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**THE EU AS A MULTILATERAL SECURITY ACTOR AFTER LISBON:
CONSTITUTIONAL AND INSTITUTIONAL ASPECTS**

**Jan Wouters
Stephanie Bijlmakers
Katrien Meuwissen**



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ABSTRACT

Two years since the entry into force of the Lisbon Treaty the implementation of the constitutional and institutional changes it introduced is ongoing. This paper examines the potential and actual implications of these novelties for the capacity of the European Union (EU) to act as an effective multilateral security actor, placing special emphasis on coordination, flexibility and coherence in the areas of Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). The structure is twofold. First, the main constitutional changes to the areas of CFSP and CSDP will be examined in a critical light. The legal personality of the EU, its cross-cutting external relations objectives, the status of the CFSP and CSDP, new mechanisms for deepened security solidarity between the Member States and enhanced flexibility for CFSP and CSDP are the focus of analysis. Second, the paper analyses the main novelties to the institutional framework of the European Union after the Lisbon Treaty, including the permanent President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service and Union Delegations, as well as the Political and Security Committee and the European Defence Agency. This paper argues that the Lisbon Treaty may have provided the constitutional and institutional ingredients for the EU to strengthen its position as a strategic actor in multilateral settings. However, practice shows that the political will of all EU actors involved and of the Member States remains an obstacle in the pursuit to reach the full potential of the novelties introduced by the Lisbon Treaty.

KEY WORDS

European Union, CFSP, CSDP, Security, Multilateralism, Lisbon Treaty

AUTHOR(S)

Jan Wouters is Jean Monnet Chair *ad personam* EU and Global Governance, Professor of International Law and International Organisations and Director of the Leuven Centre for Global Governance Studies and Institute for International Law, K.U. Leuven

Stephanie Bijlmakers is Research Fellow and PhD candidate at the Leuven Centre for Global Governance Studies, K.U. Leuven

Katrien Meuwissen is Junior Member of the Leuven Centre for Global Governance Studies and Assistant at the Institute for International Law, K.U. Leuven

ADDRESS FOR CORRESPONDENCE

Jan.Wouters@ggs.kuleuven.be

Stephanie.Bijlmakers@ggs.kuleuven.be

Katrien.Meuwissen@law.kuleuven.be

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CONTENTS

1.	INTRODUCTION: SECURITY AND MULTILATERALISM IN THE EU	4
2.	MAIN CONSTITUTIONAL CHANGES	4
2.1.	LEGAL PERSONALITY OF THE EU: POTENTIAL TO ENHANCE EU COHERENCE AND VISIBILITY	4
2.2.	CROSS-CUTTING EXTERNAL RELATIONS OBJECTIVES	6
2.3.	SPECIFIC STATUS OF CFSP AND CSDP: SURVIVAL OF THE 'SECOND PILLAR'	7
2.4.	DEEPEMED SOLIDARITY: THE MUTUAL ASSISTANCE AND SOLIDARITY CLAUSES	9
2.5.	ENHANCED CFSP AND CSDP FLEXIBILITY	11
2.5.1.	<i>ENHANCED COOPERATION</i>	11
2.5.2.	<i>PERMANENT STRUCTURED COOPERATION</i>	12
2.5.3.	<i>MULTINATIONAL FORCES OF MEMBER STATES</i>	14
2.5.4.	<i>EXECUTION OF TASKS BY A GROUP OF MEMBER STATES</i>	14
2.5.5.	<i>START-UP FUND</i>	14
3.	MAIN INSTITUTIONAL CHANGES	15
3.1.	PRESIDENT OF THE EUROPEAN COUNCIL	15
3.2.	HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY	17
3.2.1.	<i>A QUADRUPLE-HATTED HR</i>	17
3.2.2.	<i>CAN THE HR DELIVER?</i>	19
3.2.3.	<i>AN IMPOSSIBLE JOB?</i>	21
3.3.	EUROPEAN EXTERNAL ACTION SERVICE	21
3.4.	OTHER INSTITUTIONAL INNOVATIONS	23
3.4.1.	<i>POLITICAL AND SECURITY COMMITTEE</i>	23
3.4.2.	<i>EUROPEAN DEFENCE AGENCY</i>	24
4.	CONCLUSION	25
5.	REFERENCES	26

1. INTRODUCTION: SECURITY AND MULTILATERALISM IN THE EU

The present paper examines the extent to which constitutional and institutional changes introduced by the Treaty of Lisbon enhance the European Union (EU)'s capacity to be an effective 'multilateral security actor'. In a first part, the main constitutional changes to the areas of Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) are discussed. They concern i) the granting of legal personality to the EU and its potential for greater EU coherence and visibility; ii) the importance of the insertion into the Treaty on European Union (TEU) of cross-cutting external relations objectives; iii) the enduring specific status of CFSP and CSDP in the EU architecture, which may be dubbed as the survival of the 'second pillar'; iv) new mechanisms for deepened security solidarity between the Member States, i.e. the mutual assistance and solidarity clauses; and v) the novelties aimed to bring about enhanced flexibility for CFSP and CSDP, i.e. the extension of the enhanced cooperation mechanism to CSDP, the instrument of 'permanent structured cooperation', the possibility for Member States to establish multinational forces, the possible execution of CSDP tasks by a group of Member States and the new start-up fund. Part II goes into the main institutional changes of the Lisbon Treaty bearing upon the CFSP and CSDP, namely: i) the permanent President of the European Council; ii) the High Representative of the Union for Foreign Affairs and Security Policy (HR); iii) the European External Action Service (EEAS) and Union delegations; and iv) the Political and Security Committee (PSC) and legal basis for the European Defence Agency (EDA). More specifically, this paper will analyze how the institutional novelties could strengthen consistency, visibility and coordination in the EU's multilateral security relations, especially regarding EU policy-making, policy shaping and external representation in the fields of CFSP and CSDP.

2. MAIN CONSTITUTIONAL CHANGES

2.1. LEGAL PERSONALITY OF THE EU: POTENTIAL TO ENHANCE EU COHERENCE AND VISIBILITY

As stressed in the 2008 Report on the Implementation of the European Security Strategy, an essential need for ensuring the EU's security is for it to become more strategic in its thinking and more effective and visible around the world (European Council 2008: 2). The explicit granting of legal personality to the EU (Article 47 TEU) has the potential to enhance the EU's effectiveness and visibility as a multilateral security actor. The practical relevance of legal personality for the EU's security and defence policy lies in its consequences, regarding both the ability to conclude international agreements in the field of CFSP and CSDP and the representation of the Union in international *fora*.

Specifically regarding CFSP, Article 37 TEU states that 'the Union may conclude agreements with one or more states or international organizations in areas covered by this Chapter'. The EU did conclude international agreements in the field of CFSP before the entry into force of the Lisbon Treaty. However, these agreements were based on an 'implied legal personality' (Piris 2010: 87). The explicit recognition of Article 37 TEU takes away any legal uncertainty regarding the EU's competence to conclude international agreements in the field of CFSP and CSDP. Whereas before the introduction of the Lisbon Treaty the negotiation and conclusion of international agreements regarding CFSP was subject to a specific procedure (former Article 24

TEU), Article 218 TFEU introduces a single procedure applicable to all international agreements, though with specific features for agreements which relate 'exclusively or principally' to CFSP. Importantly, the new Article 216(2) TFEU provides generically – in other words, also for CFSP and CSDP agreements - that 'agreements concluded by the Union are binding upon the institutions of the Union and on its Member States'.

