

# Decision-Making under Pillars Two and Three

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## ABSTRACT

**The paper focuses on the decision-making process in the European Union since approval of the Treaty of Maastricht. Special consideration is dedicated to pillars two and three. The second pillar is connected with Common Foreign and Security Policy, while the third pillar contributes with Justice and Home Affairs. The first part of this paper introduces the major tools which are commonly used and describes how pillars system works. The difference between intergovernmentalism and supranationalism is also addressed. In the second part the paper deals with some important changes under the Treaty of Nice and Treaty of Lisbon. The Treaty of Lisbon will cancel the pillars system, being replaced by one legal personality for the European Union. While the former treaties were partly based on intergovernmentalism, the Treaty of Lisbon is mostly oriented on supranationalism.**

*Key words: Second Pillar, Third Pillar, European Union, Treaty of Lisbon, supranationalism, intergovernmentalism*

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## 1. Introduction

The Treaty of Maastricht has meant a shift towards the supranational character of the Community. But together with the separation of new agenda of Common Foreign and Security Policy (CFSP) and Justice and Home Affairs

(JHA), which are forged on the structure of Schengen Agreement, the inter-governmental principles of decision-making in this area have been retained.<sup>1</sup>

The three pillars of Maastricht Treaty rose from the texts, which had established the European Community. The main differences are in the level of supranationality, which is measured by the mechanism of decision-making. In the first pillar the competitions of legislation initiator were left by the supranational European Commission. Decision-making in the Council of Ministers is typically made by a majority of votes.<sup>2</sup> This agenda includes common trade, agriculture and transport policy, as well as common currency, the EU citizenship etc.<sup>3</sup>

The second pillar includes the newly defined Common Foreign and Security Policy (CFSP). The main reason for this is to focus on the problems of security, defence, human rights and foreign policy.<sup>4</sup> In these cases a consensus is needed for a final decision. The member states have become the main initiators of new activities, together with the Commission (Horčíčka, Kovár, 2005, p. 121). The same situation is seen in connection with the third pillar, which focuses on the Justice and Home Affairs.

## **2. Instruments of the Pillars Two and Three**

After the Treaty of Maastricht had been approved, the main interest focused on the second and third pillars. These fields defined the new aims of the Community.<sup>5</sup> According to the Treaty, the aims were limited by the inter-governmental forms of decision-making. Nevertheless it moved the Community towards the development of other forms of integration.<sup>6</sup>

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<sup>1</sup> The Treaty of Maastricht was signed by Germany, France, Italy, Spain, the United Kingdom, Portugal, Greece, Belgium, Luxembourg, the Netherlands, Denmark and Ireland (Kapteyn – Verloren van Themaat, 1998, p. 38).

<sup>2</sup> To the first pillar belongs for example Customs union, Single market, Common Agriculture Policy, Social Policy etc. Further see [http://europa.eu/scadplus/treaties/maastricht\\_en.htm](http://europa.eu/scadplus/treaties/maastricht_en.htm) (13. 4. 2009).

<sup>3</sup> For more see [http://europa.eu/scadplus/treaties/maastricht\\_en.htm](http://europa.eu/scadplus/treaties/maastricht_en.htm) (13. 4. 2009).

<sup>4</sup> The other reason was to adopt system of intergovernmentalism in this area (Hartley, 1998, p. 24).

<sup>5</sup> Due to it the system was divided on the three pillars. Sometimes it is also called the Maastricht temple (Fiala – Pitrová, 2003, p. 128 – 129).

<sup>6</sup> For more information about intergovernmentalism see the next chapter.

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Joint actions and common position were defined as the main tools for politics realization in both pillars. In many cases they were approved by the unanimous decision of member states in cooperation with the Commission and the European Parliament (Krejčí, 2001, p. 217). For the CFSP, the European Council was set as the main coordinator and the Council of Ministers unanimously approved common positions achieved. A draft could be suggested by each member state or by Commission, as well as the European Parliament. The Chairman of the Council had to consult the European Parliament on all aspects and alternatives for CFSP and then inform Commission of the results.<sup>7</sup>

The CFSP can be divided into two parts. The first focuses on foreign policy, which advances the European Political Cooperation<sup>8</sup> and the second involves defence matters (Craig, De Búrca, 1999, p. 169). Defence issues made the most important contribution to integration. The Treaty of Maastricht clearly states that the European Union wants to deepen relations with the Western European Union and cooperate through it within Nato.<sup>9</sup> The Western European Union was also asked to work on the actions and decisions of the European Union in the field of defence (Fiala, Pitrová, 2003, p. 550).

The third pillar of the European Union focuses on the Justice and Home Affairs. This was marked as a sector covering the common interests of the member states in asylum policy, immigrant policy, the fight against organized crime and cooperation in justice and customs area (Craig – De Búrca, 2007, p. 18). The development of third pillar was a reaction to rising crime after the Schengen system was set up in 1985.<sup>10</sup> The main tool of the JHA was the founding of the common police office EUROPOL.<sup>11</sup>

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<sup>7</sup> See further [http://www.mzv.cz/jnp/cz/zahranicni\\_vztahy/evropska\\_unie/spolecna\\_zahranicni\\_a\\_bezpecnostni/spolecna\\_zahranicni\\_a\\_bezpecnostni\\_1.html](http://www.mzv.cz/jnp/cz/zahranicni_vztahy/evropska_unie/spolecna_zahranicni_a_bezpecnostni/spolecna_zahranicni_a_bezpecnostni_1.html) (15. 4. 2009).

