

The Lisbon Reform Treaty and its effect on CFSP/CSDP

The [Lisbon Treaty](#) was signed on 13 December 2007 and should come into force on 1 January 2009, pending ratification by all Member States. The Treaty incorporates most elements of the failed EU Constitution, including those relating to the external representation of the EU, and will have a significant effect on the formulation and presentation of policies in this area. This document is a brief explanation of the changes made by the Lisbon Treaty to the CFSP and CSDP (previously ESDP¹) of the European Union, and provides EPLO's position on these developments.

One of the central aims of the Lisbon Treaty is to improve coherence in the field of EU external relations. As the organigramme on page 2 shows, there are, however, still a very large number of actors and bodies with a role in the external policy of the EU. At the centre of these is the High Representative; a new position created under the Treaty, merging the current positions of Council High Representative for CFSP and External Relations Commissioner, who is tasked with the difficult job of ensuring coherence between all the actors.

EPLO Comments

EPLO is overall delighted to see that the main institutional improvements foreseen in the Constitution were retained in the Lisbon Reform Treaty. Although the Lisbon Treaty is far from perfect, it does, in the view of EPLO, represent the opportunity for major improvements in terms of increased coherence and capability to prevent and react to conflicts. However in order to achieve these aims the way in which the Treaty is implemented will be as important as the provisions contained within it.

High Representative of the Union for Foreign Affairs and Security Policy

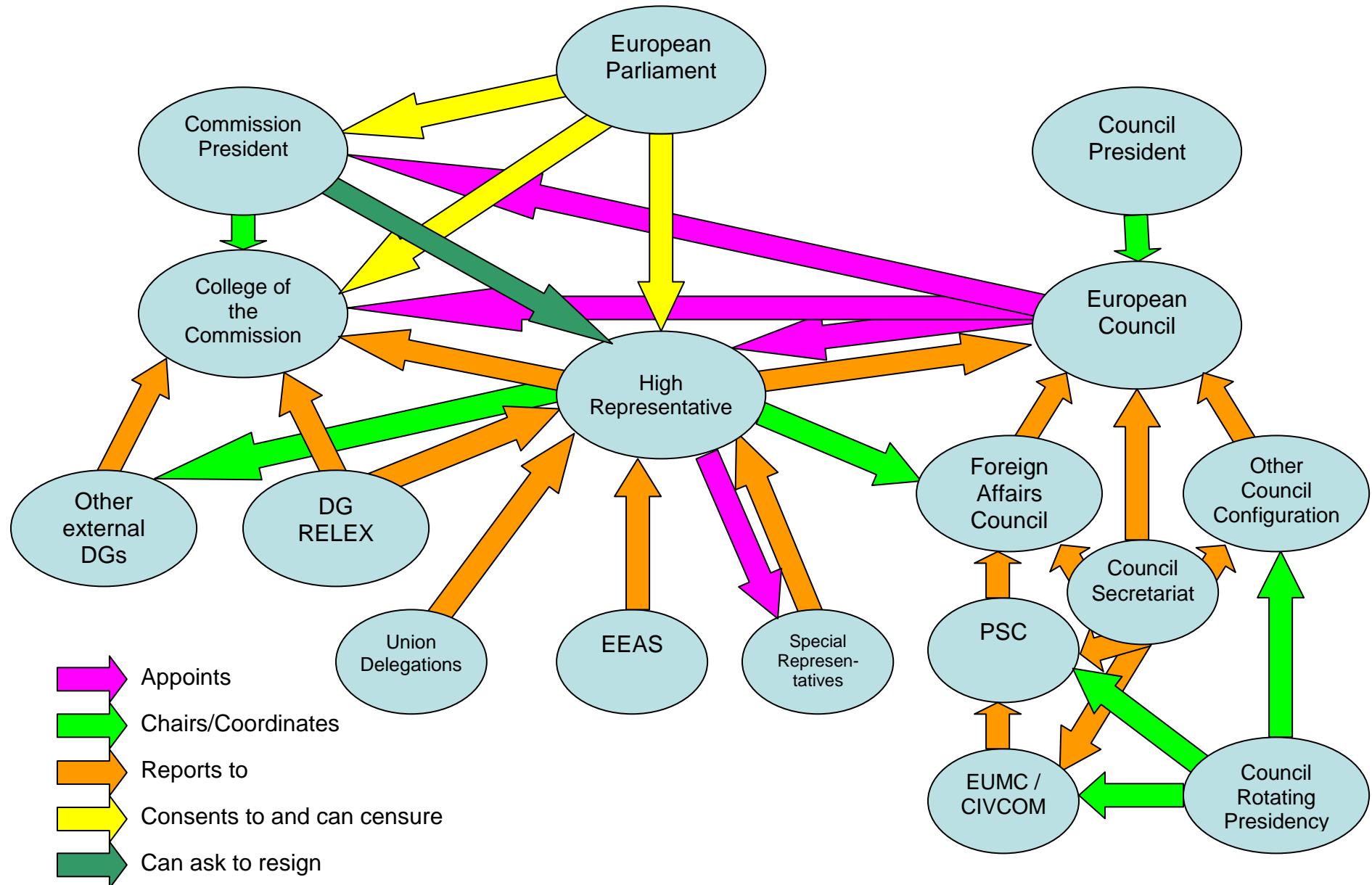
Under the Lisbon Treaty the posts of High Representative for Common Foreign and Security Policy (CFSP) of the Council, and Commissioner for Directorate-General External Relations (DG RELEX) will be merged to create the position of High Representative for Foreign Affairs, which it is hoped will bring more coherence to the external relations of the Council and the Commission. The High Representative will therefore be the foremost voice of the Union in foreign affairs (although there is a possibility that a certain amount of competition for this role may exist between the High Representative and the other newly created post of President of the European Council). Whilst at present, the role of High Representative for CFSP is coupled with that of Secretary-General of the Council, following the Lisbon Treaty these will become two separate positions.

