

BOOK REVIEW

THE EUROPEAN UNION AFTER THE LISBON TREATY

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Hermann-Josef Blanke & Stelio Mangiameli (eds.), *The European Union after Lisbon. Constitutional Basis, Economic Order and External Action*, Berlin, Springer, 2012, p. xix, 582

How has the European Union changed after the enactment of the Lisbon Treaty? What are the perspectives of the European Union in the light of a federalist development? Which (new) principles govern the European Union since the entry into force of the Lisbon Treaty? Those are few of the questions that the book edited by Hermann-Josef Blanke and Stelio Mangiameli seeks to answer.

Many books and articles have been published since the signing of the Lisbon Treaty in December 2007 (and its entry into force on 1 December 2009). Among the many books published, most deal with specific aspects of the Lisbon Treaty (e.g. as concerns the external dimension of the Union; the protection of fundamental rights; the role of Member States or of national parliaments, etc.), and quite a few try to provide a general and comprehensive picture of the institutional improvements.

With the exception of few but quite significant monographs (as those by P. Craig, *The Lisbon Treaty. Law, politics, and Treaty reform*, Oxford, Oxford University Press, 2010; J.-P. Piris, *The Lisbon Treaty. A legal and political analysis*, Cambridge, Cambridge University Press, 2010; P. Bilancia, *The dynamics of the EU integration and the impact on the national constitutional law. The European Union after the Lisbon Treaties*, Milano, Giuffrè, 2012 and G. Guarino, *Ratificare Lisbona?*, Firenze, Passigli, 2008), most of the studies are the result of collective researches or the publication of conference proceedings: e.g. D. Ashiagbor, N. Countouris and I. Lianos (eds.), *The European Union after the Treaty of Lisbon*,

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Cambridge, Cambridge University Press, 2012; A. Biondi and P. Eeckhout (eds.), *EU law after Lisbon*, Oxford, Oxford University Press, 2012; S. Dosenrode (ed.), *The European Union after Lisbon. Polity, politics, policy*, Farnham, Ashgate, 2012; F. Laursen (ed.), *The EU's Lisbon Treaty. Institutional choices and implementation*, Farnham, Ashgate, 2012; M. Trybus and L. Rubini (eds.), *The Treaty of Lisbon and the future of European law and policy*, Cheltenham, Edward Elgar, 2012; M. Carbone, *National politics and European integration. From the Constitution to the Lisbon Treaty*, Cheltenham, Edward Elgar, 2010; F. Bassanini and G. Tiberi (eds.), *Le nuove istituzioni europee. Commento al Trattato di Lisbona*, Bologna, Il Mulino, 2008 (and 2010); S. Griller and J. Ziller (eds.), *The Lisbon treaty: EU constitutionalism without a constitutional treaty?*, Wien - New York, Springer, 2008.

As in most of the other collective studies, also in the reviewed book an introductory chapter providing for hints and the common thread, or leitmotiv, of the collected essays is not included. In a very short foreword the editors explain that the volume “aims to analyse the constitutional basis of the European Union and the normative orientation of the Common Foreign Security Policy (TEU) as well as the central economic and monetary provisions (TFEU) after the reform Treaty of Lisbon”. Moreover, they explain that the essays are the outcome of two conferences, organized in the preparation of this project, held in Erfurt in 2008 and in Rome in 2010.

As the book consists of 24 essays, each dealing with a different topic, this review will not attempt to provide an in-depth scrutiny of each; indeed, it will try to find out and to focus on the broad picture of the institutional architecture of the European Union that comes out.

By reading the index of the volume, the reader may think that the volume is not a “European Commentary on the Treaty of Lisbon”, as it was meant by the editors. However, after a careful reading, it emerges that, although it is not a law commentary in the traditional meaning, that is, a treatise analyzing article by article a legal text (as the commentary that the two editors are preparing: H.-J. Blanke and S. Mangiameli, eds., *The Treaty on European Union. A Commentary*, Berlin, Springer, forthcoming in 2013), it is not even a simple collection of conference proceedings. Indeed, the essays, written by researchers from eight Member

States, provide an impressive fresco of the institutional and constitutional developments brought by the Lisbon Treaty.

The book is divided into three parts. The first, which takes more than half of the book, is devoted to the study of the constitutional basis; the second to the Economic and Monetary Union, and the third to the Common foreign and security policy (CFSP).