<sup>8</sup> European Political Cooperation was set up in 1970 as a precursor of the Common Foreign and Security Policy (Hartley, 1998, p. 24).

<sup>9</sup> NATO-EU cooperation is also progressing at a deeper level. One reason is, that 21 states are members of both organizations. See further: [http://www.nato.int/cps/en/natolive/topics\\_49217.htm#evolution](http://www.nato.int/cps/en/natolive/topics_49217.htm#evolution) (16. 4. 2009).

<sup>10</sup> The Schengen Agreement eliminated internal borders between the signatory states. For more see <http://www.euroskop.cz/290/sekce/r-s/> (18. 4. 2009).

<sup>11</sup> <http://www.europol.europa.eu/index.asp?page=facts> (18. 4. 2009).

### **3. Intergovernmentalism and Supranationalism**

Decision-making on the base of intergovernmentalism is typical of the second and third pillars. In comparison with supranationalism, used for the first pillar, intergovernmentalism is mostly based on a unanimous method of voting. The main reason for this is to protect the national interest of the member states. This system of voting is therefore mainly used for the areas of foreign policy, security policy or law. The same system is also used in the European Union (Nugent, 2006, p.565).

On the other hand, supranationalism features the most effective system of voting. In this case it is sufficient to find a majority to approve a draft. Since the Treaty of Maastricht came into force in 1993, everything except the CFSP and JHA has been approved using this model (Nugent, 2006, p. 558).

The difference between supranationalism and intergovernmentalism can be seen within the European institutions. While the European Commission or European Parliament are part of the supranationalism system, the European Council functions through intergovernmentalism.<sup>12</sup>

### **4. Decision-making under Pillar Two**

As stated above, the second pillar includes the Common Foreign and Security Policy. This area is one of the most controversial in the European Union. Differences in opinions between the member states on the one side and the requirements for common positions led to the final decision to set up a specific pillar. The first step was made in 1970 with the European Political Cooperation, but the real leap was made with the Treaty of Maastricht.<sup>13</sup>

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<sup>12</sup> It's also depends on the subject being addressed and the specific section it falls under.

<sup>13</sup> To the list of the all important treaties see [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm) (20. 4. 2009).

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The main events influencing improvements in the CFSP were the wars in the Persian Gulf and in former Yugoslavia.<sup>14</sup> During the 1990s the member states and the European institutions started consultations on the need for reforms in the area of the CFSP. The result of these consultations was part of the Amsterdam Treaty.<sup>15</sup> This treaty created a new office of High Representative for the Common Foreign and Security Policy which Javier Solana\* held from 1999.<sup>16</sup> This change has helped to improve the system of decision-making in the second pillar. It has brought more flexibility to decision-making on foreign and security affairs questions. The European Union can be active in humanitarian operations, as well as in peacekeeping operations (Fiala, Pitrová, 2003, p. 564). Cooperation in field of common troop capacities was also strengthened.<sup>17</sup>

The main aim of the CFSP is to cover the common values, interests and security of the European Union and the member states. This should all be ensured by the consultations and cooperation of diplomatic offices of member states and the European institutions. The special role plays two main tools – joint actions and common positions (Nutall, 2000, p. 257 – 264). The main difference between them is that the common positions define the positions of the EU on foreign policy and are obligatory for all member states. The joint actions are on the other hand tools enabling the EU's active participation, like sanctions on non-members countries or observers during elections (Horčíčka, Kovár, 2005, p. 126 – 127). In the Treaty of Maastricht the European Council was appointed as the main CFSP coordinator. The European Council must, according of the Treaty, cooperate with the state holding the rotating presidency.<sup>18</sup> On the other hand the Treaty also made the Council of Ministers<sup>19</sup> the

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**14** The war in Persian Gulf started in 1990 due to an unexpected occupation of Kuwait by the Iraqi troops. The war in the former Yugoslavia started then in 1991 after the federation had started separating a year ago (Veselý, 2007, p. 543 – 549).

**15** The Amsterdam Treaty was signed in October 1997 and entered into force on 1 May 1999. See further [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm) (22. 4. 2009).

**16** For specific information about Mr Javier Solana and Office of High Representative for the Common Foreign and Security Policy see <http://ue.eu.int/App/solana/default.aspx?lang=EN&cmsid=246> (22. 4. 2009).

**17** The discussion whether to establish a European army has not yet been resolved.

**18** The state holding the rotating presidency formally presides over the EU for 6 months. The presidency at present, in April 2009, is held by the Czech Republic. Slovenia held it from January to June 2008.

**19** The Council of Ministers is the principal decision-making institution. It has legislative codecision competence with the European Parliament. There are different Councils such as ministers of foreign affairs (GAERC) or ministers of finance (ECOFIN) etc. Between sessions of the Council, there is working COREPER which is represented by the ambassadors to the EU. Under qualified majority voting each state has different voting weight. The largest are

institution responsible for decision-making in this area, via unanimously approval for joint actions and common positions (Craig, De Búrca, 1999, p. 99).

From the point of view of many analyses, the main focus of the second pillar was concentrated on the using of tools and system of decision-making. The tools can be generally divided according to their effects. The first concentrated on the systematic cooperation – common positions; and the second on the pursuit of the CFSP – joint actions (Fiala, Pitrová, 2003, p. 552 – 553).

The role of the European Parliament must also be remembered. This institution should have control, if all decisions were really applied in practice. The main rule was that the President of the Council had to consult the European Parliament on all aspects of the CFSP. The European Parliament could also give the Council recommendations or question it (Hartley, 1998, p. 34).

