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NOTE

The Lisbon Treaty and its implications for the EU External Action

Abstract:

The Lisbon Treaty signed at the European Council on 13 December 2007 incorporates the main foreign policy innovations contained in the Treaty establishing a Constitution for Europe. The pillar structure disappears and the Union acquires legal personality. The High Representative for Foreign Affairs and Security Policy will not have the title of Minister for Foreign Affairs but will be both Chairman of the Foreign Affairs Council and Vice-President of the European Commission. In this capacity, he will appear for a hearing before Parliament and the Commission will have to obtain its confidence. He will be assisted by a European External Action Service. Distinguishing his role from that of the President of the European Council - who represents the Union concerning the CFSP - will require further work. New permanent structured cooperation is introduced for the CSDP. The ordinary legislative procedure (codecision) will now apply to all autonomous commercial policy instruments and all trade agreements will require the assent of the European Parliament. Development policy remains unchanged although it is now included under the EU's general foreign policy objectives, as is humanitarian aid, which is now a fully-fledged Union policy.

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This note was prepared by the Policy Department on its own initiative.

This paper is published in the following languages: English
French

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Manuscript completed in May 2008

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Brussels, European Parliament, 20 May 2008

1. Introduction

On 19th October 2007 in Lisbon, the Member States of the European Union agreed upon the text of the "**Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community**" henceforth known as the **Lisbon Treaty**. The new Lisbon Treaty was formally signed by the Heads of State and Government at the European Council on 13 December 2007. This is the latest step in ongoing efforts to reform the institutions of the European Union as launched in February 2002 with the European Convention and which continued with the ill-fated Constitutional Treaty. The Lisbon Treaty should enter into force on 1st January 2009, once ratified by the 27 Member States.

The principles of the Union's external action are set out in article 10 A [21] TEU and are described as those which "*have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations and the Charter of international law.*"¹ The Union will conduct policy in this area article 12 [25] TEU by defining general guidelines and adopting decisions (the latter incorporates the previous distinction between common strategies, common positions and joint actions).

The Union now acquires **legal personality** article 46a [47] TEU and the pillar structure is overcome with the new High Representative charged with the important role of ensuring coherence between EU institutions and between the institutions and Member States. Whilst **enhanced cooperation** Title IV article 20 [10] TEU is now extended across all areas of the Treaty (now requiring at least 9 Member States), however the articles referring to CFSP and in particular to the Common Security and Defence Policy reiterate the norm of taking decisions by unanimity (except within permanent structured cooperation - see below) as well as underlining that this is an area where legislation is excluded.

A new and detailed section (Chapter 2, Section 2 articles 28A-28E [42-46] TEU) entitled "Provisions on the Common Security and Defence Policy (CSDP)" essentially brings the European Security and Defence Policy (ESDP) and all its developments since the Cologne European Council in 1999 within the Treaty framework. The new CSDP is described as an integral part of the CFSP and can draw upon civilian and military assets to carry out missions outside the Union for "*peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.*"

In response to criticism about the lack of flexibility in the CFSP budget, a new Decision article 28.3 [41.3] TEU will be adopted (after consulting the European Parliament) setting out procedures for "guaranteed rapid access" to the Union's budget and a new "start up fund" is introduced (adopted by QMV) for tasks not charged to the Union's budget (e.g. military crisis management, defence related spending, or procurement of military/defence-related goods by third states). This "start up fund" will be made up of Member States' contributions (much like the current Athena mechanism).

The key innovations in the area of foreign affairs and defence followed those introduced in the Constitutional Treaty but with the title "Union Minister for Foreign Affairs" being replaced by a new **High Representative for Foreign Affairs and Security Policy**. The High Representative (HR) for Foreign Affairs and Security Policy will be double-hatted as a Vice President of the European Commission and will be supported by a **European External Action Service** (EEAS) - which effectively overcomes the existing pillar I and pillar II structure and incorporates a role for Member States diplomats. The European

¹ Following the example set by the European Parliament's Report drawn up by Rapporteurs Corbett and Mendez de Vigo, on the Lisbon Treaty, *the numbers of the articles in the TEU and TFEU indicated first refer to those given in the Treaty of Lisbon; the numbers in [...] are those the articles have in the consolidated version of the Treaties (OJ C 115, 9.05.2008).*

