

**THE FEDERAL TRUST**

*for education & research*

enlightening the debate on good governance

**A More  
Coherent and Effective  
European Foreign Policy?**

 ***A Federal Trust Report***

February 2009

## **A Definition of Federalism**

Federalism is defined as 'a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will.'

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## A More Coherent and Effective European Foreign Policy?

■ A Federal Trust Report



■ *Enlightening the Debate on Good Governance*

This report is based on the discussions of a Federal Trust Working Group which met on a number of occasions in the second half of 2008 to examine the new opportunities and challenges presented to the formulation of the European Union's external policies by the Lisbon Treaty.

This report arises from the Working Group's discussions, but the Trust and rapporteur are alone responsible for its analysis and conclusions.

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## Introduction

The aim of this report is to examine the challenges and the potentially new opportunities bearing on the development of European foreign and security policy against the background of the debate surrounding the Lisbon Treaty. In the context of globalisation, financial turmoil and new security threats, collective action at the European Union (EU) level constitutes by far the best way for the European states to make an effective impact on the shaping of global politics. At the same time, the Obama Presidency offers new opportunities for a renewed partnership between the EU and the US to tackle global issues. Against this background, the question must be put as to how far the EU is endowed with the necessary capabilities to deal with the challenges and opportunities ahead.

Even if appropriate institutions do not guarantee a common foreign policy – the intergovernmental nature of CFSP means that consensus among the member states is essential before any decision can be adopted – given a specific quantum of political will, institutions can make it easier to achieve a united foreign policy. This report argues that the Lisbon Treaty holds considerable potential in this regard. In particular, the Lisbon Treaty should solve some of the problems of lack of leadership and co-ordination in foreign affairs by establishing a new High Representative who will also be the Vice-President of the Commission. The External Action Service, which will assist the High Representative in his/her job, will also facilitate consensus-building, information sharing and common analysis and will enhance the EU's external representation. The Lisbon Treaty will essentially institutionalise existing cooperation in the area of security and defence and make its functioning more legitimate and transparent. More problematic is the creation of a President of the European Council. In its current form, it is unclear what added value this institutional figure will bring to the CFSP. This report argues that only a careful delimitation of spheres of competence could prevent duplication and overlaps between the President of the European Council, the High Representative, the President of the Commission and the EU Presidency.

The report begins with a brief overview of the main challenges to a coherent and effective European foreign policy and how these relate to institutional reform. The following section will offer a detailed examination of the provisions set out in the Lisbon Treaty, looking in particular at issues of leadership and co-ordination in European Foreign Policy, at the European External Action Service and at the Common Security and Defence Policy. It will also examine those questions that are left open by the Treaty and will need to be tackled by the member states after the ratification of the Treaty. The final part of the report will discuss the current state of the ratification process and will consider whether any of the measures discussed can be implemented in the case of non-ratification of the Lisbon Treaty.

## **Setting the Context: Challenges and Opportunities**

The 21<sup>st</sup> century has brought with it new challenges and opportunities for European external policy. Drafted under the responsibility of Javier Solana and approved by the European Council on 12 December 2003, the European Security Strategy (ESS) provides a comprehensive overview of the contemporary security challenges, strategic objectives and policy implications facing the EU. As far as security challenges are concerned, this document identifies five 'key threats': (1) terrorism, with Europe considered not only as a target but also as a base for terrorist groups linked to religious extremism; (2) proliferation of weapons of mass destruction; (3) regional conflicts, particularly in terms of the opportunities this context of insecurity offers for the development of the other four threats; (4) state failure; and (5) organised crime, including cross-border trafficking in drugs, women, illegal migrants and weapons, with possible links to terrorism. The ESS further argues that, in a context of global interdependence, the EU is also vulnerable to the problems arising from poverty, disease, competition for scarce resources, and migratory movements. A recent report on the implementation of the ESS entitled 'Providing Security in a Changing World', presented to the

European Council on 11 December 2008, identified new threats such as climate change, energy security, cybercrime and piracy.

To these security challenges, one can add the relative decline of Europe and America *vis-à-vis* new emerging economic and political powers such as China, India or Brazil. The recent financial crisis has also highlighted the vulnerability of European economies. In this context, no EU member state, however large, has the resources or capabilities to deal with these challenges alone. Collective action within the EU (and other international organisations) appears to be the only way effectively to confront these contemporary dangers and opportunities.

Despite the challenges, there are also many opportunities for the EU to play a stronger role in world affairs. First, in a multipolar world, there are more opportunities for new global and regional coalitions to be established. The greater flux that characterises the current international scene also leaves more room for the EU for manoeuvre and contributes to the realisation of the need of common action by the member states. 2008 has also been a turbulent year which has reminded member states of the need for unity in times of global uncertainty. When the conflict over South Ossetia between Russia and Georgia broke out in the summer of 2008, although there were different positions among the member states, the EU successfully mandated the Presidency to mediate among the conflict parties and all the member states accepted the outcome of the mediation efforts. Similarly, the EU was able to adopt a resolution approving the launch of an ESDP mission in Kosovo in December 2007, despite different national positions over Kosovan independence.

Secondly, after the unilateralist policies of President George Bush and the rift over the Iraq war in 2003, the victory of the democratic candidate Barack Obama in November 2008 also provides for opportunities for a stronger EU-US partnership. In the wake of the new Obama administration, the EU needs to re-evaluate its relationship with the US. The challenge for Europe is now to produce a common policy meeting the interests of the EU and which can influence American foreign policy, not conflict with it. The EU and the US need a joint approach to the Middle East, Russia, Iran and other issues. Reassurances from France



about EU-NATO cooperation, and in particular, Sarkozy's declared intention to rejoin NATO's integrated military structures have also eased transatlantic relations, as well as relations with other EU allies – although the UK continues to argue against the creation of an EU military headquarters in Brussels, principally citing arguments of resource allocation. Even though one can expect that the Obama Administration will not actively seek to create divisions among its European allies, EU-US relations will still be challenging on a number of policy areas (NATO, missile defence, military action in Afghanistan or possibly increased US protectionism).

Public support for a common European foreign policy continues to be high. According to the latest Eurobarometer survey, 64% of European citizens are in favour of decisions on defence and foreign affairs being made at the EU level.<sup>1</sup> This links with a further issue, that of expectations. The European Union will have to respond to the growing demands for a more significant involvement of the EU in world affairs. These expectations will emerge both inside and outside the Union, coming from its own citizens, but also from candidate countries and other international partners. The aim of this report is to examine which institutional arrangements and procedures the EU needs in the face of the global challenges and opportunities ahead, as well as increasing internal and external expectations. Will the Lisbon Treaty provide the institutions to deal more effectively with current and future foreign policy problems?

## **The Lisbon Treaty and European Foreign Policy**

### **Leadership and co-ordination in European Foreign Policy**

The Lisbon Treaty recognizes the crucial role of effective leadership within the sphere of the Union's external action. It seeks in particular to eliminate the rotating Presidency in the CFSP and establish a new semi-permanent President of the European Council and a new High Representative for Foreign Affairs and Security Policy who will also be a Vice-President of

the Commission. According to the Treaty, the full time President of the European Council will be elected by the European Council by qualified majority voting for a period of two and a half years, renewable once. The High Representative, on the other hand, will be appointed by the European Council, with the agreement of the President of the Commission and the consent of the European Parliament. This position will combine the responsibilities of the High Representative for CFSP and Vice-President of the Commission. The High Representative will be supported in his or her tasks by a newly created External Action Service. Finally, the rotating EU Presidency will disappear in the Common Foreign and Security Policy, but will remain active in other policy areas.

