

The Lisbon Treaty and External Relations



By Dr Simon Duke*

Some of the most profound and potentially far-fetching changes introduced into the Treaty of Lisbon are to be found in the area of EU external relations. Although consensus for change was already established at the Convention on the Future of Europe, the national sensitivity of foreign and security policy has meant that the Treaty often does little more than sketch the broad outlines leaving the details to be filled in at a later date. This contribution argues that the principal challenges for EU external relations lie beyond ratification. It will be up to the Member States and the EU institutions to imbue the new positions and practices introduced by the Treaty with substance. Critically, this will mean defining the role of the (new) High Representative vis-à-vis the other external relations actors; shaping the European External Action Service and the Union delegations; and deciding how national diplomatic roles will complement those of the EU institutions and vice versa. The security and defence related provisions of the Treaty will also have to be implemented in a consensual manner. In short, the Lisbon Treaty holds enormous potential for a more coherent Union on the international stage, but whether this is realised or not will ultimately depend upon the Member States.

The citizens of France and the Netherlands did not vote against the Constitutional Treaty with external relations specifically in mind. Indeed, successive public opinion polls indicate the desire for more, not less, Europe in foreign and security policy. The Lisbon Treaty introduces a number of potentially far-reaching changes in EU external relations with the scope for the Union to become a more coherent actor on the international stage. The scope of the changes reflects the visions of those working groups in the Convention on the Future of Europe who were prescient enough to realise that the Union had yet to reach its full potential in these areas.

This contribution will briefly summarise the nature of the key changes introduced by the Treaty in external relations and will then focus upon some of the potential challenges that lie beyond ratification. Since space prohibits a detailed

examination of all of the changes introduced in the external relations area, the focus will be upon the High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service (EEAS), which shall assist the former, the Union delegations and the Common Security and Defence Policy (CSDP).

Implications of the Lisbon Treaty for EU external relations

The conclusions of the Convention on the Future of Europe's Working Group on External Action recognised the need for the Union to "maximise its influence on the global stage" by using "all its instruments, political and economic alike,

in a coordinated and mutually reinforcing manner".¹ Of central importance to this effort was the creation of a position combining the existing functions of the High Representative for CFSP with that of a Vice-President of the Commission, responsible for coordination of external relations, as well as that of chair of the Foreign Affairs Council (FAC). It is thus not correct to say, as is all too common, that the new position is simply a dual-hatting of the current High Representative's role with that of the Commissioner for

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External Relations – it is more. The Working Group contented itself with outlining a number of options regarding what they then termed the "European External Representative". Although the institutional location and role of the (new) High Representative became clearer in the subsequent treaty drafting processes, it still begged a number of

important questions such as how the High Representative will balance his or her role with the triple Presidencies – those of the European Council, the Council and the Commission. These will be briefly reviewed since they are essential to understanding the institutional context in which the High Representative will have to operate.

The Treaty states that the President of the European Council shall “at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.² The first and most obvious problems are of “level” and “capacity” that may be largely determined by the perception and self-image of the first office holders. A declaration to the Final Act calls for the choice of the three positions (High Representative and the respective Presidents of the European Council and the Commission) to “respect the geographical and demographic diversity of the Union and its Member States” which, although understandable, could give rise to the familiar jockeying between the Member States. This, in turn, may then influence relations between the three key positions. At a more technical level, the absence of any specified secretariat for the President of the European Council raises the question of who, or what, will support this office? It also raises the question of whether those departments that do not fall under the European External Action Service (EEAS) (discussed in more detail below) are then under the President of the European Council? Might this also include the EU Military Staff?

The rotating national Presidency of the Council applies to all configurations of the Council with the exception of the

has, arguably, been the main focus of successive Presidencies. Under the Lisbon Treaty the delineation of duties and competences between the FAC and the General Affairs Council has yet to be specified, although the FAC is clearly not limited solely to CFSP matters since they shall also “elaborate the Union’s external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union’s action is consistent”.⁴ This has implications for the Political and Security Committee (PSC), which shall be chaired by a “representative of the High Representative of the Union for Foreign Affairs and Security Policy”, whereas the Committee of Permanent Representatives (Coreper) will be chaired “by a representative of the Member State chairing the General Affairs Council”. This gives rise to a number of questions such as who will represent the Commission in the PSC and how the working parties will be arranged and chaired. Presumably the working parties in the current Community areas of external relations (such as trade, development or enlargement) will continue to be chaired by the rotating Presidency, whereas the CFSP groups could be chaired by a member of the EEAS, with an *ad hoc* determination applying where mixed competences apply.

