

# RECUPERATING THE EUROPEAN UNION'S FOREIGN POLICY MACHINERY: BEYOND INSTITUTIONAL FIXES

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## INTRODUCTION

The European Union's foreign policy is rapidly developing, and is heavily criticised at the same time. Internationally, the EU would not be able to bear the fruits of its economic power. Its position would be undermined by a lack of military capabilities and Member States being unable to unite over important foreign policy questions. The various formats it uses for external representation, reflecting various degrees of Community competence and independent national powers of EU Member States, causes confusion among outsiders. Complex decision-making structures and a diffuse allocation of responsibilities are moreover at the root of turf wars between (staff working for) EU Member States, the Commission, the Council Presidency and the High Representative of the EU's Common Foreign and Security Policy (CFSP). The entry into force of the Lisbon Treaty would allegedly improve the situation, but its survival has now become uncertain after the Irish people rejected it in a popular vote.

This chapter will first of all discuss the various formats in which power is carefully distributed between the EU and the national level. Then it will go on to discuss the prevailing images or characteristics of EU foreign policy existing in the academic literature. In a subsequent section the institutional changes proposed in the Lisbon Treaty will be discussed. We will see that the provisions of the Lisbon Treaty are no *panacea* to cure the shortcomings resulting from the many disguises of how the EU operates and represents itself internationally. The benefits will depend to a large extent on the implementation of the provisions. The concluding sections will therefore consider what could and should be saved from Lisbon in case it would not survive, what options are available for implementing them and what other options still exist to strengthen EU foreign policy-making.

## THE STRUGGLE OVER COMPETENCES IN EU EXTERNAL RELATIONS

A key question in the field of EU external or foreign policy is how competences are divided between the EU and the level of the Member States. It influences the decision-making processes which apply and the key actors involved in external representation. It moreover indicates to what extent the EU is able to operate as a unitary and coherent actor on the international stage. The most important distinction is whether a policy falls within the Common Foreign and Security Policy (CFSP) or within the range of issues covered by the European Community Treaty.<sup>1</sup>

Within the CFSP the EU Member States are the dominant actors. Decision-making is more intergovernmental, with only a marginal role for the European Commission and the European Parliament. The external representation of the common positions and strategies, when decided upon by consensus in the (European) Council, is taken care of by the Council Presidency, assisted by the High Representative for the CFSP, and sometimes the incoming Presidency (the so-called troika construction).

With regard to *external policy issues falling within the remit of the Community pillar*, policy-making practices depend on whether there is an exclusive competence, a shared competence or only a complementary competence for the European Community to act. As a rule of thumb, the principle of implied powers, that was established by the European Court of Justice, prescribes that in areas where the European Community (EC) has the authority to legislate, the European Commission has the authority to represent the EC externally.<sup>2</sup> This is understandable when one considers that international agreements often contain policy obligations affecting Community policies. The Community system would be undermined when EU Member States could shift issues from the European to the international arena without the EC being involved. This would also undermine the position of the Commission which has the power of initiative for new Community policies and is usually in the best position to assess international commitments, since it oversees the implementation of EU policies.

For areas of exclusive competence, such as trade, it is clear that Member States are no longer in the position to conduct an independent policy. Since the establishment of a common external border tariff in the 1960s, the Commission

<sup>1</sup> This chapter will not discuss explicitly the external dimension of the EU's Political and Justice Cooperation on Criminal Matters, since this is generally similar to the CFSP.

<sup>2</sup> Cf. P. Eeckhout, *External Relations of the European Union – Legal and Constitutional Foundations* (Oxford University Press 2004); F. Hoffmeister, 'Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies', 44 *Common Market Law Review* (2007) pp. 41-68.

is in charge of representing the EC externally in trade matters. Its autonomy is curtailed somewhat by a negotiating mandate decided upon by the Council. Further supervision is exercised by a committee with Member States' representatives, which is called after the EC Treaty article in which it is established, Article 133.