Together with the President of the Commission, the President of the European Council and the High Representative will be the new 'face' of the EU in the world. Although personalities will certainly matter, the performance of these three top jobs will also depend on the institutional competences and resources allocated to them. The Treaty sets out the main responsibilities of these three positions, but there are many issues that are left only vaguely defined by the document. Thus the possibility of institutional competition remains open. In particular, ambiguity surrounds issues of representation, agenda-setting, implementation and co-ordination.

## **Representation**

Traditionally the function of representing the EU externally fell under the responsibility of the country holding the Presidency of the Council, assisted by the High Representative, but this arrangement was judged by many as unsatisfactory, with the Presidency changing hands every six months. The new Treaty does not provide a definitive answer to the question of who represents the EU abroad at the political level. It is true that it has abolished the role of the Presidency in external representation, but the Lisbon Treaty does not seem overall to have significantly reduced the number of actors claiming to speak for Europe. On the one hand, the Treaty states that the President of the European Council will have responsibility for the 'external representation of the Union' on issues

concerning the CFSP. On the other hand, the High Representative also 'represents the Union' and 'shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences', including the right to represent the Union's position on a specific topic to the United Nations.

It can be argued that the Treaty points towards an implicit division of labour between the President of the European Council and the High Representative, as the former will have to ensure the external representation of the Union 'at his level and in that capacity' and 'without prejudice to the powers' of the latter. One could expect that the President of the European Council will focus on representation at the level of heads of state, while the High Representative will conduct political dialogue at the ministerial level. Coherent external representation will therefore require intensive co-ordination and liaison between their respective staffs in order to prepare Council meetings and summits with third parties. The ability to defuse conflict will also crucially rest on the willingness of the President of the European Council and the High Representative to cooperate. Moreover, the actual influence that both institutional figures will be able to exercise will at least in part depend on the resources at their disposal. It is, however, unclear how much staffing will be allocated to the President of the European Council. 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? In the case of the High Representative, the Lisbon Treaty foresees the creation of a new External Action Service to support this post, but as will be discussed below, the institutional location, size, staff and competences of this service are still to be agreed. How these logistical issues are resolved will greatly affect the role that the Presidents of the European Council and the Commission and the High Representative will be able to play.

The picture becomes more complicated if other aspects of the EU's external action are considered. The Treaty affirms that '[w]ith the exception of the common foreign and security policy... [the Commission] shall ensure the Union's external representation'. The President of the Commission will thus have a significant role in external representation

when it comes to such important issues as trade or development aid. Channels of co-ordination will need to be established between the President of the Council, the High Representative and the President of the Commission in areas other than the CFSP. The logic of the Lisbon Treaty would suggest that the High Representative should be the normal first port of call for interested third parties. However, EU partners will still have to keep at least three phone numbers if they want to deal with the EU: those of the President of the Commission, the President of the European Council and the High Representative. Who to contact will depend on which policy areas and at which level discussions are taking place.

## **Agenda-setting<sup>2</sup>**

In the crucial area of agenda-setting and the establishment of priorities of EU external action, the provisions contained in the Lisbon Treaty also reveal some possible overlaps between these three jobs. The European Council will continue to 'identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including matters with defence implications'. The President of the European Council, as its chair, will thus have a crucial role 'driv[ing] forward its work' and facilitating consensus among the member states. To what extent, he or she will be able to steer the agenda of the European Council is not yet clear, and much will depend on the resources at his/her disposal. The President of the European Council will also have to ensure co-ordination with the President of the Commission in 'the preparation and continuity of the work of the European Council' as both incumbents share this responsibility.

On the other hand, for the first time, the High Representative will under the Lisbon Treaty have the right of initiative and the resources and expertise to make foreign policy proposals. This provision constitutes a major innovation of the Treaty – particularly since the High Representative will also be the Vice-President of the Commission – and it may well over a period of time substantially strengthen this position. He or she will inevitably play an important role shaping the policy agenda and setting

the priorities in European foreign policy and will also put forward a 'European perspective' different from the national and intergovernmental perspective currently provided by the EU Presidency. However, the High Representative will not have the sole right of initiative, sharing this right with the member states. The High Representative will chair the Foreign Affairs Council meetings and will also nominate representatives to chair other CFSP bodies such as the Political and Security Committee and the Council working groups in the area of CFSP/ESDP. In his/her role as a chair he or she will have to facilitate consensus-building among the member states and be seen as a *primus inter pares*. The intergovernmental nature of CFSP and the unanimity requirement means that consensus among the member states will still be essential before any decision can be agreed upon. The room for manoeuvre and the influence of the High Representative will therefore greatly depend upon the willingness of the member states to support common positions, something that cannot be taken for granted.

For its part, under the Lisbon Treaty, the Commission can only submit joint CFSP initiatives with the High Representative, although it has the right of initiative in other areas of external action. This provision is intended to ensure a single voice coming from the Commission on CFSP issues, but one could argue that the role of the Commission has been weakened by the Treaty in favour of the High Representative. However, it is also true that it might result in the contrary, especially if one considers that the Commission has thus far been very reluctant to resort to the right of initiative in the second pillar. A High Representative with strong links with the Commission can bring this important actor back to the CFSP. In sum, much will depend on whether the High Representative identifies himself or herself with the group of Commissioners or with his/her colleagues in the Foreign Affairs Council, with both equally, or with neither.

## **Implementation**

From the letter of the new Treaty, it is clear that the monitoring of the implementation of the CFSP/ESDP is the responsibility of the High

Representative: he or she 'shall ensure the implementation of the decisions adopted by the European Council and the Council'. How he or she will ensure implementation, and in particular, compliance by the member states, is however a different matter. The High Representative may not bring a matter of non-compliance by a member state before the European Court of Justice, but rather can only 'name and shame' those member states who do not comply with their commitments within the CFSP. The High Representative will also need to co-ordinate his/her activities with those of the President of the European Council who, as the chair of the European Council, might also want to monitor the implementation of the European Council Conclusions. Nonetheless, it is difficult to imagine how the President of the European Council will be able effectively to perform this duty, especially if this post has limited staff and resources available.

On the other hand, when it comes to the implementation of the CFSP, and in particular, crisis management operations, some duplication of tasks might occur, in this case with the Political and Security Committee, which is to 'monitor the implementation of agreed policies, without prejudice to the powers of the High Representative'. This Committee also enjoys responsibility to 'exercise, under the responsibility of the Council and the High Representative, the political control and strategic direction of the crisis management operations'. Tensions between these two institutions are not however inevitable as, according to the Treaty, it is expected that the High Representative will appoint a representative as chairperson of the Political and Security Committee.

In his/her capacity as Vice-President of the Commission, the High Representative will also shoulder the 'responsibilities incumbent on it in external relations and for co-ordinating other aspects of the Union's external action'. It is not clear however which precise areas will be under direct responsibility of the High Representative: will it be only those covered by the Directorate General for External Relations (DG Relex) or perhaps also other areas such as Development, Humanitarian Aid, Enlargement and Trade? This uncertainty raises in turn further questions as to how the High Representative will interpret his/her remit. He or she can adopt a narrow approach and focus on the administrative management of EU external action or conversely, he or she may

concentrate on the diplomatic and political aspects of this job. In the latter case, the High Representative will then need to appoint deputies to deal with different policy areas, e.g. Foreign Policy, Common Security and Defence Policy, European Neighbourhood Policy and Parliamentary Affairs. But even a narrow interpretation of this job will involve a vast range of duties such as chairing the Foreign and Affairs Council, attending the Commission's meetings, conducting the political dialogue with third parties and running the External Action Service.

