

## **Policy Department External Policies**

# **THE IMPACT OF THE LISBON TREATY ON ESDP**

**SECURITY AND DEFENCE**

January 2008

**EN**

This briefing paper was requested by the European Parliament's Subcommittee on Security and Defence.

It is published in the following language: English

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Publisher European Parliament

Manuscript completed on 31 January 2008.

The briefing paper is available on the Internet at  
<http://www.europarl.europa.eu/activities/expert/eStudies.do?languageEN>

If you are unable to download the information you require, please request a paper copy  
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Brussels: European Parliament, 2008.

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## EXECUTIVE SUMMARY

Regarding the CFSP/ESDP domain, the Lisbon Treaty includes practically the same provisions as the ill-fated EU Constitutional Treaty: its key elements, in fact, have been preserved, a few terminological details and “interpretative” declarations apart.

On the whole, the new treaty offers various opportunities for greater policy coherence, effectiveness and visibility, coupled with a number of open questions related to its actual implementation. Indeed, there is now a greater potential for a joined-up common European foreign, security and defence policy. The Lisbon Treaty provides a good legal and political basis for achieving that and giving the Union the “politics of scale” that would permit it to play a more active international role, and one commensurate to its stated ambitions.

Much, however, will depend on its implementation, as many unknowns and grey areas left by the Treaty text need clarification and, possibly, further negotiation among the EU member states and institutions in order to prevent unnecessary delays and battles for turf. This is especially true of the new ‘troika’ at the EU top, where the precise division of competences and responsibilities between the newly created President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy, and of course the President of the Commission is still unclear and potentially destabilising for all.

As regards ESDP (now CSDP) proper, some of the opportunities are common to CFSP and “foreign policy” at large, as they depend on the way in which the arguably key figure in the new system - the HR/VP – will be willing and able to establish him/her-self and to organise the relevant services. To this end, a preliminary consultation and agreement among the EU institutions (including the EP) and the member states - covering both the specific spheres of competence of the new ‘troika’ members and the set-up of the EEAS - would be most helpful, and would allow the new bodies foreseen in the Lisbon Treaty to hit the ground running in the course of 2009. Still, a period of transition and consolidation must be factored in, during which all the bodies concerned will have to adapt and adjust, before the dust settles and the new machinery finds its own internal balance and appropriate cruising speed.

More specific challenges for ESDP are represented by 1) the precise institutional ‘location’ of its military bodies in the new structure; 2) the functional relationship to establish with those operational tools and resources that still lie primarily in the old ‘community’ pillar, as well as with the EU Delegations in third countries in the event of a peace mission; and 3) the way in which ‘permanent structured cooperation’ in defence matters is to be implemented in practice - namely, with what entry criteria, what initial participants, and what ultimate goals.

In this context, the role and interest of the European Parliament (EP) lie in strengthening its scrutiny over CFSP and ESDP/CSDP through the old and also the new instruments at its disposal: first, through its increased co-decision powers, that now cover a bigger number of policy areas with significant ‘external’ implications; second, through budgetary control, also on CFSP and civilian crisis management-related activities; thirdly, through a constructive approach to the thorny issue of the EEAS, whose legal and institutional status (let alone funding) remains unclear; and, fourthly, through the establishment of a good and balanced working relationship with the future members of the new ‘troika’, and in particular the HR/VP,

whose appearances before the various instances of the EP should become the rule rather than the exception, in order also to increase access and transparency to CFSP and ESDP/CSDP.

The first opportunity to do this will be represented by the appointment of the new Commission in the autumn of 2009, when the EP will be called to scrutinise both the President and the individual Commissioners, before voting on the college. The relevant hearings should be used to highlight the overarching interests of the EU and the specific role and function of the EP in bringing them to bear - without renouncing to push for specific points whenever useful and necessary, but not to the detriment of a fruitful interaction in the future.

In the particular domain of ESDP/CSDP, a crucial testing ground to this effect is set to be civilian crisis management, both for the growing importance that it is taking in the Union's external action and for its lying at the juncture between different - and so far separate - spheres of competence and activity. The multi-faceted nature of crisis management, in other words, represents an opportunity for the EP as a whole to bring its influence to bear on a number of different policy areas while at the same time stimulating a more joined-up approach at the EU level.

Here lies an important opportunity for the relevant EP Committee (AFET/SEDE) to build a more cooperative relationship with the HR/VP, who is poised to become the main player in this respect inside the new 'troika'. This could and should lead to a situation in which the HR/VP and his/her deputies/representatives get used to turning up before the Committee ever more frequently and 'normally' - well beyond the two times per year that the Lisbon Treaty now foresees for the EP plenary.

The influence of the EP in this domain - and, most importantly, the overall influence of the EU on the international scene - can only benefit from a less (unnecessarily) confrontational approach with the new bodies that are expected to 'deliver' on policy and are often faced with little time and little resources to do so. The same applies, of course, also to the other EU institutions, that the Lisbon Treaty forces to cooperate more and better for the common good.