The new High Representative’s relations with the Commission, including the President thereof, are also likely to be challenging. The High Representative will be a Vice-President in Commission but, unlike the other Vice-Presidents, he is not appointed by the President of the Commission but by the European Council, acting by qualified-majority, with the agreement of the President of the Commission. The High Representative shall be “responsible within the Commission for responsibilities



Signing the Treaty of Lisbon
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FAC, which shall fall under the new High Representative.³ The question then arises of what role the Presidency plays in CFSP since under the current treaty arrangements this

incumbent upon it in external relations and for coordinating other aspects of the Union’s external action”.⁵ This immediately raises the question of what are those

“responsibilities” incumbent upon the Commission and what are the “other aspects” that have to be coordinated. The scope of the former could be indicated by the current Group of Commissioners on External Relations, chaired by the President of the Commission and the Commissioner for External Relations as Vice-President (in other words, DG External Relations including the Service responsible for External Delegations; DG Trade; DG Development; DG Enlargement; the EuropeAid Cooperation Office; ECHO; and some external aspects of DG Economic and Financial Affairs). These tasks would then be distinct from other aspects of the Commission’s work with a bearing on external relations, such as agriculture or the environment, where the High Representative would have a coordination role rather than direct responsibility. This question is of more than passing interest to the European External Action Service (see below) where considerable confusion exists over which departments are “relevant” to the new Service – the remit of the High Representative in this context will therefore suggest the scope of relevance to the Service. Given the extensive nature of the High Representative’s responsibilities, the President of the Commission would presumably not chair any revised external relations group – although this remains to be seen.

The High Representative’s role in the Commission context may also be complicated by some more mundane considerations, such as whether it is possible to balance his or her responsibilities and coordination roles within the Commission, which demands a presence in Brussels, with the demands of foreign representation in political dialogue and at international conferences. This may not be an easy balance, especially if the current High Representative’s punishing travel schedule is any indication. The considerable physical demands of the job makes the question of effective support a critical issue and it is to this we now turn.

The European External Action Service

The EEAS is in many ways pivotal to the coherence and effectiveness of future EU external relations. The degree to which any High Representative will be able to function and meet the demands made upon him or her will depend primarily upon the Service. The Treaty specifies that the EEAS will assist the High Representative and “shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from the relevant departments of the General Secretariat of Council and of the Commission as well as staff from national diplomatic services of the Member States”.⁶ The key issues behind which a multitude of turf sensitivities lie, are what are the “relevant departments” and how seconded national diplomats will be integrated?

Preparatory work on the Service has progressed in fits and starts, commencing with the signature of the Constitutional Treaty in October 2004, halting after the respective French and Dutch referenda in May and June 2005, and recommencing more recently with the signing of the Lisbon Treaty. Until this point progress had been made in discussions between the parties on the legal status of the

EEAS, personnel issues, budgetary questions, administrative aspects and the management of the Union delegations. The Member States were consulted between 27-29 April 2005 (including Bulgaria and Romania) and a stocktaking of these meetings took place in Coreper on 12 May. The European Parliament also held a debate on the EEAS in plenary session on 11 May and adopted a resolution on the Service on 26 May. The resolution included the firm desire to see the Service “incorporated, in organisations and budgetary terms, in the Commission’s staff structure, while the directorial powers of the Foreign Minister, who will also be a Commission Vice-Presidency, should ensure that the Service is bound in the “traditional” foreign policy sphere (the CFSP and CSDP) by the decisions of the Council ... and subject in the Community external relations sphere to the decisions of the college of Commissioners”.⁷

Javier Solana, the High Representative for CFSP, and José Manuel Barroso, President of the European Commission, were less emphatic than the European Parliament in terms of the institutional locale of the Service, preferring to describe the EEAS as *sui generis* in nature, in their 2005 Joint Progress Report. Hence, the Service “would not be a new ‘institution’, but a service under the authority of the Foreign Minister, with close links to both the Council and the Commission”.⁸ The logic underpinning the *sui generis* formulation was in part to minimise duplication and to

save costs, but also to provide the High Representative with a framework in which he or she could rely on the assistance of the EEAS as well as the support services of the Commission and the Council. Less charitably, this formulation was merely a reflection of earlier unresolved differences over the composition and affiliation of the Service that emerged from the Convention. The preference of the European Parliament to incorporate the EEAS into the Commission’s staff structures, the predictable opposition to this from a number of Member States, alongside the lack of any specific institutional reference in the Constitutional Treaty, made the *sui generis* moniker preferable – but it solved few of the underlying tensions.

