LEGAL PERSONALITY AND POWERS OF THE EUROPEAN UNION

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Rezumat. *Deşi prin Tratatul de la Lisabona, Uniunea Europeană dobândeşte personalitate juridică, în conformitate cu sistemul partajării competenţelor între Uniune şi statele membre, astfel cum este prevăzut în Tratatul privind Uniunea Europeană şi la Tratatul privind funcţionarea Uniunii Europene, orice competenţă care nu este conferită Uniunii prin Tratate aparţine statelor membre. În cazul în care Tratatele atribuie Uniunii o competenţă partajată într-un anumit domeniu, statele membre îşi exercită competenţa în măsura în care Uniunea nu şi-a exercitat, sau a hotărât să renunţe la exercitarea competenţei sale în domeniul în cauză. Reprezentanţii statelor membre pot decide să modifice Tratatele pe care se întemeiază Uniunea, inclusiv în sensul sporirii sau reducerii competenţelor atribuite Uniunii prin Tratate.*

Abstract. *Based on legal personality, EU won through Treaty of Lisbon, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union and the Treaty on the Functioning of the European Union, competences not conferred upon the Union in the Treaties remain with the Member States. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The representatives of the governments of the Member States may decide to amend the Treaties upon which the Union is founded, including either to increase or to reduce the competences conferred on the Union in the said Treaties.*

Keywords: EU legal personality; areas of Union competence; Treaty of Lisbon; Treaty on European Union; Treaty on the Functioning of the European Union.

1. Preliminary considerations

We appreciate that it became known, in October 2007, after Italy[1] and Poland[2] have obtained what they requested, through compromises specific to the international law, on what it has already entered in the history of the European Union construction, as the Treaty of Lisbon. The Portuguese Prime Minister, Jose Socrates, the country of whom had provided at the time, the EU Council presidency, said: "It is a victory of Europe! With this treaty, we are able to get out of the impasse. Europe is much stronger after this summit"[3]. This statement is completed by that offered by the European Commission President, José Manuel

[1]Italy also received a seat in the European Parliament.
[2]To solve the problem of Poland, the Treaty was accompanied by a Declaration detailing Ioannina compromise.
[3]http://www.swissinfo.ch/fre/Dossiers/La_Suisse_et_la_crise_financiere_mondiale/Actualites/LUnion_europeenne_se_dote_dun_nouveau_traite_a_Lisbonne.html?cid=6202710

Barroso, namely: "It is an agreement that gives to the European Union the capacity to act in the 21st century"[1]. The place and role of the Treaty of Lisbon, more precisely of changes appeared after its entry into force, internationally, in general and in Europe, in particular, are highlighted, including by Lars Knuchel, on behalf of the Confederation President, Micheline Calmy - Rey, of Switzerland, state which, as we know, is not a member of the European Union. According to Lars Knuchel, "Switzerland welcomes the concluding of the reform agreement which should make the European Union more effective and more democratic. Switzerland expresses its interest in having as partner, bilaterally, a stable European Union, able to work and negotiate"[2]. And, in addition to what we said, we also mention Rene Schwok's assertion, professor at the European Institute and at the Department of Political Science, University of Geneva, who stated that "the agreement was expected by observers"[3]. These are some reactions that the Treaty of Lisbon has produced, even since the negotiations.

The treaty has entered into force on December 1st, 2009, and from that moment on, we equally speak of a new modifying treaty, as well as of an institutional treaty. Why? Because on one hand, the Treaty of Lisbon amends the three treaties, namely: the Treaty establishing the European Community (TEC), the Treaty on European Union (TEU) and the Treaty establishing the European Atomic Energy Community[4] (TEAEC / Euratom). On the other hand, the Treaty of Lisbon is the first EU treaty that gives it legal personality, bringing to the forefront of international relations a new subject of international law.

The structure of the Treaty of Lisbon is relatively simple. The first two articles (Article 1 with 61 paragraphs and Article 2 with 295 paragraphs) are reserved for amendments to the Treaty on European Union, and respectively, the Treaty establishing the European Community[5] (the latter became the Treaty on the Functioning of the European Union - TFEU). The following five articles are dedicated to the final provisions. However, the Treaty is accompanied by numerous Protocols (37) and Declarations (65), plus a preamble and a Final Act.

