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## The Lisbon Treaty and the Ongoing Problem of Co-ordination of the EU's External Action

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### Introduction

The European Union (EU) has long been criticised, by both European and external observers, for the lack of coherence in its foreign policy. The reforms envisaged by the Reform Treaty, also known as the Lisbon Treaty, are designed to improve co-ordination of this policy. Except for some minor symbolic changes, the Treaty retains most of the provisions in the area of 'external action' set out in the ill-fated Constitutional Treaty. This Brief considers the extent to which the reforms are likely to improve the coherence of the EU's foreign policy. The conclusion is that there are both positive and negative aspects of the new arrangements introduced by the Treaty. As an illustration, the renamed and re-defined post of High Representative for Foreign Affairs and Security Policy, supported by a new External Action Service, will definitely help strengthen and unify the Union's external action. Yet there are many questions that are left unanswered by the Treaty, and other provisions that are left only vaguely defined (such as the precise composition and status of the External Action Service). These issues will need to be tackled by the member states if the Lisbon Treaty is to enhance the EU's capacity for formulating and implementing foreign policy.

### Setting the context

The risk of tension between different aspects of European external policy was already evident at the time of the establishment of European Political Co-operation (the predecessor of the Common Foreign and Security Policy) in the 1970s. While political issues such as bilateral relations with third states and regions were at this time largely under the control of the member states' foreign ministries and only co-ordinated at the EU level through European Political Co-operation; trade, co-operation and association agreements fell under the competences of the European Community (EC), and were primarily managed by the Commission. Two different decision-making procedures governed these two dimensions of EU external action – unanimity in the first case; majority voting in the second. Insufficient resources, and in particular a lack of administrative support for the process of European Political Co-operation left the EC ill-suited to the task of ensuring coherent external action. And the six-month Presidency rotating between the member states also created problems of consistency and coherence.

#### EDITOR'S NOTE

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The negotiations surrounding the signing of the Maastricht Treaty in 1991 were driven, at least partly, by the desire to improve the co-ordination of the EU's external policies. Central to these negotiations was the establishment of a Common Foreign and Security Policy (CFSP). The Maastricht Treaty also established the so-called 'pillar structure'. The first, or 'Community', pillar mainly covered trade and internal economic activities; the second pillar encompassed CFSP; and the third pillar related to justice and home affairs. Issues under the second and third pillars were to be decided by unanimity and on the whole decision-making remained in the hands of national governments.

In the event, the Maastricht Treaty's foreign policy provisions were a major disappointment for those who hoped it would set up the institutional basis for a more coherent external action. The successive crises in the Balkans – in Bosnia, Kosovo and Macedonia – illustrated the EU's inability to muster its economic and political instruments to deal with instability among its own neighbours. The EU's failure to make its voice heard in international affairs prompted subsequent institutional reforms in the Amsterdam Treaty (1997), and later in the Nice Treaty (2001). The most important initiative of these treaties was the establishment of the post of High Representative for CFSP, a post that was intended to solve problems of visibility and continuity in the EU's foreign policy. This position has been occupied by Javier Solana since 1999. In spite of these reforms, concerns regarding the co-ordination of the EU's external action have only intensified within European forums and institutions, as illustrated by the debates in the European Convention (2002). The EU's first European Security Strategy (2003) drafted by Solana called for more coherent external action, adding that '[g]reater coherence is needed not only among EU instruments but also embracing the external activities of the individual member states'.<sup>1</sup>

In sum, the complexity of the EU's structure of decision-making for foreign policy combined with the recent enlargements of the EU have created significant challenges to conducting an effective foreign policy. At the same time, expectations

from the European public and external demands for the greater involvement of the EU in world affairs have continued to grow. A more unified capacity for making and implementing all aspects of the EU's foreign policy – or 'external action' as the EU prefers to describe these activities – is deemed necessary if the EU is to satisfy these demands. The provisions contained in the Reform Treaty signed in Lisbon on the 13<sup>th</sup> December 2007 could potentially improve the co-ordination of the Union's external action. However, as will be discussed below, to realise this potential much depends on how the Treaty's provisions are implemented.