For many other EU policies legislative authority is shared. Either there are both EC policies and national policies, which is the case with regard to, e.g., the environment, transport and development cooperation policies, or EC powers are only minor and complementary, implying only that a few EC policies exist, which is the case with regard to, e.g., health, education and culture. This means that in these areas the EU Member States also have authority to act on their own behalf in international affairs. The EU will normally still strive to operate with a coordinated position decided upon in the EU Council (e.g., the Environment or Transport Council), but the Member States can decide to grant authority for external representation to the Council Presidency. The Presidency will usually operate in close cooperation with the Commission and the incoming Presidency.

When EC competence exists, even if it is shared or complementary, operating with a joint position is obligatory, but Member States often argue that no such competence exists or that the thrust of the matter is in the Member States' competence. In a large number of cases brought before the European Court of Justice, the Commission has contested a decision by the Member States to deny competence in an issue, sometimes with success.<sup>3</sup> The Court has ruled that EC competence exists at the moment when legislative powers are transferred to the EC, but it has also recognised the independent powers of the Member States where no clear competence exists.

### **Beyond legal competence: the persistence of national sovereignty**

For the Member States, the competence question is sensitive since the authority over external representation clearly illustrates that sovereignty has been transferred to the EU level and touches upon the fundamental characteristics of statehood. They, moreover, do not always trust the European Commission or EU Presidency to operate in their interest and to stick to its mandate.

EC competence can sometimes also be hindered because international structures are traditionally geared towards states being the prime actors. States control decision-making in international organisations, and membership is a reflection of the sovereign equality of Member States.<sup>4</sup> Operating with a joint

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<sup>3</sup> Cf. *Ibid.*, Eeckhout; Hoffmeister.

<sup>4</sup> Cf. K.V. Laatikainen & K. E. Smith, eds., *The European Union at the United Nations – Intersecting Multilateralisms* (Palgrave Macmillan 2007) p. 3.

EU representation can at times be incompatible or difficult within the context of international organisations. As a result, even in cases where EC competence exists, negotiating partners may not accept that the Commission participates in the negotiations or acts on behalf of the EU Member States, for instance because the EC is not, or cannot become, a member of the international organisation (e.g., in the World Health Organization (WHO), International Civil Aviation Organization (ICAO), International Maritime Organization (IMO)). In other cases some EU Member States may lose a prominent position if external representation is taken over by the European Union. Prominent examples are the IMF and World Bank, where individual EU Member States, notably Belgium and the Netherlands, preside over constituencies composed of both EU and non-EU states granting them a permanent seat on the board of governors.<sup>5</sup> Another example is the IMO where negotiating partners oppose a uniform EU representation, since they fear that it would become too dominant. Demanding reform with a view to establishing a joint EU representation can in such circumstances come at a political cost or a loss of influence for individual EU Member States.

Even when the exercise of EC competence is constrained, it is usually still considered that operating with a joint position and speaking with a single voice add to the powers of the individual EU Member States, also the bigger ones. Even the United Kingdom, France and Germany are at best middle-range powers in a multipolar world order that is rapidly emerging due to the increased powers of the upcoming economies. A joint EU representation would prevent third states, such as Russia, the United States and China, from exploiting their negotiating power vis-à-vis individual Member States. Operating as a bloc could prevent deals that may incur benefits for an individual Member State, but not for the EU as such. A common EU policy could, moreover, rightfully be considered a prerequisite in order to effectively address important cross-border policy questions, such as climate change and terrorism. There is also a clear added value in operating a common policy towards countries in the vicinity of the EU with a view to strengthening their stability and economic prosperity.

This tends also to be the case for matters falling within the remit of the *Common Foreign and Security Policy (including the European Security and Defence Policy)*, but here it is more understandable that EU Member States are still very sensitive when it comes to transferring competence. Consider, for instance, a decision to send national soldiers on a mission where it is difficult to

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<sup>5</sup> Cf. L. Bini-Smaghi, 'A Single EU Seat in the IMF?', 42 *Journal of Common Market Studies*, No. 2 (2004) pp. 229-248; B. Coeuré & J. Pisany-Ferry (2007), 'The Governance of the European Union's international economic relations: how many voices?', in A. Sapir, ed., *Fragmented Power: Europe and the Global Economy* (Brussels, Bruegel 2007).

see a legitimate basis for decision-making at the EU level. Exactly because the CFSP covers issues related to war and peace, its decisions are more sensitive for the EU Member States in comparison to the issues where EC legislation is in place. In particular the United Kingdom is wary of deepening EU cooperation on these issues. Together with France, it is in a special position given its permanent membership of the UN Security Council, the supreme body for discussing international conflicts. The two are supposed to inform and take into account the view of the Union as a whole, but since the CFSP falls outside the remit of the European Court of Justice this obligation is not enforceable in legal terms.