## ***The Impact of the Lisbon Treaty on ESDP: Opportunities and Unknowns***

Regarding the CFSP/ESDP domain, the Lisbon Treaty includes practically the same provisions as the ill-fated EU “Constitution”, most of which had already been presented and discussed in the Convention on the Future of Europe (2002-03) and incorporated in its draft treaty text. Both in the frantic negotiations that preceded and accompanied the June 2007 European Council and in the subsequent Intergovernmental Conference (IGC), in fact, the key elements of the political deal enshrined in the 2004 Constitutional Treaty have been preserved, a few terminological details and “interpretative” protocols apart.

This reflects also the peaceful rise of ESDP as a new policy area, especially since its operational start in 2003, and its growing centrality for the Union’s “foreign policy”. To a certain extent, the experience made with and the issues raised by ESDP have been key drivers for the kind of institutional reform now enshrined in the Lisbon Treaty.

On the whole, it can be argued that the new treaty offers various opportunities for greater policy coherence, effectiveness and visibility – coupled with a number of unknowns related to its implementation.

### ***The new CFSP/ESDP provisions in a nutshell***

As already mentioned, the new Treaty retains virtually all the CFSP/ESDP-relevant provisions of the Constitutional Treaty, with only two minor changes: the “Union Minister for Foreign Affairs” is renamed “High Representative of the Union for Foreign Affairs and Security Policy”; and not one but two new Declarations attached to the Treaty (30 and 31) underline i.a. that the new provisions (including the EEAS) “do not affect the responsibilities of the member states, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations”; neither do they “prejudice the specific character of the security and defence policy of the member states” or “the primary responsibility of the Security Council *and of its members* for the maintenance of international peace and security” [emphasis added].

The second Declaration, in particular, not only ring-fences “the existing legal basis, responsibilities, and powers of each member state in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a member state’s membership of the Security Council of the UN”. It also reiterates that no new powers in this domain are therewith given to either the Commission or the European Parliament.

The change in the title of the former “Minister” is purely cosmetic or, more precisely, symbolic, in that it aims to dispel the fears that the term could trigger. The second change is even less significant, in legal terms, as it states the obvious and reiterates existing norms. Still, taken together, the two changes in the *text* seem to herald a slight change in the *context*: inserted mainly at the request of the UK, they may in fact contribute to containing the possible spill-over effects of the ‘double-hatting’ of the new High Representative and maintaining the traditional separation between the old EU ‘pillars’.

As for the rest, the new text reiterates the main changes already enshrined in the Constitutional Treaty:

- the end of the rotational presidency in foreign relations, with a role for the President of the European Council (appointed for two and half years, renewable once) not only in protocol matters but also in crisis situations (new art.13);
- the creation of the double-hatted High Representative, also appointed by the European Council (with the agreement of the President of the Commission) acting, if necessary, by qualified majority, and also subject to a vote of consent by the European Parliament;
- the separation of such a role and function from that of Secretary-General of the Council;
- the establishment of the new Foreign Affairs Council, separate from the General Affairs Council;
- the establishment of the European External Action Service (EEAS), set “to work in cooperation with the diplomatic services of the member states”, and comprising “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” (Declaration 22, attached to the Treaty, reiterates also that “preparatory work” to this end should begin as soon as the new Treaty is “signed”);
- the adoption of a single ‘legislative’ procedure, the Council’s “European decision” (thus overcoming the distinction between common positions, joint actions, and common strategies), but with virtually no change to the existing consensual rule;
- the expansion of the scope of ESDP, now called *Common Security and Defence Policy* (CSDP), and of its missions (new art.27 and 28), including: 1) a “solidarity clause” and a “mutual defence” commitment, both with substantial qualifications and provisos; 2) the possibility for the Council “to entrust the implementation of a task to a group of member states which are willing and have the necessary capability” (new art.29); and 3) the possible establishment of “permanent structured cooperation” in the field of defence (new art.31 + relevant Protocol);
- the creation of a new “start up” fund for ESDP operations (art.28);
- last but certainly not least, the establishment of a single legal personality for the Union.

On the one hand, the fundamentally intergovernmental character of CFSP and especially ESDP is confirmed and even strengthened by the new treaty. On the other, a strong impulse towards a more coherent approach and leadership is also given, raising a number of questions about exactly how this is going to work.

The European Commission and the European Parliament will retain their administrative and budgetary roles, respectively – they are even expected to see them increased. For this reason, too, the moment looks particularly appropriate for the European Parliament (EP) to

reflect on the role it has played in recent years in this domain and on the way it can best carry out its treaty responsibilities (old and new) in the years to come.

To this end, it can be useful to analyse the relevant Lisbon Treaty provisions (and their possible implications) in more detail.

### ***The new 'troika' at the EU top***

A first question to be addressed concerns the likely new institutional 'environment' in which the ***High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission*** (the acronym ***HR/VP*** seems both more appropriate and definitely more workable than HRUFASP) will operate.

