE, Article 3(3) TEU just expresses: "The Union shall establish an Internal Market"^{xv}.

A system of guaranteeing undistorted rivalry is never again specified. Rather, this principle now shows up in Protocol (No 27) on the Internal Market and Competition:

“The High Contracting Parties, contracting that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted, HAVE AGREED that: to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 352 of the Treaty on the Functioning of the European Union”.

The reference to Article 352 TFEU intends to save the power of the legislature of the Union in the competition policy area. When the Treaties have not given the important powers, Article 352 TFEU (ex Article 308 EC) enables the Union to embrace suitable measures "to achieve the goals set out in the Treaties" at whatever point action seemed to be necessary. This lawful basis was utilized inter alia to adopt the EU Merger Regulation. The abolishment of Article 3(1) (g) EC gambled undermining the Union's skill in merger control. The Convention settles this issue. Before, the EU courts have depended on Article 3(1) (g) EC as interpretative direction to enhance the expansion, teleological perusing of the competition rules, explicitly alluding to the guideline of undistorted rivalry as a "Fundamental Objective" or "Chief Objective" of the Community, a "Fundamental provision," or a "general Principle of EU law."

For example, "Article 3(1)(g) EC, in conjunction with Article 3(4) TEU (ex Article 10 EC), was instrumental in establishing that, even though Articles 101 and 102 TFEU are directed exclusively at undertakings, they also prohibit Member States from taking measures inducing undertakings to infringe these provisions".

Thus, in the "Seminal Continental Can judgment", the Court of Justice of the European Union ('CJEU') connected Article 102 TFEU (at that point Article 86 EEC) with the guideline of undistorted competition (previously Article 3(f) EEC), to maintain the Commission's view that a merger reinforcing a current prevailing position constituted an abuse. A Literal interpretation of Article 102 TFEU did not support this view. The Court, nonetheless, stressed the need to consider the spirit and general scheme of the article and in addition the objectives and system of the Treaty.

Appropriately, the Court upheld the Commission's attack of a merger on the premise of Article 102 TFEU—long before the adoption of the primary Merger Control Directive. A few observers addressed whether the EU courts, when confronted with novel questions of scope, would have the ability to keep up their wide purposive elucidation of the competitions rules on the basis of protocol. Unquestionably a Protocol couldn't accomplish an indistinguishable interpretative status as the preamble and the first few Treaty Articles? Fairly shockingly, a great part of the verbal confrontation has been revolving around the inquiry whether the Lisbon Treaty downgraded the security of undistorted competition from an "objective" to an "activity."

As pointed out by high-level state authorities from the Commission, only in the failed DTCE did the standard of undistorted competition appears up as a goal. Article 3(1) (g) EC, as to the contrary, competition has been clearly listed as activity, i.e. an essential intends to accomplish the goals set out in Article 2 EC.

In **Konkurrensverket v Telia Sonera Sverige AB**^{xvi}, It was the first time when the court referred to the new protocol in relation to the Internal Market and Competition. The Court says "Article 3(3) TEU states that the European Union is to establish an internal market, which, in accordance with Protocol No 27 on the internal market and competition, annexed to the Treaty of Lisbon (reference omitted), and is to include a system ensuring that competition is not distorted". After going through the content of the protocol, along with the objective of

establishing an internal market, it was made clear by the CJEU that the protocol forms a constitutive part of Article 3(3).

In **Commission v Italian Republic**^{xvii}, the Court went one step further. The case is based on an action for failure to fulfill obligations brought by the Commission against Italy. In 1999, the Commission adopted a decision finding that part of the aid granted by Italy to promote employment violated the State aid rules. The Commission requested the Italian state to recover the illegally awarded sums from those who received them. In 2004, the CJEU declared that Italy, by not adopting within the prescribed time-limit all measures necessary to recover the aid, failed to fulfill its obligations under that decision.¹⁸ In the present judgment, the Court confirmed that Italy, by not fully recovering unlawful State aid from its beneficiaries, failed to comply with its earlier judgment. In determining the amount of the penalty payment proportionate to the infringement, the Court emphasized the vital nature of the Treaty provisions on competition.

