

# A Foreign Minister for Europe

The most important and far reaching innovation to the institutional architecture of the European Union (EU) proposed in the now stalled European Constitutional Treaty is the creation of the post of a 'Union Minister for Foreign Affairs'. Combining the responsibilities of both the High Representative for the Common Foreign and Security Policy (CFSP) and the European Commissioner for External Relations, the post of European Foreign Minister was designed to help achieve long-standing objectives such as coherence, consistency, effectiveness and visibility in the European Union's foreign policy. Javier Solana, the current High Representative for CFSP, was due to be appointed as the first European Foreign Minister on the day of entry into force of the Constitutional Treaty. After the rejection of the Constitutional Treaty in the French and the Dutch referendums of mid-2005, it is questionable whether Mr. Solana will ever take up precisely the post envisaged in the Treaty. Few observers doubt, however, that in due course the European Union will return to the questions of the effectiveness and coherence of its foreign policy.

## Historical Background

The European Foreign Minister stands at the end of a process in the EU which started with the Amsterdam Treaty of 1997. During the preparation for the Amsterdam European Council summit, a number of member states, notably France, came forward with a proposal for the creation of a High Representative for the Union's Common Foreign and Security Policy (CFSP).

The Amsterdam Treaty did indeed create the post of High Representative, with Javier Solana as its first occupant. But the remit of the High Representative was more limited than originally envisaged. Javier Solana was given no independent role in the shaping and articulation of the Union's foreign policy. His function was simply to assist the Council, of which he became Secretary General, 'in matters coming within the scope of CFSP, in particularly through contributing to the formulation, preparation and implementation of policy decisions' (Art.J.16). Although in the past nine years most commentators would agree that Javier Solana has done strikingly well with the limited powers at his command, his capacity for autonomous action has been severely constrained. The European Convention set up by the Laeken Declaration took as one of its main tasks a review of the CFSP and in particular of whether the role of the High Representative was satisfactorily structured.

## The Debate over the European Foreign Minister in the Convention and the IGC

At the level of general principle, most members of the European Constitutional Convention agreed on the need to improve the external action of the EU: they were divided as to how this should come about. As early as in the first plenary session of the Convention, Peter Hain, British Minister for Europe and member of the Convention representing the UK Government, argued vehemently for the Union's CFSP to remain predominantly in the hands of national governments. What was needed was a single individual capable of representing and advocating the policies adopted consensually by the member states. Chris Patten, the European Commissioner for External Affairs at the time, and the High Representative Solana took a different view. They were against the solution favoured by the British government of a merger of their two posts. In their view, such a merger would only lead to confusion and conflict of interests rather than to coherence and efficiency. Their counter-proposal was that the High Representative should be given new additional rights, notably the right to participate in Commission meetings on CFSP matters, to chair the General Affairs and External Relations Council, and to table initiatives on CFSP.

Besides meeting in the plenary, the members of the Convention set up a series of working groups. The question of the establishment of a 'European Foreign Minister' was discussed both in the working group on 'External Action', and in the working group on 'Defence', The

### EDITOR'S NOTE

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working group on 'External Action' presented in December 2002 four options. It was these four options which charted the course for all later debate.

Advocates of the first, most conservative option in the working group argued for the preservation of the status quo. They 'recommended practical measures to strengthen further the role of the High Representative and to enhance the synergy between the High Representative's activities and the role of the Commission in external relations, 'while keeping their functions separate'. They also suggested splitting the functions of the High Representative from those of the Secretary-General of the Council.

By contrast, the second option of the working group, the most 'communitarian' one, proposed 'the full merger of the functions of the HR into the Commission'. Even those intellectually and politically attracted to this proposal in the Convention accepted its utopian nature for the foreseeable future. Few member states are currently willing to cede to the Commission so completely control over the Union's external action and policies.

In order to find a compromise between the two already mentioned proposals, a third option was presented by the working group recommending the fusion of the High Representative's and the External Affairs Commissioner's office. The holder of this post would be called the 'European External Representative'. Appointed by the European Council, with the approval of the President of the Commission and endorsement by the European Parliament, the European External Representative should 'receive direct mandates from and be accountable to the Council for issues relating to CFSP', while at the same time being a member of the European Commission, 'preferably with the rank of Vice President'.

A variation of the third option for the future role of the High Representative was also mentioned by the working group. This option envisaged a replacement of the positions of the High Representative and of the External Affairs Commissioner by one single person designated as 'EU Minister of Foreign Affairs'. This Minister would be placed 'under the direct authority of the President of the European Council'. In the event, it was this final option which was adopted by the Constitutional Treaty of June 2004.

