

Lucia Serena Rossi  
Federico Casolari *Editors*

# The EU after Lisbon

Amending or Coping with  
the Existing Treaties?

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# Preface and Acknowledgments

This volume is the result of a research project on the quasi-constitutional nature of the Lisbon Treaty, a project begun 3 years ago within the framework of the Erasmus Academic Network LISBOAN (Linking Interdisciplinary Integration Studies by Broadening the European Academic Network). The research was aimed, on the one hand, at offering a better understanding of the nature of the Lisbon Treaty and, on the other, at investigating the way in which the Treaty addresses the constitutional pluralism characterizing the European integration process.

In this volume, those investigations are carried a step further through a focus on the central question of whether the EU Treaties need further revising. On 1 December 2013, it was 4 years to the day since the Lisbon Treaty had come into force, following the debacle of the Treaty establishing a Constitution for Europe. In welcoming its entry into force, the president of the European Commission, José Manuel Barroso, enthusiastically declared, ‘I’m delighted that we now have the right institutions to act and a period of stability, so that we can focus all our energy on delivering what matters to our citizens.’<sup>1</sup> However, all too regrettably, the situation that developed on the ground immediately thereafter took a dramatic turn away from that scenario: the eurozone debt crisis—coupled with some other major events, not least of which the problems the institutions of the European Union (EU) have faced in ensuring the enforcement of the rule of law (with the 2010 Roma crisis in France, the ongoing Hungarian crisis of 2011, and the 2012 Romanian crisis)—shaped an environment that made it difficult, at the very least, to fully implement the Lisbon Treaty’s reform. At the same time, those events, and the broader post-Lisbon practice, have brought to light some major inadequacies of the current legal framework in the face of the challenges confronting the Union.

Is that enough to advocate a further comprehensive reform of the Treaties? Should a new reform introduce only some major innovations? Or again, adapting the most famous line from Giuseppe Tomasi di Lampedusa’s novel *The Leopard*—

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<sup>1</sup> Doc. ‘European Commission welcomes the entry into force of the Treaty of Lisbon’, IP/09/1855, 1 December 2009.

‘If we want things to stay as they are, things will have to change’—should the current legal framework be left substantially unchanged?

The editors and authors of this volume intend to address these questions in an open-ended fashion, without setting out a commitment to any definitive solutions. In the spirit of that premise, the volume has been divided into four parts. Part I—collecting Chaps. 1–5, by Rossi, Besselink, Luif, McDonnell, and Casolari—takes a horizontal approach to the Treaties’ revision. While Chap. 1 develops the theoretical framework within which to consider reforming the EU Treaties, Chaps. 2–5 lay emphasis on the parameters of constitutional development; the allocation of competences between the Union and its Member States; and the principles of solidarity, flexibility, and loyal cooperation. These constitutional features—‘lying between’ the EU and its Member States—show themselves to be particularly suitable when it comes to assessing the tensions between the EU institutional framework and *die Herren der Verträge* (the Masters of the Treaties), and hence the fault lines generated by the tectonics of the EU lithosphere. Special attention is devoted in this respect to the euro crisis and its impact on the EU’s constitutional design.

In Part II (Chaps. 6–8) the focus shifts to the question of fundamental rights within the EU’s constitutional framework. As is well known, one of the most relevant innovations of the Lisbon Treaty lies in its incorporating the Charter of Fundamental Rights into the Union’s primary law. The chapters collected in this part—by Jacqué, Van Elsuwege, and Di Federico—take up three main issues relative to the Charter’s application (the interpretation of the Charter’s horizontal provisions, reverse discrimination, and cross-border healthcare) so as to assess whether the new mechanism for protecting fundamental rights is effective and whether (and what) further action is called for.

Part III (Chaps. 9–11) is devoted to another domain significantly reshaped by the Lisbon reform, namely, the Union’s external dimension. Chapter 9 (Wouters and Ramopoulos) frames the question through an overall assessment of the post-Lisbon constitutional design of EU external relations, and the remaining two chapters (Gatti and Comelli) look at some of the most relevant innovations in that domain (namely, the establishment of a European External Action Service and the formal recognition of the European Neighbourhood Policy as a formal strand of the Union’s external action) sketching out possible avenues for dealing with the problems and inconsistencies detected in the current system.