The experience with the second pillar, according to the Treaty of Maastricht, showed that there were many weaknesses in the CFSP. This led the EU member states to reform the second pillar. The result of this was the Amsterdam Treaty, which was approved in 1999.<sup>20</sup> This new treaty retained the system of pillars which was launched in the Treaty of Maastricht while it made the CFSP more integrated and more effective (Peterson, Sjursen, 1998, p. 10).

The Amsterdam Treaty, of course, more specified the role of common positions and joint actions. The common position was defined as concrete EU position to the thematic or geographic matters. The joint action was then to describe the steps which should direct to the solutions of specific situations, where the action of EU is necessary (Krejčí, 2001, p. 222). The Amsterdam Treaty also defined a new tool – common strategy. The common strategy was supposed to activate EU in the matters where all the member states had important common interests. The common strategies are approved by the European Council on the base of a Council of EU recommendation. The Council of the EU then implements the strategy through common positions and joint actions (Craig, De Búrca, 1999, p. 106).

The decision-making mechanism in the second pillar was also reformed on the basis of the Amsterdam Treaty. A special form of voting was accepted in addition to the common strategy. Its working name is constructive absence. In other words it means that the member states received the possibility to disagree

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Germany, France, Italy and UK with 29 votes. The smallest is Malta with 3 votes. Slovenia has 4 votes and the Czech Republic 12.

<sup>20</sup> For the Treaty see <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (29. 4. 2009).

with concrete activity in CFSP, while not blocking the decision by veto (Bretherton, Vogler, 1999, p. 39). The Treaty states that a Council member can abstain from voting according to Article 23 of Amsterdam Treaty.<sup>21</sup> If a state exercises the right to abstain and the decision is approved, all member states must accept it as a decision of the EU (Fiala, Pitrová, 2003, p. 564 – 565).

The use of the constructive absence is predicated on application of Article 23 of Amsterdam Treaty by a limited number of member states. According to the Treaty this article can only be used by states, whose total vote in Council is less the one-third of all votes of member states in the Council.<sup>22</sup> If more states decide to use the constructive absence and this limit will be exceeded, then the decision is not passed.<sup>23</sup>

Furthermore, in the Amsterdam Treaty the unanimous voting system was retained for the CFSP. Article 23 of Amsterdam Treaty states that it is possible to use the qualified majority vote when the Council approves a joint action, common positions or makes any other decision based on the common strategy (Smith, 2008, p. 44). The use of qualified majority is not common and automatic, since the Treaty also states that this process can be stopped at any point.<sup>24</sup> If a member of the Council declares that due to national interests it will vote against, the voting is postponed. The final decision can be then reached by the European Council (Fiala, Pitrová, 2003, p. 565).

The important institutional changes brought in by the Amsterdam Treaty included constituting the office of High Representative of Common Foreign and Security Policy.<sup>25</sup> The High Representative cooperates with the rotating presidency. He leads negotiations with non-member countries, if empowered by the Presidency.<sup>26</sup> But from the institutional point of view the European Council is responsible for the CFSP. The Council of Ministers is therefore responsible for unity, cohesion and operation (Fiala, Pitrová, 2003, p. 568).

When the Amsterdam Treaty was in preparation, the main questions raised concerned relations between the first and second pillars. The unclear position of the European Commission was the main issue. On one hand, the

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**21** See further <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0135040040> (3. 5. 2009).

**22** See further <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (5. 5. 2009).

**23** See *ibid.*

**24** See *ibid.*

**25** This position is sometimes referred to as Monsieur PECS (from the French original: Politique Étrangère et de Sécurité Commune).

**26** See further <http://www.eu2009.cz/en/eu-policies/general-affairs-and-external-relations/general-affairs-and-external-relations-595/> (9. 5. 2009).

Commission is responsible for the CFSP in cooperation with the Council; on the other, it has no tools to influence policy (Horčíčka, Kovár, 2005, p. 127). The only noticeable change was the institutionalization of the office of High Representative.

In the Amsterdam Treaty there was also a focus on the voting mechanism and decision-making. The most important change has been the institution of constructive absence mechanism. The Amsterdam Treaty has also reached the possibility of voting by qualified majority in area of CFSP. But before using this rule the European Council has to find a consensus. The joint actions and common positions are going out of the common strategies, which must be approved on the base of consensus.<sup>27</sup>

It also cannot be decided according to qualified majority, if a member state's considers its national interests are threatened (Smith, 2008, p. 44).

## **5. Decision-making under Pillar Three**

The issues of Justice and Home Affairs belong to newer problematic of European integration. The main area was made via the Treaty of Maastricht, where the freedom of movement has been guaranteed.<sup>28</sup> Before that we could observe two lines of development. The first one was focused on intergovernmental cooperation of member states Ministers of Interior and Ministers of Justice under the working group which was called TREVI.<sup>29</sup> The second one was made by the activity of narrow group of member states which decide to go on in integration of free movement and signed the Schengen Agreements in 1985.<sup>30</sup> This Treaty created an area without internal borders between the signatory states (Kapteyn, Verloren van Themaat, 1998, p. 697).

The development of both lines was in parallel. In both cases one could speak of intergovernmental cooperation. When the Treaty of Maastricht was signed,

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<sup>27</sup> For further information see above.

<sup>28</sup> See further <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> (14. 5. 2009).

<sup>29</sup> TREVI means (Terrorisme, Radicalisme, Extremisme, Violence internationale).