External Action Service article 13a [27.3] TEU will consist of personnel from the Council General Secretariat, the Commission and seconded staff from national diplomatic services. The inclusion of the latter will be important in fulfilling the EEAS dual mandate of supporting the High Representatives and working "in cooperation with the diplomatic services of the Member States". The modalities, structure and indeed make-up of the EEAS is currently being worked out by the Council and Commission services and Member States before consulting the European Parliament as foreseen in the Lisbon Treaty (Declaration 15).²

The Lisbon Treaty also confirms the job description of the High Representative for Foreign Affairs and Security Policy whereby Article 9E [18] TEU sets out that the HR will conduct the CFSP and will be appointed, with the agreement of the President of the Commission, by Qualified Majority Voting (QMV). The HR shall chair the Foreign Affairs Council and be one of the Vice-Presidents (VP) of the Commission (thereby charged with delivering greater consistency and coordination).

As a Vice-President of the Commission, *the European Parliament extends its role over the double-hatted HR/VP* whereby the European Parliament's consent is required in the appointment (article 9D.7.3 [17 paragraph 6 and 8]) of the Commissioners and in their dismissal through the censure procedure (Article 201 [234.2] TFEU).³ The HR/VP is expected to reinforce a recent trend towards greater policy coherence (in formulation and implementation) between the two pillars. As a VP in the Commission he/she is also expected to defend the Commission's interests in the Council, however several references in particular to the Commission's right to be *fully associated* (pre-Lisbon Treaty on European Union article 18.4) have now been deleted. Many such examples will have to be examined in more detail because an amended article 15a [30] TEU could be interpreted more positively and which states that "*Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council*". The Commission is also an integral part of the concept for the European External Action Service.

A further complication in institutional and personal relations is created by the *new permanent President of the Council* article 9B [15] TEU who will Chair the European Council article 9B.6 [15.6] TEU and more noteworthy shall article 9B.6 [15.6] TEU "*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*". It will be interesting to see how in practice the relationship between the High Representative (chairing the Foreign Affairs Council) and the President will work to achieve a coherent division of labour, e.g. who would lead in negotiations on behalf of the UN and EU-3 with Iran over the current nuclear crisis? To this equation one also needs to situate the HR/VP in the constellation of institutions, roles and chemistry that also include the new Permanent President of the Council and the President of the Commission. The latter article 9D.7 [17.7] TEU, proposed by the European Council, will be elected by the European Parliament.

The new permanent President article 9B.5 [15.5] TEU can hold this position for a two and half year term renewable once i.e. a maximum of five years. He/she will also provide the European Parliament with a report after each meeting of the European Council. The High Representative, who will work closely with

² For several interesting and speculative expert views on how the EEAS may look and operate see: "The EU Foreign Service: how to build a more effective common policy", EPC Working Paper No. 28, November 2007.

³ Article 9e states: that the High Representative is to be appointed by the European Council, acting by a qualified majority, with the agreement of the President of the Commission (Article 9e: 1); in such a role he/she will (Article 9e:3) preside over the Foreign Affairs Council; he/she will (article 9e:4) also be one of the Vice-Presidents of the Commission and as such be "bound by Commission procedures to the extent that this is consistent" with this article.

the Political and Security Committee, will become a more regular visitor article 21 [36] TEU to the European Parliament where he/she will "regularly consult" the European Parliament on the main aspects and basic choices of CFSP and CSDP "...and inform it of how those policies evolve". It also remains to be seen how the Foreign Minister and Head of State of the rotating Presidency (which ends in the area of CFSP but continues in other council formations) will come before the European Parliament (respective bodies i.e. Plenary and AFET) under the new treaty. Given that the roles are not fixed, some observers consider that there is a 'constructive ambiguity' that may boost the process of consolidating and developing the CFSP⁴.

2. The European Security and Defence Policy (ESDP)

The Lisbon Treaty confirms the Amsterdam commitment to the progressive framing of a common Union defence policy which could lead to a common defence when the European Council so decides, but adding the caveat "acting unanimously" article 28A.2 [42.2] TEU. The caveat may be an additional reminder that *unanimity* rather than *legislative acts* (excluded by article 15b [31] TEU) and *enhanced cooperation* will remain the norm in CFSP/CSDP.