Before the Convention members as a whole began to consider the reports of the working groups (the working group on defence had made its contribution to the debate by

recommending giving the High Representative the power to initiate humanitarian actions), the third option of the 'External Action' working group obtained further support through a French and German contribution paper to the Convention. In this paper, both states argued for the creation of a European Foreign Minister, who should be at the same time a member of the Commission and also a servant of the Council of Ministers. This 'double-hatting' concept was met with scepticism among Convention members, albeit for different reasons. Whereas the federalist camp feared the collegiality of the Commission could be put in jeopardy by this concept, Peter Hain, belonging to the intergovernmental camp, regarded the double-hatting as unhelpful for reducing tensions between the Commission, the Council and the member states. Peter Hain, moreover, was unhappy with the title 'European Foreign Minister'.

Despite some unease within the Convention, the 'Praesidium' of the Convention adopted the third option in its proposals on the EU's external action almost as the option had been outlined in the working group report. Largely at the insistence of the French and German representatives, this basic text was adopted by the Intergovernmental Conference. Despite reservations from some member states concerning the post's designation, the heads of state and government were able to sign in June 2004 a Constitutional Treaty giving the European Union a 'foreign minister'.

In agreeing to set up this new post, the member states were careful to preserve their own position. In Article.I-28.4 of the Treaty it is stipulated that in exercising his responsibilities within the Commission, the Union's Foreign Minister 'shall be bound by Commission procedures to the extent that it is consistent with paragraphs 2 and 3'. Since paragraphs 2 and 3 set out the Foreign Minister's responsibilities to the Council, the effect of this Article is to subordinate the Minister's activities within the Commission to his responsibilities vis-à-vis the Council. This desire of the member states to stress their predominant role in supervising the Foreign Minister is further illustrated by the appointment and resignation procedures for the Minister.

### **The Appointment and Resignation of the European Foreign Minister**

According to the Constitutional Treaty, the European Foreign Minister is to be appointed by the European Council, acting by qualified

majority, requiring only the agreement of the President of the Commission (Art.I-28). The Minister's appointment as one of the Vice-Presidents of the Commission needs beyond the above described process the approval of the European Parliament, since the College of Commissioners must be endorsed as a whole by the European Parliament (Art.I-27.2). However, in contrast to the other Commissioners, the Minister is spared the individual parliamentary ratification hearings, which in the past have been a powerful weapon of parliamentary control over appointments.

To end the Minister's term the same procedure as for the appointment applies, namely that the European Council is entitled to dismiss the European Foreign Minister after having obtained agreement by the President of the Commission (Art.I-28.1). The Minister shall also resign following a personal request by the President of the Commission, although even in this case the European Council must endorse the President's request. If the European Parliament votes on a censure motion on the Commission, 'the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the duties that he or she carries out in the Commission' (Art.I-26.8). Even so, in these circumstances, the European Foreign Minister is only displaced of his office within the outgoing Commission and keeps the right to join the following Commission. (This last provision was introduced by the Intergovernmental Conference and did not figure in the recommendations of the Convention.)

### **Functions of the Minister**

The functions of the European Foreign Minister, as granted by the Constitutional Treaty, are essentially five, initiative, co-ordination, representation, implementation, and crisis management.

#### *Initiative*

With regard to the Minister's rights of initiative, 'he or she shall contribute by his or her proposals to the development' of the CFSP' (Art.I-28.2). The European Foreign Minister may collaborate with the Commission to submit in the area of CFSP joint proposals to the Council (Art.III-293.2). Unlike the Commission, the Foreign Minister may 'on his or her own responsibility' refer any question relating to the common foreign and security policy to the Council' and may 'submit to it initiatives or proposals as appropriate'. This arrangement represents a distinct demotion for the Commission, which until the Treaty was able to table initiatives for CFSP policies, even if it only rarely made

use of this power. The Treaty makes the Commission's involvement in proposing CFSP initiatives dependent upon the goodwill of the Foreign Minister.

Specific rights of initiative accorded the Minister include the application of qualified majority voting (QMV) in CFSP, a process which the Minister can invoke 'following a specific request to him or her from the European Council'; the right to present proposals concerning the functioning and organisation of the External Action Service (Art.III-296.3); and the right to name potential candidates to be appointed as special representatives for the EU (Art.III-302).

### *Co-ordination*

Among the range of co-ordination rights attributed to the European Foreign Minister, the most visible is the Presidency of the Foreign Affairs Council and the chairmanship of Political and Security Committee meetings. These functions have been exercised (and are still being exercised) by representatives of the national government holding the rotating Presidency of the Union.

More generally, the Constitutional Treaty stipulates that as one of the Vice-Presidents of the Commission, the European Foreign Minister 'shall [also] ensure the consistency of the Union's external action' as well as 'be responsible within the Commission for responsibilities incumbent on it in external relations and for co-ordinating other aspects of the Union's external action' (Art.I-28.4). In addition to his own responsibilities, therefore, the Minister has a co-ordinating role towards his colleagues in the Commission who exercise responsibilities in the other policy fields relating to external action, notably trade, development and enlargement.