The Lisbon Treaty also intends to enhance coherence and visibility regarding the EU's representation in multilateral *fora* (European Council 2007: 15). The explicit granting of legal personality makes it possible for the EU to join other international organizations (like the Community already did before) or upgrade its status there. Accordingly, the Union succeeded the European Community in all international organizations in which it had a status. Different EU actors are competent to represent the EU externally in the field of CFSP. The introduction of new institutional players, like the President of the European Council, the HR, the EEAS and Union delegations, brings about significant changes in the EU's representation on the international plane (see below). In order to ensure an EU stance in multilateral *fora*, Article 34 TEU lays down the principle of coordination of action of EU Member States in international organizations and at international conferences, a coordination to be organized by the HR.

Specifically regarding the United Nations Security Council (UNSC), the TEU provides that, when the Union has defined a position on a subject which is on the UNSC's agenda, the Member States that sit in the UNSC shall request the HR to be invited to present the Union's position (Article 34(2) TEU). This provision does not clarify *when* a position has been defined, e.g. in the case of a formal Council decision, or more generally Council conclusions or a declaration by the HR on behalf of the EU. Nonetheless, it allows the EU to become a more visible actor at the UNSC. It was put into practice for the first time on 4 May 2010, when HR Ashton held her first speech at the UNSC on the subject of cooperation between the United Nations and regional and sub-regional organizations in maintaining international peace and security (Council of the European Union 2010e). The participation of the HR – and, in practice, of the head of the Union delegation at the UN in New York – is, from the UN side, founded on Rule 39 of the provisional rules of procedure of the UNSC¹, which, after all, remains a weak basis. Next to the HR, other EU Member States sitting in the UNSC also took the floor, mostly repeating what the HR had said. This in itself demonstrates that Member States are not willing to give up their national voice, even when an EU stance is reached. The fact that Article 34(2) TEU does *not* provide for coordination between all Member States, but only for concertation between those sitting on the UNSC and for full information *vis-à-vis* the others, remains a serious handicap for EU actorness in the UNSC.

As illustrated by the reference to the UNSC's provisional rules of procedure, the effectiveness of the EU on the international plane also depends on the rules of the international organization or conference concerned and the willingness of other members of that organization to apply the possibilities offered by these rules. In this regard, the status given to the EU is highly relevant. In most international organizations, the EU merely has observer status, while EU Member States are typically full members. In the UNSC and in the North Atlantic Treaty Organization (NATO), two essential players in the field of security, the EU has no formal participatory status, while its Member States are formally members. The visibility of the EU as a security actor could be significantly enhanced if it would succeed in

¹ 'The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence'.

upgrading its status in a multitude of *fora* into full participant status (Emerson *et al.* 2011). The granting of enhanced participation rights to the EU by the UN General Assembly in the latter's Resolution of 3 May 2011 is a significant development, though the resolution has many ambiguities and some states even use it to restrict the EU's role (Wouters *et al.* 2011b). In any event, this resolution should only be a first step in a broader diplomatic process to upgrade the EU's role in international organizations, including in the field of security. The challenge for the implementation of the Lisbon Treaty lies in finding a coherent approach regarding EU representation on the international scene that bears the support of all relevant EU actors (including, in particular, all Member States) and the relevant actors in the multilateral *forum*.

2.2. CROSS-CUTTING EXTERNAL RELATIONS OBJECTIVES

A commitment to multilateralism is central to the EU's external relations. This holds true especially, but not uniquely, in the field of security, as the 2003 European Security Strategy (ESS) demonstrates (European Council 2003). Through the ESS, the EU reconfirmed its commitment to multilateral solutions to solve common security problems, introducing the principle of 'effective multilateralism', with a main focus on the UN multilateral framework. This commitment to multilateralism is confirmed in the Lisbon Treaty. Article 21(1), second paragraph, TEU obliges the EU to promote, in its external relations, 'multilateral solutions to common problems, in particular in the framework of the United Nations'. Furthermore, the EU is tasked to 'work for a high degree of cooperation in all fields of international relations, in order to [...] promote an international system based on stronger multilateral cooperation and good global governance' (Article 21(2)(h) TEU). In her first address to the UNSC, HR Ashton emphasized that '[a] core objective of EU foreign policy is the development of an effective multilateral system with a strong UN at the centre' (Council of the European Union 2010e: 1).

Multilateralism is an equivocal concept: it means different things to different people. There is much disagreement about how to define and effectively apply the concept within the specific context of EU external relations. The ESS remains vague in this respect: it does not provide a clear definition of what 'effective multilateralism' means, or what an effective multilateral system implies (Wouters *et al.* 2011a). The 2008 Report on the Implementation of the European Security Strategy states that

[t]o ensure our security and meet the expectations of our citizens, we must be ready to shape events. That means becoming more strategic in our thinking, and more effective and visible around the world. We are most successful when we operate in a timely and coherent manner, backed by the right capabilities and sustained public support.²

In this light, it has been argued that coherence, a guiding principle in EU external relations (Cremona 2008; Koehler 2010), is an essential element of 'effective multilateralism' (Neyer 2004). The argument holds that in order for the EU to shape the security environment pursuant to its own policy priorities there is a need for increased coherence. Coherence could be translated into consistency in the EU's external activity in various multilateral frameworks, such as the UN and NATO, as well as in terms of congruence between external policies of the Member States and that of the EU (Wouters *et al.* 2011a). Coherence could also entail visibility. How the EU projects itself externally and represents itself within multilateral institutions is

² European Council (2008) *Report on the Implementation of the European Security Strategy*, Brussels, 11 December, p.2

considered important for the EU as a strategic actor (Missiroli 2001). Furthermore, if the EU seeks to apply multilateralism effectively in its external relations, it should display effective coordination and establish clear organizing principles that constitute an added value for, and are abided by, all parties concerned (Wouters *et al.* 2011a: 167).

For the EU's CFSP and CSDP a number of other cross-cutting external relations objectives laid down in Article 3(5) viz. 21 TEU may be of particular relevance. This includes the guidance of the EU's action on the international scene by 'democracy, the 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'.

2.3. SPECIFIC STATUS OF CFSP AND CSDP: SURVIVAL OF THE 'SECOND PILLAR'

Unlike the Treaty establishing a Constitution for Europe, which brought together the different aspects of the Union's external action, the Lisbon Treaty formally separates CFSP and CSDP from other areas of EU external relations: it is the only policy field covered by the TEU (all others, including all other external relations fields, are governed by the TFEU) and the Treaty literally spells out that 'the common foreign and security policy is subject to specific rules and procedures' (Article 24(1) TEU). This separation was strongly insisted upon by the United Kingdom (House of Commons 2008: §12). It creates differentiated institutional dynamics and is liable to hinder the coherence of the EU's foreign policy.

The decision-making process in the areas of CFSP and CSDP remains strongly intergovernmental, as unanimity in the Council and in the European Council remains the general rule (Article 31(1) TEU).³ In practice, however, Council representatives try to find consensus amongst themselves when taking decisions, rather than taking decisions by unanimity. Moreover, next to normal abstention, the possibility of constructive abstention allows that decisions 'commit the Union', even when 'less than one third of the Member States comprising at least one third of the population of the Union' do not want to be obliged to implement the EU decision (Article 31(1), second paragraph, TEU). Aside from unanimity, the limited role of other institutions also reflects the intergovernmental nature of CFSP. The Commission lost its autonomous right of initiative in the field of CFSP.⁴ The limited role of the European Parliament appears to be largely maintained,⁵ although the general right to be informed and consulted by the HR (Article 36(1) TEU) and the right to ask questions and to make recommendations to the HR (Article 24(2) TEU) might possibly strengthen its position. The European Court of Justice (ECJ)'s jurisdiction remains in

³ One circumstance is added to the list where the Council can decide by QMV: Article 31(2), second indent, TEU 'when adopting any decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative'. Regarding decisions having military or defence implications, the principle of unanimity applies without exception: Article 31(4) TEU. Moreover, Article 31(3) TEU provides a specific bridging clause that enables the European Council to extend, by unanimity, the scope of QMV in the field of CFSP except to decisions having military or defence implications. Accordingly, the unanimity rule can be gradually restricted without the necessity to follow the procedure of treaty revision.