### **The implications of the Lisbon and Constitutional Treaties for the co-ordination of EU external action**

The Lisbon Treaty retains the majority of the innovations in the area of external action originally set down in the Constitutional Treaty, with two notable exceptions. Firstly, the Constitutional Treaty's 'Union Minister of Foreign Affairs' will now be designated by the more politically neutral title 'High Representative'. Secondly, the Lisbon Treaty also includes two new Declarations (30 and 31) stating that the Treaty will not affect the member states' ability to formulate and implement their foreign policy, including representation in third countries and international organisations and, in the case of France and the UK, their permanent membership of the UN Security Council. Declaration 31 also stresses that provisions in the Treaty do not give new powers to the Commission or the European Parliament.

The detail of the Treaty and its implications can be broken down into six areas: (1) the new chapter on 'General Provisions on the Union's External Action'; (2) changes introduced to the pillar structure; (3) the new position of President of the European Council; (4) the reinforced post of the High Representative for Foreign Affairs and Security Policy; (5) the establishment of an External Action Service, and (6) the provisions on co-ordination of member states' foreign policies.

### *The Union's External Action*

A fundamental characteristic of the Lisbon Treaty is that it is an exercise in drawing together the multiple aspects of the EU's foreign policy under the new heading of 'Union's External Action'. The idea of bringing together all the external policies of the EU under the label of 'External Action' can be seen as a move away from the traditional distinction between those areas managed by the Commission and those under control of the national foreign ministries and hence as a first step towards a more unitary external relations or foreign policy system. In terms of the content, External Action includes the policies covered by Part Five of the Treaty on the Functioning of the European Union (inter alia, the Common Commercial Policy, co-operation with third countries and humanitarian aid, restrictive measures and international agreements), the Common Foreign and Security Policy (including ESDP), and 'the external aspects of its other policies' (Art. 10a).

It is explicitly stated in the Treaty that '[t]he Union shall ensure consistency between the different areas of its external action and between these and its other policies'. While in the past, the Council and the Commission shared the responsibility of ensuring such consistency, now the High Representative of the Union for Foreign Affairs and Security Policy will assist the Council and the Commission in this task. Despite the strong rhetoric contained in these clauses which have been drawn from the old TEU Article 3, it is unclear how the High Representative will be able to prevent inconsistencies among different policy areas since he does not have any specific enforcement powers to implement these provisions. For instance, he does not have competencies over other EU policies with an external dimension, such as the Common Agricultural Policy or the environmental policy (see below for an overview of the High Representative's responsibilities).

## *Changes to the pillar structure*

The Lisbon Treaty has brought important changes to the pillar structure introduced by the Maastricht Treaty. Some of the new Treaty provisions point towards a formal abandonment of the three-pillar structure. For example, references to the European Community will disappear and the 'Treaty Establishing the European Community' is to be renamed the 'Treaty on the Functioning of the European Union'. As outlined above, the Treaty also brings together all the Union's external policies under the rubric of External Action. Similar financial procedures and a provision on enhanced co-operation would henceforth apply to all the Union's policy areas. The most radical transformation in the pillar structure has taken place in the area of Justice and Home Affairs, which relates to co-operation in the areas of criminal justice, terrorism, organised crime and immigration. In this policy field, the Lisbon Treaty has, inter alia, replaced unanimity with qualified majority voting.

Despite these changes, CFSP remains an exceptional decision-making system. The underlying principles of the CFSP 'pillar' (intergovernmentalism and unanimity) have been preserved and, as explicitly stated in the Treaty, CFSP 'is subject to specific rules and procedures' (Art. 11). The Commission's role in CFSP has also been reduced, with most of its previous tasks, including most significantly, the right to initiative, now being taken up by the High Representative. The European Parliament retains a limited role in CFSP matters, although the existing annual EP debate on CFSP has been increased to twice per year. Finally, jurisdiction of the European Court of Justice is still excluded from CFSP matters.