Finally, the Minister is enjoined to ensure that 'member states [...] support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity' (Art.III-294.2). In theory this is a substantial task given to the Minister, nothing less than ensuring that the member states conscientiously respect the decisions they have themselves adopted. In reality, the Minister has no sanction which he can apply against recalcitrant member states.

### *Representation*

Since one major objective underlying the creation of the European Foreign Minister post was the improvement of the EU's ability to speak and act in a more unified manner on the international scene, the

Constitutional Treaty provided the Minister with important representative functions. According to Art.III-296.2, which builds on the mandate already given to the High Representative, the Union's Minister 'shall represent the Union for matters relating to the common foreign and security policy'. Art.III-305.1 charges the Minister to 'organise and co-ordinate member states' action in international organisations and at international conferences. When the EU has defined its position on a subject discussed at the UN Security Council 'those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position'. How far and how often France and Britain will be willing to observe the letter and spirit of this article remains to be seen.

The representational functions of the Minister are limited by Art.I-22.2 of the Constitutional Treaty, which allows the new President of the European Council as well to represent the EU to the outside world 'on issues concerning its common foreign and security policy'. Although the provision is included that this should happen 'without prejudice to the powers of the Union Minister for Foreign Affairs', the scope for conflicting competences is clear. A de facto division of tasks might be the best way forward, with the President of the Council, for example, negotiating with the US President, whilst the European Foreign Minister would speak with the US Secretary of State.

Any clear-cut division of tasks, however, is prevented by the fact that 'with the exception of the common foreign and security policy and other cases provided for in the Constitution', the Constitutional Treaty entrusts the duty of external representation of the EU to the Commission (Art.I-26.1), whose President will naturally wish to contribute to this important area of the Commission's competence. Far from producing one negotiating partner for the American, Chinese or any other foreign administration, the Constitutional Treaty has produced three.

### *Implementation*

As regards the Minister's power of implementation, Art.I-40.4 provides that CFSP 'shall be put into effect by the Union Minister of Foreign Affairs and by the Member States' while Art.III-296.1 says more precisely that the Minister 'shall ensure implementation of the European decisions adopted by the European Council and the Council of Ministers'. When crisis management is at issue, the Minister is given a particularly important role by the

Constitutional Treaty. He has the authority to propose the initiation of a military or civil mission as well as the use of both national resources and Union instruments in order to carry them out (Art.I-41.4). When the Council entrusts the implementation of a Petersberg task to a group of member states, 'those Member States, in association with the Union Minister for Foreign Affairs, shall agree among themselves on the management of the task' (Art. III-310). The continuing role in such circumstances of the European Foreign Minister is intended as a guarantee that the member states involved do not forget the European dimension of their actions. Smaller EU member states in particular would look to the Foreign Minister as a bulwark against any moves towards a 'Directoire'.

## **Problems and Opportunities**

The advantages and disadvantages arising for the European Union from the envisaged post of European Foreign Minister are inextricably linked. Rightly, the Constitutional Treaty's drafters wanted the Minister to function as a conduit between the actors who contribute to the EU's external policies. He or she would thus help ensure greater coherence and consistency in the external action of the Union. The Constitutional Treaty goes some way to facilitating coherence and consistency, but the price paid is to create a Foreign Minister with a range of institutional masters.

In effect, the Minister is embedded by the Constitutional Treaty somewhere between three European institutions, the European Council, the Council and the Commission. He presides over the Foreign Affairs Council and carries out its instructions; he is both servant and co-equal of the President of the European Council who is also responsible for ensuring the external representation of the EU in matters concerning CFSP; and he is member of the European Commission as being one of its Vice-Presidents. Furthermore, the Union's Foreign Minister must consult and inform the European Parliament on a regular basis on the main aspects and basic choices of the Union's external policies.

It is already a commonplace in discussion of the Foreign Minister's role that he or she will need the confidence of the member states in general and of the major member states in particular in order to exercise authority. But the most difficult relationship the European Foreign Minister will face is likely to be that with the President of the Commission. The Minister is to be in large part removed from the authority of the Commission's President. The President's role

in his appointment and dismissal is marginal at best. The Minister is entitled to co-ordinate the activities of his colleagues in the Commission in their external policies, a power traditionally reserved for the President. The Commission will, if the Constitutional Treaty is ever ratified, be unable to submit any initiative to the Council concerning CFSP without the agreement of the Minister. It will require at least as much diplomatic skill from the Minister to manage his relationship with the President of the Commission as it will to conduct the EU's relations with third parties.