The difference, albeit undefined, between *responsibilities* within the Commission and the *coordination* of other aspects of the Union’s external action, suggests two logical options. The first, a minimalist model, would put the emphasis on coordination and less on the direct responsibilities of the High Representative, while the maximalist version stresses responsibilities rather than coordination.

Given the High Representative’s specific responsibilities in the CFSP and CSDP areas, the minimalist model would emphasise the ability to assist him or her in this domain. Since the High Representative’s role does not preclude him from drawing on other services within the Council Secretariat and the Commission, the arguments could be made in favour of a fairly small Service, complemented by seconded national diplomats. The minimalist model would restrict the EEAS to most of DG-E and the Policy Unit from the Council Secretariat side and DG External Relations on the Commission side, most notably Directorate A, or the “Crisis Platform”, with responsibility for policy coordination in

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CFSP. In this case, the self-exemption of trade from the EEAS discussions on the grounds of exclusive competence could reasonably be extended to other areas of exclusive or mixed competence in external relations, such as development policy, humanitarian assistance, management of external financial programmes and enlargement negotiations; in these areas the High Representative would play an important coordination role.⁹ The advantage of this approach is that it would be easier to manage and, given its relatively small size, less likely to evoke turf tussles amongst the institutions, or concern from some Member States regarding the potential effects upon their national diplomatic services and practices. It would, however, be insufficient to staff the full range of geographic and thematic desks, quite aside from the basic staffing of the Union delegations. The preferences of the Member States were torn between those who wanted the EEAS restricted to CFSP issues, while others preferred an even broader remit than that described above, to include areas such as enlargement, neighbourhood (ENP) and development policy.¹⁰

As has already been suggested, the maximalist model would include a far wider representation from the Commission side to include all or most of the DGs mentioned above (except trade). The Joint Progress Report by Solana and Barroso, referred to above, argued that the roles attributed to the High Representative (including, notably, responsibility for consistency of the external relations of the Union) mean that the EEAS should be in a position to “provide unified policy advice and briefing not only to the [High Representative], but also to the other Commissioners and the President of the European Council”.¹¹ The same report suggested that the Service should include “services currently dealing with CFSP (including CSDP), together with geographical desks covering *all* regions of the world and thematic desks dealing with issues such as human rights, counter-terrorism, non-proliferation and relations with the UN”.¹² The report is careful to note that desks should not be duplicated, but this dodges the question of whether existing desks should be relocated to the EEAS or not?

On the Council Secretariat side involvement could extend to all crisis management-related aspects, including the Military Staff, as well as the Sitcen. It is worth noting in passing that the minimalist model would have the effect of bifurcating the civilian and military aspects of crisis management, if the Military Staff were excluded from the Service. The maximalist perspective would therefore incorporate the military dimensions of crisis management into the EEAS which, it could be argued, is logical given the High Representative’s responsibilities in the CSDP domain. The model could give rise to questions of manageability for the High Representative and the type

of management structures and style that would be required to deal with the Service and coordination with the Commission, Council Secretariat and the Member States. Finally, the maximalist model may bring up the question of how to improve relations between the European Parliament

and the EEAS and whether there is need to expand upon Michael Matthiessen’s current role as Personal Representative of the High Representative for Parliamentary Affairs in the CFSP area, into a fully-fledged section responsible for relations with the Parliament.

No matter which model prevails (the former seems more likely) there will still be a number of vexatious issues. Four deserve brief mention. First, the question of staffing ratios may prove challenging. Commission officials in the *famille Relex* outnumber their Council Secretariat counterparts by a ratio of almost 5:1.¹³ The presence of national diplomats may alter the ratio slightly but, in both the minimalist (as service providers) or the maximalist (as the predominant staff component) cases, the Commission’s role in shaping and staffing the Service will be significant. This may also have implications for the financing of the Service.

Second, the question of whether the Situation Centre (SitCen) will be within the EEAS remains highly sensitive. The current reservations that apply to the sharing of intelligence analysis beyond the Member States may be an *a priori* argument for excluding the SitCen, but this could then harm the ability of the Service to respond in an optimal manner, especially since crisis prevention remains a fixed priority under the treaty.

Third, the budgetary arrangements for the Service remain unclear. If the EEAS is financed from the general budget this will give the European Parliament considerable leverage (a point noted in the Convention), whereas if it is financed through a separate intergovernmental arrangement the question of who should pay for what, at a time when nearly every national foreign ministry faces budget strictures, will come to the fore. In the event of the latter, this could tip the balance in favour of the minimalist option.