In fact, with the end of the rotational presidency in external affairs and with the personal union translated into the double-'hat' arrangement, most of the problems of fragmentation and 'dualism' associated with the current system seem solved, at least in principle: there will no longer be two or even three distinct EU representatives at international meetings, from the Middle East 'Quartet' (thus often turned into a 'Sextet') to other diplomatic occasions; neither will there be any longer a new personality representing the EU on the world stage every six months.

Like the Constitutional Treaty beforehand, however, the Lisbon Treaty introduces another new institutional figure, namely the ***President of the European Council***. S/he will take over some of the responsibilities – and arguably staff – of the Council Secretariat, and will also ensure some form of external coordination and representation as related to EU summits and CFSP matters, albeit "without prejudice to the powers of the High Representative". On top of that, the new President will have the right to convene "a special meeting" of the EU Heads of State and Government "when the situation so requires" – which seems to hint at critical contingencies, either internal or external.

As a result, the HR/VP will have to liaise very intensely and closely with the new institutional figure for all matters linked to the preparation of European Council decisions and events. At best, this will require a degree of duplication between their respective staff.

An additional unknown is represented by the decoupling of the Foreign Affairs Council – to be chaired by the HR/VP) and the General Affairs Council, on whose precise composition the new Treaty says virtually nothing. For one, the new GAC will deal with a number of administrative issues - including the *budgetary* ones - that are relevant for CFSP/ESDP and it will operate in close contact with the new President of the European Council. In other words, the HR/VP will be confronted with a new potential fragmentation of the decision-shaping machinery as related to CFSP/ESDP – an issue that may have to be addressed as early as possible in order to prevent bureaucratic infighting and political confusion.

Moreover, it seems unlikely that the ***President of the Commission*** will entirely abstain from intervening in the sphere of foreign relations. There are so many policy areas the Commission is involved in which now have an 'external' dimension that it will be difficult to



draw a line and keep its President out of this game, considering also the possible need for some coordination and *arbitrage* among Commissioners.

Finally, despite the suppression of the rotational presidency in external relations, the head of state and government and the foreign minister of the country in the Council presidency – to date mostly in charge of all EU affairs during the semester – may still keep some role in this domain. After all, the **rotational presidency** is likely to remain in place for both the General Affairs Council (which also deals with enlargement issues) and the COREPER, unquestionably a major player in foreign, security and defence policy matters. And there are ever more Council formations that have a specific ‘external’ policy dimension.

As a result, along with the two ‘hats’, the HR/VP may also have to carry a raincoat and an umbrella. It will be very crowded indeed at the EU top, and the old formal *troika* may well be succeeded by a new informal one (the President of the European Council, the HR/VP, and the President of the Commission), while the new *trio* of successive Council presidencies - from their Heads of State and Government to the Foreign Ministers - will linger on the sidelines and, occasionally, claim a place in the sun.

At the end of the day, the precise division of labour and even the chemistry inside this sort of new EU *troika* will depend also on the profiles and personalities of the post holders. In fact, Solana’s case has already shown that the way in which an official interprets and plays a role that is very much a blank sheet matters more than the actual competences and even the treaty language.

In this particular case, the modalities for the appointment of the three top EU officials will also matter, especially if it comes down to a ‘package deal’ to be struck, probably, at some point in time between December 2008 and June 2009. Speculations abound already in the international media about possible candidates for each post, and the need for some political balance and personal trade-offs between a) EU institutions (including the European Parliament), b) party ‘families’, c) big and small countries, d) North and South, as well as East and West, may produce unpredictable results. The hope is that policy competence does not lose out to political expediency, and that legitimate personal (and national) ambitions do not hijack the overarching EU interests.

There will probably be a trial period for all, in which adjustments and ad hoc arrangements will have to be made. Still, it would be preferable that the respective core competences of the members of the new ‘troika’ be spelt out before personal choices are made, possibly through a sort of interpretative **memorandum on implementation** - including more detailed job descriptions and *modi operandi* for all - to be agreed by the European Council in December 2008 and, possibly, presented also to the European Parliament right before the entry into force of the new treaty.

In other words, the choice of personalities to be appointed should be driven by their suitability for each post – of course also in the light of some political and geographical balance - rather than having their eventual competences determined by a particular leader and his/her willingness to expand or ring-fence them.

## ***All the HR/VP's men (and women)***

For his/her part, the HR/VP may also have to juggle the two 'hats' - or even *three*, if one considers the implications of chairing the Foreign Affairs Council - more frequently than previously assumed. The new Declaration mentioned above, in fact, insists on the separation between the CFSP/ESDP pillar proper and the community one, and will therefore make it more difficult – politically rather than legally – to 'mingle' the two with a view to achieving a more coherent and effective EU external policy. On the other hand, the EEAS is meant to achieve precisely that, a degree of mingling and contamination between the old 'pillars' (see below).

So how strong and far-reaching is the political impact of the Declaration going to be? On the one hand, in fact, it is likely to provide a solid platform for developing ESDP/CSDP proper regardless of any concern about its possible '*communautarisation*'. On the other, it seems to put into question one of the main achievements of the new set-up, namely the quest for more coherence and synergy between the foreign policies of the Council and the Commission.