### **Co-ordination**

Finally, the High Representative will also play an important role in the co-ordination of the EU's external action, although here too he or she may end up working in competition with other actors. 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. In the CFSP area, this task falls under the responsibility of the 'Council and the High Representative' who 'shall ensure the unity, consistency and effectiveness of action by the Union'. Despite the strong rhetoric contained in these clauses, it is unclear how the High Representative will be able to prevent inconsistencies among different policy areas or enforce compliance by the member states with common positions since he does not have any specific enforcement powers to implement these provisions.

Within the Commission, the High Representative will 'co-ordinate' the whole range of the Union's external action, such as trade, co-operation and humanitarian aid, or the external aspects of internal policies such as agriculture or environment. From the letter of the Treaty, it would appear that the High Representative enjoys some authority over other colleagues dealing with external policies. Meanwhile, the President of the Commission will retain responsibility for ensuring that the Commission 'acts consistently, efficiently and as a collegiate body'.

Hence, one pressing question is what would happen in case of disagreement between other Commissioners and the High Representative; would the President of the Commission have the last say? Currently, the President of the Commission chairs the Group of Commissioners on External Relations consisting of the Commissioners for External Relations, Trade, Development and Humanitarian Assistance, and Economic and Monetary Affairs. The Commissioner for External Relations, Benita Ferrero-Waldner, is the Vice-chair of this group. Thus, the question is whether this group will retain its current format or the High Representative will take over its chair from the President of the Commission.

The High Representative has a further responsibility, that of co-ordinating member states' activities in international organisations and at international conferences. A new provision of the Lisbon Treaty envisages that the member states that are members of the UN Security Council 'will concert and keep the other Member States as well as the High Representative fully informed'. The Treaty also foresees that when a 'Union position' 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 in open public debates in the way the EU Presidency now does. However, 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.

A final potential source of inconsistency in the Union's external action might be the Presidency of the Council. As mentioned above, the Presidency will still chair other Council formations in policy areas other than the CFSP. Thus, the President of the European Council will have to ensure co-ordinated action not only with the High Representative in the CFSP field, but with the Presidency of the Council in other policy areas. Co-ordination will also be required between the activities of the Foreign Affairs Council, chaired by the High Representative, and the General Affairs Council chaired by the Presidency (as is also the case with the committees and working groups under the responsibility of these two Council formations). It is also not clear if the Commission will have a (non-voting) representative in the Foreign Affairs Council, or if it will be



represented by the High Representative, although it would be reasonable to assume the former.

The Lisbon Treaty will thus introduce significant changes at the highest administrative level of EU foreign policy. In contrast to the six-month rotating EU Presidency, the new President of the European Council could bring more continuity and, if held by a strong personality, more visibility to the EU. However, in its current form, it is unclear what added value this new institutional figure will bring specifically to the CFSP, where the High Representative's leading role has been maintained by the Lisbon Treaty. In areas other than the CFSP, the President of the Council will also have to co-ordinate his/her activities with the President of the Commission and the Presidency of the EU. In sum, the institutional innovation of the Presidency of the European Council will do little to increase coherence in EU external action as it will not put to an end to questions about who speaks for Europe. Only a careful delimitation of spheres of competence could prevent duplication and overlaps between the President of the European Council, the High Representative, the President of the Commission and the EU Presidency.

### **The European External Action Service<sup>3</sup>**

The High Representative for Foreign Affairs and Security Policy is to be assisted in his/her work of co-ordinating European foreign policy by the newly-founded European External Action Service. While the High Representative will also have the task of representing and advocating to third parties the consensual European policies and attitudes which he or she has helped to bring into being, it is worth stressing at the outset the logical priority of the High Representative's work of consensus-building within and between the European institutions. Without such consensus within the European Union, there will be little indeed in the way of robust and effective European policies which the High Representative can seek to advocate to the wider world. This analysis is also valid for the work of the External Action Service, which will have

the twin roles of facilitating consensus between the decision-makers of the Union and presenting the results of this consensus to the wider world, particularly through the Union's external delegations. The unresolved administrative questions relating to the new Service need to be considered above all in the light of these related, but not identical tasks for the new Service.

### **Institutional affiliation**

Analyses of the appropriate institutional affiliation of the Action Service have been predictably varied since its creation was first mooted by the European Constitutional Convention. The controversy about whether the Service should be more closely associated with the Council of Ministers, with the European Commission or with neither, faithfully reflects the composite status of the High Representative as both a servant of the Council and simultaneously a Vice President of the European Commission. The controversy also reflects differing views as to whether in future the Common Foreign and Security Policy of the Union should indefinitely continue to be conducted primarily by intergovernmental agreement, or whether in the long term it should become more similar in its operation to the rest of the Union's workings, with greater roles for the Union's central institutions, namely the Commission, Parliament and Court of Justice. Those favouring the latter approach will naturally see the European Commission as the appropriate institutional home of the new Service. They will rightly point out that of all the European institutions, the Commission has the greatest experience as broker and reconciler of differing national and institutional negotiating positions. Depending upon the precise membership of the Service, the Commission might also be expected to provide the largest single contribution to the personnel of the new body.

Persuasive although these arguments may appear, there is a significant risk associated with them. The new Service may well be less able to facilitate consensus if it is seen as simply a representative of one interested party within the sought-for consensus, namely the European Commission. The need to co-ordinate better the external policies of the

Commission, the Council and the member states was the main motivating force behind the European Convention's recommendations in this area and in the Treaties which followed these recommendations. Many national governments moreover, including some which can be expected to play a substantial part in the reinforcement of the Union's external role, insisted in the Convention and have continued to insist since, that substantial elements of intergovernmentalism should remain for the foreseeable future as component parts of the Union's decision-making in external affairs. To entrust so potentially powerful a tool of the Union's external policy to the Commission as the External Service could well be seen by these governments as an attempt to modify the terms of the painful compromise contained in the Lisbon Treaty, whereby the High Representative is institutionally bound both to the Council and the Commission.

It is no doubt an awareness of these dangers that has led a number of commentators to call for the new Service to be given a *sui generis* status, or to become an agency of the Union. The role of the High Representative corresponds to nothing in the traditional institutional architecture of the EU, a fact well illustrated by the Treaty change necessary to allow the High Representative, as a member of the Commission, also to work for the Council while remaining a member of the College of Commissioners. The most logical institutional affiliation of the Service would appear to be the High Representative himself or herself, as a *sui generis* element of the Union, mirroring the *sui generis* nature of the Representative. If at some time in the coming years the institutional character of the High Representative changes, then the institutional character of the Service can evolve correspondingly.

## **Tasks of the Service**

Some confusion has been caused in public discussion of the tasks of the Action Service by the conflation of two related but separate tasks of the Service, namely its contribution to the formation of robust, consistent and well-constructed external policies for the Union and its role as representing these policies outside the EU, whether providing individual

envoys of the High Representative or as providing personnel for Union delegations in third countries. These tasks can and should be considered separately.