The scope and range of the Petersberg Tasks have been extended article 28B [43] TEU, although in a similar vein to that already agreed at the Thessaloniki European Council and under the Headline Goal 2010, to include:

"...joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories."

The same article 28B.2 [43.2] TEU reiterates article 28A.4 [42.4] TEU that all such specified tasks are to be defined, and the launch adopted, by Decision of the European Council. The Political and Security Committee's (Nice Treaty) mandate to oversee the "the political control and strategic direction" of crisis management operations is to be carried out under the responsibility of the Council **but importantly it is the HR** "*acting under the authority of the Council and in close contact with the Political and Security Committee, [that] shall ensure coordination of the civilian and military aspects of such tasks*". Therefore the PSC remains the main preparatory and management body for CSDP missions but it is the HR (as the principle coordinator of civilian and military instruments) that now has a more prominent role and a specific mandate to ensure coherence, perhaps making the HR the new linchpin in CFSP.

There is a specific reference article 28A.3 [42.3] TEU to making available military and civilian capabilities (including multinational forces) for the implementation of the Common Security and Defence Policy. This paragraph essentially incorporates ESDP (a term which has never existed in the text of the Treaties) in a more transparent and detailed manner within the text of the Treaty and under the new heading Common Security and Defence Policy (CSDP). Similarly the European Defence Agency (EDA) shall oversee the capability definition and development process including having the aim to "strengthen the industrial base of the defence sector" and its "participat[ion] in defining a European capabilities and armaments policy" article 28A.3 and 28D [42.3 and 45] TEU. The reference to an armaments policy establishes an idea promoted by France (at the 2003 Tervuren Summit in the form of an *Armaments Agency*) but strongly resisted by the UK who championed the EDA as a *capability development agency* (thus bringing all the proposals from Tervuren into the Treaty/Headline Goal framework except the

⁴ Christian Mölling at the Subcommittee on Security and Defence workshop organised with the support of the Policy Department on 11 February 2007.

innovative but still not implemented "EUFAST" force which would have created a standby force for humanitarian relief operations).

Article 28A.4 [42.4] TEU confirms the established rule and practice of *unanimity* in defence matters with the statement that "*Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously....*". The second clause in that sentence states that such a unanimous decision will be taken "*on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State*". Furthermore, the final sentence in the paragraph offers hope of greater coherence across the instruments and Member States of the Union whereby "*The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate*". This helps improve long standing questions about leadership and transparency in decision making.

The next sub-paragraph article 28A.5 [42.5] TEU foresees the delegation of a "task" within the Union framework (e.g. an EU mission based upon a unanimous decision) to a "group of member states". Although it is not stated, this could be in the form of a multinational force or EU Battlegroup (as the Union does not have a standing army). This delegation to a group is different from perhaps the most important innovation in the defence area, that of permanent structured cooperation which is introduced in two articles (article 28A.6 and 28E [42.6 and 46] TEU) but elaborated in a specific protocol on permanent structured cooperation.

It is the first time that the term Permanent Structured Cooperation has been introduced into the treaties and although many questions remain about its eventual use (or similarities to enhanced cooperation), we are provided with a number of precise details including the general proposition that (article 28A.6 [42.6] TEU) it would allow those Member States "whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework".

The procedure article 28E [46] TEU for adopting Permanent Structured Cooperation by Council Decision foresees "...qualified majority voting after consulting the High Representative". Other uses of QMV or unanimity amongst participating states are foreseen "within the framework of permanent structured cooperation" but "unanimity" still remains the baseline for all Decisions referring to the launch of a mission (article 28A.4 [42.4] TEU) or the expanded Petersberg Tasks (article 28B [43] TEU). This may reassure those worried that a group within permanent structured cooperation will launch a mission on their own accord on behalf of the EU. However, those same Member States could lead an *ad hoc* mission outside the framework of the EU i.e. launch an operation without an EU mandate/decision.