This would be a pity, also because notably the experience of the past few years in such places as Afghanistan and Iraq has shown that international crisis management requires a varied and complex set of instruments and a high degree of synthesis and coordination - rather than separate boxes, approaches, and staffs. Also, insofar as they have not competed with each other, the two 'pillars' of European foreign policy have proved quite complementary, much as resistance to better coordination has come from different quarters (including the Commission). What they still lack is a common political direction and a joined-up framework.

In order also to better manage such a near-impossible brief, for instance, the HR/VP may have to have a ***single cabinet*** rather than two - to ensure coherence - and also to appoint ***deputies***. These are not foreseen by the new treaty but could well become part and parcel of its implementation. But how many - and what for?

***A deputy*** could for instance cover ***ESDP*** (now called ***CSDP***, with *Common* replacing *European*) ***and crisis management proper*** - whose specifically military component, in turn, will remain more 'compartmentalised' than any other aspect of foreign policy. As his/her key interlocutor in this domain is going to be the ***Political and Security Committee (PSC)***, s/he could also act as its ***Chairperson***.

The Lisbon Treaty already foresees that the PSC be chaired by a "representative" of the HR/VP. This Chairperson could either be appointed through a specific Council decision, as is the case with the EU Special Representatives, or be elected by (and arguably from within) the PSC itself. An interesting precedent in this respect was set in 2001 with the election of the Chairman of the EU Military Committee (MC). In the case of the PSC, however, the duration of the mandate – which is three years for the MC chair – should preferably be in line with that of the other relevant bodies: two and a half years, for instance, renewable once.

It is evident that such an option for the PSC risks separating the specifically ESDP/CSDP (operational) dimension of foreign policy from the CFSP (diplomatic) one, replicating a little bit the division of labour at the national level between ministries of defence and foreign

ministries, while the coherence between military and civilian crisis management would be still ensured by both the HR/VP (the new treaty sets that in stone) and the PSC.

But such a solution is still preferable to a situation in which, instead, ESDP/CSDP matters end up under the primary responsibility of the President of the European Council, who will be – after all – the only *purely* ‘intergovernmental’ figure in the new EU ‘troika’ and, therefore, the first and last port of call especially for those member states who may wish to avoid any ‘contamination’ of security and defence policy with traditional community bodies and procedures.

If deemed necessary, therefore, **a dedicated deputy for CFSP** could, in turn, assist the HR/VP when s/he wears the ‘third’ hat, i.e. chairing the Foreign Affairs Council, and in liaising with the Presidency of the European Council, the GAC and the COREPER. If appointed as a Special Representative, such a second deputy on the Council side, so to speak, would then have to follow all the relevant procedures before entering office.

Further **deputies** could deal with those other policies - such as the ENP and, possibly, also development aid - that lie rather under the HR/VP’s Commission ‘hat’, with shared and overlapping competences, and where some ‘contamination’ may be not only inevitable but also necessary. This will depend primarily on the way in which the next **Commission** (2009-14) shares out portfolios and responsibilities: but it is entirely conceivable that, in a college that will still be composed by at least 27 Commissioners, there will be scope for one or two deputies running those policies and programmes that are a) relevant for CFSP/ESDP and the overall coherence of EU ‘foreign policy’, and b) foreseen and funded by the Financial Perspectives 2007-13: the two cycles do not entirely coincide, in fact, but there is high degree of overlap – and ‘bridging’ measures can always be adopted to this end, possibly already in the framework of the forthcoming budget review.

For this system to work, however, the Commission should:

- a) identify the policy areas it is ready to put under the supervision of its VP, starting of course with DG Relex and, arguably, also Development and Humanitarian Aid (as they are crucial for any comprehensive and credible policy towards Africa), while Trade is likely to remain separate and its consistency with “foreign policy” to be still ensured by the college President;
- b) establish, if not a rigid hierarchical internal ‘chain of command’, at least a recognisable line of accountability - e.g. on administrative and budgetary matters – that confers the VP a tangible coordinating and supervisory role in this domain inside the college. To achieve that, it could initially suffice to review some internal rules so that, for instance, certain decisions by individual Commissioners would be taken only “in agreement with the Vice-President/High Representative”.

All this said, the coordinating and supervisory role of the HR/VP will prove crucial to ensure coordination and coherence across the EU external policy board: **civilian crisis management** in particular is likely to benefit significantly from the new Treaty provisions, as arguably the quintessential policy area requiring a high degree of ‘contamination’ between the different competences and resources of the Council, the Commission, and also the member states. Here clearly lies an opportunity but also a challenge for the new system – including for the *European Parliament*.

Last but not least, it remains to be seen where exactly to place a) the coordination of the fight against terrorism, which cuts across competences and pillars; and, now, b) also “the protection of [EU] citizens” abroad, that the Lisbon Treaty has inserted - at the request of France - among the objectives of the Union’s common external action.

### ***The EEAS: a new asset***

How will all this reflect on the possible make-up of the EEAS? In this case, the wording in the treaty has not changed: its three structural components – “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” – remain the same, as does their task (to “assist” the HR/VP in fulfilling his/her mandate: art.13).