### *Internal co-ordination within the Union*

The Treaty of Lisbon imposes upon the High Representative at least three different co-ordinating roles within the Union's external policies. The Representative will chair the Foreign Affairs Council and seek to promote among its members, not least by use of the Representative's right of initiative, the unanimity of view which is the precondition of that Council's action. The Representative will be a Vice-President of the European Commission, responsible as executor or co-ordinator for the different aspects of the Commission's activities which bear on the Union's external relations. The Representative will finally by his or her double affiliation in the Council and the Commission always be vigilant to ensure that the views of these two institutions do not damagingly diverge from each other. This is a challenging spectrum of activity. The Action Service is one of the few instruments of support for the Representative in these tasks.

From its very inception, the structure of the Service must therefore reflect above all the co-ordinating roles of the Representative. At least as important as geographic or thematic expertise is a steady stream of information to the Representative of the development of opinion on central questions of external relations within the member states, within the Council of Ministers and within the Commission. The High Representative will not have the time to follow all such issues in detail, nor without advice and guidance be able to recognize at an early stage the possibility of harmful divergence in emerging analyses and policies. This advice and guidance could be provided initially by a relatively small cadre of officials, whose primary task it would be to monitor and promote on the High Representative's behalf consensual policy formation within the Council, the Commission and the member states. These officials would draw to the Representative's attention those areas where failing efforts of mediation and consensus-building, within or between the institutions, call for an intervention from the Representative.

It may well be that in due course greater thematic and geographic responsibilities can more directly be located in the new External Service, but such is not the immediate underlying rationale of the Lisbon Treaty, and of the uneasy compromise that it represents between differing views of the Treaty's signatories on the subject of the Union's external policies. According to this uneasy compromise, those tasks which until now have been carried out by the member states individually, by the member states in the Council and by the College of Commissioners will continue under the Lisbon Treaty to be carried out as before by essentially the same institutional actors. The High Representative, supported by the External Service, has the new and complex responsibility under the Treaty of weaving these various elements of policy and decision-making into a more coherent whole. But he or she does not have exclusive responsibility for producing these various elements of policy and decision-making.

It would be surprising indeed if it were possible to gain consensus within the Council, necessary as a precondition for the setting up of the External Service, on an initial model for that Service which widely diverged from the (perhaps unsatisfactory) political compromise on external policy enshrined in the Treaty of Lisbon. This consideration points strongly to a relatively limited initial set of officials to comprise the staff of the Service working to the High Representative in Brussels.

In connection with the task of internal coordination, one should also add the role played by the External Action Service supporting the new role of initiative of the High Representative. The External Action Service will support the High Representative's agenda-setting by providing thematic and geographical expertise, policy assessment, and drafting for policy proposals. The High Representative supported by the External Action Service will thus be in a position to provide a European assessment of European policies and act as an animating force in EU foreign policy. The Service's role as a drafter for the initiatives of the High Representative may well reinforce the Representative's role in steering towards consensus among the member states.

### *External representation*

Different arguments apply to the contribution which the new Service can make to the external representation of the Union. A specific provision of the Lisbon Treaty envisages the setting up of 'Union delegations', which would most naturally be based in the buildings of the current Commission representations throughout the world. The obvious major source of staff for these Union delegations would be the new Service, reporting from third countries to and acting on the instructions of the High Representative. No doubt, as in many national diplomatic services, some individuals from outside the Service could find a place within specific delegations, with appropriate arrangements being made on *ad hoc* basis for the individuals involved. At least potentially, the organizational structure of Union delegations could well in the medium term come significantly to resemble that of most national embassies in foreign capitals. The question of how far the Union delegations staffed by the External Service could take over the tasks of national embassies is a different and more complicated one. An attraction for some national governments of the new External Service is the possibility that in the medium to long term it may be able to take over some or all of the responsibilities exercised currently by national representations abroad – especially if one considers that the economics of national representation have become more and more costly. This prospect is an entirely feasible one for consular matters. There is no reason at all why in ten years time the Union representations in third countries, particularly small third countries geographically remote from Europe, should not carry out consular duties for all EU citizens in the countries to which they are accredited and in particular provide Schengen visas to citizens of these countries wishing to visit the EU. The emergence of a specialized corps of consular officials within the External Service would be an entirely logical development, demonstrable proof of the Union's ability to save the money of European tax-payers by common action.

Much less clear cut is the extent to which Union delegations could replace in the foreseeable future the work of political reporting and representation of national interests which are today core tasks of national embassies. It may well be that no definite answer can yet be given to

this question. Size, economic development and historical ties to specific countries or regions all make for a very varied calculus of interests between different member states. It will be many years before any member state would be prepared to give up its national embassy in Washington. Shared political reporting and even representation of specifically national interests is altogether easier to envisage in less economically and politically significant capitals geographically remote from Europe. Any agreements made now for the future development of the Service in this direction can only be preliminary, tentative and facilitatory.

Although we have considered the tasks of internal coordination and representation separately, one can expect that they will not remain so in practice. First, in due course, the Union Delegations might develop into a sophisticated form of political reporting for the High Representative and the Commission. Second, some rotation can also be expected among the officials involved in the co-ordination of EU foreign policy and those representing the EU abroad, as it is usually the case in national diplomatic services. The ability of these returning officials to use in Brussels the experience they have acquired in national capitals will be an important element of this embryonic 'European diplomatic service'.

## **Composition of the Service**

According to the Treaty of Lisbon, the External Service shall 'comprise officials from relevant departments of the General Secretariat of the Council and of the Commission, as well as staff seconded from national diplomatic services of the Member States.' Further details of its functioning will be established by a Decision of the Council, on a proposal of the High Representative, after consulting the European Parliament and with the assent of the Commission. Some preliminary discussions between the interested parties took place on this matter in 2005, although many questions remained predictably unresolved. One interesting feature did, however, emerge from the discussions, namely the acceptance that the Directorate General of the Commission responsible for External Trade should not be incorporated into the new Service. Limited although this

point of agreement appears, it can be taken as implying a more general model for the setting up of the Service, a model which corresponds to the broader political and institutional analysis of the Lisbon Treaty developed earlier in this paper.

The main unresolved question as to how the future External Service should be structured is essentially that of what proportion of the existing Commission organization should be incorporated within it. The significance of this issue can hardly be overstated. A wide-ranging transfer of existing Commission personnel to the Service would reinforce the personal standing of the Representative, not least at the expense of the President of the Commission. Simultaneously and perhaps paradoxically, it would reinforce the impression that the new Service is simply the European Commission in another manifestation. On any hypothesis, Commission officials will predominate numerically in the new Service. This predominance will be reinforced the greater the number of Commission officials allocated in the first instance to the new Service.

The Treaty of Lisbon does not provide guidance as to what may be the 'relevant departments' as recruiting-grounds for the External Service. Implicitly, however, the non-incorporation of the Directorate-General for External Trade does answer that question, because it respects the fundamental philosophy of the Lisbon Treaty that existing competences over the spectrum of external policy will continue to be exercised by those who have exercised them until now. There is no aspect of the Commission's responsibilities which more directly impinges upon the external relations of the European Union than trade policy and the negotiations in the World Trade Organization which are at its heart. There are good administrative reasons why the High Representative should not take on, in addition to his or her many other tasks, the direct responsibility for this complex field. But that the day to day responsibility for this vital external policy area should be in the hands of another colleague in the Commission clearly reflects an institutional philosophy which emphasizes the co-ordinating and representative role of the High Representative rather than the executive and implementing aspects of that post.