More specific details on what is meant by "higher criteria" and "more binding commitments" is set out in a specific protocol (Protocol on Permanent Structured Cooperation Established by article 42 of TEU). Article 1 of the protocol states that permanent structured cooperation shall be open to any Member State which undertakes to proceed more intensively to develop its defence capacities in multinational forces, in the main European equipment programmes, and in the activity of the European Defence Agency (EDA). Furthermore it incorporates the (Headline Goal 2010) Battlegroup Concept in that it is open to those that have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned with support elements including transport and logistics and that can be deployed within a period of 5 to 30 days and sustainable for 30 to 120 days.

Article 2 states that to achieve these objectives Member States participating in permanent structured cooperation shall cooperate on the level of investment in defence equipment. They shall also 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. In addition they shall take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures. They shall work together to make up the shortfalls perceived (and without prejudice to commitments in NATO) in the framework of the "Capability Development Mechanism". Finally they shall also take part, where appropriate, in the development of major European equipment programmes in the framework of the European Defence Agency. The EDA will play an important role (Article 3) in evaluating the performance of Member States' commitment to permanent structured cooperation.

For the moment the specific criteria to be evaluated remain undefined. Instead we are presented with a description of the "EU capability development methodology" which has, since the 2001 Laeken European Council, placed an emphasis upon "voluntary-bottom up" commitments of Member States (to existing initiatives - Headline Goals, shortfalls and procurement) rather than setting "top down" targets requiring national adjustments (such as setting for example a target of 2% of GDP for defence spending - as recently proposed by Pierre Lellouche in *Le Figaro* 31 January 2008 - or to commit 25% within existing defence budgets for Research and Development). The ambition of Member States i.e. to continue the incremental process set in train at Laeken or to set targets for needed structural reform of the defence sector, will only become clearer after ratification when proposals come forward (such as that expected by Spain).

Two other notable changes are the introduction of a **mutual assistance article 28A.7** [42.7] TEU which **reads** like a **mutual defence clause** in that it states "if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power...". This reminds us of questions raised during the European Convention on whether the EU should have its own mutual defence clause *a la* NATO and on the fate of the modified 1954 Brussels Treaty and the remaining cell at the Western European Union.

The Lisbon Treaty and Mutual Defence

The full text of the Lisbon Treaty's mutual assistance article 28A.7 [42.7] TEU states that:

"if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation".

This can be compared to that of article V of the 1954 modified Brussels Treaty which states that:

"If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power".

There are striking similarities in the first part of the Lisbon Treaty text with that of the modified Brussels Treaty. This is not an accident if one recalls that the Lisbon Text (as discussed in the context of the 2004 IGC) was designed to satisfy three groups of states:

- **those seeking a mutual defence commitment** which could be satisfied with the part of the article stating that *"if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter."*;
- **those seeking to protect their traditional neutral status** (such as Ireland, Austria and Sweden) which could be satisfied with the clause *"This shall not prejudice the specific character of the security and defence policy of certain Member States"*; and
- **those wanting to ensure that the article would not undermine NATO** which could be satisfied with the reminder that *"Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation"*

There is also a *mutual solidarity clause* (Part V Title VII, article 188R [222] TFEU) which has essentially been introduced in the form of a Declaration set out in European Council conclusions on 25 and 26 March 2004 following the terrorist attack in Madrid.

The Lisbon Treaty introduces many innovations in the area of CFSP, and ESDP is now more clearly defined within the Common Security and Defence Policy (CSDP). Along with a defined role in the budgetary procedure the article specifically referring to the role of the European Parliament in CFSP/CSDP article 21 [36] TEU has also been expanded to include:

"The High Representative of the Union for Foreign affairs and Security Policy shall regularly consult the European Parliament on the main aspects and basic choices of common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may ask questions of the Council or make recommendations to it and to the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy including the common security and defence policy."

The new innovations along with the existing role and experience of the European Parliament and National Parliaments (the latter having more prominent visibility and a specific protocol) bring with them new opportunities for the extension of parliamentary oversight in the further development of EU foreign, security and defence matters.

3. The common commercial policy

The current legal and institutional framework

The current legal and institutional framework for the common commercial policy is set out in Article **133 TEC** as formulated in the *Treaty of Nice*.