The final sensitive question is how the Member States fit into the EEAS. Two declarations on CFSP inserted into the Final Act strike a potentially defensive note on the part of the Member States vis-à-vis the putative Service.¹⁴ The first notes that the provisions on CFSP, including the creation of the office of High Representative and the establishment of the External Service, will 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 organizations”. In a similar vein the second declaration notes that the same developments will “not affect 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 United Nations”.

The manner in which personnel from the Member States are supplied to the Service is open for discussion (temporary

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agents or seconded?), as is the question of how all staff in the EEAS can be accorded the same status and conditions of employment. The selection procedure for national staff working in the Service and who has the final right of approval also remains up in the air. The perception of the EEAS from the Member States, and the decisions that are made regarding the quantity and level of secondment to the EEAS, will have a strong influence on the shaping of the Service. The quality of existing national staff in the Council Secretariat leaves room for optimism, but if the EEAS is perceived to be Commission-oriented or dominated (see the above point on potential staffing ratios), it may evoke more caution on the part of the Member States.

If the Member States were to choose to see the EEAS as an opportunity, rather than a potential threat to the conduct of foreign policy or representation, their role could be substantial, especially if senior national figures serve in the Service (as was the idea behind the appointment of the former Irish Prime Minister, John Bruton, to the Head of Delegation in Washington DC). The EEAS offers an opportunity for closer coordination between the Member States and the EU, compared to the vagaries of coordination in the current Commission and rotating Presidency contexts. The EEAS could also be usefully promoted as a platform for horizontal coordination in the growing number of issues that go beyond the ambit of any one Member State. The presence of national embassies (especially those of the larger Member States) in many overseas locations, as well as EU delegations, raises the question of whether such representation is duplicative or whether the EEAS might usefully concentrate on regional perspectives and issues, in the same manner that a number of Special Representatives are doing.

Union delegations

The Lisbon Treaty, due to the attribution of legal personality to the EU, refers to Union delegations.¹⁵ There was originally no defined position on whether the delegations should form part of the EEAS or not but, logically, it is assumed that they should. This does not imply, however, that the EEAS should entirely staff the delegations. The treaty states that, "With the exception of the common foreign and security policy, and other cases provided for in the Treaties, [the Commission] shall ensure the Union's external representation".¹⁶ The Union delegations will presumably build upon the current External Service and will include staff from other DGs, such as trade, agriculture or transport, to provide seconded expertise; this is similar to many national models where professional diplomats are complemented by the line ministries. For the CFSP-specific aspects, Council Secretariat or seconded national staff will have to be included. The Treaty instructs national diplomatic and consular missions to work in "close cooperation" with the delegations.¹⁷

The composition of the delegations raises a number of issues, starting with the question of authority. Presumably, the staff of a given delegation will fall under the Head of delegation which implies that all staff, regardless of origin, should be part of a single structure. The integration of national staff into the delegations raises questions regarding

the exchange of information and liaison arrangements between the delegations and the missions of the Member States in third countries. A broader question, broached by Michel Barnier, former French Foreign Minister and former Commissioner, concerns the ill-defined links between consular and diplomatic protection and areas such as civil protection, crisis intervention and humanitarian assistance.¹⁸ The Charter of Fundamental Rights also defines the right to consular and diplomatic protection as a "fundamental right" of the EU citizen. This may suggest a greater EU role in this area but for less noble reasons, such as the financial restrictions confronting many national diplomatic services, there may be national interests in moving some consular and visa duties towards the EEAS.

The Treaty is clear that "The diplomatic missions of the Member States and the Union delegations in third countries and at inter-

national organisations shall cooperate and shall contribute to formulating and implementing the common approach [defined by the European Council or the Council]"¹⁹ and that the Union delegations "shall act in close cooperation with the Member States' diplomatic and consular missions".²⁰ The spirit of mutual cooperation that will be required is not evident if read in conjunction with the two declarations on CFSP attached to the Final Act (see above). The evident danger of not striking the right cooperative balance is that the national diplomatic staff will view temporary assignment or secondment to the EU as a burden, with the consequence that the game becomes one of shifting burdens (notably consular) in the direction of the delegations and downgrading the prestige of service in the EEAS amongst national diplomats. Finally, the pressure from the Member States to replicate national diplomatic models at the European level should be resisted since the EEAS offers the chance to design from scratch far more integrated horizontal structures that can address complex interlinked challenges – ranging from terrorism, health issues, security sector reform to migration – in ways that many national diplomatic services find difficult to do.