The task of representing both the Commission and the Council presents a certain level of risk of conflicting interests. In terms of hierarchy, the Treaty states that the High Representative is:

- Mandated by the Council to develop and carry out the CFSP and CSDP
- Bound by Commission procedures, to the extent that this is compatible with the mandate from the Council, when coordinating the Commission's external relations.
- Appointed, and may be removed, by the Council;
- Subject, along with the rest of the Commission, to votes of consent and censure by the Parliament;
- May be asked to resign by the Commission President.

¹ This change in terminology will take effect via the Lisbon Treaty

The EU's External Representation Post-Lisbon



Besides the immediate tasks of running the European External Action Service (EEAS) and DG Relex and being the visible face of the EU in external relations, the High Representative will be tasked with a number of other important functions, including taking on the chair of the Foreign Affairs Council (which will become separated from the General Affairs Council); being responsible for the coordination of CSDP missions; coordinating the various external relations DGs of the Commission; proposing and being responsible for the Special Representatives of the Union; and managing the EU Delegations. In addition, the High Representative is also tasked with establishing relations with international organisations, such as the Council of Europe (CoE), Organisation for Security and Cooperation in Europe (OSCE) and Organisation for Economic Cooperation and Development (OECD) and will also be asked to present the Union's position to the UN Security Council.

The High Representative may also become part of a new informal EU troika, which will probably now consist of the High Representative, the President of the European Council and the President of the Commission.

EPO Comments

The creation of the post of High Representative is potentially an important step towards greater coherence in the EU's external relations, and will ensure for the first time a single EU profile towards the wider world. However, the extent to which the merging of the roles of High Representative for CFSP and Commissioner for External Relations will result in the positions of the Council and Commission becoming more consistent remains to be seen. EPO therefore remains cautiously optimistic about this development and looks forward to seeing how the new reforms will be implemented in practice.

European External Action Service (EEAS)

Another major innovation of the Lisbon Treaty is the creation of the EEAS, which is described below:

Article 13a.3, Treaty on European Union (as amended by the Lisbon Treaty):

"In fulfilling his or her mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission."