3- CUSTOM DUTIES AND TAXATION

The European Union is likewise a Union of Custom. This implies part states have expelled traditions hindrances amongst themselves and presented a common custom strategy towards different nations. The general and main objective behind this is "to ensure normal conditions of competition and to remove all restrictions of a fiscal nature capable of hindering the free movement of goods within the Common Market"^{xviii}^{xix}.

By the agreement between the Union and the states concerned, Andorra, Monaco, San Marino and Turkey likewise take an interest to be the part of the EU Customs Union.

Custom duties

Article 30 TFEU forbids member states from charging or imposing any sort of tax on the goods requiring any obligations on products crossing the boundaries and covers the both the goods created inside the EU and those delivered outside. Once a Good has been brought into the EU from a third nation and custom duty has been paid, Article 29 TFEU directs that it might then be considered to be in free movement between all the member states^{xx}.

Since the Single European Act, there can be no precise customs controls at the member states border. The major concern has been given to the post-import audit controls and analysis of risk. Physical controls of export and imports now happen at premises of the trader's, and not at the territorial borders^{xxi}.

Charges having equal impact to custom duties

Article 30 of the TFEU disallows Duties on Custom as well as charges having effect of equivalent nature. The European Court of Justice characterized "charge having equivalent effect" in **Commission v Italy**.

"Any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect... even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product".

A charge is a equivalent to a custom duty if it is proportionate with Goods value; if it is proportionate with the quality of the goods, if it's a charge that will be having equal impact on the custom duty.

There are three exceptions cases to the forbiddance on charges forced when products cross a border, recorded in **Case 18/87 Commission v Germany**. A charge is not a customs duty or charge having comparable impact if:

- It identifies with a general arrangement of interior levy systemically applied and as per similar criteria to domestic items and imported items alike.
- If it constitutes payment with regard to any services actually rendered to the financial operator of a sum in extent to the service,
- Subject to specific conditions, if it attaches to inspections carried out to fulfill obligations imposed by Union law.

Taxation

Article 110 of the TFEU states that:

“No Member State shall impose, directly or indirectly, on the products of other member states any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products”.

It is also imposing a limitation upon the Member State and hence they are prohibited on imposing any internal taxation on the products of such nature to afford indirect protection to other products.

In the **Taxation of Rum Case^{xxii}**, the ECJ stated that:

“The Court has consistently held that the purpose of Article 90 EC [now Article 110], as a whole, is to ensure the free movement of goods between the member states under normal conditions of competition, by eliminating all forms of protection which might result from the application of discriminatory internal taxation against products from other member states, and to guarantee absolute neutrality of internal taxation as regards competition between domestic and imported products”^{xxiii}.

So to create a common market what was needed to be done was “The Elimination of all Import and Export duties” which were present among the member states prior to the formation of the European Economic Community (EEC).

4- EU COMPETENCE AND FDI

The Lisbon Treaty streamlines EU policy regarding external trade policy by affirming that every single key part of exchange are exclusively competence of EU and bringing agreement of mixed nature to an end. The treaty brings all trade and services related aspect of IP (INTELLECTUAL PROPERTY) into EU skill, which hence brought an end the long standing argument on competence in these fields. In a noteworthy innovation the treaty additionally brings “FDI” (Foreign Direct Investment) into EU ability (Art 207(1)). Article 207(4) is a special provision which deals with the trade related services and the sensitive topics of Audio Visual, Education, and Social Services. These accommodates unanimity in the arrangement and agreements conclusion in cultural field and audio visual services, where these agreements ‘risk prejudicing the Union’s linguistic and cultural diversity.’^{xxiv}

This does not imply that an agreement that incorporates audio visual services will be an agreement of mixed nature that requires national parliaments to endorse. Or, there is any sort of automatic veto of any discussion has been given for these types of services. Yet, any agreement that is seen as prejudicing culture and linguistic character must be embraced consistently. There are comparative unanimity rules for education, training, social in Art 207(4) (b). For this situation unanimity would be required if an agreement 'risk(s) genuinely disturbing the national association of such services and prejudicing the duty of Member States to convey them'.