### **A practice of mixed involvement and representation**

Although structures of authority and decision-making are very different, in practice international policy issues are frequently related to both Community and CFSP policies. The use of economic sanctions is the most mentioned example, but there are many other issues. As a consequence, contractual relations with third countries (e.g., the partnership and association agreements) usually cover a range of policy areas including economic issues and typical foreign policy issues such as human rights. For this reason the European Security Strategy,<sup>6</sup> the EU's most important foreign policy statement, has called for a holistic approach to EU external relations. The structures beneath this holistic approach are, however, still divided and often there are also still national foreign policies at work. Indeed, most Member States have historic and cultural ties to, or economic interests in, certain countries or regions of the world. In such cases national foreign policies may complement and even strengthen EU foreign policy.

To alleviate conflicts over competences usually various 'EU representatives' are involved, such as the relevant Commissioners, the rotating Presidency, the High Representative and Foreign Ministers of the countries most involved. This, however, has led to confusion over who is in charge and to duplications and bureaucratic turf wars among support structures – it has been a key reason why politicians and EU foreign policy experts advocated institutional reform.

Below, proposals on institutional reform will be discussed. Before looking at them, some more general images of EU external relations will be analysed, both with regard to the complex structures regarding a joint approach and external representation, and with regard to its policy orientation and visibility in world affairs.

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<sup>6</sup> 'A Secure Europe in a Better World' (12 December 2003).

## IMAGES OF EU EXTERNAL RELATIONS

In terms of economic power the European Union is a major player in the world. With almost 500 million inhabitants, which is more than the population of the United States and Russia combined, it is the largest international trade block and generates about one fourth of the global wealth. The euro is the world's second currency and jointly the European Community and EU Member States are responsible for around 55% of total development aid, making the EU the biggest donor in the world. In the area of trade the EU has already long practised a joint policy and it is also acting with a common position and a single voice in a wide range of other policy areas. With regard to sensitive foreign policy questions the EU Member States cooperate within the framework of the CFSP. Within the related European Security and Defence Policy (ESDP), the EU is even developing a modest defence capability and is involved in small-scale military operations.

Despite this impressive overview, scholars and media observers are generally critical about the EU's capacities to act effectively in global matters. They have focused on what kind of power the EU is, how its foreign policy-making machinery is organised and how it is viewed in terms of leadership and visibility.

### **What kind of power?**

Perhaps the most important image of the European Union's external relations is the *expectations-capabilities gap* as identified by Christopher Hill.<sup>7</sup> The EU would be outstanding in creating high expectations, for instance in its Council conclusions. It would, however, not have the means and instruments to act upon its statements, particularly not when it comes to what is generally considered to be the instrument of last resort, military intervention. Despite remarkable progress made in the ESDP, and the recent establishment of a European Defence Agency to work more closely on purchasing military equipment, the EU's military might is still modest in comparison to NATO, or to global players with a comparable number of inhabitants and welfare. The EU's CFSP budget is relatively small and there is hardly any staff to consider strategic foreign policy questions. ESDP missions are subject to a separate financing mechanism and depend on the *ad hoc* willingness of the EU Member States to deliver well-trained soldiers and military equipment. Therefore the image of having a limited (military) capacity still seems valid.

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<sup>7</sup> Cf. C. Hill, 'The capability-expectations gap, or conceptualizing Europe's international role', 31 *Journal of Common Market Studies*, No. 3 (1993).