This philosophy can be more broadly applied to the structure of the new Service. The philosophy implies that a wide range of expertise and advice should be available to the High Representative, but that this expertise should not normally derive from the wholesale incorporation into the Service of existing Commission structures such as DG Enlargement and Development. Nor should substantial parallel structures be built up in the Service to reduplicate the work already being carried out by those Directorates General of the Commission, the work of which has an impact on the external policies and relations of the Union. It might be that at some stage in the future these Directorates will be transferred to the External Service. Until that happens, it would be an expensive source of institutional friction for the External Service to reduplicate the work of these Directorates or to do more than monitor and co-ordinate their activities. The High Representative will need advisers with recent and current knowledge of the work of many of the Commission's Directorates General. A clear distinction should be observed, however, between the substantive work of those Directorates and the co-ordinating role of the High Representative, supported by the External Service.

There is only one major aspect of the Commission's present structure that obviously will gravitate towards the new Service. According to the Lisbon Treaty, the High Representative will, in addition to 'co-ordinating other aspects of the Union's external action, be the Vice President of the Commission charged personally with 'responsibilities incumbent on it (the Commission) in external relations.' Within the present Commission, the Commissioner responsible for external relations is supported by the large External Relations Directorate, a Directorate which would logically work after ratification of the Lisbon Treaty for the High Representative. It would be strange indeed if this Directorate did not provide a substantial contribution to the new External Service, together with the corresponding (less numerous) officials from the General Secretariat of the Council responsible for external and those responsible for military affairs. The presence of these latter officials, many of whom are seconded from national administrations, will reflect the important role of the High Representative in the Common Security and Defence Policy, a function the exercise of which will demand appropriate technical support. Beyond

these mentioned officials, however, there is at present no compelling rationale for wholesale incorporation into the External Service of existing clusters of officials from either the Council Secretariat or the Commission.

The final main building-block of the External Service will be, as the Treaty stipulates, the national civil servants recruited directly to its ranks. The High Representative will in any case need experts on national external policies and national civil servants are those most likely to be able to provide the necessary insights. More generally, the Service will be dependent upon national administrations for a supply of national administrators who can ensure that the ethos of the new organization adequately reflects the contribution to and competences in European external affairs of national governments. It will be difficult to achieve this without the willing collaboration of national governments, probably operating initially on at least a loose quota system. The assurance that senior positions will be available to suitably qualified candidates from national administrations will be one precondition of attracting candidates of appropriate quality from the civil services of the member states. National Foreign Ministries will also need to be prepared, in terms of training, and think carefully about the implications of the eventual establishment of this Service.

Finally, consideration should be given here to whether the External Action Service should also support the President of the Council in his/her foreign policy responsibilities. In order to minimise the risk of duplication and clashes between the President of the Council and the High Representative, it would seem logical that the Service would provide at least some support to the President of the Council too. How the Service will report to the Commission President (who also has responsibilities in global affairs) remains however an open question.

## **Conditions of Service and Budget**

If the External Service is to perform effectively its co-ordinating function, it must be seen as an honest broker between the interested parties, particularly when conflicting views and interests fall for resolution. The internal culture of the Service must not merely be non-partisan, but must

be understood to be such by outsiders. A number of administrative arrangements for the new Service would be helpful in facilitating this culture and its external perception.

Reference has already been made to the need to reassure national civil servants joining the Service that senior posts will be open to them. More generally, a strong mix of officials from different backgrounds at every level of the Service will reinforce the non-partisan credentials of the new organization. It should be a conscious policy of the personnel department of the Service to ensure in every working unit adequate representation of all three main streams of recruitment, Council, Commission and national civil services. It should also be the responsibility of the officials themselves and their managers to ensure that this mixture of backgrounds leads to the constructive integration of different strands of interest and argument, rather than a simple reproduction within the Service of institutional rivalries that have been traditional outside the Service. Long standard periods of employment within the Service, a code of professional conduct for the Service, regular and repeated training for new entrants and the rapid establishment of a career pattern exclusively within the Service would all be helpful in this regard. A natural guarantee for the independence of the Service would be the recognition that that all personnel questions are the exclusive responsibility of the High Representative.

Since many of those who will comprise the first members of the External Service are already employed by the Union, the extra cost to the Union of setting up the Service will be correspondingly mitigated. An unresolved issue is that of the salaries and other expenses associated with the national civil servants who are to join the Service. Since the member states are the signatories of the Lisbon Treaty and all of them are beneficiaries of the more coherent external policies for the Union which the Service will be promoting, it would be entirely reasonable for them to bear the costs of the civil servants they contribute to the Service. The interests of the Service however probably point in the opposite direction, to the entire cost of the organization's being borne by the Union's budget. For the member states to remain the paymasters of 'their' civil servants working for the Service would be a barrier to

integration within the organization and might well lead to undesirable differences of working conditions between colleagues in the Service.

Irrespective of the precise arrangements adopted for national civil servants, it is anyway clear that the European Parliament, as joint budgetary authority, will have great influence over the financial affairs of the new Service. It will be a matter for political decision within the Parliament how and how far it wishes to make use of this influence. The understandable and proper desire of the Parliament to hold the Service and indeed the High Representative to democratic account may conflict, particularly in the early years of the Service, with another goal of the Parliament, namely to demonstrate the Union's enhanced capacity for external action after the Lisbon Treaty, of which the rapid establishment and effective functioning of the External Service will be a major element.

The discussions concerning the External Service which were suspended after the French and Dutch referendums in 2005 made clear that widely differing views existed between the participants about the future role and composition of the Service. If an overall agreement on the establishment of the Service cannot in the short term be attained, there might be merit in setting up those elements of the Service which are least contentious and which can most easily be implemented. It is in any case highly likely that the Service will have to be set up gradually, rather than in a single act of creation. From the very first day of the High Representative's activity, however, there will be a need for advice and analysis to support the Representative's co-ordinating and representative roles. There is no reason why plans should not already be prepared for member states, the Council Secretariat and the Commission to set up a skeleton staff for the High Representative, which could function as a nucleus around which later development of the External Service could take place. Parallel preparations could be made for the remodelling of the Commission's external offices into Union delegations. The change of name of all these offices can occur simultaneously, on a designated day. There would however be powerful symbolism in ensuring that, as soon as possible after this change of name, members of the External Service, particularly those who previously had been in the Council Secretariat and national civil services, were sent to join the staff of these renamed delegations.

These first tangible activities of the Service in supporting the work of the High Representative and in providing personnel for external representation might well act as a spur to further agreement in the Council of Ministers and elsewhere on a more precise blueprint for the future structure of the Service. Despite the vagueness of the Lisbon Treaty about the details of the Service's administrative configuration, the Service is conceived by the Treaty as exercising relatively clear functions. The exercise of those functions may give added substance and urgency to the otherwise potentially self-absorbed debate on the best theoretical model for the Service.

## **Common Security and Defence Policy**

Cooperation in the area of defence has been one of the latest, but fastest developing additions to the European Union's array of policies. After the St. Malo summit, new bodies were created to give form to the ESDP. These included the Political and Security Committee, the EU Military Committee, and the EU Military Staff. The institutionalisation of the ESDP has continued with the creation of a European Defence Agency and the setting up of a Civ/Mil Cell that could serve as a basis for an EU autonomous Headquarters. At the Helsinki Council (December 1999), the member states decided on the creation of a Rapid Reaction Force<sup>4</sup> and military capability targets (the so-called Helsinki Headline Goal) and they also agreed to have a specific number of military and civilian personnel, including police officers, civilian experts, and judges at the EU's disposal.<sup>5</sup> The Helsinki Headline Goal was wrongly declared to have been achieved in 2004. The new Headline Goal 2010, agreed in 2004, aimed at further enhancing the EU's military capacities by identifying military capability targets, namely an EU strategic lift command, EU battlegroups and the availability of an EU aircraft carrier. A Battlegroup Concept has been developed with the establishment of thirteen national and multinational battlegroups. Since 1 January 2007, the EU has two battlegroups on standby for six months at a time, following a rotating schedule.