⁴ Compare former Article 22(1) TEU with Article 30 TEU Lisbon: the Commission's role is confined to support proposals submitted by the High Representative.

⁵ Declaration No. 14, §2: 'The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament'. However, the European Parliament considers this Declaration 'unjustified, if not partially incorrect' (European Parliament 2008: 27-8, footnote 1).

principle excluded (Article 24 TEU and Article 275 TEU).⁶ Furthermore, Declarations 13 and 14 attached to the Lisbon Treaty emphasize the intergovernmental character of foreign policy, by stating that the Lisbon Treaty does not affect the power of Member States to conduct *their* foreign policy; security and defence remain important elements of national sovereignty.

An institutional separation between, on the one hand, CFSP and CSDP and, on the other hand, the other EU competences remains in place, and the prominent role of Member States in the security field is assured in the Lisbon Treaty. However, competences that are relevant for CFSP and CSDP are spread over all EU actors (European Council, Council of the EU, European Parliament, Commission, and the 27 EU Member States). The multiple competent actors regarding CFSP and CSDP challenge the ability of the EU to establish the effective coordination and clear organizing principles that are presented as essential for effective multilateralism. A relevant example is the CFSP budget, which partly depends on the EU budget (for which approval of the Commission and Parliament is necessary), and partly on Member States' funding (Article 41 TEU). Moreover, today's security challenges are not confined to the CFSP and CSDP policy areas; EU security and defence actors have to cooperate 'across' EU policy pillars, with national actors and international actors. An illuminating example is the European disaster response.⁷ The main operational instruments of the EU's immediate response to disasters are civil protection and humanitarian assistance. These instruments have been brought together into one Directorate General (DG) in the Commission, DG ECHO (European Commission 2010: 11). The EU civil protection response is currently based on ad hoc offers of assistance from Member States (European Commission 2010: 6). However, civilian and military capacities developed in the context of the EU's CSDP can be used in support of civil protection and humanitarian assistance (European Commission 2010: 10).⁸ Two Council configurations are relevant for the EU's disaster response; while the General Affairs Council deals with the overarching European disaster response policy,⁹ specific discussions regarding relevant CSDP instruments take place in the Foreign Affairs Council (Council of the European Union 2011b). Additionally, effective cooperation with the UN crisis response institutions is key, specifically to tackle crises in third countries.¹⁰

Cooperation – both on a horizontal¹¹ and vertical¹² level – is essential to ensure effective EU action. Even though the Treaty provisions emphasize the

⁶ With two exceptions: Article 275(2) TFEU.

⁷ See in this regard: European Commission (2010: §1) 'EU Member States and EU institutions have responded well to the many disasters that have struck this year, both in the EU and further afield. The Haiti earthquake and the floods in Pakistan in particular stand out [...] The work of building a stronger, more coherent and better integrated European disaster response capacity is two-fold: to strengthen individual EU response instruments; and to ensure consistency and synergies between these different instruments, to the benefit of the coherence of the international response'.

⁸ The use of military assets to provide assistance in third countries as part of a response to natural disasters is governed by the so-called 'Oslo Guidelines'. See United Nations Office for the Coordination of Humanitarian Affairs (2006); *Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission* (2008).

⁹ See for example: Council of the European Union (2010d).

¹⁰ See European Commission (2010: 5.2.): 'For disasters in third countries, the EU strongly supports the central coordinating role of the UN, in particular that of the UN Office for Coordination of Humanitarian Affairs. Stronger EU co-ordination will reinforce the UN's role by ensuring a coherent EU contribution to UN-led relief efforts'. See also: Council of the European Union (2011a).

¹¹ Article 21(3) TEU embodies the principle of horizontal coherence, stipulating that 'The Union shall ensure consistency between the different areas of its external action and between these and its other policies', also referred to as inter-policy and inter-pillar consistency: See Nuttall (2005); Schmalz (1998).

¹² The TEU also incorporates the principle of vertical coherence. Article 24(3) TEU reads 'The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of

intergovernmental character of CFSP and CSDP, the willingness to cooperate of all relevant actors is necessary in order to enable a coherent and effective EU security and defence policy. In this line, the Treaty of Lisbon introduces common principles and objectives for the whole EU external action (Article 21(1) TEU; Article 21(2) TEU), and specifies that the consistency of the EU external action has to be ensured by the Council, the Commission and the HR (Article 21(3) TEU). Further analysis of the balance between the different institutional actors relevant to the EU's security and defence policy will be elaborated in Part II of this paper.

2.4. DEEPENED SOLIDARITY: THE MUTUAL ASSISTANCE AND SOLIDARITY CLAUSES

Following the terrorist attack in Madrid of March 2004, the European Council made a Declaration, introducing mutual EU solidarity in case of a terrorist attack (European Council 2004). The Lisbon Treaty adopts this solidarity clause at treaty level, and extends its scope to natural and man-made disasters (Article 222 TFEU).¹³ Furthermore, Article 42(7) TEU introduces a mutual assistance clause in case of an armed aggression.¹⁴ The clauses reflect the importance of Member States' contributions in order to activate EU security provisions. In this line, the aid and assistance in the framework of the mutual assistance clause is totally dependent on national contributions. Moreover, the EU Treaty does not provide for an obligation to implement the mutual assistance clause in the framework of the EU (Naert 2010: 222).¹⁵ Whereas the EU as a whole is not theoretically involved in mutual assistance, it cannot be imagined that in practice the EU would not play a role in case of an aggression of an EU Member State. At the very least, an extraordinary session of the Foreign Affairs Council would likely be convened at the request of the Member State directly concerned or of the HR (Angelet and Vrailas 2008: 30).

The solidarity clause, in contrast, does explicitly involve the Union and its Member States. The arrangements for the implementation by the EU of the clause still have to be defined by a decision 'adopted by the Council acting on a joint proposal by the Commission and the High Representative' (Article 222, §3). In this regard, the EU Counter-Terrorism Coordinator has remarked that

loyalty and mutual solidarity and shall comply with the Union's action in this area'. It calls for congruence between the external policies of the Member States and that of the EU.

¹³ Article 222 TFEU: 'The Union and its Member States shall act jointly in a spirit of solidarity if a member state is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States to: i) prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; ii) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster'.

¹⁴ '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. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States that are member of it, remains the foundation of their collective defence and the forum for its implementation'.

¹⁵ Firstly, Article 42(7) TEU *in fine* adds that 'Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those states which are members of it, remains the foundation of their collective defence and the forum for its implementation' (emphasis added). Secondly, Article 38, second paragraph, TEU only provides that the Political and Security Committee shall exercise 'the political control and strategic direction of the crisis management operations referred to in Article 43' and does not mention Article 42(7) TEU, which contains the mutual assistance clause. Naert (2010; 2011).

We all have a vital interest in having a mechanism in place before a future crisis demands the creation of something *ad hoc*. [...] There is an urgent need to answer some preliminary questions related to the scope and meaning of Article 222 TFEU before moving ahead further (e.g. when does “prevent” start, what is the relation to other mechanisms, what is the military dimension?). Article 222 TFEU deals with incidents “in the territory of the Member States”, but experience so far, [...], demonstrates that it is crucial to coordinate better the different crisis reaction mechanisms that exist (both internal and external).¹⁶

A joint proposal by the Commission and the HR for the implementation of Article 222 TFEU will be presented in the beginning of 2012 (European Commission 2011: 9). Whereas the new provisions introduced by the Lisbon Treaty remain vague regarding their specific implementation, it is clear that coordination and cooperation among the relevant EU actors that can ensure a coherent EU approach will be necessary for the EU to act as an effective security actor. At the moment, however, the actual implementation of the clauses is still underway.