Among those many changes brought to the Treaty of Lisbon, the following are very important:

- The European Community is replaced by the European Union, which acquires legal personality;

- the disappearance of the three EU pillars established through the Treaty of Maastricht, of 1992, by turning them into EU policies;

[1]Idem.
[2]Idem.
[3]Idem.
[4]Even though, in its name, including the amendment of this Treaty was not specified, it results clearly, however, from Article 4, paragraph (2) of the Treaty of Lisbon.
[5]TEEC

- establishing the values and objectives of the Union even from the opening lines of the Treaty. Union values are the reference for future membership of the European Union, as well as for possible sanctions for Member States, if they violate, in a serious and persistent manner, the Treaty provisions;

- the possibility of EU adhesion to the European Convention on Human Rights, by unanimous vote of the Member States;

- the list of fundamental principles governing relations between the Union and Member States (allocation of powers, fair cooperation, equality among states). The Treaty states explicitly that the principle of national security remains the responsibility of each Member State;

-"The European Parliament and the national parliaments have a much greater contribution to EU decision-making, and citizens will be entitled to be informed of decisions taken by ministers, at EU level. All citizens have the opportunity to influence the laws proposed by the European Union;

- for the first time, citizens can directly ask the Commission to propose an initiative of interest to them and within the competence of the Union, by collecting one million signatures from different Member States"[1];

- including the clause on the possibility of Member States to withdraw from the Union. Withdrawal is not subject to any conditions, and becomes operational after an agreement between the Union and the State, or two years after the notification of the intention to withdraw, even if an agreement to that effect had not been concluded.

A deeper study of the European Union legal personality and powers is an important aspect of legal approaches of that period, and a series of conceptual clarification must be made[2].

2. The Legal Personality of the European Union

Until December 1st, 2009, the European Union was defined as a sui generis entity, with an emerging legal personality, relying in its existence on the three pillars established by the Treaty of Maastricht, namely: the European Communities, the common foreign and security policy, justice and internal affairs[3].

[1]Source: http://europa.eu/lisbon_treaty/faq/index_ro.htm

[2]Ion M. Anghel, in the article "Brief considerations on how to establish the powers of the European Union in the regime of the Treaty of Lisbon", published in the Romanian Journal of Community law, no.1/2009, p. 29, states that: "Determining the powers of the European Union and of its institutions should be an organic and unavoidable necessity, and is an essential and inexorable prerequisite for its existence and operation".

[3]The name of this pillar was changed by the Treaty of Amsterdam (1997/1999), by the name of "police and judicial cooperation in criminal matters".

Among the Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, we find the one through which "The Conference confirms that the European Union has legal personality", but this fact "does not authorize it in any way to legislate or to act beyond the powers conferred by the Member States by the Treaties "[1].

As for the legal personality of the European Union, we notice that the shortest article of the Treaty on European Union, namely Art. 47, establishes for the first time in EU history, the legal personality of this entity: "The Union shall have legal personality". What legal effect/s does this text produce? It is relatively easy to answer. Thus, from December 1st, 2009, we can say that on the international scene, a new subject of law appears, namely the European Union, if we refer to the definition provided in Art. 1 of the 1975 Convention on the Representation of States in their relations with international organizations with universal character, namely: "an association of states formed by a treaty, with its own constitution and common bodies, having a legal personality distinct from the one of Member States which constitute it"[2]. Another argument is also "Article 2 of the Convention on the Law of Treaties of 1969 that defines the international organization as an intergovernmental organization, highlighting the quality of members"[3]. In short, the following aspects result from definitions provided, with application also to the European Union:

- the members of the organization are the states;
- the organization is established following the agreement of the states, expressed by memorandum (for the European Union, the Treaty of Lisbon);
- the organization has its own institutional structure;
- the organization has its own international legal personality distinct from that of its constituent states.

Another consequence of the legal personality conferred to the European Union is that only the Union is authorized to conclude international agreements in its fields of competence. Also, the legal personality allows to the European Union to have a budget, officials and offices, it can sign contracts and receive diplomatic representatives.

Briefly, the acquisition by the Union of a legal personality:

- is the result of a necessary requirement to establish a clear legal status of the Union, internationally, in general and in Europe, in particular;
- "contributes to improving the Union perception and its capacity for action, facilitating the political and contractual activity of the Union, at bilateral

[1]"24. Declaration on the EU legal personality"
[2]Dumitra Popescu, "Public International Law. Distance learning", Titu Maiorescu University, Bucharest, 2003, p. 62.
[3]Idem.

and multilateral level, on the international stage, as well as to its presence in other international organizations;

- contributes to the visibility of the European Union and provides to Member States citizens an identity in relation to the Union;

- constitutes an indispensable element in establishing a protection system for fundamental rights at EU level;

- helps to correct failures resulting from the pillar structure"[1].