In a Declaration attached to the Treaty, the relevant actors (including Commission, Council and Member States) were mandated to begin preparatory work on the EEAS from the date of signature of the Treaty (rather than its ratification). Preliminary high level negotiations are currently ongoing, yet all details regarding the future service, excepting those given above, remain unclear. Seemingly even the nature of the EEAS, and whether it will act simply as a coordinating body between the Council and the Commission, or whether it will take on the majority of the external tasks of the two institutions by integrating large sections from both into its structure, has not yet been decided. Neither has there been any public information about any of the following issues:

- Where the EEAS will be situated (in the Commission, Council, or entirely separate);
- How it will be composed (which units from the Council Secretariat and RELEX will be combined in the EEAS, and which will stay as they are);
- The role and position of the Commission delegations in third countries and their relationships with Member State diplomatic representations there;

- What will be the status of the staff working there (whether they will retain their formal status of the institution or Member State they are being seconded from, or be given an entirely distinct EEAS status);
- How the EEAS will be funded (and the implications in terms of lack of Parliamentary oversight if it is not funded out of the general EU budget);
- How conflicts of interest will be resolved in undertaking the difficult job of being responsible to the Council and Commission, and having to coordinate the positions of both.

EPLO Comments

EPLO also welcomes the creation of the European External Action Service (EEAS) but is concerned that negotiations regarding the new service are being conducted in secret. So far few efforts have been made to inform or consult with civil society or the European Parliament. EPLO therefore emphasizes that transparency, and parliamentary and civil society consultation, are essential in the process of creating the new service, for reasons both of democratic accountability and in order to take advantage of expert knowledge.

The EEAS should seek to improve coherence between short-term second pillar crisis management and longer-term first pillar peacebuilding activities and also between all external policy areas of the EU. It should avoid duplication by minimising the overlap of tasks being performed by the Commission and Council and by centralising those tasks which are currently duplicated in both these institutions in the EEAS. It should also enjoy a broad mandate, covering all those areas in which the EU is active externally, such as for instance Development, Trade, CFSP, ESDP, the Neighbourhood Policy, and Enlargement. The EEAS should have primary responsibility for ensuring that conflict sensitivity, gender and human rights, are mainstreamed in all these policies.

A specific Peacebuilding Directorate/Department should be established within the EEAS with the prime responsibility of coordinating all aspects of conflict prevention activities, peacebuilding, and crisis management missions, in order to ensure coherence and consistency in this field between the Council and the Commission, which has so far been lacking. Such a coordinating cell should have as its main tasks: co-ordination of internal EU instruments; planning, mission support and evaluation for crisis management missions; cooperation with external organisations and non-governmental organisations; training and recruitment of civilian personnel; and research and evaluation. Building on this Cell's coordination work, the EEAS structure should allow for the flexibility needed to build up standing civilian capacity for EU crisis prevention and conflict management in third countries without the necessity of further Council decisions.

EU Special Representatives (EUSR)s

The Lisbon Treaty gives the High Representative the power to propose to the Council the appointment of Special Representatives, "with a mandate in particular policy issues", who will then be under his or her authority. This function was previously held by the High Representative for CFSP.

EPLO Comments

EPLO is of the view that EUSR's should be appointed in such a way as to avoid duplication and, in line with UN Security Council Resolution 1325, should aim for a greater representation of women (given that none of the 31 current and former EUSR's have been women).

Foreign Affairs Council

The Foreign Affairs Council will be decoupled from the General Affairs Council and will now be chaired by the High Representative, rather than the rotating Council Presidency, in order to ensure greater coherence between the institutions. Presumably this will also mean that Presidency declarations on issues of foreign policy will now be replaced by declarations of the High Representative, on behalf of the Council. Despite the fact that deliberations of all Councils when discussing legislative acts will now be made public, the Treaty explicitly excludes legislative acts in the domain of the Union's external action, which, although in practice is not a departure from the current situation (as all external acts are non-legislative), it does mean that deliberations will remain secret.

European Union Delegations

Under the Treaty, the Commission Delegations will become Union Delegations and will present EU positions, rather than simply the positions of the Commission, which will serve to reduce confusion abroad created through lack of awareness of the structure of the EU. In addition the Lisbon Treaty proscribes that the Delegations will offer diplomatic protection to EU citizens, which they do not currently do, elevating them somewhat closer to the status of embassies. The Delegations will fall under the authority of the High Representative, but it is not yet clear whether they will remain under DG Relex or whether they will be integrated into the EEAS.