This brings us to a second and related image, *civilian power Europe*, already propagated in the early 1970s by Duchene.<sup>8</sup> Although the EU would be a political dwarf and even a military worm, it still is an economic giant. It would at times be able to use its economic powers to grant political concessions, thereby contradicting a traditional view on power being related first and foremost to military might.<sup>9</sup> Smith calls this the *flag follows the trade*.<sup>10</sup> On the flip side, the image of *fortress Europe* emerged. The EU would be an area of prosperity, but difficult to penetrate for outsiders, both with regard to export products as with regard to labour opportunities (migration). The EU would moreover dump its own subsidized agricultural products on world markets, thereby ruining agricultural sectors in developing countries. As a result, attention to how development policy and other EU policies interrelate, notably trade and agricultural policies, has increased. This focus on *policy coherence* or consistency concentrates both on the substance of policies and on how policy-making processes could be better integrated.<sup>11</sup>

According to Manners, the EU has increasingly been able to influence world politics by its emphasis on normative issues, such as human rights and environmental policies.<sup>12</sup> It would have been transformed into a *normative power*, able to influence what is considered to be 'normal' in world politics. Its ability to do so would derive from it being a normatively constructed polity itself, and from its ability to draw upon its economic powers (the concept thereby builds upon the civilian power concept). Prominent examples include the EU's efforts to establish the International Criminal Court and to keep the Kyoto Protocol alive despite strong US opposition.<sup>13</sup> Where Manners first and foremost referred to the EU's ability to frame discussions, scholars more recently emphasise the EU's ability to literally set global standards with regard to many economic goods and services being produced. It would be a *regulatory power*.<sup>14</sup> Another recent

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<sup>8</sup> F. Duchêne, 'Europe's Role in World Peace', in R. Mayne, ed., *Europe Tomorrow. Sixteen Europeans Look Ahead* (London, Collins 1972) pp. 32-47.

<sup>9</sup> J. Orbie, ed., *Europe's Global Role: External Policies of the European Union* (Aldershot, Ashgate 2008).

<sup>10</sup> M. Smith, 'Does the flag follow the trade? "Politicisation" and the emergence of a European foreign policy', in J. Peterson & H. Sjursen, eds., *A Common Foreign Policy for Europe? Competing visions of the CFSP* (London/New York, Routledge 1998).

<sup>11</sup> CEPS, *Policy Coherence for Development in the EU Council: Strategies for the way forward* (Brussels, Centre for European Policy Studies 2006).

<sup>12</sup> I. Manners, 'Normative Power Europe: A Contradiction in Terms?', in: 40 *Journal of Common Market Studies*, No. 2 (2002) pp. 235-258.

<sup>13</sup> M.L.P. Groenleer & L.G. van Schaik, 'United We Stand?, The European Union's International Actorness in the Case of the International Criminal Court and the Kyoto Protocol', 45 *Journal of Common Market Studies*, No. 5 (2007) pp. 969-998.

<sup>14</sup> E.g., A. Sapir, 'Europe and the global economy', in Sapir, ed., *supra* n. 5.

development, coined by Keukeleire, is that the EU also increasingly influences structures of international politics. By combining its economic (including aid), normative and military powers it would increasingly manage to operate as a *structural power*,<sup>15</sup> leaving lasting effects on global developments.

### **A unified position and external representation?**

One of the main criticisms with regard to how the EU organises its external relations is its *lack of a single voice*. Kissinger's question about which phone number to dial to speak to Europe clearly illustrates what is at stake. Authority over EU external relations is unclear and diffuse as has been described above when discussing the competence struggle between the national and European level. The creation of the position of High Representative of the CFSP to assist the rotating Presidency represented only a partial answer. A related issue is the EU's inability to unite over tough questions of foreign policy, such as the war in Iraq, or more recently the independence of Kosovo. Also the ever-lasting EU coordination meetings contribute to the image of Europe being indecisive. Its internal discussions on which position to take and how to develop its foreign policy directions involve a lot of navel gazing, with limited attention for the rest of the world. A process of the 'Brusselsisation' of EU foreign policy-making would have occurred, where senior diplomats of EU Member States spend the majority of their time in meetings of Council bodies and less time in their own capitals or in meetings with third countries. The shift towards 'Brusselsisation' was accelerated by the increased foreign-policy making capacity within the Council.<sup>16</sup> The High Representative's Policy Unit can be considered an indigenous foreign-policy making capacity, although it is modest in terms of size.