For the HR/VP, arguably, the EEAS is expected to become at the same time a walking stick and a satellite navigator: it will be to the HR/VP what the Policy Unit has been to Solana since 1999. Yet its precise composition, size and internal set-up are not spelt out in the treaty, and even the joint Progress Report delivered in May 2005 (in the expectation of the entry into force of the Constitutional Treaty) said very little in this respect: it was reasonably clear about what the EEAS would probably *not* be, but quite unclear about what it could or should turn out to be.

Paradoxically, one unintended consequence of the UK demands in the treaty negotiations - resulting in the two new Declarations mentioned above - may be that the EEAS, in the end, cling much more onto the Commission’s side than initially imagined. If part of the Council Secretariat moves to work for the new President of the European Council, in fact, and if another part (the politico-military structures) remains neatly separate from the rest of the external action machinery, it seems obvious that the bulk of the EEAS would come from (and/or rely upon) DG Relex, and more indirectly also other Commission services that are increasingly relevant to the Union’s external action. If so, the “Vice-Presidential” hat will gain in importance and influence, while especially ***the military bodies and agencies*** will remain an institutional world apart - if arguably under the authority of the same ‘boss’ as the rest of the EU foreign and security policy machinery.

And what could then be the functional and institutional whereabouts of the EEAS? Generally speaking, it could become a sort of functional ***interface*** between all the main institutional actors of European ‘foreign policy’. For both political and functional reasons, it should not be placed in the Commission or the Council: as also the Progress Report of 2005 underlined, it should be ***sui generis***, due also to the difficulty of making the legal and professional backgrounds of its three (or rather 2 + 27) components fully compatible and interoperable with one another.

Like the European Defence Agency (EDA) established in 2004, for instance, it could have no tenured staff of its own, at least in its starting phase: but it could easily evolve, if proven effective, into a more stable structure. Unlike the EDA (that essentially hires people from national defence ministries), however, it should offer a common ‘home’ – albeit temporarily – to officials from very different backgrounds.

It could initially include all the main *geographical* desks of both the Commission and the Council. This is a domain where a lot of duplication has been in place (or even created from scratch) over the past few years, and where some streamlining is in order and coordination necessary. Following the 'interface' model, this should also include liaising with the Presidency of the European Council and assisting the relevant officials in the preparation of the General Affairs Council to ensure, once again, the necessary coherence.

And what legal status could the EEAS have? Personnel issues are among the most intractable, although they do not normally grab the headlines, and there is definitely a risk that, over the next months, the entire EU foreign policy machinery be trapped into bureaucratic turf wars instead of remaining focused on delivery. Considering the transitional nature of the arrangements that will probably govern the EEAS at the start, however, a possible solution preserving its *sui generis* nature (without opening the Pandora's box of inventing a new status for its staff) could be based on seconded officials only: from the Commission, the Council General Secretariat, and the member states.

Accordingly, all EU *fonctionnaires* would preserve their status, career path and salaries: they would simply be placed with the EEAS for a few years. Officials from the member states could be either dispatched as temporary agents or, possibly, be taken in as Seconded National Experts: this would in fact amount to an indirect form of co-financing that would significantly alleviate the initial costs of setting up the service without changing much (in the light of the experience made so far) the degree of EU 'loyalty' of those officials.

The duration of the secondment, however, should be the same for all, whichever 'component' they come from. And, presumably, some system of national *quotas* would be tacitly used, to guarantee the common 'ownership' of the new service, but matched with a homogenous process of selection of candidates based on their professionalism.

Finally, the specific nature of the EEAS could be **similar to** that of **an EU agency**: neither a Community agency, however, nor a Council one like the EDA, but rather a **hybrid** new construct, indeed *sui generis*. It could be established through a Council decision (though not through a CFSP instrument) but one negotiated in advance at the inter-institutional level. And it could have its administrative costs covered primarily by the EU budget, thus directly involving the **European Parliament** and emphasising the logic of co-ownership that underpins it. This arrangement could well last until 2013 (when the current Financial Perspectives expire), before being substantially reviewed in light of experience.

By 2013, in fact, the whole set-up may have to be checked again: not only will a new EU budget have to be adopted, but the one-third reduction in the size of the Commission foreseen by the new Treaty for 2014 will impact also on the position of the HR/VP.

This is also why it is extremely difficult, at this stage, to make any guess as to the eventual **shape and size** of the EEAS. The figures that circulated tentatively in 2005 look rather unrealistic now, as too many practical questions still have to be addressed which will impinge upon its overall organisation and status. Estimates should rather start from a limited 'pioneer group' to be installed in the course of 2009, with the prospect of a gradual beefing-up in the 3-4 years to follow – in strict consultation with all the "shareholders", including the European Parliament.

This means that such an agency-type EEAS would constitute only a first step towards the establishment of a European “foreign service” worthy of this name – which, in turn, may end up being not too dissimilar from other already existing ‘common services’, available to both Council and Commission, like for instance the *EU Interpretation Service*.