This review will focus only on certain aspects dealt by some essays. In particular, it will concentrate on those essays that provide more specific hints as to the progress and future developments of the European integration.

The essays may be divided, of course only for descriptive purposes, in four different sets. The first set concerns the general political and institutional framework of the Lisbon Treaty and the future institutional developments; the second is about the idea of European Constitution and its principles and values; the third regards the economic and monetary constitution of the EU (part II of the volume); and the last regards the CFSP (part III of the volume).

The first set of essays pays attention to the political and institutional framework that led to the approval of the Lisbon Treaty and to the future developments. A general fish-eye overview of the new institutional framework is provided by Stelio Mangiameli in the essay on “The Institutional Design of the European Union After Lisbon”, which is significantly concluded with a paragraph posing the question on who actually heads the Union. The widespread idea of the lack of democracy and the incorporation of democratic principles in the Lisbon Treaty is scrutinized in the essay of Jiří Přibáň on “Desiring a Democratic European Polity: The European Union Between the Constitutional Failure and the Lisbon Treaty”. Whilst the role of national parliaments – in an historical perspective and taking account especially of the new links between European and national parliaments and of the horizontal cooperation between national parliaments – is examined by Rudolf Hrbek in the essay on “The Role of National Parliaments in the EU”. Then, three extremely important issues are examined by Albrecht Weber (“The Distribution of Competences Between the Union and the Member States”), Luis Jimena Quesada (“The Revision Procedures of the Treaty”) and Anna Wyrozumska (“Withdrawal from the Union”).

A second set of essays concentrates on the idea of the Treaties as a constitution, which provides for some basic principles and values.

First of all, the idea of a “European Constitution” is discussed broadly in the essay of Antonio D’Atena on “The European Constitution’s Prospects”. After stressing that the existence of a “constitution” may be affirmed (in a substantive sense) even if some formalistic characteristics are missing, the author points out that, also in the European Treaties, certain rules resembling a state constitution, and providing for some basic organization rules, may be found. Even if it may not be compared to that of federal states, a European multilevel constitutionalism may be found, although it encounters the obstacle of the continuing sovereignty of the Member States (which have maintained areas of sovereignty). This prevents national and European constitutional levels to be placed within a single hierarchical structure.

The concept of the Union legal personality and especially its external profile are discussed in the essay by Daniel Thürer and Pierre-Yves Marro on “The Union’s Legal Personality Ideas and Questions Lying Behind the Concept”, which focuses on the phenomenon of the pooling of sovereignty.

As concerns constitutional rights, principles and values, Hermann-Josef Blanke examines, in the long and detailed essay on “The Protection of Fundamental Rights in Europe”, the evolution and the problems of the multilevel constitutional governance, characterized by multiple and overlapping layers of regional and national governance: the relationship between national constitutional courts and the European Court of Human Rights, within the European judicial dialogue, and their cooperation, are examined taking account of the different national case law. Francisco Balaguer Callejón, in his essay on “The Relations Between the EU Court of Justice and the Constitutional Courts of the Member States”, after stressing how Member States sovereignty has been reinforced by supranational institutions (as governments may exercise competences that previously could not be exercised because of limitations imposed by the democratic rule of law in the domestic sphere) and the false image of “constitution” as opposed to “integration”, examines the break of the dividing line between internal constitutional systems and the

EU legal order (especially by the creation of a direct link between European institutions and citizens), caused by the Lisbon Treaty and the consequences on the dialogue between national constitutional courts and the European Court of Justice.

The consequences of the European citizenship provisions are further examined by Margot Horspool in her essay on “The Concept of Citizenship in the European Union”. After describing the evolution in EU law of that concept, the essay focuses on the introduction of the “citizenship initiative” (article 24.1 TEU), which, although often neglected by commentators, is indeed an important tool, whose effect will depend on how it will be interpreted and operated in practice.

A special attention is devoted to fundamental rights, with specific regards to the rule of law (in the essay of Jens Meyer-Ladewig on “The Rule of Law in the Case Law of the Strasbourg Court”), their drafting in the EU Charter (in the essay of Eduardo Gianfrancesco on “The Charter of Fundamental Rights of the Union as a Source of Law”) and their protection in Europe (in the cited essay of Hermann-Josef Blanke on the protection of fundamental rights). Although the justification for limiting the research of the rule of law only to the Strasbourg Court is not so convincing, it is clearly explained how this principle underlines the whole Convention. The drafting and role of the EU charter is, indeed, clearly explained, as well as the important role undertaken by European courts (including national judges applying European law): although a clear fundamental decision is missing, the author shows that the current system is the only possible one, and “probably not such a bad one”.