The agreement-based instruments for this policy are the trade agreements reached with one or more countries or international organisations; the other autonomous instruments are basically the anti-dumping regulation and the other basic instruments relating to the Generalised System of Preferences (GSP) which

gives duty-free access or preferential access at reduced rates to most imports from developing countries and economies in transition.

The trade agreements are negotiated by the Commission on the basis of negotiating directives issued by the Council and in consultation with a special committee appointed by the Council (known as the 'the 133 Committee'). It is then up to the Council to conclude these agreements, without the approval of the European Parliament being required. It is also the Commission that represents the European Union at the WTO and before its dispute settlement body (DSB).

The changes made by the Lisbon Treaty

Article 188C [207] TFEU incorporates the provisions of Article 133 TEC of the Treaty of Nice with some changes. The main changes concern:

- *extending the exclusive competence of the Union to all trade agreements;*
- *strengthening the role of the European Parliament.*

The current rules on competence are characterised by their complexity. The first paragraph of Article 133 TEC makes the common commercial policy an *exclusive competence of the Community*, which is a logical consequence of the Customs Union. The exclusive nature of this competence has been reiterated on several occasions by the Court of Justice (ECJ), which has adopted an extensive interpretation of the scope of this policy.

The *ECJ* did however exclude international agreements concerning the services sectors (with the exception of cross-border services) and intellectual property from the scope of the common commercial policy, in an opinion delivered in 1994 upon the conclusion of the Marrakesh Agreement of 15 April 1994 establishing the World Trade Organisation⁵. Up until the entry into force of the Treaty of Nice, these agreements came under the shared competence of the Community and the Member States and constituted 'joint agreements' that were concluded by the Community and subject to ratification by all the Member States. This situation was unsatisfactory and led to major difficulties during international negotiations on these agreements.

The *Treaty of Nice* had provided a partial answer to these problems by including agreements relating to trade in services and the commercial aspects of intellectual property in the common trade policy, thus placing them within the exclusive competence of the Community (Article 133.5 TEC). It did, however, retain some important exceptions, which make the implementation of these agreements excessively complex. This extension of the scope of Article 133 TEC does not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Community law and other relevant international agreements. In addition, agreements relating to trade in cultural and audiovisual services, education services, and social and human health services continue to fall within the *shared competence* of the Community and its Member States. This derogation was a response in particular to France's desire to preserve the notion of the 'cultural exception' and to the request made by Nordic countries worried about the possible liberalisation of social, education and health services.

The Treaty of Lisbon simplifies the common commercial policy system, by making the whole system an exclusive competence of the Union (Article 188C.1 [207.1] TFEU). This simplification *puts an end to shared competence agreements* concerning cultural and audiovisual services or education, social and

⁵ OJ L336, 23.12.1994, p 3.

human health services, although the system continues to have derogations, as ***the Council continues to act unanimously*** for agreements that risk prejudicing the Union's cultural and linguistic diversity accords or disturbing the organisation of social, education and health services.

Agreements in the field of ***transport*** are, however, still excluded from the common commercial policy.

The scope of the common commercial policy is also extended to all ***foreign investment*** in order to take account of the growing proportion of financial flows within international trade. Agreements in this field are also adopted unanimously. The progressive abolition of restrictions on such investment is also listed as one of the objectives of the customs union (Art. 188B [206] TFEU).

The Treaty of Lisbon makes provision for ***the European Parliament to play a greater role in trade policy***. The current Treaties did not give the European Parliament any formal role in this field. The absence of the European Parliament detracted from the legitimacy of this policy entailing key societal challenges with major consequences for the everyday life of EU citizens (as regards employment, food or the environment).

During the negotiations leading up to the Treaty of Nice, the European Commission had argued, in vain, for the role of the European Parliament to be strengthened. It has since made efforts to keep it regularly informed, by stepping up its dialogue with the Committee on International Trade and involving Members in the Union delegation at WTO ministerial meetings. These efforts were still not enough, however, and the Treaty of Lisbon is a key step forward in this respect.

The Treaty of Lisbon makes general provision for an extension of codecision to virtually all areas (as already envisaged in the draft Constitutional Treaty). By way of information, only one codecision procedure occurred in 2007 in the international trade sector, and this related to the TRIPS agreement. Codecision now becomes the normal legislative procedure. As a result the Parliament will become a co-legislator on an equal footing with the Council for 95% of European legislation.