### ***The EU presence in third countries***

Most of the considerations made above refer primarily to the Brussels ‘headquarters’ of the EEAS, so to speak. There is, however, also a very important ‘external dimension’ to that, namely its possible articulation in ***the EU Delegations***. In fact, the Lisbon Treaty maintains i.a. that the Union acquires full legal personality: this is likely to have a strong impact on the role of the Delegations, although probably only over some time.

The Delegations cannot be considered mere instruments of foreign policy, as they also deal with trade, development and now also other issues (including crisis management, if the case with the African Union in Addis Ababa is to be considered a precedent); nor can their Heads be seen simply as instruments of DG Relex. Once again, the Lisbon Treaty (like the Constitutional Treaty beforehand) states that they will be placed *under the authority of the HR/VP*, but does not explicitly mention them in connection with the EEAS.

As a consequence, ***a degree of ‘double-hatting’*** may well have to be introduced also there: its articulation and implementation may vary according to the relative importance of economic or political affairs in the country in question. In some cases, for instance, there could be good reasons for continuing along more traditional lines (predominance of the old community ‘pillar’ and project management: in some ACP countries, for instance), while in others the Head of Delegation could have a much stronger politico-diplomatic profile and background (e.g. in most Asian countries).

A special case in point will be represented by those countries and/or regions where the EU is engaged in ***ESDP/CSDP operations***. To date, in those very few cases where that has happened, the prevailing solution has been to resort, notably, to some form of ‘double-hatting’ associating the Head of the local EU Delegation and a Council Special Representative (Macedonia/FYROM, AU). On the one hand, however, the latest tendency in EU crisis management is to neatly separate Special Representatives (CFSP) and operational officials on the ground (ESDP). On the other, in the new foreign policy architecture drawn up by the Lisbon Treaty the role of the ***‘Special Representative’*** - that has so far contributed to fill a gap in the fledgling CFSP/ESDP machinery - seems bound to become redundant. This redundancy may occur as the HR/VP will have the possibility to resort to both the EEAS and the wider network of EU Delegations – unless, of course, it turns into the temporary title to be given to ‘roving ambassadors’ with a particular task, possibly stemming from the EEAS itself, or it is somehow ‘reintegrated’ into the operational chain of command for ESDP/CSDP missions.

On the whole, however, while no single rigid ‘template’ needs to be designed in advance, some ***‘pilot’*** formats could be put in place, tested, and subsequently reviewed. The objective would be to come to some sort of general reassessment and rationalisation in a few years time, in light of the experience made until then.

Needless to say, the unified regional desks in the Brussels HQs will have to be well connected with the local missions, and *vice-versa*. Good communication lines will have to be established with all the relevant Commission DGs, too, as well as with the services of the European Council's President.

It will also be interesting to see whether the future Union Delegations are given **consular representation**, elaborating on both art.20 of the current Community Treaty and the new commitment to the “protection” of EU citizens abroad.

Some proposals to this end were put forward in May 2006 - in a Report to the Council and the Commission by former European Commissioner Michel Barnier, prompted by the Asian *tsunami* of December 2005 - in the context of the possible creation of a European civil protection force. They were not given much consideration, as they raised sensitive issues that nobody wanted to address at that time. But moving towards the creation of at least a few experimental “European consulates” would certainly bring the debate on the EEAS to a completely different level.

Last but not least, the provisions of the Lisbon Treaty may also have ‘cascading’ effects on other aspects of the external machinery of the Union. Just to name one: who is going to *chair* the coordinating meetings of EU member states ambassadors in third countries or international organisations?

In the current system, such task falls to the rotating presidency, with additional arrangements for those capitals and regions where the country chairing the EU is not represented. In the new system enshrined in the Lisbon Treaty, could it fall to the local Head of the EU Delegation? After all, s/he would be accountable to the HR/VP, who in turn chairs the Foreign Affairs Council.

### ***More flexibility - and where***

Finally, the Lisbon Treaty – following on the Constitutional Treaty – makes it easier to implement both CFSP and ESDP/CSDP *flexibly*.

With respect to the possibility of entrusting “**a group of member states**” with a certain operational task (art.29), it mainly certifies what has already been happening in EU-led international crisis management missions, namely that participation is limited to a (bigger or smaller) number of interested member states, acting with the consensus and in the name of all. The terms of such “entrustment” are normally laid out and negotiated in advance, and therefore do not affect the equal rights of the Union members nor represent a blank check. Still, having such an eventuality mentioned in the new treaty confers more transparency and legitimacy to the existing practice.

More **functional** flexibility is also granted by the new art.28, which expands on the previous “Petersberg tasks” adding to them “joint disarmament operations”, “military advice and assistance tasks”, “post-conflict stabilisation”, let alone “the fight against terrorism, including by supporting third countries in combating terrorism in their territories”. Such extension of the scope of ESDP/CSDP operations - which basically replicates the wording of the

Constitutional Treaty - covers a range of activities that have already been incorporated in the actual ESDP menu. While they do not create new obligations for the Union, their inclusion in the Lisbon Treaty clearly adds legitimacy to the missions that have already been carried out without an explicit treaty mandate.