The most essential expansion of EU ability is the incorporation of Foreign Direct Investment (FDI). To date investment has been Member State. EU member states who are individual have got into negotiations with their bilateral investment agreements to give protection against expropriation and fund repatriation. There has been a negotiation may by the commission in the agreement with regard to the services, in mode 3 of the GATS agreement, but not general investment liberalization^{xxv}.

CONCLUSION

Treaty of Lisbon has been proved to be very effective to the objectives it aimed at. It has played a major role in expanding the European market economy. It has protected the rights of the member-states. It also has granted a greater power to the directly elected representatives of the people. More legal rights have been granted to the member-states as they had before. Thus on total it has made European Union more effective and efficient. However, it has been stated that for the Irish people it has been a bit deprived. It was held that if the treaty came into force then it will further bring the sovereignty of the Ireland down. However, The Lisbon treaty has influenced the corporate projects which have ultimately made the economic status stronger.

So, it can be stated that the treaty has played a massive role in order to uplift the economic strata of the European Union. But there have been various setbacks too, the positive the powerful countries gained a lot. Hence, the overall impact was satisfactory and the shortcomings of the Lisbon treaties must be taken care of in order make the treaty fully attain its objectives.

ⁱ The presidency conclusion concerning the igc mandate, in particular point 5, Brussels European council 21/22 June 2007

ⁱⁱ Book by koen lenaerts & piet van nuffel, published in 2011

ⁱⁱⁱ Judgment of june 30,2009 bverfge,2 bve 2/08

^{iv} "the Lisbon treaty referendum 2008" (2009) i.p.s 107-121

^v See the concern of the Irish people on the treaty of Lisbon as set out by the Taoiseach in annex 1 to the European council presidency conclusion of December 11 and 12, 2008

^{vi} See the protocol on the application of the charter of the fundamental rights of the European union in the Czech republic set out in annex 1 to the European council presidency conclusion of October 29, 30, 2009.

^{vii} European union law book by alina kaczorowska.

viii Dr. Dragana damjanovic's thesis entitled as "social market rules for europe"

ix <https://en.wikipedia.org/wiki/european_single_market>

x <http://ec.europa.eu/internal_market/top_layer/index_3_en.htm>

xi <<http://ec.europa.eu/growth/single-market/>>

xii "<http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/2-article-2.html>"

xiii "<http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisions-on-the-unions-external-action-and-specific-provisions/chapter-2-specific-provisions-on-the-common-foreign-and-security-policy/section-1-common-provisions/117-article-26.html>"

xiv "http://www.europarl.europa.eu/atyourservice/en/displayftu.html?Ftuid=ftu_3.1.2.html"

xv "<https://www.lexology.com/library/detail.aspx?G=48a4327a-c5e8-41a7-8000-c93e90abe763>"

xvi case c-52/09

xvii case 7/68

xviii case 27/67 fink-frucht

xix "http://www.europedia.moussis.eu/books/book_2/3/6/index.tkl?All"

xx case 7/68 commission v italy

xxi "https://ec.europa.eu/taxation_customs/general-information-taxation/eu-tax-policy-strategy/lisbon-treaty-tax-legislation-eu_en"

xxii case 323/87

xxiii "*case 323/87 commission v italy (taxation of rum), 1989 ecr 2275*"

xxiv "<https://efilablog.org/2016/08/25/why-the-eus-foreign-direct-investment-fdi-competence-should-be-re-nationalized/>"

xxv Book on European union law by Alina kaczorowska, published in 2009