The new ‘solidarity clause’ resembles the collective security Article (Article 5) of the NATO Treaty,¹⁷ and Article V of the Modified Brussels Treaty¹⁸ in the framework of the former Western European Union (WEU) (Western European Union 2010). This gives rise to the question of whether the EU is in fact becoming a defence organization. The Lisbon Treaty provides in Article 42(2) TEU that ‘[t]he common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides’. The exact meaning and scope of ‘a common defence policy’ remains unclear. Practice suggests that it includes at least military security. But, does it also entail territorial defence? (Naert 2011). A common EU defence policy may be an EU policy goal, but today the EU is not (yet) a defence union. One of the main obstacles in this regard is the lack of a common stance among EU Member States regarding the necessity and appropriateness of developing common EU defence machinery.¹⁹ While Article 42(7) TEU respects the decisional autonomy of NATO, the coexistence of a European and NATO defence clause highlights the importance of EU-NATO cooperation in order to prevent duplications and contradictions between both policies.²⁰ This is a sensitive

¹⁶ Council of the European Union (2010c) *EU Counter-Terrorism Strategy, Discussion paper*, Brussels, 29 November. p.12

¹⁷ ‘The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security’.

¹⁸ ‘If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power’.

¹⁹ Divergence exists between the countries that promote an EU common defence (*inter alia* France and Germany), the neutral states (Austria, Finland, Ireland and Sweden) and the NATO-minded states (*inter alia* the UK, Poland, Spain). This divergence is reflected in the compromise text of the Lisbon Treaty’s mutual assistance clause. Whereas the insertion of the first sentence of Article 42(7) TEU satisfies the promoters of EU defence, the neutral states’ interests are guaranteed by the second sentence of the Article, while the relevance of the NATO defence clause is guaranteed by the third sentence of Article 42(7) TEU.

²⁰ The importance of the NATO-EU alliance was again confirmed recently in NATO (2010: Preface §3): ‘It commits the Alliance to prevent crises, manage conflicts and stabilize post-conflict situations, including by working more closely with our international partners, most importantly the United Nations

undertaking, as not all EU Member States are members of NATO and some want to maintain a neutral position. Furthermore, EU-NATO cooperation is troubled by diplomatic tensions between Turkey and the Republic of Cyprus.²¹ Whereas the respect for and the relevance of the NATO defence clause is upheld by the Lisbon Treaty, the WEU Permanent Council decided to terminate the Modified Brussels Treaty and to close down the WEU as 'with the entry into force of the Lisbon Treaty [...] the WEU accomplished its historical role' (Western European Union 2010: 3).

The introduction of the mutual assistance and solidarity clauses allows the EU to respond to security threats independently of the initiatives of existing defence organizations. However, political will of Member States, compromises and cooperation among EU Member States (with diverging views on security policy), as well as coordination between the different international security organizations, are necessary prerequisites for a coherent and effective implementation of the new security clauses.

2.5. ENHANCED CFSP AND CSDP FLEXIBILITY

As described above, the Lisbon Treaty does not alter the unanimity principle regarding decision-making in the field of CFSP and CSDP. However, the Treaty does introduce or formalize some new procedures that have the potential to enhance the flexibility and effectiveness of the EU's responses to new security threats.

2.5.1. Enhanced Cooperation

The Lisbon Treaty reaffirms the possibility of enhanced cooperation (Article 20 TEU), which was introduced by the Nice Treaty (Article 27a TEU Nice) but which was never used in practice. In the Lisbon Treaty the scope of enhanced cooperation is extended to the entire CSDP.²² Moreover, the procedure to start enhanced cooperation is made more flexible: the minimum number of Member States which have to participate has been changed from eight to nine, meaning a reduction from half to one third of the Member States in an enlarged EU of 27. Whereas the Lisbon Treaty introduces enhanced cooperation for the entire spectrum of CFSP, the procedures are different for enhanced cooperation in the field of CFSP (Article 329(2) TFEU) than for enhanced cooperation in other policy areas (Article 329(1) TFEU). In the area of CFSP the request to start enhanced cooperation has to be addressed to the Council instead of to the Commission, while the Parliament only has to be informed, and parliamentary consent is not needed. Furthermore, in the area of CFSP, the HR is responsible for assessing whether enhanced cooperation is consistent with CFSP policy, whilst the Commission has to ensure consistency with

and the European Union'. From a European perspective, this was confirmed in the Council of the European Union 2010b: §1.7.b.: 'In this connection, the High Representative is invited to develop ideas on how EU-NATO cooperation in crisis management, in accordance with the United Nations Charter and with the relevant United Nations Security Council resolutions, could be further strengthened. This should be done in a spirit of mutual reinforcement and with due respect for their decision-making autonomy, further to the recommendations on concrete measures transmitted by the EU to NATO in February 2010'.

²¹ Turkey counters participation by the Republic of Cyprus in CSDP missions with NATO engagement, as well as the establishment of a Partnership for Peace with NATO. Also, a veto by Cyprus has obstructed formal association of Turkey with the EDA and full engagement of Turkey in the development of CSDP (Dursun-Ozkanca and Mazzucelli 2011).

²² Article 27b TEU Nice limited the scope of enhanced cooperation to the implementation of joint actions or common positions. Stating explicitly that: 'It shall not relate to matters having military or defence implications' most aspects of CSDP were not covered.

the other policy areas of the Union (Article 329(2) TFEU). In view of the fact that the HR is Vice-President of the Commission and is responsible 'within the Commission for coordinating the Union's external action' (Article 18(4) TEU), it is not clear how the tasks are divided between the HR and the rest of the Commission regarding enhanced cooperation in CFSP. At the moment, there is no implementing practice that clarifies the Lisbon Treaty's provisions regarding enhanced cooperation. Moreover, enhanced cooperation is conditional upon authorization by a decision of the Council acting unanimously (Article 329(2) TFEU). As Wessels and Bopp remark, 'in light of the experiences so far the use of this flexibility option remains doubtful' (2008: 26).

2.5.2. Permanent Structured Cooperation

The Lisbon Treaty establishes a new and flexible form of cooperation for CSDP, 'permanent structured cooperation' (further: 'PSCo'; Article 42(6) TEU, Article 46 TEU and Protocol no. 10 on PSCo). According to Article 42(6) TEU, Member States 'whose military capabilities fulfill higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework'. This novelty is seen as very promising and much needed, as European defence is suffering from a lack of efficient use of its capabilities²³ (Angelet and Vrailas 2008; Biscop and Coelmont 2010: 2). The Lisbon Treaty provides the general institutional framework to set up PSCo. As the provisions of the Treaty remain vague, agreements have to be concluded to flesh out and implement the concept. Whereas several European actors have recognized the potential of PSCo,²⁴ no concrete agreements have yet been concluded. The Council conclusions of January 2011 suggest 'to achieve concrete results' by the end of 2011 (Council of the European Union 2011a: 1).