3. The Powers of the European Union

As stated above, under Statement no. 24 annexed to the Treaty, on grounds of legal personality, which the Union has acquired, it (the Union) is not authorized "in any way to legislate or act beyond the powers conferred to it by Member States by the treaties"[2].

In determining the relationship between EU law[3] and national law of Member States, including in terms of priority, it is important to realize the distinction between the powers of the Union, on one hand, and of Member States, on the other hand. In this respect, the Treaty of Lisbon establishes a clear division of powers between the European Union and its Member States.

The material nucleus is represented by articles 4 and 5[4] of the Treaty on European Union, on one hand, and Title I – "Categories and areas of competence of the Union", articles 2-6 of the Treaty on the Functioning of the European Union, on the other hand.

According to article 5 of the Treaty on European Union, "The delimitation of Union powers is governed by the conferral principle. The exercising of these powers is governed by the principles of subsidiary and proportionality"[5]. "Under the conferral principle, the Union shall act only within the powers conferred by Member States in the treaties, in order to achieve the objectives set by those

[1]Adapted from the European Parliament Report, «Rapport sur la personnalité juridique de l'Union européenne (2001/2021 (INI))», Final A5-0409/2001, conducted by the Commission on Constitutional Affairs, rapporteur Carlos Carnero González, submitted on November 21st, 2001.

[2]"The Declaration on the EU legal personality", cited above.

[3]The entry into force of the Treaty of Lisbon requires, among other things, including the initiation steps as renaming and redefining incident industries branches (the shift from traditional branches of law as the community law, the European Community law, the institutional European Community law or the Community law of Business, the European Union law, the institutional law of the European Union, namely the European Union Business Law). This development is emphasized, among other things, also by the Court of Justice of the European Union, in Press Release no. 108/09 of December 10th, 2009 on the decision in Case C-345/08 Krzysztof *Peśla c / Justizministerium Mecklenburg-Vorpommern*; in this press release, the "interpretation of **Union law** or (...) the validity of a **Union act**" are mentioned for first time.

[4]Former Art. 5 TEC.

[5]Paragraph (1).

treaties. Any power which is not conferred to the Union in the treaties belongs to the Member States"[1]. Under "the principle of subsidiary, in areas that are not under its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by Member States, either at central or at regional and local level, and because of the dimensions and effects expected, can be better achieved at Union level"[2]. In addition to these provisions, we also find those listed in Art. 4. (1) TEU, namely: "any power that is not conferred to the Union through Treaties belongs to Member States".

Besides these two principles, under which powers are shared between the European Union and Member States, the Treaty on the Functioning of the European Union dedicates five items to categories and areas of competence of the Union, by developing a genuine list of powers.

Even from the first article of the Treaty on the Functioning of the European Union, it is stated unequivocally that "this Treaty organizes the functioning of the Union and determines areas, limits and conditions for the exercise of its powers"[3].

According to article 3 of the Treaty on the functioning of the European Union, "the Union power is exclusive in the following areas: (a) customs union, (b) establishing competition rules necessary for the functioning of the internal market, (c) monetary policy for Member States whose currency is the euro, (d) conserving marine biological resources under the common fisheries policy, (e) common commercial policy, but also for "an international agreement when its conclusion is provided for by a legislative act of the Union or it is necessary to enable the Union to exercise its internal competence, or insofar as it might affect common rules or alter their scope". In all these cases, "only the Union can legislate and adopt acts with mandatory legal action, and Member States can do so only if authorized by the Union or for the implementation of Union acts"[4].