For the ***common commercial policy***, the Treaty of Lisbon establishes that:

- the ***ordinary legislative procedure*** (codecision) shall now apply to all autonomous commercial policy instruments (basic regulations relating to trade defence instruments, the GSP, antidumping, rules of origin) (Art. 188C.2 [207.2] TFEU);
- ***the consent of the European Parliament is now required for all trade agreements (Art. 188N.6 [218.6] TFEU regarding the procedure for negotiating and concluding international agreements between the European Union and third countries or international organisations) and as a result, the latter must be regularly informed about how the negotiations are proceeding (Art. 188N.10 [218.10] TFEU)***, which was not the case in previous Treaties.

The extension of codecision should therefore increase the democratic legitimacy of European legislation in the field of commercial policy.

4. **Development policy**

The ***Treaty on the Functioning of the European Union*** recognises the Union's competence with regard to development policy (Article 188D [208] TFEU). Development policy should comply with the principles of the Union's external action set out in the ***Treaty on European Union*** (Article 10A [21] TEU). These principles were already set out in the provisions of the Treaty establishing the European Community (EC Treaty) relating to development policy (Article 177.2 TEC).

The innovation in the Treaty of Lisbon as regards development has less to do with the content of the text than its inclusion in Part Five (external action by the Union). Some of those involved in development fear that development policy would be less autonomous vis-à-vis the general objectives of EU external policy. However, with the new Treaty, the *principles of development* become *principles of the Union's external action*. The principle that the different EU policies should take account of the objectives of development policy (Article 178 TEC) is in fact taken up in the new Treaty (second paragraph of Article 188D.1 [second paragraph of 208.1] TFEU). The innovation here is that this concerns all EU policies and not just those of the Community, thus taking in all external action by the EU.

Grouping external relations under the one 'pillar' is a major plus for the whole field of external relations, even if this is less significant for development policy, to which the Community method already applies.

The text of the Treaty of Lisbon on development is centred on the main objective of *eradicating poverty* (second paragraph of Article 188D.1 [second paragraph of 208.1] TFEU). The other objectives of the EC Treaty - sustainable economic and social development and the integration of developing countries into the world economy - feature among the general provisions relating to external action by the EU in the Treaty on European Union (Article 10A.2 [21.2] TEU). The new Treaty does not therefore make any formal fundamental changes to development policy.

Title III 'Cooperation with third countries and humanitarian aid' establishes the EU's competence in the field of development, economic, financial and technical cooperation with third countries and humanitarian aid (Chapters 1, 2 and 3). The difference from the EC Treaty is that it is explicitly stated in the Treaty on the Functioning of the European Union that the Chapter on economic cooperation with third countries does not apply to developing countries.

The EU's development policy and that of the Member States should complement and reinforce each other (Article 188D.1 [208.1] TFEU). This provision reiterates the principles of the current Treaty (Article 177 TEC) and emphasises the need for *consistency between EU policies and those of the Member States*. The new Treaty also includes the provision from the EC Treaty whereby the EU (the Community in the TEC, Article 180) and the Member States are required to promote the complementarity and efficiency of their action, particularly by consulting each other on their aid programmes, including in international organisations (Article 188F [210] TFEU).

Measures for implementing the policy on development cooperation are adopted under the *ordinary legislative procedure* (Article 188E.1 [209.1] TFEU). This provision does not change the current legal framework, as codecision already applies to development policy (Article 179 TEC).

Other provisions in the Treaty of Lisbon also touch on development policy. The major changes do not in fact concern the content of the articles relating to development cooperation but other aspects of the Treaty could have an impact on this area. The most important relate to the commercial policy, the security and defence policy and the High Representative of the Union for Foreign Affairs and Security Policy.

The application of codecision to legislation relating to the commercial policy is one of the innovations of the Treaty of Lisbon. *Commercial policy* has a growing influence on development policy, which is very visible in the case of economic partnership agreements. Involving the EP in the legislative procedure should therefore achieve a balance between codecision in the field of development and weaker powers in the field of commercial policy.