An important principle of European legal integration is scrutinized by Stelio Mangiameli in the essay “The Union’s Homogeneity and Its Common values in the Treaty on European Union”. Homogeneity, is regarded as a fundamental principle (more than a value) of the Union, for many different reasons: for example, it gives to the Treaties “a certain level of rigidity”, by committing Member States not to affect the same Union identity even in the revision process; and it affects the membership of new Member States. Although certain dangers may arise from the unification and homogenisation process, its establishment and judicialization (through the amendments to articles 7 and 46 TEU) are an important step in the trend towards federalisation, as it

shows a development from a “federal coercion” model to a “federal execution” model.

Although the success of Europe cannot be measured on the level of success of the monetary union and of the common currency, nor the failure of the euro may constitute a failure of the European integration project, it may not be doubted that an extremely important feature of the development of European integration is provided by the economic and monetary union and by the common economic policies. The second part of the book is devoted to the economic and monetary constitution of the Union: the three essays of this part discuss the question, the first, from a general point of view; the second, specifically taking account on the economic and monetary union; and the third concentrating on the issue of state aids.

The essay of Hermann-Josef Blanke on “The Economic Constitution of the European Union” provides an important sketch of the main developments, that can be summarized along three main lines. The first, is the change of the competitiveness paradigm of the Union after the Treaty of Lisbon (as the competition principle, though still mentioned, is somewhat blurred); the second, is the change of the concept of the internal market (which takes the place also of the concept of the common market); the third is the establishment of a triad of economic fundamental rights of the Union in the European Union Charter of fundamental rights; the fourth, is given by the changes in the Economic and Monetary Union mechanisms. Although the essay is not updated to the most recent changes (as the adoption of the so-called six-pack of November 2011 and the Fiscal Stability Treaty of 2012) it clearly underlines the strength of European instruments, such as the stability and growth pact, the European stability mechanism – ESM and the coordination and surveillance of the budgetary discipline and the fact that, in the minds of the Germans, the role of the European Union in global politics has replaced its role as a simple economic union.

Ulrich Häde, in the essay on “The Treaty of Lisbon and the Economic and Monetary Union” describes the institution and evolution of the economic union, concluding that the Lisbon Treaty preserved much continuity.

The second part of the book is concluded by the essay of Paul Adriaanse on “Public and Private Enforcement of EU State Aid

Law”, which describes the evolution of such a policy, without, however, explaining how it has been affected by the Lisbon Treaty.

The third part of the book, devoted to the study of the Common Foreign and Security Policy (CFSP), includes seven essays, which describe the functioning of this policy: Piergiorgio Cherubini on “The Role and the Interactions of the European Council and the Council in the Common Foreign and Security Policy”; Eileen Denza on “The Role of the High Representative of the Union for Foreign Affairs and Security Policy”; Ramses A. Wessel on “Initiative and Voting in Common Foreign and Security Policy: The New Lisbon Rules in Historical Perspective”; Daniel Thym on “The Intergovernmental Branch of the EU’s Foreign Affairs Executive”; Aurel Sari on “Decisions on Operational Action and Union Positions: Back to the Future?”; Sebastian Graf von Kielmansegg on “Permanent Structured Cooperation: A New Mechanism of Flexibility”; and Günter Sautter on “The Financing of Common Foreign and Security Policy – on Continuity and Change”.

The picture emerging from the book resembles an impressionistic painting, where an exact and precise drawing is not given, but the observer gets the colours and emotions that the artist wants to inject to others. The essays provide many important hints on the developments brought by the Lisbon Treaty; however, the trends and prospects may be imagined and reconstructed by the reader, as a complete general picture is not provided. The most significant developments, like those related to the emergence of an European Constitution, the “constitutionalization” of principles and rights, the development of federative principles, like the homogeneity principle, the increasing loss of economic, monetary and budgetary sovereignty by the Member States, are clearly – but separately – described. However, it is left to the reader, or to the researchers that will profit a lot from reading this interesting book, to find out the perspectives and possible developments of the European Union. But, of course, this is the shortcoming – and, at the same time, the advantage and benefit – of most collective books.