Further, the Treaty specifies the areas where the Union shall share power with the Member States, namely: (a) internal market, (b) social policy, for aspects defined in this Treaty, (c) economic, social and territorial cohesion (d) agriculture and fisheries, excluding the conservation of marine biological resources, (e) environment, (f) consumer's protection (g) transport, (h) trans-European networks (i) energy, (j) area of freedom, security and justice (k) common safety objectives in public health matters, for aspects defined in this Treaty"[5]. These provisions are added to the following: "In research, technological development and space areas,

[1]Paragraph (2).
[2]Paragraph (3).
[3]Paragraph (1).
[4]Art. 2, paragraph (1) TFEU.
[5]Art. 4, paragraph (2) TFEU.

the Union shall have competence to carry out activities, and in particular to define and implement programs and not exercising this power can have as result preventing Member States from exercising their own competence. In areas of cooperation for development and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy, and not exercising that power may have the effect of depriving Member States of the opportunity to exercise their own competence"[1]. Also, "The Union and the Member States may legislate and adopt mandatory legal acts in this area. Member States shall exercise their competence if the Union did not exercise it. Member States shall again exercise their competence if the Union decided to stop exercising it"[2].

Protocol no. 25 on the exercise of shared powers, to the unique article, contains a provision according to which "if the Union takes action in a given area, the scope of exercising the competence covers only those elements regulated by that act of the Union and therefore it does not cover the whole area".

Declaration no. 18 on the delimitation of powers completes everything described above, in that, "according to the system of powers division between the Union and the Member States, as provided in the Treaty on European Union and the Treaty on the functioning of the European Union, any power not conferred to the Union by the Treaties belongs to Member States. When treaties assign to the Union a competence shared with Member States in a given area, the Member States exercise jurisdiction if the Union has not exercised or has decided to stop exercising it. The latter situation may arise when the relevant EU institutions decide to repeal a legislative act, in particular to constantly ensure a better respect of the principles of subsidiary and proportionality. The Council may request to the Committee, at the initiative of one or more of its members (representatives of Member States) and in accordance with article 241 of the Treaty on European Union, to submit proposals for repealing a legislative act".

In addition to these provisions, comes art. 6 TFEU that, among other things, enumerates areas where the Union is competent to carry out actions to support, coordinate or supplement the actions of Member States: "(a) protect and improve human health, (b) industry, (c) culture, (d) tourism, (e) education, training, youth and sport, (f) civil protection; (g) administrative cooperation". "The Acts of the Union, legally binding, adopted on the basis of Treaties relating to these areas, shall not entail the harmonization of laws and administrative provisions of Member States. The scope and conditions for the exercise of Union powers are established by the provisions of Treaties relating to each area"[3].

[1]Art. 4, paragraphs (3) and (4) TFEU.
[2]Art. 2, paragraph (2) TFEU.
[3]Art. 2, paragraphs (5) and (6) TFEU.

EU legal personality and powers are closely related to the concept of supranationality. Why? Because, in its turn, "the supranationality of the European Union is closely related to the pooling of sovereignty and is reflected in the establishment of common institutions…"[1].

Without going into details, however, it must be noted that, unlike the provisions of EU treaties, the division of powers before the entry into force of the Treaty of Lisbon, between the Union and Member States has undergone some changes, namely: until December 1st, 2009, powers were systematized as follows: exclusive Community powers (agricultural policy, trade policy, transport policy and fisheries), shared powers (e.g.: environment, energy, social policy, etc.), and purely national powers (justice and internal affairs, foreign policy and security policy, as cooperation pillars of the European Union). Currently, as one can see, powers are differently ranked, namely: exclusive Union powers, shared powers and actions to support, coordinate or complete actions of Member States. New are also a number of areas exclusively allocated, until the Treaty of Lisbon, to Communities, and today we find them within the shared powers.

In addition, it is also important that "Member States coordinate their economic and employment work policies under the conditions of this treaty, for the defining of which the Union has jurisdiction"[2]. Also, "The Union has the competence, in accordance with provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including to progressively defining a common defense policy"[3].

The provisions in article 352[4] of the Treaty on the functioning of the European Union are also interesting; this article, as it has already been enshrined in the specialized national and international literature, includes a "passarelle clause". According to this article, "if an action by the Union should prove necessary within policies defined in the Treaties, in order to achieve one of the purposes mentioned in the treaties, and if the necessary powers in this regard are not provided in those treaties, the Council acting unanimously at the Commission proposal and after the European Parliament's approval adopts the appropriate measures. At the date on which those provisions are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously at the Commission proposal and after the European Parliament's approval"[5]. The Commission, within the procedure for monitoring the subsidiarity principle, calls the national Parliaments' attention to proposals based on this article. Measures

[1]Ion M. Anghel, "Legal personality and Powers of the European Communities / European Union", Lumina Lex Publishing House, Bucharest, 2006, p. 73.
[2]Art. 2, paragraph (3) TFEU.
[3]Art. 2, paragraph (4) TFEU.
[4]Former art. 308 TEEC.
[5]Paragraph (1).