Another new element that could well have an impact on development policy is the strengthening of *security and defence policy*, which has strong links with development policy. European missions are

carried out in countries where European development cooperation is crucial (DR Congo, Chad, etc.) and the link between restoring peace/peacekeeping and development is a vital step for the future of these countries. It is difficult to judge *a priori* the impact of the creation of the European External Action Service on development policy. There is no information yet on the structure of this service, which will be used by the High Representative. The new tighter link between development and other external action could also have an impact on the independence of development policy vis-à-vis EU foreign policy, but also lead to greater consistency between the different external policies. In this respect, the High Representative will, at the same time, be one of the Vice-Presidents of the Commission and will need to ensure consistency in the Union's external actions.

The text of the Treaty of Lisbon incorporates all the provisions of the draft Constitution and contains few innovations as regards development cooperation policy. Whilst there may be concern about development being 'subordinated' to external policy objectives, there is also the hope of greater consistency between the EU's various external actions.

5. Humanitarian aid

The main novelty in the Treaty of Lisbon regarding humanitarian aid policy is the inclusion of this policy as a ***policy in its own right***, within the framework of the EU's external actions (Article 188J [214] TFEU). Until now, humanitarian aid was not explicitly mentioned in the Treaties and was based, by default, on Article 179 of TEC (development policy). Its regulatory framework is the EC Regulation 1257/96, adopted on 20 June 1996⁶.

The Treaty of Lisbon establishes the following provisions for the delivery of humanitarian aid:

- **Framework:** the framework for humanitarian aid, as for all other external policies, is provided by the principles and objectives of the Union's external action (Article 10A [21] of the reformed TEU), which includes, amongst other things, the principle of 'solidarity' and the objective of 'assist(ing) populations, countries and regions confronting natural or man-made disasters'.
- **Objectives:** as defined in more detail in Article 188J [214] TFEU, the EU's operations in the field of humanitarian aid are intended to provide ad hoc assistance and relief for people in third countries who are victims of natural or man-made disasters. This objective was already set out in Regulation 1257/96 concerning humanitarian aid.
- **Basic principles:** the Treaty reiterates the principles of humanitarian aid, these being respect for international law and the principles of impartiality, neutrality and non-discrimination as also set out in Regulation 1257/96. On the other hand, the Treaty 'forgets' to mention the principle of humanitarian aid policy being independent of other policies⁷, which has led to criticism of the possibility that humanitarian aid policy may be 'subordinated' to the general objectives of EU external policy.
- **Codecision:** measures to implement humanitarian aid operations will be adopted under the codecision procedure. This is no great innovation, as the previous regulation was adopted in 1996 under the cooperation procedure that already involved the EP in the legislative procedure. Since the Treaty of Amsterdam, this procedure has virtually disappeared in favour of

⁶ Official Journal L 163 , 02/07/1996 p. 1.

⁷ Council Regulation 1257/96 states '*Whereas humanitarian aid (...) must not be guided by, or subject to, political considerations*'

codecision. The decisions taken since then are implementing decisions for which the EP has the same right of scrutiny as for decisions adopted under the codecision procedure (comitology regulation).

- **Voluntary Corps:** a European Voluntary Humanitarian Aid Corps was set up establish a framework for involvement by young Europeans in the humanitarian aid operations of the Union. This is an important innovation in the Treaty. In its opinion on the draft Constitution⁸, the Committee on Development had expressed reservations about setting up this Corps, asking that only sufficiently experienced volunteers be allowed to participate in it. These reservations were not, however, taken up in the European Parliament resolution, which is very positive on this point⁹.
- **Coordination, role of the Commission:** the Treaty also specifies that the Commission may take any measures considered necessary to enhance efficiency and coordination between the Member States on humanitarian aid. This federative function was already contained in the regulation concerning humanitarian aid, but has been used very little to date.