The Lisbon Treaty determines that, in order to set up PSCo, the participating Member States have to notify their intention to establish their cooperation to the Council and HR. Within three months, the Council has to decide with qualified majority on the establishment of the permanent structured cooperation. The procedure is remarkably simple, certainly when compared with 'enhanced cooperation' in the field of CFSP and CSDP, which requires unanimity (Article 329(2) and Article 331(2) TFEU) and the participation of at least nine Member States (Article 20(2) TEU). The European Defence Agency (EDA) is appointed to 'contribute to the regular assessment' of the performance of Member States' commitments to permanent structured cooperation, which 'may serve as a basis for Council recommendations and decisions' (Article 3 Protocol 10). If a participating Member State no longer fulfills the criteria, or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol, the other members may adopt by Qualified Majority Voting (QMV) a decision suspending its participation. This is an

²³ E.g.: in terms of capability, the actual output of the money spent by Europe only presents 20 per cent of the relevant American figure (Angelet and Vrailas 2008).

²⁴ Ministers of Foreign Affairs and Ministers of Defence of France, Germany and Poland, letter to Ms. Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy, 6 December 2010: 'Lessons learned should be turned into practical steps to improve the EU performance in CSDP including in terms of structures and capabilities [...] In the future, Permanent Structured Cooperation may be a useful tool to achieve progress in reinforcing European Capabilities'. This letter was adopted by the Council of the European Union on 31 January 2011 (Council of the European Union 2011a): 'The Council welcomes the Weimar letter of 6 December 2010 signed by France, Germany and Poland as an important contribution to stimulating the agenda for the development of Common Security and Defence Policy, including with a view to strengthening military and civilian capabilities in Europe, building on the efforts and achievements undertaken during recent Presidencies'.

important evolution, as for the first time participating Member States would enter into binding commitments in the field of defence and allow an EU body (the EDA) to contribute to assessing their performance. Moreover, the cooperation of the EDA and EU Member States in the framework of PSCo might boost the EDA's initiatives to strengthen European military capabilities.²⁵

In the area of defence and security, national sovereignty remains the norm. EU defence capability is inefficient today, as EU Member States continue to define defence needs, planning and expenditure on a national, rather than multilateral, basis²⁶ (Angelet and Vrailas 2008: 11-2). In this regard, PSCo is an opportunity to develop flexible cooperation (that can take various forms in different cooperative structures) between willing Member States, which allows for bottom-up initiatives grouped and steered in a permanent structure. Today, the 'pooling and sharing' of military capabilities seems to have gained momentum.²⁷ An unofficial gathering of Defence Ministers in Ghent from 23-24 September 2010 addressed the need for capability development in view of the financial crisis and budgetary constraints facing Member States (Biscop 2011). The subsequent meeting of Defence Ministers on 9 December 2010 stressed 'unnecessary duplication between Member States' (Council of the European Union 2010b: 1). These paved the way for further deliberation on the pooling and sharing of assets and the sharing of roles and tasks in defence (Council of the European Union 2010b). Initial efforts have been made. Enhanced cooperation between France and the UK in the pooling and sharing of military capabilities is a case in point. Discussions on the further development of multinational initiatives in the field of CSDP, taking a long-term and more systemic perspective, are ongoing.²⁸ EU Defence Ministers have committed themselves to expand collaborative projects by mid-2012 (Council of the European Union 2010b). PSCo thus may have the potential to enhance coherence, cost-effectiveness, and encourage all EU Member States to engage in further cooperation and integration in the field of EU security and defence. Nonetheless, its practical implementation still depends on the willingness of Member States to make it work.

²⁵ See for example: European Defence Agency (2010b): 'The Agency has quickly reacted to the needs of European Defence Ministers, who are looking for opportunities to work closely together in order to improve capabilities while budgets are under pressure. Pooling and sharing offers potential for savings, while increasing interoperable capacities'.

²⁶ However, today, some initiatives exist already that aim for integration in the field of defence among EU countries: the European Confederation of Police (EuroCOP) and the European Air Transport Command (EATC) are two examples. The recent bilateral *UK-France Summit 2010 Declaration on Defence and Security Cooperation* (2010) is also remarkable in this regard.

²⁷ For example: Weimar letter of 6 December 2010 signed by France, Germany and Poland: 'Analyzing lessons from the past operations and missions and taking into account our enhanced level of ambition we consider CSDP needs to be more efficient particularly in the field of civil-military crisis management [...] we see a specific need to improve our capacities to plan and to conduct operations and missions, to strengthen cooperation among militaries and to create synergies in times of scarce resources'. Online. Available HTTP: <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede031011weimarletter_/sede031011weimarletter_en.pdf> (accessed 21 December 2011).

²⁸ On 24-25 February 2011, the Hungarian Presidency organized an informal meeting of EU Defence Ministers, Chaired by HR Ashton, dedicated to 'developing new ideas and laying the foundations for further decisions within the framework of CSDP in order to reach our common goals in the area of the Common Foreign and Security Policy [...] On 25th February during the two working sessions the ministers will discuss the major directions and issues in the area of defence policy, in light of recent multinational initiatives, such as Weimar and Pooling and Sharing'. Programme of the informal meeting. Online. Available HTTP: <<http://www.eu2011.hu/event/informal-meeting-eu-defence-ministers>> (accessed 21 December 2011). See also Council of the European Union (2011b).

2.5.3. Multinational Forces of Member States

Article 42(3) TEU determines that Member States can make available to CSDP multinational forces which they have established. As of yet, this treaty-based option has not formally been used to make such forces available. It remains to be seen whether multinational forces of Member States will actually be deployed for CSDP as foreseen by the Lisbon Treaty. Yet, the EU has an alternative, temporary military instrument at its disposal for rapid response in view of military crisis management operations: the EU Battlegroups. In July 2004, the EU Military Committee approved the EU Battlegroups Concept, which was adopted in the 2010 Headline Goal. The 2010 Headline Goal envisaged the establishment of national or multinational Battlegroups, with supporting elements that would be capable of starting a military operation within ten days. Since 2007, the EU has two fully operational Battlegroups of about 1,500 troops that are put at the EU's disposal by Member States for early and rapid military responses. However, these have so far not been deployed.

2.5.4. Execution of Tasks by a Group of Member States

Article 42(5) TEU and Article 44 TEU create the possibility for the Council to entrust the execution of a CSDP task within the Union framework to a group of Member States which are willing and have the necessary capability. In association with the HR, the willing and capable Member States agree amongst themselves on the management of the task (Article 44(1) TEU). In practice, the execution of some CSDP missions on the ground has been done by personnel and forces from groups of willing Member States before the introduction of the Lisbon Treaty, as only willing Member States make operational contributions to CSDP missions,²⁹ and the implementation of some CSDP missions has been led by a given EU Member State.³⁰ The Lisbon Treaty provisions enhance flexibility regarding the execution of CSDP tasks, as decisions regarding the 'management of a task' can be taken by a group of Member States (and the HR) instead of by unanimity in the Council (Article 44(4) TEU). The extent of the flexibility depends, however, on the definition of 'management of the task'.

2.5.5. Start-up Fund

Operations having military and defence implications are funded through different budgets: whereas administrative expenditure for EU institutions is funded by the Union budget (Article 41(1) TEU), operating expenditure is charged to Member States (Article 41(2) TEU). Civilian operations are funded from the EU budget, unless the Council decides otherwise (Article 41(2) TEU). Member States are charged in accordance with their gross national product, but the possibility exists to make a formal declaration in the Council in order to not be obliged to contribute to the CSDP budget (Article 41(2) §2).³¹ The Athena mechanism is the permanent financing mechanism that assumes the charge of the financing of common costs of the EU's CSDP operations (Council of the European Union 2008). Athena acts on

²⁹ E.g.: Ten EU Member States made an operational contribution to the recently extended operation Atalanta (Council of the European Union 2010b): the Netherlands, Spain, Germany, France, Greece, Sweden, Italy, Belgium, Luxembourg and Estonia.

³⁰ E.g.: ESDP operation Artemis: As framework nation, France took the lead of the operation which was collectively planned, and which remained under the political control of the EU.