The institutional development of the ESDP has allowed for the implementation of EU crisis management operations and, since 2003, the EU has deployed twenty three civilian and military operations. These developments have increased the EU's international visibility and impact. The Union has increasingly taken over NATO operations in the Balkans, and it has also deployed missions in Eastern Europe, Africa and Asia, including civilian and military operations to deal with recent security crises in the South Caucasus and Africa, together with the deployment of an EU Monitoring Mission in Georgia and an EU naval operation (Atalanta) against piracy off the Somali coast. Against this backdrop, how will the adoption of the Lisbon Treaty affect cooperation in this field?

### **Decision-making and implementation**

The Lisbon Treaty, which retains most of the provisions of the Constitutional Treaty in this area, institutionalizes the European Security and Defence Policy. A new section on 'Provisions on the Common Security and Defence Policy' incorporates into the Lisbon Treaty all the informal developments that have taken place since the launching of the ESDP at the Cologne European Council in 1999. The Treaty also maintains the distinct intergovernmental nature of this policy. While the use of qualified majority voting is possible in the Common Foreign and Security Policy (CFSP) in some cases, such as the appointment of the High Representative and Special Representatives, implementation of actions, and provisions on financing – its use is excluded when it comes to decisions that have military or defence implications. The member states do not wish to lose control in this sensitive policy area and, as the Treaty reminds us, 'national security remains the sole responsibility of each Member State'. Moreover, provisions on the Common Security and Defence Policy (CSDP) have to respect the specific character of the national defence policies of certain member states (e.g. neutrality) and the obligations of those member states 'which see their common defence realised in the North Atlantic Treaty Organisation (NATO)' (Art. 42.2). This provision has acquired even more significance in the context of the Irish referendum since one

of the main concerns of the Irish voters referred to Ireland's traditional policy of neutrality.

Within these parameters, the Lisbon Treaty introduces several provisions regarding the functioning and implementation of CSDP. First, the Lisbon Treaty increases the scope of the so-called Petersberg tasks. In addition to humanitarian missions, rescue, peacekeeping, and crisis management, including peacemaking operations, the Treaty adds 'joint disarmament operations', 'military advice and assistance tasks', 'post-conflict stabilisation' and 'the fight against terrorism, including by supporting third countries in combating terrorism in their territories'. The Treaty also institutionalizes the European Defence Agency, established in July 2004. In terms of financial arrangements, in addition to existing procedures, the Treaty envisages the possibility of guaranteeing rapid access to the Union budget for new CSDP missions. The member states can also agree to establish a 'start-up fund' to be financed by member state contributions.

### **Flexibility and solidarity**

The Lisbon Treaty also allows for more flexibility in CSDP in the form of different procedures for cooperation, namely, enhanced cooperation, permanent structured cooperation and 'coalitions of the willing'. The Nice Treaty had already introduced the possibility of enhanced cooperation for the implementation of CFSP joint actions and common positions that did not have military or defence implications. The Lisbon Treaty allows for a group of states to establish enhanced cooperation in order to deepen their cooperation in a given policy area, including in defence matters (Art. 20). Enhanced cooperation is considered by the Lisbon Treaty as a 'last resort' mechanism, to be used only when 'the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole' (Art. 20.2). A proposal on enhanced cooperation requires the support of at least nine member states and it has to be adopted by the Council by unanimity. The High Representative and the Commission would also give their opinion and the European Parliament would be informed. Although the Treaty increases flexibility

in CSDP by allowing enhanced cooperation in this area, the requirement of unanimity in the Council is much more demanding than the current qualified majority voting foreseen in the Nice Treaty. Furthermore, the fact that other member states may attend deliberations relating to these issues might increase reluctance to resort to this formal mechanism, to the advantage of other informal 'like-minded groups'. In sum, as in past practice, provisions on enhanced cooperation within ESDP may well represent a theoretical possibility, without ever becoming a realized option.

Permanent Structured Cooperation on the other hand holds more potential to assist cooperation between the member states. The Treaty provides for 'cooperation between member states whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area'. The participating member states are expected to 'bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics' (Art. 2(b)), Protocol 10). Although it is not envisaged as a procedure for the deployment of EU missions, this mechanism should facilitate capability development and the pooling of assets, in turn increasing CSDP operational capabilities. Membership is voluntary: there is no obligation for the member states to join a Permanent Structured Cooperation. The decision for the establishment of a Permanent Structured Cooperation is to be adopted by the Council on the basis of qualified majority voting. There is also a procedure to admit new member states that wish to join the Permanent Structured Cooperation in later moments and also to suspend those member states that no longer meet the requirements.

The 'Protocol on Permanent Structured Cooperation' contains the provisions about how to proceed with this form of cooperation, although there are still many open questions as to how it is going to be operationalised.<sup>6</sup> For example, it is still not clear which member states will be able to participate in the Permanent Structured Cooperation. Unlike enhanced cooperation, Permanent Structured Cooperation does not require a minimum of member states to be launched. Rather



membership will depend on the criteria used to assess the eligibility of the participants. It is still unclear what the 'higher criteria' for joining a Permanent Structured Cooperation will be as those mentioned in the Treaty, Protocol 10, are still rather vague. Yet, it is likely that if the criteria are too strict or related only to capability this could lead to a two-speed or multi-speed Europe in the area of defence. For example, a criterion that sets a defence budget of 2% of GDP as threshold for participation will have such consequences since most of the current member states face financial constraints to reach that level of expenditure. The member states will also need to determine what the role of the European Defence Agency would be and how it would contribute to the development and implementation of assessment criteria.

The Treaty also foresees the possibility of entrusting CSDP operations to a group of member states 'which are willing and have the necessary capability for such a task'. The procedure to establish a 'coalition of the willing and able' is much less convoluted than in the case of Permanent Structured Cooperation. The Council authorizes the decision and, thus, the mission is launched in the name of the EU, but run by the 'coalition of the willing'. The coalition will agree on the details of the implementation of the task, in association with the High Representative. The rest of the member states have the right to be kept regularly informed of its progress. Only if there are major problems or if the decision requires an amendment will the Council adopt new decisions. While this has been common practice in the past within the ESDP framework and outside – as seen during the crisis in Albania in 1997 – introducing the possibility to establish 'coalitions of the willing' in the Treaty might render this practice more legitimate and transparent, avoiding some of the controversies of the past.

Last but not least, the Lisbon Treaty introduces solidarity and mutual defence clauses. The former calls on the member states to assist other member states in the event of a terrorist attack or a major natural or man-made disaster. Assistance, which remains voluntary, will be provided at the request of the political authorities of the member state affected. Any decision to implement this clause will be adopted by the Council on the basis of a joint proposal submitted by the Commission and the High Representative. The Political and Security Committee will assist the Council.