When it comes to ESDP, unanimity remains the rule (Art. 28). A new section on 'Provisions on the Common Security and Defence Policy' incorporates into the Treaty all the informal developments that have taken place since the establishment of the ESDP at the Cologne European Council in 1999 (e.g. the establishment of the European Defence Agency), as well as new provisions. For instance, in terms

of financial arrangements, there is the possibility of establishing a start-up fund to provide rapid access to funding for new ESDP missions (Art. 27.1 and 28). There are also other particular procedures for co-operation in the area of ESDP such as permanent structured co-operation ('co-operation between member states whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area') or the possibility to entrust an ESDP operation to a group of member states 'which are willing and have the necessary capability for such a task' (Art. 29). The provisions outlined above suggest that this policy area is distinct from CFSP and has its own procedures for co-operation. In sum, CFSP and ESDP have not yet been communitarised and hence at least two separate external action 'systems' will remain.

## *The President of the European Council*

An innovative provision of the Lisbon Treaty envisages the creation of a full-time President of the European Council for a period of two and a half years, renewable once. This new institution is designed to provide for greater continuity and visibility in the EU's external representation at this level (EU summits and European Councils) and more consistency in the Union's external action. The rotating Presidency (now consisting of three member states) will continue to exist only at lower levels in policy areas other than CFSP.

According to the new Treaty, '[t]he President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy'. However, there are still a number of uncertainties surrounding the resources and job description of this new vaguely defined institutional figure. Firstly, it is unclear how much staffing will be allocated to this post. Will his or her

administrative support be drawn from existing Council Secretariat resources, or will they be new recruits? Will they be EU officials or seconded national officials? How these logistical issues are resolved will to a great extent determine the role the President will be able to play.

Secondly, while the reference to 'his or her level' might implicitly lead to a functional division of labour between the President of the Council and the High Representative, there is no explicit mechanism to ensure allocation of roles or consistency between the two. Furthermore, in policy areas other than CFSP 'and other cases provided for in the Treaties, [the Commission] shall ensure the Union's external representation'. One might therefore suspect that the Lisbon Treaty has not significantly improved the existing situation. EU partners will still have to keep at least three phone numbers if they want to deal with the EU: those of the Commission, the President of the Council and the High Representative. Who to contact will depend on which policy areas and at which level discussions are taking place.

## *The High Representative for Foreign Affairs and Security Policy*

Under the Lisbon Treaty, the new position of High Representative will merge the responsibilities of the High Representative for CFSP (currently held by Javier Solana) and the job of the Commissioner for External Relations (under the current responsibility of Benita Ferrero-Waldner). It is expected that Javier Solana will take up this post as a provisional arrangement in January 2009, once the Treaty is ratified by all the member states. After the elections to the European Parliament (due in May or June that year) and the new Commission that will follow, a new High Representative will have to be nominated. Even though it is still too early to make any detailed conjectures about possible candidates, it is safe to conclude that any decision made after the elections to the European Parliament will be taken as a package: appointing the High Representative, the President of the European Council

and the President of the Commission at the same time. The political balance between 'Big' and 'Small' and 'Northern' and 'Southern' member states will probably play a significant part in these decisions.

The first obvious consequence of establishing the High Representative will be that the responsibilities for CFSP, and for the wide range of EU external relations, will be under the co-ordination of a single person (except at the highest level where the President of the European Council will hold this responsibility). This move will help reduce long-standing frictions between the political and economic dimensions of the EU's external action. The situation thus far has been one of dualism in the management of the Union's external policy. The Commissioner for External Relations has had access to a sizeable budget (approximately Euro 3.5 billion), but his 'soft' and long term activities have not attracted headlines in the media. By contrast, Solana has acted as a mediator for the EU in several trouble spots and has gained a considerable diplomatic profile as a result. The new position of High Representative will finally be able to utilise both the diplomatic weight of the High Representative and the economic clout of the EU, with the organisational support of the European Commission Directorate General for External Relations (DG RELEX). However, the relationship between DG RELEX and the new External Action Service is still unclear.

What is certain is that the new High Representative will replace the rotating six-monthly member state Presidency in CFSP/ESDP and therefore reduce (but not eliminate) potential inconsistencies between national agendas and the on-going priorities of the EU's external action. In spite of the gains in terms of consistency that can be expected to result from the end of the rotating Presidency, this reform might have drawbacks. First, since the EU Presidency was traditionally an instrument ensuring some national 'ownership' of the process, abandoning it might undermine the legitimacy of this policy in the eyes of the member states and their populations. Second, the Presidency also gave an opportunity to the member states

to familiarise themselves with the complexities of CFSP policy-making process. Last, but not least, holding the Presidency also forced EU member states to adopt a more 'European' approach to CFSP business as they were expected to play a mediating role as chairs of CFSP meetings. Thus, the abandonment of the EU Presidency may well reduce the scope for 'Europeanisation' of EU member states in their approach to external policy-making.