<sup>30</sup> The Treaty was signed by Germany, France, Belgium, the Netherlands and Luxembourg. Today 22 member states, Norway, Switzerland, Iceland and the microstates participate on this Agreement.



both systems were institutionalized by the third pillar (Fiala, Pitrová, 2003, p. 608), but one still could not talk of a unified system. The point of intersection was set up after the Amsterdam Treaty was created. Since this time both lines have been connected and the Schengen Agreements have become part of the EU Treaties (Steverson, 2007, p. 79).

The Treaty of Maastricht clearly defined the area of common interests, which was the part of third pillar. It chiefly addresses the problems of asylum policy, external borders and immigration policy, fighting against drugs dealers, custom cooperation or cooperation of police against the terrorism and organized crime (Hartley, 1998, p. 26).

Decision-making in the third pillar starts with the proposal of an initiative to the Council. According to the Treaty of Maastricht, the draft can be prepared by member states or by the European Commission (Craig, De Búrca, 2007, p. 126), but the European Commission has the right to reject initiatives. In the areas of court cooperation, customs cooperation and police cooperation the member states are only entitled to propose a draft (Fiala, Pitrová, 2003, p. 609). The Council acquired the power to adopt common positions, common procedure and then propose the final version of agreements (Craig, De Búrca, 1999, p. 112 – 113). The common position was the first tool to be created to support cooperation rulings to achieve EU aims. The common position should have been advocated by the member states in the international organizations. Before that it had to be unanimously approved by the Council (Hartley, 1998, p. 40).

The common procedure which was not clearly defined was also adopted unanimously but the Council could opt to use a qualified majority system (Hartley, 1998, p. 41). The measures of effecting of common procedure were approved by qualified majority, in other words by the majority of two-thirds member states. The Treaty of Maastricht also set up the coordinator committee which consisted of higher officers (Horčíčka, Kovár, 2005, p. 127). The main reason of this step was the requirement to prepare statements to the Council. The President of the Council has to regularly consult the Parliament on third pillar issues. The Parliament can also interpellate the Council, as well as offer recommendations.<sup>31</sup>

Because of the intergovernmental system of third pillar, the Treaty on EU constitutes a major legislative act that regulates the process of responsibility of member states for law and order (Fiala, Pitrová, 2003, p. 615). The third pillar

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<sup>31</sup> See further: <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&pageRank=3&langure=EN> (18. 5. 2009).

should also not be a barrier to cooperation on the bilateral or multilateral level.<sup>32</sup>

Significant attention was also paid to the principles of democratic control. This was more important in the third pillar than in the first and second pillar. The reason this was so important was the issue of processing the personal data of citizens. In this case the European Parliament was appointed to check on the Council and the Commission. Both institutions were also required to notify the Parliament in relation to third pillar matters.<sup>33</sup> Part of this agenda also came under auspices of the European Court of Justice in Luxembourg.<sup>34</sup>

The area of Justice and Home Affairs was the most important part of all changes in Amsterdam Treaty. The reform which the Treaty brought better categorized, the agenda of third pillar and a part of this agenda shifted to the first pillar.<sup>35</sup> For this change the transition period of five years was set and the agenda was renamed as a Police and Judicial Cooperation in Criminal Matters (PJCC). Under the third pillar remained only area of Judicial and Police cooperation (Archer, 2008, p. 54). The Amsterdam Treaty revised the tools which had been used before. The Council can draw up common positions, general decisions, and decisions or prepare a number of other documents. The innovation came with general decisions and decisions.<sup>36</sup>

The general decisions are defined in the Treaty as a specific act which is approved for the coming the law and acts of the member states together. According to the Treaty they do not have primary influence and they are obligatory only in results which should be achieved. But it does not matter which tools are used. This falls within in the remit of the member states (Fiala, Pitrová, 2003, p. 621). The decisions, on the other hand, are approved for any purpose that does not contravene the principles of the Treaty. The decisions are obligatory and do not have direct effect.<sup>37</sup>

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**32** It means that the member states can cooperate in specific way together in accordance with EU Law.

**33** For the further information about the relation of European Parliament and other institutions see <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&pageRank=9&language=EN> (20. 5. 2009).

**34** For further information see <http://curia.europa.eu/en/instit/txtdocfr/index.htm> (21. 5. 2009).

**35** The problematic of visa system, asylum policy and immigration policy were shifted from the third pillar to the first.

**36** Further see <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (21. 5. 2009).

**37** For the difference between decision and general decision see above.

The general decisions and decisions should be approved unanimously in the Council. The initiator may be the Commission or a member state. The measures which are necessary to take according to the decision on the level of EU are approved by qualified majority (Fiala, Pitrová, 2003, p. 622). The Amsterdam Treaty also introduced changes in the institutional scheme of the system. The Coordinate committee was kept, as well as the influence of the European Commission. On the other hand, the European Parliament was more involved in the process of legislation approving.<sup>38</sup> The right of Parliament to interpellation and discussion with the Council is still valid.<sup>39</sup>

The European Court of Justice in Luxembourg gained significant influence, the right to decide in preliminary questions on the grounds of general decisions and decisions. The use of this procedure must be approved by the member states in advance (Krejčí, 2001, p. 222). The general decision is considered as a great achievement of the Amsterdam Treaty. It gives all member states the opportunity to influence the implementation of European legislation. The same positive view is seen also in context of approving declarations. The Council can set a term within which the ratification should be done. But if there is no date, then the declaration is valid when it is approved at least by the half of the member states (Fiala, Pitrová, 2003, p. 629).