The mutual defence commitment (Art. 42) states that in the case of an armed aggression, other member states have the obligation to assist the member state victim of aggression 'by all the means in their power'. This obligation, which echoes Art. V of the Brussels Treaty, was very controversial during the negotiations of the Constitutional Treaty. On the one hand, it was criticized by non-aligned countries because of its similarities with military alliances. On the other hand, some NATO members and the WEU Assembly were critical of the mutual defence clause because it fell short of the commitments contained in the modified Brussels Treaty, which calls on NATO to execute this commitment. Agreement among the member states was only achieved in the Constitutional and Lisbon Treaties by adding substantial qualifications to the mutual defence commitment. Thus, this obligation is now limited by reference to 'the specific character of the security and defence policy of certain Member States' and should be consistent with member states' commitments under NATO, which is described in the same article as the foundation of the collective defence for its members. Finally, despite references to commitments to the Atlantic Alliance, the Treaty remains silent on the issue EU-NATO cooperation. The Lisbon Treaty will not of itself help reduce strains in the relationship between the two organisations at the political level (for instance concerning ESDP deployments in Afghanistan and Kosovo).

## **After the Irish Referendum**

The Irish referendum of June 2008 has thrown the future of the Lisbon Treaty into inevitable and considerable doubt. It now seems likely that the Irish government will hold a second referendum on the issue in the autumn of 2009. A second referendum is however not a guarantee that the Irish people will say 'yes' at this second consultation. If the Lisbon Treaty were to be rejected in a second referendum, the EU's external policies would have to continue to function on the basis of the Treaty of Nice. However, and given the consensus on the need for these reforms, EU leaders might also want to adopt some provisions of the Lisbon Treaty without a formal Treaty reform, i.e. 'cherry picking' from

the text of the Treaty. One can envisage two different alternatives. A first option might be to adopt pragmatic steps aimed at better co-ordination among the European institutions and with the member states' diplomatic services, but without altering the current institutional structure. A similar attempt by the European Commission followed the negative outcomes of the referendums held in 2005 in France and The Netherlands on the Constitutional Treaty.<sup>7</sup>

A second alternative would be to adopt some institutional reforms in the external field by a Joint Action or a decision of the European Council. For instance, the External Action Service could be established following a decision by the Council of the EU (with the consent of the Commission and prior consultation of the European Parliament). As will be discussed below, the option of piecemeal institutional change would be limited in terms of what can be adopted. Some of the provisions envisaged by the Lisbon Treaty, such as the creation of a new President of the European Council, would anyway require amendments to the current Treaties and therefore could not be implemented without Treaty ratification. A further option under current consideration would be to incorporate certain reforms into a protocol which would be adopted at the same time as the Croatian accession treaty.

## **Life without Lisbon**

The aim of this section is to examine the ways in which the innovations contained in the Lisbon Treaty in the area of foreign policy could be implemented in the event of non-ratification of the Treaty. There is a near consensus among policy-makers and scholars that changes in the area of the EU's foreign policy along the general lines of those envisaged in the Lisbon Treaty are a precondition of the Union playing a stronger role in world politics. However, the implementation of these arrangements without Lisbon will still be extremely difficult, as it will require a renewed consensus on the part of the member states and the incumbent institutional actors, something that cannot at all be taken for granted at this stage.

## **Leadership and co-ordination: practical measures**

As regards the President of the European Council and the new High Representative the options in the event of non-ratification of the Lisbon Treaty are rather limited. In this context, the Treaty on European Union plainly states that the European Council 'shall meet [...] under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council' and that 'the Presidency who shall represent the Union in matters coming within the common foreign and security policy'.

Under the existing Treaties, it would however be possible to reinforce the powers of the High Representative, allowing him/her to chair the External Relations Council. He or she could also be permitted to participate informally in the meetings of the College of Commissioners in order to increase co-ordination between the Council and the Commission in the area of foreign policy. From a legal point of view, however, the High Representative could not assume the responsibilities of the Presidency of the Council or be appointed as Vice-President of the Commission. According to the current Treaties, it is not possible for the High Representative to be a Commissioner as the members of the Commission should be 'completely independent' from the member states.

## **The European External Action Service**

Arguably, the External Action Service could be established by the Council of the EU on the basis of a Joint Action if the Lisbon Treaty is finally abandoned. Other inter-institutional services and agencies have been established without the need for Treaty change (e.g. the European Defence Agency). Yet, the fate of this service is directly linked to that of the High Representative for Foreign Affairs and Security Policy. What would the purpose of this service be if there is no High Representative/Vice-President of the Commission to be assisted? Simultaneously, other pragmatic solutions for an enhanced foreign policy capacity could be implemented, such as closer co-ordination between the Commission Directorates General dealing with external relations, increased

cooperation between the Commission and the Council Secretariat services and joint policy papers drafted by the Commission and the Council Secretariat. Enhanced coherence in foreign policy can also be achieved through a structured dialogue between the High Representative, remaining a representative of the member states, and the Commission (in particular with its President) or having the High Representative attending Commission meetings.

If the Lisbon Treaty is not ratified, the Commission Delegations will not be renamed 'Union Delegations.' Some *ad hoc* measures might however be put in place in order to improve their role. For instance, more exchanges and cooperation between the Commission Delegations and the national diplomatic services could be promoted, in particular regarding consular assistance. Furthermore, the possibility of double-hatting the Head of the Commission Delegation and the EU Special Representatives in some countries (as was the case in Macedonia) could lead to a more unified approach. As far as external representation is concerned, the member states could well agree on some informal measures to increase cooperation and ensure a unified policy within international organisations and towards non-member states. They could also agree to increase the current role of the High Representative in international organisations.

## **European Security and Defence Policy**

The ESDP is perhaps the policy area which would suffer least in institutional terms from the demise of the Lisbon Treaty. There are plenty of precedents of institutional innovations in ESDP that were established informally and only later institutionalised in the Treaties (such as the establishment of the Political and Security Committee). In fact, many of the reforms introduced by the Lisbon Treaty in the area of defence only institutionalize existing and evolving practices. Thus, the creation of the European Defence Agency before the ratification of the Treaty shows not only the willingness of the member states to deepen their cooperation in defence procurement, but also the potential for informal developments in this area.

Another area where the Treaty has been pre-empted regards the Petersberg tasks. The EU has already been involved in several of the new Petersberg tasks incorporated in the Treaty. The EU Monitoring Mission in Aceh was for instance responsible for the decommissioning of the Free Aceh Movement's armaments. 'Post-conflict stabilisation' has also been one of the main tasks of the civilian and military operations deployed in the Western Balkans. By providing advice and training to police forces, the EU police missions in Afghanistan (EUPOL) and Palestine (EUPOL COPPS) have contributed to the strengthening of the rule of law and improving security in these territories.

As far as flexible forms of cooperation are concerned, the ESDP has been flexible enough in the past to allow for a group of member states, or a coalition of the willing, to co-ordinate their military forces under the umbrella of the EU. This was the case, for example, with operation Artemis in the Democratic Republic of Congo in 2003, when a number of member states, including Sweden, Belgium, the Netherlands and the UK, led by France, pooled their resources to launch and implement this military operation. The majority of EU operations have been led by one or several countries, supported by a variable number of member states and with contribution from other non-EU member states like the US, Turkey, Morocco, Canada or Chile. For instance, 22 member states have contributed to EUFOR Tchad/RCA and the same number of countries participates in the EU Monitoring Mission in Georgia and the EU military naval operation deployed off the Somali coast is led by the British warship, HMS Northumberland, and comprises British, French, German, Italian and Spanish ships.