In addition, several *horizontal provisions* common to all external policies could affect the implementation of EU humanitarian aid:

- appointment of the **High Representative of the Union for Foreign Affairs and Security Policy**. While his main task will be to '*conduct the Union's common foreign and security policy*', he will also ensure the '*consistency*' and '*coordination of the Union's external action*' (Article 9E [18] TEU, see above). Again, this provision has created some concerns about the potential 'imposition' of foreign policy priorities to humanitarian actions.
- creation of the **European External Action Service**, to assist the High Representative in his mandate (Article 13a.3 [27.3] TEU). It is yet unclear what will be the implication of DG ECHO in this External Service, but ECHO officials do not hide their fears of losing their precious autonomy and independence.

Five days after the signature of the Treaty of Lisbon, the Presidents of the European Parliament, the Council and the Commission signed in Brussels the **European Consensus on Humanitarian Aid**, a joint statement agreed after six months of tri-partite negotiations. The Consensus, following the model set up in 2005 by the European Consensus on Development, establishes common principles, objectives and ways of operation with and its aim is to enhance the effectiveness of the EU humanitarian action in the world. Although it is not a legally binding document, it is a statement which commits the three institutions and the EU Member States and has, therefore, a substantial political weight. The Consensus, where the principles of independence and professionalism of the humanitarian action have been emphasised, may be used to preserve the integrity of the EU humanitarian action should future proposals to implement the provisions of the Treaty of Lisbon threaten it.

6. Budgetary aspects

The provisions of the new Treaty as regards the budget are not fundamentally different although they have been simplified. They basically involve adapting the **budgetary procedure** so that there is now only **one reading**, followed by a conciliation procedure should agreement not be reached at first reading. The

⁸ Report on the Treaty establishing a Constitution for Europe, A6-0070/2004 of 9.12.2004, p. 68.

⁹ T6-0004/2005.

Treaty also adds a chapter on the **multiannual financial framework**, which must be unanimously approved by the Council after it has obtained the consent of the European Parliament. The new Treaty also puts an end to the distinction between compulsory and non-compulsory expenditure. Nor does it distinguish any more between EP amendments that increase expenditure and other amendments.

On the specific topic of external relations, one major change for the future is that the **European Development Fund** (EDF) is no longer excluded from the scope of the Treaty (Article 179.3 TEC). This means that it could be integrated into the general budget without prior changes having to be made to the Treaty.

With regard to the CFSP, the distinction in the EC Treaty between administrative and operational expenditure is in principle removed, as **operational expenditure is now charged to the EU budget**. There is, however, still one **exception** when the operational expenditure relates to **military operations** or those with implications in the field of defence. To finance tasks, the Council should adopt a **decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget** for urgent financing of initiatives in the framework of the CFSP, and in particular for the tasks referred to in Article 28 A(1) [42.1] and Article 28 B [43]. The Council should then act **unanimously after consulting the European Parliament**. For **military tasks**, the Treaty makes provision for a **start-up fund made up of Member States' contributions**. The European Parliament should try to ensure, by means of an interinstitutional agreement, that it is informed about the budgetary requirements for launching a civil task or military operations.

7. Conclusion

Parliament's **powers in the field of external relations are strengthened by the new Treaty**. Many of the innovations in this field also entail much uncertainty as to their implementation. The greatest uncertainty surrounds the post of **High Representative**, who is both a member of the Council and Vice-President of the Commission. How will his/her powers dovetail with those of the future permanent President of the Council? What will be the structure and form of his/her European External Action Service?

The EU budget review is scheduled for 2009 (mid-term review of the financial perspective). Will the amendments to the Treaty be reflected in budgetary action at this point, particularly in order to take account of developments with the CFSP and ESDP? Will the decision on integrating the European Development Fund into the general budget, which the European Parliament has sought for so long, finally be taken, as requested by the members of the Committee on Development in their opinion on the Treaty of Lisbon?

In terms of the powers exercised by the Parliament, control over the High Representative is a very satisfactory achievement. What about going even further and arranging hearings for special representatives¹⁰ and EU ambassadors, as happens in the US Congress? The High Representative's hearing could be used a 'lever' to obtain a political commitment on this point.

Despite the progress made by the Treaty of Lisbon, there are still many issues to be resolved and many avenues for developing the powers of the European Parliament to be explored.

¹⁰ Rule 86 of the EP's Rules of Procedure already makes provision for conducting hearings of CFSP special representatives, but Parliament can only make a recommendation pursuant to the statements made by the special representatives.