Despite these difficulties (to which must be added the potential overlapping competence between the Minister and the President of the European Council), few observers doubt that the post of EU Foreign Minister offers a real chance to move towards a better co-ordinated and more effective role for the European Union in the wider world. Combining the roles of the High Representative and the External Affairs Commissioner in one person will guarantee more coherence and convergence in external policy between the Commission and the Council than has been the case in the past. The abolition of the rotating Presidency in the external action field is a real gain for the stability and solidity of European foreign policy. Despite some unclarified divisions of representative responsibility with the President of the European Council and the President of the Commission, there seems little doubt that the European Foreign Minister will lend visibility and continuity to the external representation of the Union. Even the most enthusiastic advocates of the new position would accept that the post of Foreign Minister sketched out in the Constitutional Treaty is an experimental first step. But they have solid arguments for claiming that it is a step in the right direction.

## The Future of the European Foreign Minister

As a result of the lost referendums in France and the Netherlands, the member states called in June 2005 for a 'pause for reflection'. Whether this pause can lead to the eventual ratification of the Constitutional Treaty must, however, be more than doubtful. Even if a way could be found to reverse the French and Dutch 'no' votes (and no plausible method has been suggested), it is difficult to believe that after the French and Dutch referendum results of last year referendums on the Treaty could be won in Poland, Denmark, the Czech Republic and the United Kingdom, all of which would need to ratify the Treaty.

Given that the setting up of the European Union's Foreign Minister reflected a widespread perception among member states that the Union's external action needed to be more coherent and effective, it has been asked whether it might be possible to institute the post of Foreign Minister independently of the European Constitutional Treaty. A number of legal and political barriers, however, stand in the way of any such initiative.

The creation of the position of EU Foreign Minister is linked to a whole series of reforms in the external action field. These reforms, particularly the merger of the High Representative and the External Affairs Commissioner and the abolition of the rotating Presidency in the external action field, would change enormously the institutional architecture of the EU. The Treaty on the European Union states clearly that it is the rotating Presidency who shall 'represent the Union in matters coming within the common foreign and security policy' (Art.18.1) and 'be responsible for the implementation of decisions taken under this title' (Art.18.2). An amendment of the Treaty would therefore be necessary to exclude the rotating Presidency from the external action field. There is also a legal impediment to combining the positions of the High Representative and of the External Relations Commissioner in one person. Article 213.2 of the Treaty of Rome forbids members of the Commission to 'engage in any other occupation'.

Nor is the political background propitious in the immediate future for Mr. Solana's transformation from High Representative to Foreign Minister. Some national governments are reluctant to be seen to be ignoring the popular will in regard to the Constitutional Treaty, as expressed in the French and Dutch referendums. Others, by contrast, have not abandoned the eventual hope of ratifying the Treaty. They are therefore reluctant seriously to consider implementing only some of the Treaty's provisions, fearing that this would imply an abandonment of the rest of the text. These two radically different analyses make it unlikely that the question of a European Foreign Minister will return in the immediate future to the internal debates of the European Union.

## Conclusion

It may well be that in the short term consideration will be given to ways of enhancing the authority of the High Representative, possibly by delegating some of the Presidency's tasks to Mr. Solana. It has been proposed, for instance, that Mr.

Solana should sometimes be invited informally to chair the General Affairs and External Relations Council. This might be appropriate when matters are on the agenda, such as the Western Balkans and the Middle East, where he has a particular expertise. Equally, Mr. Solana could assume more responsibility for external representation. The present triumvirate or troika system comprising the Council Presidency, the High Representative and the External Affairs Commissioner, causes confusion in the rest of the world through the changing composition of the troika. Although he cannot entirely replace the troika, the High Representative might be encouraged more often to replace or accompany it as an equal partner.

Cumulatively, such incremental steps (combined with administrative measures for better co-ordination between the Commission, Council and member states) may contribute to enhancing the visibility and authority of Mr. Solana. They seem unlikely, however, to bring about the enhanced unity and coherence of the EU's external action which the Foreign Minister was intended to promote. If, as some hope, the European Constitutional Treaty can be renegotiated, no doubt the provisions relating to the external action of the European Union will be preserved in a form not very different to those of the present text. If, as seems more likely, the European Union will not give itself a Constitutional Treaty in any foreseeable future, it is highly likely that national governments will in the medium term wish to revisit the whole issue of the role the European Union can and should play in the world. No doubt at that stage they will repeat many of the arguments and controversies which surfaced in the European Convention and the succeeding Intergovernmental Conference. It is not impossible that they will come to similar conclusions to those rejected by the French and Dutch voters. The foreign policy of the European Union played little or no role in the Dutch referendums. The referendums which probably killed the European Constitutional Treaty may well not have killed the idea of a European Foreign Minister.