³¹ Denmark does not contribute to the funding of operations having military or defence implications.

behalf of the participating Member States to Athena,³² or, regarding specific operations, on behalf of the contributing states.³³ The Lisbon Treaty introduces a new fund: a start-up fund made up of Member State contributions to fund preparatory activities for EU operations, which are not charged to the Union budget (Article 41(3) §2 TEU). Article 41(3) §1 provides that

[t]he Council shall adopt a decision establishing specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43, i.e. for civilian operations.

Moreover, Article 41 indicates that '[w]hen the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorize the High Representative to use the fund'. This raises the question of whether the start-up fund could be used for more than only preparatory activities. The Council may adopt decisions by qualified majority, on a proposal from the HR, to determine the procedures to set up, finance, administer and control the start-up fund. The Athena mechanism is currently under review.³⁴ The Council has not yet taken any decisions that determine the procedures of the new start-up fund. Hence, there is still uncertainty about how the start-up fund will relate to Athena, as well as what its added value will be.

3. MAIN INSTITUTIONAL CHANGES

In addition to the constitutional changes that impact CFSP and CSDP, the Lisbon Treaty introduces three main novelties to the Union's institutional framework: the position of the President of the European Council, the office of the HR and the EEAS. This section will examine whether these institutional amendments offer the potential to enhance the ability of the EU to effectively operate as a multilateral security actor on the international plane. It will place special emphasis on EU policy-making, policy-shaping and external representation in the field of CFSP and CSDP.

3.1. PRESIDENT OF THE EUROPEAN COUNCIL

The Lisbon Treaty establishes the full-time position of the President of the European Council. The mandate of the President is to chair the European Council and drive forward its work. Moreover, he 'shall ensure the preparation and continuity' of its work (Article 15(6) b TEU) and 'shall endeavor to facilitate cohesion and consensus within the European Council' (Article 15(6) TEU). In addition the President ensures, at his level and in his capacity, the external representation of the Union on issues concerning the CFSP 'without prejudice to the powers of the High Representative' (Article 15(5) TEU). These responsibilities imply that the President of the European

³² These are all EU Member States except Denmark (Council of the European Union 2008: Article 1, a).

³³ Council of the European Union (2008: Article 1, b): "Contributing states" shall mean the Member States contributing to the financing of the military operation in question in accordance with Article 28(3) of the Treaty on European Union and the third states contributing to the financing of the common costs of this operation pursuant to agreements between themselves and the European Union'.

³⁴ Weimar letter of 6 December 2010 signed by France, Germany and Poland: 'To prepare the revision of the Athena Mechanism under the Polish Presidency, we will work with you on proposals, including common funding, aiming at increasing the readiness, deployability and cost efficiency of Battlegroups'. Online. Available HTTP: <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede031011weimarletter_/sede031011weimarletter_en.pdf> (accessed 21 December 2011).

Council plays a role in the formulation and implementation of aspects of CFSP (Gaspers 2008: 30). Moreover, with the Lisbon Treaty, the European Council gained the mandate to adopt by unanimity decisions on the strategic interests and objectives of the Union relating to all areas of the external action of the Union, including CFSP (Article 22(1) TEU).³⁵

As economic governance debates largely dominated the agenda of the European Council and its President in 2010-1,³⁶ the question as to how their role in CSFP translates into practice remained open, until the Arab revolutions provided new momentum in the spring of 2011. As the turmoil in Tunisia spread throughout the Northern African and Middle Eastern region, the European Council addressed CFSP matters on various occasions. On 4 February 2011, the European Council discussed the political upheavals for the first time. It called upon the Commission and the HR to prepare 'a package of measures' to support the transition and transformation processes in Egypt, Tunisia and other countries in the Arab-Mediterranean region, to 'adapt rapidly the instruments of the EU' in order to provide humanitarian aid where necessary, as well as to 'propose measures and projects to stimulate cooperation, exchange and investment in the region' (Agence Europe 2011). An extraordinary meeting of the European Council was convened on 11 March 2011 to address the issue of Libya and the Southern Neighborhood region in order to set political direction and priorities for future EU policy and action (European Council 2011c). In his capacity as President, Herman van Rompuy delivered various statements on behalf of the EU, including at a High-level Meeting on Libya convened at the United Nations on 20 September 2011 (European Council 2011a).

By establishing the office of President of the European Council, the Lisbon Treaty provides a clear-cut solution to the problems posed by its previous chair, the head of state or government of the Member State holding the six-month rotating presidency. Ensuring consistency and continuity under the TEU's previous arrangements proved difficult as the EU's priorities changed every six months with a new incoming presidency. The presidency combined the job in Brussels with the normal tasks as head of state. This often resulted in a lack of leadership and a lack of time to properly prepare the European Council's meetings (Piris 2010: 206). The TEU now states that the European Council elects its President for a period of two and a half years, renewable once (Article 15(5) TEU), which could result in more continuity in the workings of the European Council. As chair of the European Council, the President has considerable agenda-setting power. This could serve as a helpful tool in reconciling diverging national foreign policy interest (Gaspers 2008: 29). Whilst the decision-making resides with the Member States, the fulltime mandate of the new President could account for more cohesion and consensus in the European Council as well as proper preparation and continuity in its work.

There has been concern about the Lisbon Treaty falling short in clearly defining responsibilities between the President of the European Council, the HR and the President of the Commission in terms of the external representation of the EU. The vague language of the Treaty has left the pecking order between the former³⁷ and the HR, who represents the Union for matters relating to CFSP, conducts political dialogue with third parties on the Union's behalf and expresses the Union's position

³⁵ Whilst not novel to CFSP as such, this is a remarkable improvement of the European Council's previous tools under Article 13 of the old TEU, which were confined to the definition of the principles and general guidelines for the CFSP and the adoption of common strategies restricted to the CFSP domain.

³⁶ These especially gained momentum with the offset of the Greek debt crisis early 2010.

³⁷ The President ensures *at his level* and *in his capacity*, the external representation of the Union on issues concerning the CFSP 'without prejudice to the powers of the High Representative' (Article 15(5) TEU).

(on CFSP) in international organizations and at international conferences (Article 27(2) TEU), unclear, which could result in tensions. Furthermore, it follows from Article 17(1) TEU that the President of the Commission represents the EU externally at the highest level in areas other than CFSP (and monetary matters) falling within the Union's competence. Indeed, there has been some juggling between Van Rompuy and Ashton about strategic relations,³⁸ as well as between Ashton and Barroso about influence over the EEAS.³⁹ This illustrates the importance of good working relations between the actors and a clear delineation of responsibilities among them. Van Rompuy and Barroso seem to have found a working arrangement on their respective external representation roles, meeting weekly and working to 'avoid any conflicts of competence or misunderstandings as to who is responsible for what' (Marangoni 2010: 17).

If tensions could be largely eliminated, the question arises as to whether this would suffice to bring about the desired change in terms of enhancing the EU's multilateral security actorness. As pointed out by Avery, 'a single voice in international forums is not enough, and sometimes it is not even necessary: the EU needs to have a single message' (2011: 2). The fact that Herman van Rompuy and Catherine Ashton were elected, two faces with rather low international profiles, suggests that the EU Member States did not want strong leaders to usurp their policy-making authority. As the next section will demonstrate, much depends upon one factor for which the Lisbon Treaty could not provide a straightforward solution: political will power.