European Council President

Another of the major innovations of the Lisbon Treaty is the introduction of a President of the European Council, who will take this role over from the Head of State/Government of the rotating presidency. The President, who will probably be a distinguished and well known European statesperson, will be elected by the European Council by qualified majority, and will serve for a term of two and a half years, renewable once. He or she is also mandated under the Lisbon Treaty to ensure the external representation of the EU, along with and without prejudice to the powers of the High Representative, although there will inevitably be a certain amount of overlap in the exercise of this function that will have to be worked out between the two actors and may depend more upon the personalities of the two people than on any institutional set-up.

Council Rotating Presidency

Although the rotating presidency of the Council will assume a much diminished role in foreign affairs under the Lisbon Treaty, notably losing the chair of the European Council and the Foreign Affairs Council, they will still retain the chair of the Political and Security Committee (PSC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM), as well as the other Council configurations, meaning that they will remain important actors on the European stage even if somewhat less visible than before. In particular they will have an important role to play in the PSC, which is tasked under the Lisbon Treaty with the management under the responsibility of the Council and of the High Representative, of the political control and strategic direction of the EU's crisis management operations.

Commission

Few changes are made to the Commission's prerogatives in the field of CFSP/CSDP under the Lisbon Treaty with the important exceptions that DG Relex and the Union Delegations will now fall under the authority of the High Representative, who will also have the responsibility of coordinating the other Relex-family DGs such as ECHO, AIDCO, Development, Enlargement and, to a lesser extent, Trade. However, an explicit reference is included in the Lisbon Treaty that, with the exception of the CFSP and other cases provided for in the Treaties, the Commission shall ensure the Union's external representation so it will continue to play a role in this area. The Commission, together with the High Representative, will now also be able to propose the use of national resources and Union instruments for the implementation of Council CSDP decisions.

European Parliament

The European Parliament retains its mostly supervisory and consultative role in foreign policy under the Lisbon Treaty (although in other areas it increases its status with the extension of the co-decision procedure). It still has the power to censure the Commission and force their resignation and this will apply now to the High Representative as well. The High Representative has a duty to regularly consult the Parliament and ensure that its views are taken into consideration in the formulation of external policy. In particular the European Parliament will be consulted by the High Representative regarding the establishment of the EEAS before he submits his proposal to the Council.

In addition, the Parliament is specifically mandated to hold a debate on implementing CFSP and CSDP twice a year. If the EEAS is funded under the general Union budget, the Parliament will also be able to play its traditional role of budgetary supervision, including the ability to reject the budget if it sees fit.

EPLO Comments

EPLO is concerned that democratic scrutiny over CFSP and CSDP has not been greatly increased under the Lisbon Treaty and that these are areas in which Parliament plays only a minimal role. However, EPLO hopes that the Parliament will:

- Continue to actively scrutinise and report on the CFSP and CSDP (albeit that these are not specific competences of the Parliament);
- Organise itself sufficiently to pass resolutions before the launch of each CSDP mission and seek the views of civil society before doing so;
- Play an active role in the consultation on the creation of the EEAS which is mandated by the Treaty.

European Defence Agency

The already-existing European Defence Agency is mandated under the Treaty to promote measures aimed at strengthening the defence sector of the Member States to fill those operational requirements that are identified by the Agency and to participate in the development of policy. It will include only those Member States that wish to join and will presumably also be the focal point for enhanced and permanent structured cooperation in defence issues that is mentioned elsewhere in the Treaty.

EPLO Comments

EPLO is generally wary of efforts to increase military capacities and feels that emphasis should be put on prevention of conflicts and civilian interventions. Therefore it is regrettable that whereas the Defence Agency was included in the Treaty, the idea of a Peacebuilding Agency, which had been proposed by EPLO, was not incorporated into the Treaty.

EPLO hopes, however, that a specialised department/directorate will be created in the EEAS to take on the tasks of the proposed Peacebuilding Agency, as a civilian counterpart to the Defence Agency, and will be at a senior enough level to have exercise influence.