The strengthening of the Council Secretariat as the EU's foreign policy centre has highlighted the tensions with the EU's most important administrative body, the European Commission. Whereas this organisation is in charge of implementing aid, trade and other external policies, EU external relations often also include political dialogue. At this stage the EU Presidency and High Representative of the CFSP step in. It is often said that due to good personal contacts, notably the choice to appoint Javier Solana as the first High Representative, *coherence problems* between the Commission-led external relations and Council-led CFSP positions have been diminished. Perhaps this should not come as a surprise given that Solana's position was new and resources available for exter-

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<sup>15</sup> Stephan Keukeleire, 'The European Union as a Diplomatic Actor: Internal, Traditional and Structural diplomacy', in W. Rees & M. Smith, eds., *International Relations of the European Union* (London, SAGE Publications 2008 [forthcoming]).

<sup>16</sup> The HR CFSP position was created by the Amsterdam Treaty (1998).

nal relations were still first and foremost located at the Commission. At the working level the situation proved more cumbersome and resulted in duplications of activities, contradictory statements and confusion over authority.<sup>17</sup> This has added to the image of the EU not being an effective global player.

### Europe, leading the world?

At the same time, the Union's external relations have become more important as a means to increase the visibility of the EU and to justify its added value towards an increasingly Eurosceptic population. The EU would be able to provide shelter against the negative effects of globalisation. Its size would ensure that influence can be exerted in areas where particularly the smaller Member States would otherwise not be able to play a significant role. Its *international leadership* and focus on seeking multilateral solutions to address international policy problems fit within the logic of its own construction. Other parts of the world have noticed the benefits of European integration, but they have also been critical, arguing that the EU would be too mild-mannered and on the sidelines in global politics, behaving like a 'giant Switzerland'.<sup>18</sup> This appears to be another flipside to the civilian power ideal. Establishing a well-functioning trade relationship, even if linked to conditionality with regard to human rights, will not be sufficient to guarantee the emergence of peace and prosperity in (all) other parts of the world. For some of the world's most complicated and difficult conflicts, it will be inevitable that the EU will become actively engaged in order to find long-lasting and stable solutions. For such situations to be credible, it may require more than just being able to deploy small-scale military operations.

### THE PROVISIONS OF THE LISBON TREATY

The previous section illustrated that criticism of the EU's international performance centres around a lack of (military) capabilities, a unified and coherent external representation and a visible leadership role matching its economic powers. The new provisions of the Lisbon Treaty mainly address the latter two. They address concerns with regard to the system of a rotating Presidency in representing the EU in the world, coherence problems between the Commission and Council and foreign-policy making capacities.

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<sup>17</sup> Cf. A. Missiroli, 'Introduction: A tale of two pillars – and an arch', in: *The EU Foreign Service: how to build a more effective common policy*, European Policy Centre, Working Paper No. 28, 2007.

<sup>18</sup> Cf. G. Rachman, 'Irrelevance, Europe's logical choice', *Financial Times* (20 May 2008); K. Mahhubani, 'Europe is a geopolitical dwarf', *Financial Times* (22 May 2008).

First of all, the Lisbon Treaty would abolish the term European Community, which is considered to be confusing by outsiders, and replace it by the European Union. The EU would obtain legal personality and Community competence is to be renamed as Union competence. The EU would be able to accede to international organisations and treaties, as the EC does today. The renaming of EU resembles intentional desires to merge the CFSP into the Community structure, but this proved to be a bridge too far. Two declarations have been attached to the EU treaty to underline that the CFSP would continue to be subject to specific intergovernmental procedures and rules.

Secondly, a set of general provisions on the Union's external action was decided upon. Article 21 of the Lisbon Treaty stipulates that action on the international scene 'shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, 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 Charter and international law.' The statement is particularly relevant for external relations where a Community competence exists, such as trade, development cooperation and climate change policies. The CFSP also has to adhere to it, but it would be difficult to oblige the Member States to stick to the Treaty objectives, since CFSP activities would continue to fall outside the remit of the European Court of Justice.