based on article 352 TFEU "can not entail the harmonization between laws, regulations and administrative provisions of Member States where Treaties exclude such harmonization"[1]. The benefit of this article's provisions cannot be used "to achieve the objectives of foreign policy and security policy" and "any measure adopted under this article shall respect the limits"[2] set by the Treaty. The limits specified in the text mentioned are in article 40[3] of the Treaty on European Union. Thus, "the implementation of the common foreign and security policy shall not affect the application procedures and the appropriate scope of powers of institutions under the Treaties for the exercise of Union powers under Articles 3-6 of the Treaty on the Functioning of the European Union. Also, the implementation of policies listed in those articles shall not affect the application of procedures and the appropriate scope of powers of institutions under the Treaties, for the exercise of Union powers, on grounds of this Chapter[4]". To these it is added the Declaration on article 352 of the Treaty on the Functioning of the European Union: "The Conference underlines that, in accordance with the constant jurisprudence of the Court of Justice of the European Union, article 352 of the Treaty on the Functioning of the European Union, which is integrated in an institutional system based on the principle of conferred powers, cannot form the basis for the extension of Union powers beyond the general framework which is represented by all provisions of the Treaties and, in particular those provisions that define the tasks and activities of the Union".

In a careful analysis of provisions of the Treaty on European Union, as amended by the Treaty of Lisbon, we note that, although clearly defined, the powers of the Union may still be restricted, or on the contrary extended. To support this statement, we bring the following arguments:

- Art. 6[5], section (1), paragraph 2: "Provisions of the Charter[6] do not extend in any way the competences of the Union, as defined in the Treaties"; also, section (2) provides that "The Union shall accede to the European Convention on Human Rights and Fundamental Freedoms. The Union's competences, as defined in the Treaties, are not altered by this accession";

- Art. 48, section (2) TEU states that "the Government of any Member State, the European Parliament or the Commission may submit to the Council

[1]Paragraph (3).
[2]Paragraph (4).
[3]Former art. 47 TEU.
[4]Chapter 2, "Special provisions for foreign and security policy".
[5]Former article 6, TEU.
[6]It involves the Charter of Fundamental Rights, EU legal instrument, which has become legally binding upon the entry into force of the Treaty of Lisbon.

proposals for revising the treaties. These proposals[1] may concern, among others, either to increase or reduce the competences conferred to the Union, in the Treaties. These proposals shall be submitted to the European Council by the Commission, and national Parliaments shall be notified". Likewise, we also use the content of section (6), the third paragraph: "The decision referred to in the second paragraph[2] cannot extend the powers conferred to the Union, through Treaties".

4. Conclusions

The entry into force of the Treaty of Lisbon, on December 1st, 2009, is undoubtedly a step forward in achieving the European project. It was possible for such an objective to become a reality through a series of compromises made in the sense of international law, but without compromising the idea of European Union, as a subject of international law, having still a highly particular character, even if other theorists have already the most different opinions[3].

The legal personality and powers of the European Union are issues likely to trigger increased efforts from all socio-professional categories, but especially those of lawyers, objectively and necessarily involved in renaming and redefining some concepts, as well as in the knowledge, understanding, study and application of the new acquit of the new entity. The origin of such obligations is in the fundamental law of our country, namely the Romanian Constitution, republished, Title VI (the Euro-Atlantic Integration), art. 148 – Integration into the European Union:

"(1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the

[1]Ion M. Anghel, "Legal personality and Powers of the European Communities / European Union", op. cit., p. 101, states that "The specialized literature considers that the allocation of EC / EU powers is an irreversible act. We believe that this view should be expressed in less categorical terms ... ".

[2]"The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the functioning of the European Union. The European Council shall act unanimously after consulting the European Parliament and the Commission, as well as the European Central Bank in case of institutional changes in the monetary area. This decision shall enter into force only after the approval of Member States, in accordance with their respective constitutional rules".

[3]Ion M. Anghel, in the article "The European Union and the position (the quality of subject of international law) of its Member States", published in the Romanian Journal of Community Law no. 6 / 2009, p. 78, states that: "in the typology of institutions of international law, the European Union appears in its general outline, as an international organization ....".

Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators..

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act [1].

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval".

[1]Emphasis added.

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