The High Representative will now chair the Foreign Affairs Council and nominate representatives to chair other CFSP bodies such as the Political and Security Committee, or the Council working groups in the area of CFSP/ESDP. The High Representative also takes over other responsibilities currently held by the Presidency in the implementation of CFSP, proposing candidates to be appointed as Special Representatives (Art. 18) and the duty to consult the European Parliament 'on the main aspects and the basic choices' of CFSP (Art. 21). The High Representative will gain the right to make proposals to the Foreign Affairs Council, a significant upgrading when compared with the previous powers of this institutional figure. Even so, the room for manoeuvre and the influence of the High Representative will depend on the willingness of the member states to support common positions, something that cannot be taken for granted.

The High Representative will also be one of the Vice-Presidents of the Commission. One of his or her competencies will be to ensure the consistency of the EU's external policies. Within the Commission, he or she will co-ordinate other aspects of the Union's external action, such as trade, co-operation and humanitarian aid, or the external aspects of other internal policies such as agriculture or environment. Meanwhile, the President of the Commission will retain responsibility for ensuring that the Commission 'acts consistently, efficiently and as a collegiate body' (Art. 9). Under the Lisbon Treaty, the Commission can only submit joint CFSP initiatives with the High Representative (Art. 16). This provision is intended to ensure consistency between the positions of the

High Representative and the Commission, but again it is based on the implicit assumption that the High Representative will embody what is a shared view within the Commission. How the Commission will co-ordinate internally as a result of these new provisions is hard to anticipate. First, the High Representative will have to juggle his or her two 'hats' (those of the Council and of the Commission) while trying to avoid potential conflicts. Second, a working arrangement between the High Representative and the President of the Commission will have to be achieved to in order to ensure good internal co-ordination.

### *The new External Action Service*

This 'Service' will provide support and advice to the High Representative. It will consist of officials from the General Secretariat of the Council, the Commission, and staff seconded from the diplomatic services of the member states. Its final composition and functions will depend on what agreement is eventually arrived at in Brussels between the Commission and the current High Representative and, more importantly, the member states. According to Declaration 22, 'preparatory work' to define the precise role and institutional status of this service should have begun when the Treaty was signed. However, under the current Slovenian Presidency, formal talks about this issue remain limited for fear of upsetting the ratification process.

However, one issue is already clear: the current Commission delegations in third countries will be renamed as Union delegations and will be responsible to the High Representative. Sources of incoherence between the Union Delegations and the local Presidency will be removed as the Presidency disappears from the area of CFSP. However, several questions of coherence between different EU bodies on the ground in third countries remain unanswered by the Treaty. For instance, how will these Union delegations co-ordinate with the current Special Representatives? Will ESDP operations be integrated into the Union delegations? Can

a fair division of labour between Union Delegations and national embassies be achieved? Even though some member states, in particular small and new member states, might decide to benefit from economies of scale by handing some responsibilities (e.g. diplomatic representation or consular protection) to the Union delegations, separate member state embassies will almost certainly remain in most third countries and will continue to co-exist with the Union delegations. It is still unclear what modalities of delegation/co-operation will emerge as a result of the creation of the External Action Service. Much will depend on the size and resources of the member state in question, as well as on how sensitive relations are with that third country or international organisation. Clearer guidelines need to be agreed by the member states, the Commission and the High Representative if coherence and effectiveness are to be ensured. However, for the reasons outlined above, it is difficult to see a uniform model for the division of labour between national embassies and Union delegations taking shape.