## **6. Decision-making according to the Treaty of Nice**

The Treaty of Nice<sup>40</sup> also introduced a number of changes.<sup>41</sup> The main purpose of this Treaty, soon after the Amsterdam Treaty, was to make membership possible for countries from central and eastern Europe.<sup>42</sup> This required amendments in the mechanism of EU decision-making.

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**38** For example the European Parliament has cooperated on the approving of the general decisions, decisions or just takes the consultation.

**39** See further: <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&>

**40** For more information about the Treaty of Nice see [http://ec.europa.eu/dgs/secretariat\\_general/](http://ec.europa.eu/dgs/secretariat_general/)

**41** The Treaty of Nice was signed in February 2001 and came into force in February 2003.

**42** On 1 May 2004 the largest ever enlargement of the European Union took place. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia became the members of the EU. Two and half years later, on 1 January 2007, also Bulgaria and Romania entered to the EU.

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The first important change was that the agenda of the defunct European Coal and Steel Community was delegated to the European Community (Fiala, Pitrová, 2003, p. 163). It also changed the decision-making system. It was clear, that the EU with so many members had to be made more effective. This led to the introduction of votes by qualified majority, instead of unanimous majority (Archer, 2008, p. 36).

The Treaty introduced the principle of the double majority of member states and population. This means that the approval of a draft required the votes of 55% of members of the Council of Ministers, representing 62% of EU citizens (Chryssouchoou et al., 2003, p. 107). Furthermore, the Treaty raised the number of the European Parliament members to 732<sup>43</sup> and set the number of votes in the European Parliament and Council of Ministers.<sup>44</sup>

## **7. Decision-making according to the Treaty of Lisbon**

The new reform treaty, the Treaty of Lisbon<sup>45</sup>, whose ratification has now been completed<sup>46</sup>, adjusts the former European Constitution, which was rejected by referendum in France and the Netherlands.<sup>47</sup> It comes from the two previous treaties, from the Treaty on EU (Maastricht Treaty) and the Treaty establishing the European Economic Community (Treaty of Rome).<sup>48</sup>

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**43** For the distribution of the votes between the states see: <http://www.europarl.europa.eu/members/public/geoSearch.do?language=EN> (24. 5. 2009).

**44** See further <http://www.consilium.europa.eu/showPage.aspx?id=242&lang=EN> (25. 5. 2009).

**45** For the whole reading of the Treaty see [http://www.euroskop.cz/gallery/2/737-ls\\_pbtisk.pdf](http://www.euroskop.cz/gallery/2/737-ls_pbtisk.pdf) (26. 5. 2009).

**46** The Czech Senate ratified the Treaty of Lisbon on 6 May 2009, but the ratification was completely finished on 3rd November 2009, when Czech President Václav Klaus signed it. Before that he had asked for other conditions, connected with post-war Beneš's Decrees, which were law framework for displacement of Non-Slavic citizens from Czechoslovakia. Also Czech Senators had handed a complaint about the Lisbon Treaty to Constitutional Court. Irish voters approved the Treaty in Referendum, held on 2 October 2009. One week later also Polish President Lech Kačzynski signed the Treaty.

**47** For the results of referendums see <http://news.bbc.co.uk/1/hi/world/europe/3954327.stm> (26. 5. 2009).

**48** See <http://www.euroskop.cz/297/sekce/vyjednavani-a-obsah/> (26. 5. 2009).

After the rejection of the EU Constitution it took two years Europe to decide how to proceed. The German Presidency and Chancellor Merkel opened the theme of European Union future during its presidency in the first half of 2007.<sup>49</sup> It was also one of the priorities of the German Presidency. The first step came with the Berlin Declaration, which was signed on the 50th anniversary of the establishment of the European Community.<sup>50</sup>

The main difference between the Constitutional Draft and the Lisbon Treaty is that the Constitution was intended to replace all other treaties. The Lisbon Treaty only adds to and amends the previous treaties.

The base of the document is the former Constitution. The present treaty is based on the four principles. The first is about more transparency and democratic Europe. It gives more power to the European Parliament, which is considered to be a supranational organ, and to national parliaments, which should have more power in legislative processes of EU institutions.

For the European Parliament, which is the only elected institution, it means that its position will be more similar to the Council. For the national parliaments it then means that they will only have control over whether the European Parliament makes decisions in fields which are effective for all of Europe.<sup>51</sup>

The second principle deals with a more effective Europe. It simplifies the decision-making mechanisms with the qualified majority voting spread into more areas. From 2014 the qualified majority vote will apply according to the double majority principle of member states and population. Proposal approval will require a majority of 55% member states, representing 65% of EU inhabitants. There will be also more areas in which qualified majority voting is used.<sup>52</sup>

The Treaty also introduces the position of President of the European Council, to be elected for a two-and-a-half year term. It also states that there should be a direct connection between the results of the elections to the European Parliament and the appointment of the President of the European Commission. From 2014, the number of European Commissioners was planned to be set at two-thirds of EU members, where the European Council could unanimously

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**49** For further information about German Presidency see <http://www.eu2007.de/de/> (30. 5. 2009).

**50** The Declaration was signed on 25 March 2007, exact date when the Treaties of Rome were signed in 1957. The Berlin Declaration proclaimed to rebuild the European Union till the elections to European Parliament in June 2009. Further see: [http://www.eu2007.de/de/News/Press\\_Releases/June/0627AABilanz.html](http://www.eu2007.de/de/News/Press_Releases/June/0627AABilanz.html) (30. 5. 2009).

