

Peacebuilding and the Lisbon Treaty

Introduction

The [Lisbon Treaty](#) was signed on 13 December 2007 and would have come into force on 1 January 2009, had all Member States ratified it. However, after the no-vote in Ireland the Lisbon Treaty cannot now come into force in its current form and within the anticipated time-scale.

There are similarities between the Lisbon Treaty and the failed EU Constitution with regard to the elements relating to the external representation and action of the EU, and would have had a significant effect on the formulation and presentation of policies in this area.

This document seeks to explain the changes the Lisbon Treaty would make to the Common Foreign and Security (CFSP) and European Security and Defence (ESDP) of the European Union, to provide EPLO's position on these developments and to outline the policy and institutional developments we believe need to be pursued and achieved in the future through whatever mechanisms, agreements and/or treaties will follow.

One of the central aims of the Lisbon Treaty was to improve coherence in the field of EU external relations. Under the current Treaties, the pillar structure establishes a de-facto division between foreign policy and external action, with the former situated in Pillar 2 (one of the policy areas which are intergovernmental and where the European Parliament thus has no powers) and with the latter situated in Pillar 1. This does lead to competence competition (which culminated in a case brought by the European Commission to the European Court of Justice¹). The Lisbon Treaty, by including the post of High Representative for Foreign Affairs as a double hatted post with a role in the Council and a role in the Commission, would have at least attempted to bridge that divide to a certain extent.

EPLO Comments

EPLO has called repeatedly for institutional improvements to ensure coherence, transparency and accountability. Some of the structural changes foreseen in the Constitution and retained in the Lisbon Reform Treaty would have gone some way to improve things in this area. However, the Lisbon Treaty was far from perfect in this respect; but it did, in the view of EPLO, represent the opportunity for improvements. The implementation would have contributed as importantly to this as the letter of the Treaty. EPLO also sees the possibility for improved coherence, transparency and accountability which can evolve in the period which follows the rejection of the Lisbon Treaty.

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 External Relations (RELEX) would have been merged to create the position of High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission. The High Representative would have been the foremost voice of the Union in foreign affairs (although there

¹ Case C-91/05; all documents relating to the case are available at: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-91/05%20&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

might have been a certain amount of competition between the High Representative, the President of the Commission and the proposed new 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 would have 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 Lisbon Treaty states that the High Representative is:

- Mandated by the Council to develop and carry out the CFSP and CSDP²;
- 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 European Council;
- Subject, along with the rest of the Commission, to votes of consent and censure by the Parliament, though the censure only applies to duties he carries out in the Commission;
- May be asked to resign by the Commission President, subject to qualified majority vote by the European Council.

These parameters put on the role within the Lisbon Treaty immediately show that it is an uneasy place to be: who exactly would the post be accountable to? What would happen if the Commission President asked the post holder to resign and the Council disagreed? What if the European Parliament censured the Commission as a whole? Would the post holder remain in their role in so far as CFSP/CSDP is concerned? None of the questions were resolved in the Lisbon Treaty; nor is a Treaty necessarily the best place to resolve such matters. But they must be resolved. The delay caused by the Irish referendum may provide some time to think these issues through.

The High Representative would have an impressive range of tasks:

- Running the European External Action Service (EEAS) and DG RELEX
- Being the visible face of the EU in external relations
- Chairing 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;
- Managing the EU Delegations
- 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)
- Presenting the Union's position to the UN Security Council.

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

² CSDP (Common Security and Defence Policy): This is the new name for what is currently called European Security and Defence Policy (ESDP)

EPLO Comments

Whilst EPLO broadly welcomes the direction of these proposed changes which are intended to ensure greater coherence and cooperation between the areas of foreign and external policy which are now compartmentalised in Pillars 1 and 2, both the complexity and potential conflict in the lines of accountability of this post and the enormous range of tasks assigned to it would suggest that some further thinking about the institutional position and the necessary support structure which would make such a post/role viable. It is also important to ensure that within the support structure there is an adequately resourced element which focuses on peacebuilding activities specifically to ensure that this important area of work the EU does retains and develops its centrality within the external action/foreign policy portfolio.

European External Action Service (EEAS)

Another major innovation of the Lisbon Treaty would be the creation of the EEAS, which is referred to in the text of the Treaty as follows:

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 Lisbon Treaty, the relevant actors (including Commission, Council and Member States) had been 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 would welcome the creation of a European External Action Service (EEAS) but is concerned that negotiations regarding the new service should not be conducted behind closed doors. 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.

An 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 an 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, CSDP, the Neighbourhood Policy, and Enlargement. An EEAS should have primary responsibility for ensuring that conflict sensitivity, gender and human rights, are mainstreamed in all these policies and should have a remit for assisting other parts of the European Institutions to ensure their mainstreaming in their relevant policy areas.

A specific Peacebuilding Directorate/Department should be established within an 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, an 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 (EUSRs)

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. In other words, no real change is foreseen.

EPLO Comments

EPLO is of the view that EUSRs should be appointed in such a way as to avoid duplication with other European Union roles and appointments and, in line with UN Security Council Resolution 1325, should aim for a greater representation of women (given that none of the current and former EUSRs have been women³).