Thirdly and probably most importantly, the Lisbon Treaty would establish an 'EU foreign policy coordinator'. Officially the post is entitled *High Representative of the Union for Foreign Affairs and Security Policy*. Although this title is similar to the current position of High Representative CFSP Solana, the scope and mandate of the new function have considerably expanded. It merges the current High Representative position and the position of the Commissioner for External Relations, supplemented by the chairmanship of the Foreign Affairs Council, and the vice-Presidency of the Commission, which has led to a common use of the acronym *HR/VP*.<sup>19</sup> His or her tasks would include conducting the CFSP and ensuring the consistency of the Union's external action.<sup>20</sup> Another task is to supervise a new, still to be established European External Action Service (EEAS) composed of national diplomats and Commission and Council staff dealing with external and foreign policy. Although the Lisbon Treaty provides for the establishment of the EEAS, its scope, organisation and functioning would still need to be decided upon. It was subject to intense debate within the Commission, the Council Secretariat and the capitals of the EU Mem-

<sup>19</sup> Missiroli, *supra* n. 17.

<sup>20</sup> Art. 18, Treaty on European Union (Lisbon Treaty).

ber States before the Irish no vote jeopardised the entry into force of the Lisbon Treaty. A sensitive question is whether the Member States would allow the EEAS to become a genuine diplomatic service. Another sensitive question is which parts of the Commission's services dealing with external relations (e.g., DG Development, DG Trade) would be transferred to the new organisation. Since the EEAS would be working both for the intergovernmental and hitherto Council-led, CFSP, and for the hitherto Commission-led areas of external relations, a key question appeared to be where the EEAS would be hosted, or whether a hybrid organisation should be decided upon (e.g., an agency).

The establishment of the EEAS would clearly affect the practice of EU diplomatic representations in third countries. Currently more than 40,000 officials work in the foreign ministries of the Member States and the approximately 1,500 diplomatic missions abroad. Each Member State maintains between 40 and 160 diplomatic missions, while the Commission has a network of over 120 delegations around the world. In comparison, the United States has about one-third of the human resources that the EU devotes to diplomacy and one-fifth of its diplomatic missions.<sup>21</sup> With the entry into force of the Lisbon Treaty, the EC delegations would become EU delegations reporting to the HR/VP. This means they would need to increase and improve their political reporting capabilities. One of the problems is that the Commission has never recruited staff for traditional diplomatic tasks and has never put adequate resources into training. Most of the current staff lack the specific know-how and expertise of modern diplomacy and international crisis management, as their culture is still predominantly one of (development cooperation) project management and trade. An important question is whether the EU delegations would be able to take over some of the activities of the embassies of the Member States or whether they would remain complementary to them.

The creation of the more centralised foreign policy position HR/VP and EEAS raised concerns about too much power being placed in the hands of one person, and foreign policy objectives prevailing over economic, environmental and development cooperation objectives. However, others emphasised the continued existence of multiple players in EU external relations, while arguing in favour of strong coordinating powers for the HR/VP. Notably competition with yet another newly created position, the permanent European Council President, has been feared.<sup>22</sup> Competition with fellow Commissioners and the Commission President would likely occur as well. Finally, also the role of the rotating Presi-

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<sup>21</sup> Missiroli, *supra* n. 17.

<sup>22</sup> According to Art. 15 of the Lisbon Treaty the European Council President will 'at his 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 HR/VP.'

dency in EU's external relations could continue to exist, although probably less prominently. The rotating Presidency would continue to chair the general affairs Council and the 'regular' Ministerial formations (environment, agriculture, etc.) and Coreper (Council of Representatives).

Issues have been raised with regard to whom the HR/VP would be accountable to. According to the Lisbon Treaty he or she would be appointed by the European Council, acting by a qualified majority, with the agreement of the President of the Commission (and may end the appointment by the same procedure). The HR/VP would, however, also have an accountability relationship with the European Parliament since he or she would be one of the members of the College of Commissioners. The Treaty stipulates that Commission procedures apply when the HR/VP is exercising responsibilities within the Commission, so it seems the European Parliament would be able to hold him or her accountable for issues where an EC competence exists. However, when there would be a hearing in the Parliament, it would politically be difficult to claim that the person appointed by the European Council is not fit for the job.