**51** Further see [http://europa.eu/lisbon\\_treaty/glance/index\\_cs.htm](http://europa.eu/lisbon_treaty/glance/index_cs.htm) (30. 5. 2009).

**52** See *ibid.*

decide to change this number. Following the Irish referendum, however, the Council decided in December 2008 to retain one Commissioner for one state.<sup>53</sup>

The third principle is focused on the Europe as an area of freedom, solidarity and prosperity. Its main goal is to find the new mechanisms to make Europe the area of democracy. The most important part of this is Charter of Fundamental Rights, which is part of this Treaty.<sup>54</sup> The Treaty also strengthens the four basic freedoms: freedom of movement for people, goods, services, and capital. Of course, it also guarantees the economic, social and political rights of the people.<sup>55</sup>

The last principle is aimed at making Europe a global player. The High Representative for Foreign Policy becomes the vice-chairman of the European Commission. The European Union also receives the legal personality which makes it strong in a global policy.<sup>56</sup>

The other very important part of the Treaty is connected with the pillar system. In fact at present time only the first pillar has legal personality. When the Lisbon Treaty comes into power, all three pillars will be united under the one legal personality, i.e. the European Union.<sup>57</sup>

Formally some areas of policy will be also united. The best examples are the areas of the free movement of people, visa, asylum and immigration policy which are today under the first pillar, and justice and police cooperation in criminal law which is today under the third pillar. This change also entails the spread of system of qualified majority voting and a stronger position for the European Parliament. This agenda will be newly named the Area of Freedom, Security and Rights. The cancellation of the pillar structure means that unanimous voting will only be used in exceptional cases.<sup>58</sup>

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<sup>53</sup> Further see <http://euobserver.com/?aid=27265> (21. 10. 2009).

<sup>54</sup> Poland, the Czech Republic and the United Kingdom have permanent exemption from this part of this Treaty. The Czech President Klaus addressed this exemption for the Czech Republic at the beginning of October 2009. The Slovak Prime Minister Robert Fico has confirmed that, if the Czech Republic receives the exemption, Slovakia will request it, but in the end he decided not to. Further see <http://euobserver.com/18/28850> (20.10.2009).

<sup>55</sup> Further see [http://europa.eu/lisbon\\_treaty/glance/index\\_cs.htm](http://europa.eu/lisbon_treaty/glance/index_cs.htm) (31. 5. 2009).

<sup>56</sup> See *ibid.*

<sup>57</sup> Further see [http://www.euroskop.cz/gallery/13/4050-kdyz\\_se\\_rekne\\_lisabonska\\_smlova.pdf](http://www.euroskop.cz/gallery/13/4050-kdyz_se_rekne_lisabonska_smlova.pdf) (31. 5. 2009).

<sup>58</sup> [http://www.euroskop.cz/gallery/13/4050-kdyz\\_se\\_rekne\\_lisabonska\\_smlova.pdf](http://www.euroskop.cz/gallery/13/4050-kdyz_se_rekne_lisabonska_smlova.pdf) (1. 6. 2009).

## **8. Conclusion**

The pillar system of the European Union is very important part of the organization. It was set up by the Treaty of Maastricht in 1993, but the first steps were made before. The Schengen Agreement which was signed in 1985 firstly opened the theme of cooperation in judicial and police affairs.

The pillar structure truly developed after 1993 as a way to find a compromise between the two concepts of integration – intergovernmentalism and supranationalism. The first is characterized by the unanimous decision-making process. This agenda often includes issues that are very important for member states. Within the European Union this involves the second and third pillars. The second pillar is focused on the agenda of Common Foreign and Security Policy (CFSP) and the third on Justice and Home Affairs (JHA), later renamed as Police and Judicial Cooperation in Criminal Matters (PJCC).

The principle of supranationalism involves agenda that are the responsibility of the institutions, i.e. the first pillar in the case of the European Union. This system of voting means that the states delegate certain powers to EU bodies, in other words they give up some of their own power. The decision-making process under the theory of supranationalism is more effective and more useful for the European Union.

In my opinion, both decision-making systems are very useful. Following I would like to present some examples of Czech politicians or political parties and their opinions on the process of decision-making in the European Union.

The first party is the right-wing Civic Democratic Party (ODS) which belongs to the conservative branch of political parties. The members called themselves the euro-realist party, but according to many political scientists they are eurosceptics. Their opinion on the decision-making process in the European Union is focused on intergovernmentalism. They consider that the European Union has gone too far and now the organization should return to the roots, with most matters decided unanimously. For this reason they are strongly against the Lisbon Treaty and the Czech Republic was the last country to approve the Treaty.

The second party are Social Democrats (ČSSD). They are a typical left-wing party, more focused on the European affairs. They are strong supporters of the Lisbon Treaty because they believe that only strong, stable and unified Europe can be successful in competition with other parts of the world. Their

opinion on the process of decision-making is more comfortable with theory of supranationalism.

In my opinion both options are needed. The decision-making on the level of intergovernmentalism helps protect the national interest of the states.<sup>59</sup> If a state feels that its interests are threatened then it can apply a veto and block negotiations. It also helps protect small states against the larger states, or poorer states against the richer. On the other hand it leads to difficulties in making any progress. It is also difficult to find a consensus and for this reason the results of consultations are not as clear, or in other words it is still often possible to find many contrasting views within a supposed agreement.

The second theory, supranationalism, is more effective. It gives European institutions more power to solve the problems facing the continent. I personally think that at present it is the only way to overcome all the problems connected, for example, with the present financial and economical crisis. Looking back to the past, each time there has been economical and social problems in Europe they have led to political crises. In other words, only a strong and modern Europe can be successful.