In matters of common procurement and capability development, the member states have pursued 'permanent structured cooperation' outside the EC/EU Treaties in the past through the WEU - e.g. Eurocorps and Euromarfor - and also bilaterally. Bilateral agreements between EU member states have focused on cooperation in the field of training, joint procurement and joint command and control. For instance, France and Belgium have a joint programme to train pilots; for its part, Admiral Benelux constitutes an example of joint command between Dutch and Belgium navies.<sup>8</sup> In the EU context, the creation of battlegroups so far constitutes the best example of the philosophy of Permanent Structured

Cooperation. More recently, the member states have agreed on several measures to improve European military capabilities. Programmes on a European Air Transport Fleet, maritime mine counter-measures, helicopters, a future unmanned aerial system, and a space-based imaging surveillance system were discussed at a meeting of EU Defence Ministers on 10-11 November 2008. Interestingly, not all the 27 member states will participate on each of these programmes (e.g. Hungary, Romania and Bulgaria will not participate in the multinational airlift fleet based on the A400M) and a non-EU member state, Norway, will participate in the development of maritime mine counter-measures capabilities. Thus, existing cooperation does not significantly differ from Permanent Structured Cooperation as foreseen in the Treaty, although one could expect that the latter would take place according to certain criteria agreed beforehand by the member states, rather than on an *ad hoc* basis.

The non-ratification of the Lisbon Treaty will mean the abandonment of the solidarity clause and the mutual defence commitment. In practical terms, this might not have a significant impact. In the past, member states have provided assistance to other member states in case of natural disasters (e.g. forest fires or flooding) and DG Environment is already co-ordinating programmes in the field of civil protection. One could also imagine that if requested, in the case of a terrorist attack or armed aggression, other member states would assist the victim of that attack. However, in this event, NATO would be the primary organisation expected to carry out the operation. For its part, the WEU Treaty also contains a mutual defence clause which obliges its ten member states to assist each other in case of armed attack.<sup>9</sup>

The civilian side of ESDP might suffer more from the non-implementation of the Lisbon Treaty as it would mean that the foreseen 'start-up fund' financed by the Union budget will not be created. This would entail that for urgent needs (e.g. fact-finding missions, start-up of an operation), police, rule of law and monitoring missions will not have rapid access to the Union budget, but will have to follow standard procedures, which have in the past delayed the deployment of the mission. The member states could decide even without the Lisbon Treaty to establish a 'start-up fund' for civilian crisis management operations to

be financed by member state contributions, similar to the mechanism that has been established for the financing of EU military operations – the so-called ATHENA mechanism. It might well be, however, that some member states would prefer to remain with existing financial arrangements, even if this means delaying the EU's response to international crises.

In sum, there could well be some, if limited life in CFSP/ESDP without the Lisbon Treaty. In security and defence matters, in particular, there are plenty of examples of past cooperation between the member states and it is likely that cooperation will carry on in the future in any event.

## Conclusions

The European Union needs a strong foreign policy machinery if it wants to meet the current global challenges of financial turmoil, international conflicts and climate change, among others. To date, EU foreign policy has been characterised by overlapping structures, a lack of leadership and weak capabilities. The Lisbon Treaty has the potential to improve the management of EU external action, especially with the creation of a new double-hatted High Representative supported by a strong European Action Service. Being at the top of the EU's diplomacy and EU external policies (and managing the EU's external relations budget), he or she could bring more consistency to these two dimensions of EU external action.

However, whether the High Representative can bring about such result will depend on how he or she manages inter and intra-institutional competition on the one hand, and relationships with the member states on the other. The High Representative will be under close scrutiny by the President of the European Council, the President of the Commission and the member states, who are each likely to try to steer his or her actions. Given the ambiguity of the Treaty, the person holding this position could interpret the role of the High Representative as a mere administrator of EU external action at the service of the member states and a *primus inter pares* within the Commission or as a key political figure and the



main 'face' of the EU in the world. Although the latter would solve problems of continuity and visibility of EU external action, it might lead to tensions with the President of the European Council and the President of the Commission, not to mention some member states which jealously guard their independence in foreign policy. In sum, while the Lisbon Treaty might improve the effectiveness of EU foreign policy by merging the positions of the High Representative and Vice-President of the Commission, and establishing a new External Action Service, it has not fully rationalised the EU foreign policy system and might even lead to new problems of inter and intra institutional competition.

Above all, the member states will still retain the power to veto initiatives that do not conform with their perceived national interests. The institutional reforms foreseen in the Lisbon Treaty can palliate some of the problems of coherence experienced by the Union in the past (the rift over the Iraq war being only one example) and create the conditions in which an effective foreign policy is implemented, but it cannot provide for the necessary political will.

As regards the ESDP, the Lisbon Treaty does not change its fundamental character, which remains the preserve of the member states acting co-operatively. The sensitivity carried by defence matters means that progress in this area, more than in any other policy area, will still depend on the willingness of the member states to act together. Even in the event of the demise of the Lisbon Treaty, it is likely that existing cooperation projects and operations would carry on. Cooperation among the member states in security and defence matters has been characterized by its flexibility, voluntary character and *ad hoc* nature, and it is likely that it will continue to be so.

The fate of the Lisbon Treaty rests on the second Irish referendum this autumn. If the Irish voters reject the Treaty for a second time, the document itself will be irreparably damaged. In the face of current global challenges, as well as increasing expectations of a stronger role for the Union in world affairs, one could well expect that the member states will certainly look for other ways to improve the EU's foreign policy machinery, especially as it is generally recognized that there is a gap in the co-ordination and representation of the Union's external policies.

One way forward could be the implementation of those provisions foreshadowed by the Lisbon Treaty; which do not strictly need change in the treaties for their implementation. However, there is no guarantee that these attempts will succeed. In particular, one should not underestimate the difficulties that will be encountered in the attempt to achieve a new consensus amongst 27 in the event of non-ratification. There is no guarantee or even probability that the member states will find it easier to achieve on a piecemeal basis the overall package of often painful compromises which they finally accepted in the Lisbon Treaty.

## Notes:

<sup>1</sup> European Commission, *Eurobarometer 70, Public Opinion in the European Union, First Results*, Autumn 2008, available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb70/eb70\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb70/eb70_first_en.pdf).

<sup>2</sup> Although it is true that in foreign policy much of the issues on the agenda constitute a reaction to external events and crises, one can still talk of agenda setting in terms of prioritising some issues over others.

<sup>3</sup> This section draws on Brendan Donnelly, 'The European External Action Service', *European Policy Brief* (The Federal Trust, September 2008).

<sup>4</sup> The RRF consists of a militarily self-sustaining force of 15 brigades (50,000-60,000 persons), capable of full deployment within 60 days, sustainable for at least one year and with appropriate air and naval support.

<sup>5</sup> At the Feira Council in June 2000, the member states agreed to commit up to 5000 civilian police officers for civilian crisis management operations, as well as to create a Rapid Reaction Mechanism to enable emergency civilian aid to be available to help stabilise crises. The objective was to be able to deploy up to 1000 police officers within 30 days for crisis situations.

<sup>6</sup> For a detailed examination of this issue, see S. Biscop, 'Permanent Structured Cooperation and the Future of the ESDP', 20 *Egmont Paper* (Egmont, Brussels, 2008).

<sup>7</sup> European Commission (2006) *Communication from the Commission to the European Council of June 2006. Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility*, COM (2006) 278 Final, Brussels, p. 2.

<sup>8</sup> *Ibid.*, pp. 12-13.

<sup>9</sup> The member states still need to take a decision about the future of the WEU Treaty and its possible termination.

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