Paradoxically, a degree of flexibility can be found even in the new provisions on both internal **solidarity** vis-a-vis major disasters and **mutual defence** (art.28) – derived, once again, from the Constitutional Treaty. For the former, in fact, the solidarity ‘reflex’ remains voluntary, although the PSC - quite interestingly for a mainly internal matter - is mentioned as the main EU body called upon to plan and coordinate the rescue efforts. For the latter, the new commitment is crucially constrained and virtually ‘neutralised’ by the reference to NATO commitments and other national arrangements. As a result, it is unlikely to generate any new special policy initiative in the ESDP domain.

The only conceivable consequence - if the precedent of the Convention and the Constitutional Treaty is of any relevance - is the reopening of a discussion on the future of the **WEU Treaty**, which also enshrines a mutual defence commitment (whose actual implementation is equally expected to be carried out through NATO). However, at least presently, there seems to be little appetite among the member states for such a discussion, and especially for taking decisions about its possible termination.

As for **enhanced cooperation** proper - that the Lisbon Treaty simplifies (it can now be requested by nine member states) and extends to all EU policy areas - it remains to be seen whether it is likely to be ‘triggered’ at all, especially in the domain of **foreign policy**, where no internal legislation is produced, and consensus is not only the formal rule but also the preferred option of national diplomacies.

An interesting test to this effect may come with the French idea of a “Union for the Mediterranean”, if at some point in time it is brought under the common institutional roof. If so (but it looks unlikely for both political and procedural reasons), the main challenge would then consist in preventing a proliferation of similar ‘regional’ initiatives by other member states (on the ‘Northern’ or the ‘Eastern’ dimension, for instance), which could trigger a dangerous fragmentation of existing and future common policies. Rather, the ‘enhanced cooperation’ format seems likely to serve - at least in this domain of European integration - mainly as a sort of institutional ‘deterrent of last resort’ against political blockage.

**Permanent structured cooperation in defence matters** (PSCD, art.28), however, is a completely different story, as it looks inherently different from both enhanced cooperation proper – PSCD is *predetermined* in scope rather than generically *enabling*, and has specific procedures and requirements (e.g. no minimum threshold of participants) – and other forms of flexibility based on voluntary contributions and peer pressure. In fact, the commitment to PSCD is permanent (though a withdrawal is possible), its nature is structured, and the eligibility assessment is based on performance as evaluated by a specialised body (the EDA, whose role is bound to increase). Interestingly, also, the traditional EU political taboo over the unanimity rule on all matters “having military or defence implications” - a taboo that has persisted since the Maastricht Treaty - is broken here, mainly in order to meet functional goals and overcome potential vetoes.



What still looks unclear is the extent to which participation is (and will be) determined by political will and/or functional ability. As compared with the convergence criteria for joining EMU enshrined in the Maastricht Treaty, for instance, those listed in Protocol 4 to the Lisbon Treaty are less specific: they include the achievement of high military operational readiness through national or multinational force packages, and through pooling and/or specialisation of defence means and capabilities; participation in “major joint or European equipment programmes” and in the programmes managed by the EDA; and increased cooperation with a view to meeting agreed objectives concerning “the level of investment expenditure on defence equipment”.

As such, the criteria leave much room for interpretation, which may be precisely the point of keeping them a bit vague. There is no clear hierarchy among them either, although much emphasis is put on high military readiness and comparatively less on formal participation in common industrial programmes.

This said, the essential goal of PSCD seems to be a general and uniform improvement of European military capabilities to be pursued through

- *explicit* (but still not ‘quantified’) functional benchmarks, and
- *implicit* political incentives (being ‘in’ or ‘out’) that have all been set in common and in advance.

This is indeed something the EU has proved to be good at in the past – not only with EMU but also with Schengen - although the challenge in this domain is particularly tough.

Much will depend, once again, on the way in which the specific criteria for participation will be eventually set and implemented, as their degree of inclusiveness will determine also the ultimate shape and scope of the whole scheme. If one looks at the current levels of national performance, in fact, hardly any one EU member - with the exception of Britain and France - would qualify as a top performer in each and every functional area mentioned in the Treaty (and attached Protocol). Such countries as Germany, Italy, the Netherlands, Spain and Sweden would probably meet some or most of the criteria. And others - e.g. Poland, Slovakia, Belgium, Portugal – may well be driven by the political incentives to raising their capabilities to an adequate level.

In other words, a convincing balance will have to be struck between functional and political criteria, with a view to making PSCD a source of additional impulse for matching effectiveness and efficiency, on the one hand, and inclusiveness and legitimacy on the other. Here lies a crucial challenge for ESDP/CSDP: in an ever wider Union, the group of ‘stakeholders’ cannot limit itself to Paris and London – decisive as their convergence has been for its inception and further development.

In this vein, Spain has already announced an autonomous proposal to kick start the discussion over the implementation of PSCD, which is expected to be put on the agenda after the entry into force of the Lisbon Treaty. It is not clear yet, however, exactly when the whole procedure is expected to be ‘triggered’.