The Common Security and Defence Policy

The renamed ESDP – CSDP in the Treaty – reflects a number of changes that, for the most part, codify existing practice. For instance, the idea of "coalitions of the willing" and lead framework nations is already fairly well established, but is codified in the form of permanent structured cooperation. The expanded Petersberg tasks also codify what the EU has been doing anyway and the 2004 Solidarity Clause, adopted by the European Council in the aftermath of the Madrid bombings, are now in the Treaty. Two things are worthy of note, however.

First, the appearance of the mutual defence clause²¹ appears to open up the possibility for an "Article 5" type NATO (or WEU) obligation. The relevant section 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". The clause is however circumscribed by reference to the "specific character of the security and defence policy

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of certain Member States". It is therefore clear that, while some may welcome the presence of a mutual defence clause, its practical impact is limited by the neutrality or non-alignment of some EU members on the one hand, and by a preference to see such obligations fulfilled through NATO on the other.

The second notable aspect of the stipulations on CSDP is the considerable emphasis placed on the role of the European Defence Agency (EDA). The multiple mentions of the EDA is remarkable given that only two other agencies (the European Space Agency and Euratom's Supply Agency) are actually mentioned by name (see Article 45 in particular). Large parts of the 2004 Joint Action founding the EDA are reproduced in the treaty. The purpose is, presumably, to accord particular importance to the role of the Agency as a vehicle for helping to address the underlying rhetoric-resources gap at the centre of CSDP. This is clearly a high-stakes move when considering the relative newness of the agency and its limited powers to influence European

defence procurement, budgeting and innovation. The agency has enjoyed some early successes, but the longer-term challenges are formidable.

Conclusion

The test for the future coherence and credibility of EU external relations depends upon the political will of the Member States to breathe life into the new institutions and practices created by the Treaty of Lisbon. The Treaty does not put national diplomatic practice up against European-level diplomacy but offers potential synergy through mutual involvement and enrichment. The question of whether the treaty is allowed to live up to its potential will depend critically upon the EEAS since it is difficult to conceive of an effective High Representative, streamlined geographical or thematic desks, let alone fully-fledged Union delegations, if the Service is deprived of oxygen upon delivery. The real challenges lie ahead, beyond the ratification of the Treaty.

NOTES

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¹ Final report of Working Group VII on External Action, The European Convention, The Secretariat, CONV 459/02, Brussels, 16 December 2002, Para. 20.

² Art. 15(6) TEU.

³ Art. 16(9) TEU.

⁴ Art. 16(6) TEU.

⁵ Art. 18(4) TEU.

⁶ Art. 27(3) TEU.

⁷ *Official Journal of the European Union* C 117 E/233, 18 May 2006, P6_TA(2005)0205, European External Action Service, European Parliament resolution on the institutional aspects of the European External Action Service, 26 May 2005, Para. 2.

⁸ European External Action Service, *Joint Progress Report to the European Council by the Secretary-General/High Representative and the Commission*, Council of the European Union, 9956/05, Brussels, 9 June 2005, Para. 6.

⁹ In the case of enlargement it could be excluded altogether on the grounds that it is not really external relations, although the current practice is to treat it as such.

¹⁰ *Ibid.* Para. 7.

¹¹ *Ibid.* *Issues Paper on the European External Action Service*, Annex II, Para. 12.

¹² *Joint Progress Report to the European Council by the Secretary-General/High Representative and the Commission*. Para. 8 (emphasis added).

¹³ Calculated on the basis of AD officials and temporary agents on the Commission side and staff in Directorate-General E of the Council Secretariat, and staff detached to the High Representative. If all staff are included (i.e. contract staff, seconded national experts, technical and administrative) the ratio changes to around 11:1

¹⁴ *Final Act*, Conference of the Representatives of the Member States, CIG 15/07, 3 December 2007, Declarations concerning provisions of the treaties, Declarations 13 and 14 concerning the Common Foreign and Security Policy.

¹⁵ Art. 32 TEU.

¹⁶ Art. 17 TEU.

¹⁷ Art. 221(2) TEU.

¹⁸ Michel Barnier, "For a European civil protection force: europe aid", May 2006, at http://ec.europa.eu/commission_barroso/president/pdf/rapport_barnier_en.pdf.

¹⁹ Art. 35 TEU, emphasis added.

²⁰ Art. 221 TEU, emphasis added.

²¹ Art. 42(7) TEU.