Part IV (Chap. 12) presents some general conclusions on the topic. In the conclusions Advocate General Paolo Mengozzi highlights the common themes emerging from the various contributions, stressing the need for a more general supranational approach to the political crisis the Union is going through.

The bulk of the chapters in this volume are based on papers presented at a roundtable and a workshop held on 14 and 15 November 2012, respectively, at the Bologna University Department of Legal Studies. The roundtable (*The European Union and the Crisis: Amending or Just Completing the Lisbon Treaty*) was made possible by funding from the European Commission under the *Ad Personam* Jean Monnet Chair ‘The Impact of the Lisbon Treaty on European Integration’, while the workshop (*The EU after the Lisbon Treaty: A Quasi-Constitutional Framework to*

*Be Revised?*) was organized as part of the LISBOAN network. The debate that took place during these two events greatly contributed to the reworking and the finalization of the contributions in this volume.

The editors wish to thank all the chairs and speakers who took part in these events—including Thomas Christiansen, Sir Francis Jacobs, Marc Maresceau, Laurent Pech, and Miguel Poiares Maduro—for their invaluable contribution. We are deeply grateful to Paolo Mengozzi, who agreed to write the conclusions to this volume. We also owe a debt of gratitude to Tobias Kunstein for his precious support at all stages of the LISBOAN research on the quasi-constitutional nature of the Lisbon Treaty, to Oriana Mazzola for her assistance in organizing the two Bologna events, and to Filippo Valente for his support in preparing and revising the manuscript.

Bologna, Italy  
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# Abbreviations

ACP	African, Caribbean and Pacific Group of States
AFSJ	Area of Freedom, Security and Justice
BVerfGE	<i>Bundesverfassungsgericht</i> (German Federal Constitutional Court)
CEECs	Central and Eastern European Countries
CFI	Court of First Instance of the European Union (now General Court)
CFSP	Common Foreign Security Policy
COREPER	Committee of Permanent Representatives
CRS	Crisis Response System
CSDP	Common Security and Defence Policy
CSOs	Civil-Society Organizations
DCFTAs	Deep and Comprehensive Free Trade Areas
DCI	Development Cooperation Instrument
DG ECHO	Directorate-General for Humanitarian Aid and Civil Protection
DG RELEX	Directorate-General for External Relations
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EDF	European Development Fund
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EFSF	European Financial Stability Facility

EFSM	European Financial Stabilization Mechanism
EFTA	European Free Trade Association
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
EMAAs	Euro-Mediterranean Associations
EMP	Euro-Mediterranean Partnership
EMU	Economic and Monetary Union
ENI	European Neighbourhood Instrument (starting on January 1, 2014)
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument (to be renamed European Neighbourhood Instrument, starting on January 1, 2014)
ERCC	Emergency Response Coordination Centre
ESM	European Stability Mechanism
ESS	European Security Strategy
EU	European Union
EUR	Euro
Euratom	European Atomic Energy Community
Europeaid	Directorate-General Development and Cooperation
FAC	Foreign Affairs Council
FAO	Food and Agriculture Organization
FTAs	Free Trade Areas
GATS	General Agreement on Trade in Services
GC	General Court of the European Union (former Court of First Instance)
HR	High Representative of the Union for Foreign Affairs and Security Policy
IFICs	International Financial Institutions and Conferences
IfS	Instrument for Stability (to be renamed Instrument contributing to Stability and Peace, starting on March 16, 2014)
IGC	Intergovernmental Conference
IMO	International and Maritime Organization
INSC	Instrument for Nuclear Safety Cooperation
LIBE	European Parliament's Civil Liberties Committee
OJ	Official Journal of the European Union (former Official Journal of the European Communities)
OSCE	Organization for Security and Co-operation in Europe
PCA	Partnership and Cooperation Agreement
PSC	Political and Security Committee
SAP	Stabilisation and Association Process
SEA	Single European Act
SGEIs	Services of General Economic Interest
SSM	Single Supervisory Mechanism
TEC	Treaty establishing the European Community

TEEC	Treaty establishing the European Economic Community
TESM	Treaty establishing the European Stability Mechanism
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ('Fiscal Compact')
UN	United Nations
UNEP	United Nations Environment Programme
U.S./US	United States of America
VAT	Value Added Tax
VCLT	Vienna Convention on the Law of Treaties (1969)
VP	Vice-President of the European Commission



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