Finally, the Treaty of Lisbon would bring more powers to the European Parliament in external relations. Although the CFSP would continue to fall outside its reach, except for some power over its budget, the EP would obtain the powers to reject nearly all international agreements to which the EU subscribes.<sup>23</sup> This means it could threaten not to ratify an agreement when certain of its demands would not be taken into account. Whether the European Parliament would start to make use of its expanded powers remains the question, since in political terms it may prove difficult to reject high-profile international treaties that are the result of long and intense negotiations.

#### TOO HIGH HOPES OF INSTITUTIONAL REFORM?

Taken together, the Lisbon Treaty would have implied considerable changes for EU foreign policy making. After the Irish no vote and critical voices by, among others, the Presidents of Poland and the Czech Republic, it has become politically incorrect to further discuss the implementation of the Lisbon Treaty. At the same time, some have remarked that world events will not stop and wait for the EU institutions to catch up. Recent tensions with Russia, following the conflict in South Ossetia, have underlined the need for a stronger external representation. EU foreign policy making would be in desperate need of reform. Less openly it has been mentioned that the HR/VP position and EEAS could still be put in place, if EU Member States would allow it.

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<sup>23</sup> See Art. 218 (6a), TFEU.

The more important and politically difficult issue is that the HR/VP and EEAS would only be likely to contribute to making EU's external relations more coherent and effective when they would obtain a broad remit and sufficient resources. One could easily image these institutions being able to push a powerful EU foreign policy, when within them development cooperation resources would be combined with trade powers and foreign policy instruments. But would Member States and the Commission President allow such a bundling of power to occur? It would require several Commissioners to be subordinated to the HR/VP. Member States would have to accept a permanent spokesperson in a range of international activities, which are now the remit of the rotating Presidency. The HR/VP would, moreover, be likely to press them to agree more quickly and decisively on sensitive foreign policy questions. The EU's trade and aid relations would become more political. From a legal perspective it could be argued that authority, responsibility and accountability would need to be clearly attributed, which may be tricky when the Treaty in force would still formally grant these powers to the rotating Presidency. Perhaps most importantly, whether the EU would be coherent and effective would still depend on EU Member States being able to reach consensus on important foreign policy questions. A mandate by the Council would still be needed for most policy directions.

## FINAL REMARKS

Strengthening EU unity in external representation does not seem to depend mainly on institutional rules, but on a willingness by EU Member States to give up more easily specific foreign policy preferences in the spirit of compromise. In addition, it is clear that the institutional changes proposed in the Lisbon Treaty mainly address the concerns regarding a unified and coherent external representation, and those regarding the EU's ability to be more visible in international politics. It does not address the sensitive question of scaling up (military) capabilities. With the establishment of a European Defence Agency, and the growing number of EU missions, some progress has been made. However, for most Member States, NATO is and will remain the most important organisation for military cooperation.

Finally, it seems relevant to look at what other improvements could be considered when Lisbon will not survive and when also the HR/VP and EEAS proposals would be dead and buried. In such a situation an important question is how the system of the rotating Presidency could be made more effective. The burden of external representation is currently extremely heavy. It could be considered to offer more support by the Council Secretariat and/or Commission to the rotating Presidency. Member States could also decide to work more often with a lead negotiator covering international issues on behalf of the EU over a

longer term (under the formal responsibility of the Presidency). Other issues could be to restructure the organisation of the Commission (DG external relations, DG development, DG trade, etc.) and the Council Secretariat. More training could be offered to Commission officials and diplomats from EU Member States on EU foreign policy objectives and methods, and how 'Europe' is viewed in the world.

Although a number of the negative images of EU foreign policy would undoubtedly continue to exist, it would still be important to consider such small steps. In a world order that is increasingly becoming multipolar and in which other countries look to the EU to demonstrate normative leadership, it cannot afford to stay on the sidelines.