3.2. HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

One of the main novelties of the Lisbon Treaty in the area of security and defence has been the creation of the new office of the HR. The HR conducts the CFSP (Article 18(2) TEU), chairs the newly established Foreign Affairs Council (Article 18(3) and Article 27(1) TEU)⁴⁰ and is one of the Vice-Presidents of the Commission (Article 18(4) TEU). By providing the HR with this mandate, the Lisbon Treaty incorporates the former 'troika formation' – the High Representative of the CFSP, the Commissioner for External Relations and the Foreign Minister of the country holding the rotating presidency – into one position. Some have called the new HR 'triple-hatted' for taking over the areas of responsibility formerly exercised by these three actors. Others have called the HR 'double-hatted' for serving both the Council and the Commission. This section illustrates that, if one carefully observes the tasks and responsibilities of the HR under the Lisbon Treaty, notably her role in the progressive framing of a Common Defence Policy (Article 24(1) TEU) and her responsibility to conduct the CSDP (Article 18(2) TEU), the HR is, in fact, quadruple-hatted.

3.2.1. A Quadruple-Hatted HR

The Lisbon Treaty gives the new office of the HR four main tasks. Firstly, the HR is responsible for putting into effect the CFSP together with the Member States, 'using national and Union resources' (Article 26(3) TEU). The HR exercises a right of

³⁸ Van Rompuy was accused of supporting a French proposal to establish a 'special task force' on strategic relations, what would rival the HR (Benitez 2010).

³⁹ The most striking example was the appointment by Barroso of his former Chef de Cabinet João Vale de Almeida to the prestigious post of EU ambassador to Washington, instead of Irish Prime Minister John Bruton. This was perceived as an insurance to Washington that it would have a direct channel to the President of the Commission, rather than being reliant on Ashton.

⁴⁰ With the entry into force of the Lisbon Treaty, the former General Affairs and External Relations Council was split into a General Affairs Council and a Foreign Affairs Council.

initiative; she is mandated to submit proposals for the development of the CFSP and the CSDP and has the ability to execute these as mandated by the Council (Article 18(2) TEU). Also, the HR is responsible for managing⁴¹ and implementing⁴² the policies of, and has the right to propose, and exercise authority over, EU Special Representatives (Article 33 TEU). In performing these tasks, the HR assumed the hat of the former High Representative for CFSP, Javier Solana.⁴³

Secondly, in her capacity as Vice-President of the Commission, the HR 'shall ensure the consistency of the Union's external action' and 'shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action' (Article 18(4) TEU). Moreover, together with the Council, the HR ensures the unity, consistency and effectiveness of action by the Union (Article 26(2) TEU). Accordingly, the HR has assumed the hat of former Commissioner of External Relations, Benita Ferrero-Waldner, who contributed to the Commission's right of initiative (Article 22(1) former TEU) and assisted the Council Presidency in the conduct of negotiations for the conclusion of international agreements in the field of CFSP (Article 24 former TEU).

Thirdly, the HR presides over the Foreign Affairs Council (Article 18(3) and Article 27 TEU). According to Article 27 TEU, the HR ensures the implementation of the decisions adopted by the European Council and the Council. She contributes to the development of the CFSP through her right of initiative, represents the Union for matters relating to CFSP, conducts political dialogue with third parties on the Union's behalf, and expresses the Union's position in international organizations and at international conferences. The HR also constitutes the link to the Parliament for CFSP.⁴⁴ The position as chair of the Foreign Affairs Council was previously held by the President of the External Relations Council, the Minister of Foreign Affairs of the six-monthly rotating presidency.⁴⁵

Fourthly, the HR conducts the CSDP. As noted, the CSDP is an integral part of the CFSP and includes the progressive framing of a common Union defence policy when the European Council, acting unanimously, so decides (Article 2(2) TEU). The HR may make proposals to the Council relating to CSDP. The Council can adopt decisions unanimously and may, where appropriate, propose the use of both national resources and Union instruments together with the Commission (Article 42(4) TEU). If the EU opts to use civilian and military means in the exercise of tasks referred to in Article 42(1) TEU, the HR, acting under the authority of the Council and in close and constant contact with the PSC, shall ensure the 'coordination of the civilian and military aspects' of such tasks (Article 43(2) TEU). In addition, the HR

⁴¹ In terms of management, for example, if the EU opts to use civilian and military means in the exercise of tasks referred to in Article 42(1) TEU, the HR, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure the coordination of the civilian and military aspects of such tasks. See Article 43(2) TEU.

⁴² For example, the HR and the Commission are responsible for the implementation of the Union's relations with international organizations. See Article 220(2) TFEU.

⁴³ He assisted the Council especially through 'contributing to the formulation, preparation and implementation of policy decisions' and through 'conducting political dialogue with third parties' (Article 16 former TEU). Whereas in theory, Javier Solana did not have a right of initiative and could only speak on behalf of the Council at the request of the Presidency, in practice he stretched his competences considerably. Amongst other responsibilities, he also coordinated the work of the EU Special Representatives (Article 23(3) of the Council's rules of procedure) and had authority over the EU Military Staff.

⁴⁴ Article 36 TEU provides that the HR shall regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and the CSDP and inform it of how those policies evolve.

⁴⁵ The President represented the Union in matters coming within the CFSP (Article 18 former TEU). He was responsible for the implementation of decisions, expressed the position of the Union in international organizations and international conferences, negotiated international agreements on behalf of the Council in CFSP matters (Article 24(1) former TEU) and consulted the European Parliament on CFSP matters (Article 21 former TEU).

plays an important role in the establishment of permanent structured cooperation. Finally, the HR has assumed the duties of former HR Javier Solana as head of the European Defence Agency and has become chairman of the EDA's Steering Board, its decision-making body.

3.2.2. Can the HR Deliver?

The new office of the quadruple-hatted HR could serve as a valuable tool to eliminate duplication, increase efficiency and enhance consistency in the EU's external policies. By bringing together the intergovernmental pillar of the CFSP managed by the Council Secretariat and the Community pillar of external policies managed by the Commission, the position underlines the de-pillarization effected by the Lisbon Treaty. As Vice-President of the Commission, responsible for ensuring consistency between the different areas of its external action and between these and its other policies, the HR is considered to have an overarching coordinating role aimed at increasing the coherence of all policies conducted by the Commission having an external dimension (Gaspers 2008: 23). Moreover, Article 24(3) TEU establishes the HR's task to ensure, together with the Council, compliance with the spirit of loyalty and mutual solidarity in the field of CSDP. Hence, the task of safeguarding horizontal coherence that was previously carried out by the Commission and the Council, now also resides with the HR. This 'offers a streamlined and more effective means of doing things at the European level' (Avery 2008: 30).

Also in terms of visibility, the office of the HR could account for more coherence in the EU's external relations. Whereas the EU was previously represented by a multiplicity of persons and organs – the rotating presidency of the Council, the High Representative for CFSP and the European Commission – now the system can articulate EU policies and positions with the single voice of the HR, albeit wearing different hats, and, as such, render the EU more visible in the world (Avery 2008: 30). That was, according to Piris (2010), the very aim of creating the office, namely to inject more consistency between the different sectors of the EU's external action, as well as more visibility and more stability into the external representation of the EU on CFSP matters (Piris 2010: 245). However, to find consensus among the 27 Member States in a swift manner, especially in times of crisis, has turned out to be a daunting task.