But supranational mechanism of decision-making also raises some problems. The first and in my opinion the most important one is connected with question of legitimacy. The European Parliament is the only institution directly elected by the people.<sup>60</sup> The other institutions are then nominated by the governments of member states<sup>61</sup> or are formed by delegates of the member states.<sup>62</sup> For example, the Lisbon Treaty attempts to find some connection between the results of the elections to the European Parliament and the European Commission. Yet this is probably not enough to increase citizens respect for the European institutions.

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**59** One of the examples of the using veto in decision-making in CFSP is Slovenian statement on the process of enlargement negotiation with Croatia. Last year, Slovenia decided to use a veto against the opening of the other chapters with Croatia until the dispute about the Piran Bay is solved.

**60** The first election took place in 1979.

**61** European Commission.

**62** European Council and Council of Ministers.



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### **Abbreviations**

- BBC News – [www.news.bbc.co.uk](http://www.news.bbc.co.uk)
- Council of the European Union – [www.ue.eu.int](http://www.ue.eu.int)
- Czech Presidency of the European Union – [www.eu2009.cz/en](http://www.eu2009.cz/en)
- EUObserver – [www.euobserver.com](http://www.euobserver.com)
- EurLex – [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu)
- European Affairs Information Department – [www.euroskop.cz](http://www.euroskop.cz)
- European Commission – [www.ec.europa.eu](http://www.ec.europa.eu)
- European Court – [www.curia.europa.eu/en](http://www.curia.europa.eu/en)
- European Parliament – [www.europarl.europa.eu](http://www.europarl.europa.eu)
- European Union – [www.europa.eu](http://www.europa.eu)
- Europol – [www.europol.europa.eu](http://www.europol.europa.eu)
- German Presidency of the European Union – [www.eu2007.de](http://www.eu2007.de)
- Ministry of Foreign Affairs of the Czech Republic – [www.mzv.cz](http://www.mzv.cz)
- NATO – [www.nato.int](http://www.nato.int)

POVZETEK

## **SPREJEMANJE ODLOČITEV V SKLADU Z DRUGIM IN TRETJIM STEBROM**

Članek obravnava postopek sprejemanja odločitev v Evropski uniji po sprejetju Maastrichtske pogodbe, ki je pomenila prehod na nadnacionalni značaj Skupnosti. Po drugi strani pa je ta pogodba prinesla ločevanje novih poslovnikov – skupne zunanje in varnostne politike (SZVP) ter pravosodja in notranjih zadev (PNZ), kjer se je ohranil medvladni način sprejemanja odločitev.

Maastrichtska pogodba je razdelila postopek sprejemanja odločitev na tri stebre. Prvi steber, ki se osredotoča na gospodarske in socialne zadeve, temelji na načelu naddržavnosti. Naddržavnost je najbolj učinkovit sistem glasovanja, v katerem je za potrditev nekega osnutka zadostno pridobiti večino.

Za razliko od prvega stebra je sprejemanje odločitev, ki temelji na medvladnem načinu odločanja, značilno za drugi in tretji steber. V primerjavi z naddržavnostjo medvladni način večinoma temelji na glasovalni metodi soglasja. Glavni razlog za to je zaščita nacionalnih interesov držav članic. Zaradi tega se ta sistem glasovanja uporablja predvsem za področje zunanje politike, varnostne politike ali prava.

Prav tako lahko prikažemo razlike med naddržavnostjo in medvladnim načinom odločanja v Evropskih institucijah. Medtem ko Evropska komisija in Evropski parlament pripadata sistemu naddržavnosti, v Evropskem svetu velja medvladni način.

Ko preidemo na drugi steber, ki zajema področje skupne zunanje in varnostne politike, lahko opazimo enega najbolj kontroverznih pristopov sprejemanja odločitev v Evropski uniji. Razlike v mnenjih med državami članicami na eni strani in zahtevami skupnih stališč na drugi so pripeljale do končne odločitve, da se vzpostavi ta posebni steber.

Vendar pa so kmalu po vzpostavitvi sistema stebrov države članice in Evropske ustanove pričele razpravljati o potrebnosti reform na področju SZVP. Rezultat teh razprav je vsebovala Amsterdamska pogodba. V skladu s tem dokumentom je bil ustanovljen nov urad visokega predstavnika za skupno zunanjo in varnostno politiko. Ta sprememba je prinesla več prožnosti na odločitve v zunanjih in varnostnih zadevah. Evropska unija je bila

lahko aktivnejša v humanitarnih operacijah kot tudi v mirovnih operacijah. Prav tako se je okrepilo sodelovanje na področju zmogljivosti skupnih enot.

Splošni cilj SZVP je pokriti skupne vrednote, interese in varnost Evropske unije in njenih držav članic. Vse to bi morali zagotoviti v razpravah in s sodelovanjem diplomatskih uradov držav članic in Evropskih ustanov. Posebno vlogo pri tem igrata dve glavni orodji – skupni ukrepi in skupna stališča. Glavna razlika med njima je, da skupna stališča opredeljujejo stališča EU na področju zunanje politike in so zavezujoča za vse države članice. Skupni ukrepi pa so orodja za aktivno udeležbo EU, kot je sankcioniranje držav nečlanic ali uporaba opazovalcev med volitvami.