Further Important Developments under the Lisbon Treaty:

Civilian and military cooperation and CSDP missions

For the first time, under the Lisbon Treaty, prevention of conflict is explicitly stated as both a purpose of the Union's external action and of the CSDP, and the so-called "Petersberg tasks" are further extended. The tasks for which Member States should make civilian and military means available to the Union and provide it with an operational capacity now include:

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

(The new additions to the Petersberg tasks, as amended by the Headline Goal 2010, are indicated in bold)

The coordination of the civilian and military aspects of such tasks will be delegated to the High Representative, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, or the Council may decide to delegate this responsibility to a group of Member States.

Despite the fact that the majority of CSDP missions are civilian in nature, the Treaty commits Member States to undertake progressively to improve only their military capabilities, whereas there is no counterpart stipulation regarding civilian capabilities. In terms of military cooperation, the Treaty specifically envisages a permanent, structured military cooperation to be established between "those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions". This approach has the negative consequence of giving Member States an incentive to increase military spending, in order not to risk being excluded from the structured military cooperation.

In terms of funding, the Lisbon Treaty states that the Council will adopt a decision, after consulting Parliament, concerning the procedures for guaranteeing rapid access to Union budget funds for urgent financing of initiatives in the framework of the CFSP and, in particular, for preparatory activities for those activities mentioned above. A start-up fund made up of Member States' contributions will be created for the purpose of financing these preparatory activities, which the High Representative will be authorised to use by the Council when the task cannot be charged to the Union budget.

EPLO Comments

EPLO regrets that, whereas the Lisbon Treaty commits Member States progressively to improve their military capabilities it does not similarly commit them to improve their civilian capabilities for the prevention, management and resolution of conflicts, which it feels is at least of equal, if not greater, importance for peacebuilding and conflict prevention.

EPLO is concerned that the start up fund used for urgent actions will be financed by Member State contributions and will therefore, like the current ATHENA mechanism, be beyond the scope of democratic overview in the form of European Parliament budgetary control.

Enhanced Cooperation

One of the innovations of the Lisbon Treaty is the ability for Member States to establish enhanced co-operation, meaning that groups (of at least nine) Member States will now be able to pursue projects, subject to the approval of the Council, within the framework of the EU and drawing upon the support of its institutions without the participation of all the Member States being necessary, as was the case previously. How, and if, this will be used in practice, apart from the specific provisions relating to enhanced military cooperation, remains to be seen.

Increased role of National Parliaments

National Parliaments are given the power under the Lisbon Treaty to challenge any draft legislative act on the grounds that it does not comply with the principle of subsidiarity. If the

Parliaments of a third of Member States submit such an opinion the act must be reviewed, and if it is not modified, a reasoned opinion must be given. The Treaty also provides for a conference of Parliamentary Committees for Union Affairs to submit any contribution it deems appropriate to any of the EU institutions and to organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy.

EPLO Comments

EPLO hopes that greater involvement of national parliaments will lead to more coherence between the actions of the EU and the Member States and will raise public awareness of the external actions of the EU. EPLO particularly welcomes the organising of interparliamentary conferences on significant CFSP and CSDP topics and views this as an important means of enhancing public debate across Europe.

Legal Personality and International Agreements

The Lisbon Treaty establishes legal personality for the EU, and it will thus now be able to conclude international agreements. Consequently the Treaty states that the EU will sign up to the European Convention on Human Rights (ECHR), which has been long awaited, although the effect of this convention in external relations is limited. In addition, the Lisbon Treaty gives the previously non-binding Charter of Fundamental Rights (which contains a broader selection of rights than the ECHR) the same legal force as the treaties. This could allow stricter human rights scrutiny of foreign policy decisions and practices, including those that are ongoing since before the enforcement of the Lisbon Treaty.

EPLO Comments

EPLO welcomes the fact that the EU now has legal personality and that it will sign up to the European Convention on Human Rights, but further notes that bestowing legal personality on the EU opens up the door to wider possibilities in terms of signing international agreements. This should be considered in order to ensure that the EU respects the highest standards of human rights and humanitarian law in the implementation of its CFSP, and to encourage the ratification of the major human rights, humanitarian, environmental etc conventions in countries which have not yet ratified them.