Foreign Affairs Council

Under the provisions of the Lisbon Treaty, the current General Affairs and External relations Council (GAERC) would be split in two configurations. A new Foreign Affairs Council, decoupled from the General

³ At the time of writing, this represents 31 appointments.

Affairs Council, would be chaired by the High Representative, rather than the rotating EU Presidency, in order to ensure greater coherence between the institutions. This might also have meant that Presidency declarations on issues of foreign policy would have been replaced by declarations of the High Representative on behalf of the Council.

Deliberations of all constellations of the Council when discussing legislative acts are to be made public, but the Lisbon Treaty explicitly excludes legislative acts in the domain of the Union's external action, which, though not a departure from the current situation (as all external acts are currently non-legislative), does mean that deliberations in this area will remain secret.

European Union Delegations

Under the Lisbon Treaty, the Commission Delegations would become Union Delegations and would present EU positions, rather than simply the positions of the Commission. This would serve to reduce confusion abroad. In addition the Lisbon Treaty would ensure that the Delegations would offer diplomatic protection to EU citizens, which they do not currently do. This would elevate 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 would remain under DG Relex or whether they will be integrated into an EEAS.

European Council President

Another of the major innovations of the Lisbon Treaty would have been the introduction of a President of the European Council, who would take this role from the Head of State/Government of the rotating presidency. The President, who will probably be a distinguished and well known European statesperson, would have been elected by the European Council by qualified majority, and would have served for a term of two and a half years, renewable once. He or she would also have been 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 would inevitably have been a certain amount of overlap in the exercise of this function.

Council Rotating Presidency

Although the rotating presidency of the Council would have assumed a much diminished role in foreign affairs under the Lisbon Treaty, notably losing the chair of the European Council, the Foreign Affairs Council, the Political and Security Committee (PSC), and potentially also the Committee for Civilian Aspects of Crisis Management (CIVCOM)⁴, it would retain the chair of the other Council configurations and their preparatory bodies, meaning that they would remain important actors on the European stage even if somewhat less visible than before.

Commission

Few changes would be 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 would 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, would also be able to propose the use of national resources and Union instruments for the implementation of Council CSDP decisions.

⁴ Although CIVCOM is not specifically mentioned, the Treaty indicates that the preparatory bodies of the Foreign Affairs configuration of the Council will be chaired by representatives of the High Representative, although this is open to change by way of the Council decision establishing the measures for implementation of these aspects (Declaration 9, Article 2).

European Parliament

The European Parliament would retain 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 well⁵. 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 would be consulted by the Council regarding the establishment of the EEAS before the High Representative submits a proposal to the Council.

In addition, the Parliament would be specifically mandated to hold a debate on implementing CFSP and CSDP twice a year. To the extent that an EEAS were to be funded under the general Union budget, the Parliament would 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 the overlapping roles of the High Representative and the President of the Council are still not very clearly defined in the Lisbon Treaty and would recommend that any future development into this direction should include a clear definition of the division between these two roles.

EPLO is concerned that democratic scrutiny over CFSP and CSDP would not be 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 would:

- Continue to actively scrutinise and report on the CFSP and CSDP (albeit that these are not specific competences of the Parliament);
- Establish a mechanism which would enable it 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 an 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.

For more information on the idea of the Peacebuilding Agency, see EPLO paper "A European Peacebuilding Cell", January 2006, available at <http://www.eplo.org/documents/EPCCPolicyPaperCPP.pdf>.

⁵ As explained above, this censure of the European Parliament covers only the duties the High Representative carries in the Commission.

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.

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.

The Council may also decide to delegate the implementation of a crisis management mission to a group of Member States, willing and capable to undertake this task. The management of such tasks will be done by those Member States in association with the High Representative.

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 cooperation, meaning that groups (of at least nine) Member States will now be able to pursue projects, subject to the approval by unanimity 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.

Acronyms

ESDP	European Security and Defence Policy
CFSP	Common Foreign and Security Policy
EPLO	European Peacebuilding Liaison Office
DG Relex	Directorate General for External Relations - European Commission
Pillar 1	European Union Community Policies
Pillar 2	European Union Common Foreign and Security Policy
CSDP	Common Security and Defence Policy (Lisbon Treaty successor name of ESDP)
EEAS	European External Action Service (might be set up in context of institutional reforms if they follow the Lisbon Treaty in substance)
DGs	Directorates General of the European Commission
CoE	Council of Europe
OSCE	Organisation for Security and Cooperation in Europe
OECD	Organisation for Economic Cooperation and Development
GAERC	General Affairs and External Relations Council (one of 9 current formations of the Council of the European Union)
PSC	Political and Security Committee (important decision making forum within the Council of the European Union at Ambassadorial level)
CIVCOM	Committee for Civilian Aspects of Crisis Management (Committee within the diplomatic structure of the Council on which MS are represented by diplomats from within their Permanent Representations to the EU)
MS	Member States (of the EU)
ECHO	European Commission Humanitarian Aid Office
AIDCO	EuropeAid Cooperation Office (DG which deals with the distribution of funding for development)