Amsterdamska pogodba seveda bolj opredeljuje vlogo skupnih stališč in skupnih ukrepov. Skupno stališče je bilo opredeljeno kot konkretno stališče EU glede tematskih ali geografskih zadev. Skupni ukrepi pa so nato opisani kot koraki, ki bi morali biti usmerjeni k rešitvam določenih situacij, v katerih je potrebno ukrepanje EU. Amsterdamska pogodba je prav tako opredelila novo orodje – skupno strategijo. Skupna strategija naj bi aktivirala EU v zadevah, v katerih imajo pomembne skupne interese vse države članice. Skupne strategije potrjuje Evropski svet na podlagi priporočila Sveta EU. Svet EU nato s pomočjo skupnih stališč in skupnih ukrepov izpelje strategijo v praksi.

Mehanizem sprejemanja odločitev v drugem stebru je bil prav tako obnovljen na podlagi Amsterdamske pogodbe. Poleg skupne strategije je bila sprejeta posebna vrsta glasovanja, tako imenovani konstruktivni zadržek. Z drugimi besedami to pomeni, da so države članice dobile možnost nestrinjanja s konkretno dejavnostjo v SZVP, vendar zaradi tega ne blokirajo odločitev z vlaganjem veta. Pogodba pravi, da se član Sveta lahko vzdrži glasovanja v skladu s 23. členom Amsterdamske pogodbe. Če katera od držav uporabi pravico neglasovanja in se odločitev ne glede na to potrdi, morajo vse države članice sprejeti to odločitev kot odločitev EU.

Drugi del Maastrichtske pogodbe je povezan z vprašanji pravosodja in notranjih zadev. Pogodba je jasno opredelila področje skupnih interesov, ki so del tretjega stebra. Ta govori predvsem o problemih azilne politike, zunanjih meja in politike priseljevanja, bori se proti prekupčevalcem z mamili ter govori o carinskem sodelovanju in sodelovanju policije v boju proti terorizmu in organiziranemu kriminalu.

Sprejemanje odločitev na področju tretjega stebra se prične s predlaganjem pobude Svetu. V skladu z Maastrichtsko pogodbo lahko osnutek

pripravijo države članice ali pa Evropska komisija. Vendar pa ima Evropska komisija izločitev. Na področju sodelovanja sodišč, carinskega sodelovanja in sodelovanja policije so države članice upravičene le do predlaganja osnutka. Svet pa je pridobil možnosti sprejemanja skupnih stališč, skupnih postopkov in nato predlaganja končne verzije sporazumov. Skupno stališče je bilo prvo orodje, ki je bilo ustvarjeno za podporo skupnega upravljanja za doseganje ciljev EU. Skupno stališče bi morale države članice v mednarodnih organizacijah zagovarjati. Pred tem je bila potrebna soglasna odločitev Sveta.

Področje pravosodja in notranjih zadev je bilo najbolj pomemben del vseh sprememb v Amsterdamski pogodbi. Reforma, ki jo je prinesla pogodba, je bolje kategorizirala načrt tretjega stebra in prenesla del tega načrta na prvi steber. Za to spremembo je bilo določeno prehodno obdobje petih let in načrt je bil preimenovan v Policijsko in pravosodno sodelovanje v kazenskih zadevah. V sklopu tretjega stebra je le področje pravosodnega in policijskega sodelovanja.

Amsterdamska pogodba je obnovila orodja, ki so bila uporabljena prej. Svet lahko zavzame skupno stališče, sprejme splošne odločitve in odločitve ali pa pripravi nekatere dokumente. Takratna novost so bile splošne odločitve in odločitve.

V skladu s Pogodbo v Nici pa so bile sprožene še druge reforme. Zaradi prihajajoče širitve na vzhod je bilo nujno potrebno malce spremeniti mehanizem sprejemanja odločitev v Evropski uniji. Prva pomembna sprememba je bila prenos pristojnosti ugasle Evropske skupnosti za premog in jeklo na Evropsko skupnost in na mnogih področjih je ta začela glasovati s kvalificirano večino namesto s soglasno večino.

Nato je pogodba opredelila načelo dvojne večine držav članic in prebivalstva. To pomeni, da mora za sprejetje osnutka glasovati 55 % članov Sveta ministrov, ki predstavljajo 62 % prebivalstva EU.

Zadnja sprememba je vsekakor povezana z Lizbonsko pogodbo. Ta daje več pristojnosti Evropskemu parlamentu, ki se šteje kot naddržavno telo, in državnim parlamentom, ki bi morali imeti več pristojnosti v zakonodajnih postopkih institucij EU. Prav tako poenostavlja mehanizem sprejemanja odločitev, ko se bo glasovanje s kvalificirano večino razširilo na več področij. Od leta 2014 se bo glasovanje s kvalificirano večino štelo glede na dvojno večino držav članic in prebivalstva. Za sprejetje predloga bo po novem treba doseči večino 55 % držav članic, ki predstavljajo 65 % prebivalstva EU. Prav tako bo več področij, kjer se bo uporabljala kvalificirana večina. Pogodba uvaja položaj predsednika Evropskega sveta. Ta se

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izvoli za obdobje dveh let in pol. Visoki predstavnik za zunanjo politiko postane podpredsednik Evropske komisije. Evropska unija prav tako prejme pravno subjektivnost, ki jo v svetovni politiki naredi močnejšo.

Drugi zelo pomemben del te pogodbe je povezan s sistemom stebrov. Dejansko je imel le prvi stebel pravno osebnost. Ko je Lizbonska pogodba stopila v veljavo, so bili vsi trije stebri združeni v eno pravno osebo, imenovano Evropska unija.