### *Co-ordination between the member states*

The new Treaty retains the obligation envisaged in the Maastricht Treaty for the member states to 'support the Union's external and security policy in a spirit of loyalty and mutual solidarity' (Art. 11.3). In the context of CFSP, the member states shall seek 'a common approach' and consult one another, in particular when it affects the Union's interests (Art. 17a). Yet, as in previous treaties, the Lisbon Treaty does not make provision for enforcement mechanisms, nor does it grant jurisdiction to the European Court of Justice to ensure that these provisions are complied with (although given the intergovernmental character of this policy another matter is whether such mechanisms could be created). Thus, individual member states can still deviate from the agreed common position should they deem it in their interests to do so. Hence, a 'common approach' to EU external action can only be the product of a strong political commit-

ment on the part of the member states, combined with a high dose of diplomatic skill from the High Representative.

In case any doubt remained about the underlying independence of national foreign policies, the member states have been very careful to add two declarations to the Lisbon Treaty that were not present in the Constitutional Treaty (Declarations 30 and 31), seeking to reinforce their national freedom of manoeuvre on foreign policy. It is now clearly stated that nothing in the Treaty will affect 'the responsibilities of the member states, as they exist, for the formulation and conduct of their foreign policy'. While some states might attach little importance to these Declarations, the UK government sought their inclusion to preserve the notion that the Lisbon Treaty does not expand the EU's competences on foreign policy to the detriment of the member states.

Finally, the High Representative is also expected to play a crucial role in the co-ordination of member states' foreign policies in international organisations and conferences (Art. 19). The relevant article includes the controversial provision that when there is a Union position on a topic being discussed by the United Nations Security Council (UNSC), the permanent and temporary EU member states sitting at the UNSC 'shall request' that the High Representative present the Union's position. There have already been cases where the EU Presidency or Solana have addressed the UNSC. This article might therefore not greatly change current practice. Besides, the ability of the High Representative to present a common EU position will still be dependent upon prior unanimous agreement among the member states on the topic in question.

## Conclusion

The reforms envisaged in the Lisbon Treaty have not altered the underlying principles of CFSP, which remains an area firmly based on intergovernmental decision-making. However, few observers will doubt that the new Lisbon Treaty has the potential to bring about a new era in the management of the Union's external action. The High Representative is at the heart of this reform and, under the terms of the Treaty, will be responsible for ensuring coherence across all aspects of External Action policies. He or she will be supported by the External Action Service and will be in charge of the EU's external relations budget. The holder of the new post of High Representative will need however to be highly skilled, both diplomatically and managerially. He or she will need to be trusted by the member states, while at the same time acting as a full member of the Commission.

There are many issues that are left vaguely defined in the Lisbon Treaty. One such issue is the composition and role of the External Action Service. The final configuration of this service will crucially determine the influence that the High Representative will be able to exercise within and outside the European Union. Similarly, the responsibilities of the quasi-permanent President of the European Council are ambiguously stated in the Treaty and little is said about how he or she will be assisted in his or her task. On the basis of the implementation of previous Treaties, caution would seem to be in order.

On the negative side, even though the institutions set up by the new Treaty are designed to help generate more coherence and hence more effectiveness of the EU's external action, they might well also lead to new conflicts of interest between Brussels-based institutions and more confusion for external observers. For instance, the new Treaty might create some problems of co-ordination between the High Representative and the President of the Council, and between the latter and the President of the Commission. In addition, new disputes may arise within the Commission as the new High Representative

takes over the post of Commissioner for External Relations and becomes one of the Vice-Presidents of the Commission. This accumulation of roles might be particularly problematic for Solana if, as expected, he becomes the first High Representative for Foreign Affairs and Security Policy for the transitional period of January-June 2009. Perceived as someone 'from the Council', Javier Solana will find it difficult to be seen as a 'neutral' actor and to gather the wide spectrum of support to carry out his responsibilities.

Mixed conclusions can therefore be reached on the Lisbon Treaty and its foreign policy provisions. Some of the reforms enshrined in the Lisbon Treaty could well facilitate greater co-ordination in the area of External Action. However, these reforms are probably insufficient in themselves to correct all current deficiencies in foreign policy-making and might even in some cases result in unintended negative consequences.

## Notes

<sup>1</sup> *A Secure Europe in a better world. European Security Strategy. Report presented by the High Representative for CFSP to the Brussels European Council, 12 December 2003, Brussels.*