The overall **evaluation of the European Security Strategy** (ESS) and its implementation since 2003 that the December 2007 European Council has tasked Solana with is likely to be another occasion for launching this debate. So will probably be, in early December 2008, also the **10<sup>th</sup> anniversary of the Franco-British St.Malo Declaration** that launched ESDP in the first place, especially since it will fall a few weeks after the US presidential elections and will therefore represent a good opportunity for “Europe” to send a message to the new American leadership.

## **Conclusions**

There is now a greater potential for a joined-up common European foreign, security and defence policy, and also a stronger demand for it, inside and outside the Union. The Lisbon Treaty provides a good legal and political basis for achieving that and giving the Union the “politics of scale” that would permit it to play a more active international role, and one commensurate to its stated ambitions. Much, however, will depend on its implementation, as many unknowns and grey areas left by the Treaty text need clarification and, possibly, further negotiation among the EU member states and institutions in order to prevent unnecessary delays and battles for turf.

As regards ESDP (now CSDP) proper, some of the opportunities are **common** to CFSP and “foreign policy” at large, as they depend on the way in which the arguably key figure in the new system - the HR/VP – will be willing and able to establish him/her-self and to organise the relevant services. To this end, a preliminary consultation and agreement among the EU institutions (including the European Parliament) and the member states - covering both the specific spheres of competence of the new ‘troika’ and the tricky set-up of the EEAS - would be most helpful, and would allow the new bodies foreseen in the Lisbon Treaty to hit the ground running in the course of 2009. Still, a period of transition and consolidation must be factored in, during which all the bodies concerned will have to adapt and adjust, before the dust settles and the new machinery finds its own internal balance and appropriate cruising speed.

More **specific** challenges for ESDP/CSDP are represented by:

- the precise institutional ‘location’ of its military bodies in the new structure;
- the functional relationship to establish with those operational tools and resources that still lie primarily in the old ‘community’ pillar, as well as with the EU Delegations in third countries in the event of a peace mission;
- and the way in which ‘permanent structured cooperation’ in defence matters is to be implemented in practice: namely, with what entry criteria, what initial participants, and what ultimate goals.

In this context, the role and interest of the **European Parliament** lie in strengthening its scrutiny over CFSP and ESDP/CSDP through the old and also the new instruments at its disposal:

- first, through its increased co-decision powers, that now cover a bigger number of policy areas with significant 'external' implications;
- second, through budgetary control, also on CFSP and civilian crisis management-related activities;
- thirdly, through a constructive approach to the thorny issue of the EEAS, whose funding remains an open question;
- and, fourthly, through the establishment of a good and balanced working relationship with the future members of the new 'troika', whose appearances before the various instances of the European Parliament should become the rule rather than the exception, in order also to increase access and transparency to CFSP and ESDP/CSDP.

The first opportunity to do this will be represented by the appointment of the new Commission in the autumn of 2009, when the European Parliament will be called to scrutinise both the President and the individual Commissioners, before voting on the college. The relevant hearings should be used to highlight the overarching interests of the EU and the specific role and function of the European Parliament in bringing them to bear - without renouncing to push for specific points whenever deemed necessary, and without silencing (party) political dissent whenever relevant, but not to the detriment of a fruitful interaction in the future.

In the particular domain of ESDP/CSDP, a crucial ground to this effect is set to be **civilian crisis management**, both for the growing importance that it is taking in the Union's external action and for its lying at the juncture between different - and so far separate - spheres of competence and activity.

Here lies an important opportunity for the **relevant European Parliament Committee (AFET/SEDE)** to build a more cooperative relationship with the HV/VP, who is expected to become the main player inside the new 'troika' as regards crisis management. This could and should lead to a situation in which the HR/VP and his/her deputies/representatives get used to turning up before the Committee ever more frequently and 'normally' – that is, well beyond the two times per year that the Lisbon Treaty now foresees for the HR/VP in the European Parliament plenary.

To these ends, especially the newly elected European Parliament (2009-2014) may have to consider adopting a more cooperative and constructive approach with the President of the European Council and, notably, the HR/VP. In the past, in fact, too assertive and antagonistic an attitude on the part of the European Parliament on CFSP and ESDP-related issues - i.e. one aimed at extracting additional rights and concessions just in order to increase the Parliament's leverage and standing in a sort of inter-institutional zero-sum game - has often led the member states and the Council to go to any imaginable length to try and circumvent the assembly, thus often resorting to cumbersome procedures and all sorts of *escamotages* to achieve their (mostly budgetary) goals.

The influence of the European Parliament in this domain - and, most importantly, the overall influence of the EU on the international scene – can only benefit from a less (unnecessarily)

confrontational approach with the new bodies that are expected to 'deliver' on policy and are often faced with little time and little resources to do so. There are, in other words, also positive-sum games to play – and this applies, of course, to *all* EU institutions.

In this respect, too, the new treaty represents a unique opportunity for a new treat.