The HR's speech at the International Conference on Haiti in New York on 31 March 2010, her statement at the UNSC on 4 May 2010 about growing cooperation between the UN and the EU, and her presentation at the 2010 Non-Proliferation Treaty review conference make good cases for the EU's enhanced visibility within the UN multilateral framework. But the HR has been criticized for reacting slowly to the 2010 Haiti earthquake and the crisis in Egypt (Erlanger 2011). A significant example in this regard is the joint statement of 3 February 2011 issued by the leaders of Germany, France, Britain, Italy and Spain to express their concern regarding the 'deteriorating situation' in Egypt,⁴⁶ whereas a day later the Foreign Affairs Council was scheduled where a common EU statement was made on the

⁴⁶ 'We are watching with utmost concern the deteriorating situation in Egypt. The Egyptian people must be able to exercise freely their right to peaceful assembly, and enjoy the full protection of the security forces. Attacks against journalists are completely unacceptable. We condemn all those who use or encourage violence, which will only aggravate the political crisis in Egypt. Only a quick and orderly transition to a broad-based Government will make it possible to overcome the challenges Egypt is now facing. That transition process must start now' (Foreign and Commonwealth Office 2011).

Egyptian situation (European Council 2011b).⁴⁷ In reaction to the HR's slowness in responding to events in the Middle East and North Africa, German Chancellor Merkel confirmed that the HR had a difficult job and that there was a great need to strengthen the position to have a visible face representing the Union, without indicating a willingness to act (Erlanger 2011).

The question of whether the HR can live up to the high expectations in terms of coherence, consistency and visibility is all but an easy one. Her appointment by the European Council, acting by QMV, upon agreement of the President of the Commission, for a five-year term could serve as a stabilizing measure. It has the potential to increase consistency and effectiveness in the functioning of the Council (Piris 2010: 209; 245). Moreover, it could have a positive effect on the harmonization of Member State positions and therewith contribute to more vertical coherence in European foreign policy (Gaspers 2008: 24). However, as noted above, the responsibilities of the Member States in the conduct and formulation of their foreign policy have not changed significantly and the dualities between the Union's external policy areas remain largely intact. The effectiveness of the HR's office is therefore conditional upon the will of the Member States (Koehler 2010: 58).

This political will is especially paramount for the HR to effectively carry out her fourth hat as head of the CSDP. Before the entry into force of the Lisbon Treaty, in the absence of a 'Defence Council', the Defence Ministers addressed defence issues during a meeting held every semester in the General Affairs and External Relations Council formation and informally at a gathering hosted by the rotating Presidency. EU Chiefs of Defence came together in the EU Military Committee (which normally meets at the level of their Military Representatives to the EU) in bi-annual meetings. Experience, however, showed that no team spirit conducive to collective creative thinking had developed under these arrangements (Angelet and Vrailas 2008: 5). This proved problematic. As pointed out by NATO Secretary-General Anders Fogh Rasmussen, without proper investment, the EU would risk being 'divided, weaker and increasingly adrift from the United States' (NATO 2011), referring with concern to the EU's drastic defence budget cuts.

Can the HR mobilize Member States to generate the necessary political will and cooperation for capability development in the CSDP field? The combination of the HR's chairpersonship of the Foreign Affairs Council as well as the EDA's Steering Board could be instrumental in this regard. The EDA supports the Member States and the Council in their efforts to improve the Union's defence capabilities in the areas of crisis management and in sustaining CSDP.⁴⁸ As chair of the Foreign Affairs Council, the HR can contribute to CSDP policy creation and development, whereas by presiding the EDA Steering Board, the HR can partake in the delivery of the CSDP by helping to elaborate the EDA's functions in fulfilling its mandate. In practice, this implies the following. The Council brings together the Foreign Ministers of the Member States at least once a month. Ministers for defence, development and trade may attend depending on the agenda. When the Defence Ministers met for the first time in the formation of the Foreign Affairs Council on 9 December 2010 (Council of the European Union 2010b), in the margins of this meeting, they met as the Steering Board of the EDA. The main issue on the agenda was the need for

⁴⁷ Stating in the same line as the 'Joint Statement' of the UK, France, Germany, Italy and Spain: 'The European Council is following with utmost concern the deteriorating situation in Egypt. It condemned in the strongest terms the violence and all those who use and encourage violence. It emphasized the right of all citizens to demonstrate freely and peacefully, under due protection from law enforcement authorities. Any attempt to restrict the free flow of information, including aggression and intimidation directed against journalists and human rights defenders, is unacceptable'.

⁴⁸ The mandate of the EDA is 'to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future'.

greater pooling and sharing in the field of military capabilities, as a key means to reduce the impact of budget cuts on European capabilities (Council of the European Union 2010a). Whereas in the Council configuration, the Defence Ministers exchanged views on the need for such pooling and sharing (Council of the European Union 2010b), in the formation of the Steering Board they tasked the EDA to make proposals to this end, in cooperation with the EU Military Committee (Council of the European Union 2010a). That the role of the HR is key in coordinating Member States' efforts in CSDP also became apparent during the Council meeting on 31 January 2011. The Council called upon the HR to take work forward on a set of issues raised in the Weimar letter of 6 December 2010,

cooperating closely with Member States through the Political and Security Committee, the EU Military Committee and the European Defence Agency, and in consultation with relevant stakeholders, looking forward to the proposals of the High Representative as tasked by the European Council Conclusions of September 2010 referring to EU-NATO cooperation in crisis management.⁴⁹

3.2.3. An Impossible Job?

As the quadruple-hatted job settles the HR with a huge workload and many responsibilities, there have been doubts about the position's feasibility in practice. The HR has to undertake many travels and exercise her mandate as Vice-President of the Commission, which meets on a weekly basis, and as President of the Foreign Affairs Council, which meets once every month. The multiplicity of engagements, obligations and responsibilities requires her to be almost ubiquitous. Indeed, she has been criticized for not acting effectively enough at breaking world events, such as those in the Middle East and North Africa, for not having traveled to trouble spots quickly enough, and for having been reluctant to reach out to the media (Erlanger 2011). Furthermore, Catherine Ashton was heavily criticized after having cancelled her participation in a gathering of Defence ministers in Palma de Mallorca on 24 February 2010, in order to represent the EU at the inauguration of the new Ukrainian president. At the defence meeting, former French minister of defence Morin lashed out at the HR stating:

It is quite rich that this morning, at the first meeting of defence ministers after the entry into force of the Lisbon Treaty, that when we talked of the relationship between the EU and NATO, the NATO Secretary-General was there and not the High Representative.⁵⁰

3.3. EUROPEAN EXTERNAL ACTION SERVICE

The Lisbon Treaty made provision for the establishment of the EEAS. On 26 July 2010, the Council adopted the Decision establishing the organization and functioning of the EEAS, after having consulted the European Parliament and having obtained the consent of the Commission (Article 27 TEU).⁵¹ It created the EEAS as an

⁴⁹ Council of the European Union (2011a) *Council conclusions on CSDP*, 3065th Foreign Affairs Council meeting, Brussels, 31 January. p.1

⁵⁰ EurActiv (2010) *French minister lashes out at Ashton Ukraine visit*, 26 February. Online. Available HTTP: <http://www.euractiv.com/foreign-affairs/french-ministerlashes-ashton-ukraine-visit-news-289533> (accessed 21 December 2011).

⁵¹ This happened after the General Affairs Council had reached agreement on the HR's proposal on the structure of the EEAS on April 2010 and the European Parliament had adopted the Brok report on the proposal on 8 July 2010.

autonomous body of the Union under the authority of the HR, made up of a central administration and of the Union Delegations to third countries and to international organizations (Article 1). The EEAS is tasked with supporting the HR in the fulfillment of its mandates in all four capacities (Article 2). Furthermore, the EEAS assists the President of the European Council, the President of the Commission and the Commission in the exercise of their functions in the area of external relations (Article 2). The EEAS is composed of single geographical and thematic desks that will continue to perform under the authority of the HR the tasks previously carried out by the Commission and Council Secretariat. The Crisis management and Planning Directorate (CMPF), the Civilian Planning and Conduct Capability (CPCC) and the Military Staff (EUMS) form part of the EEAS and are placed under the direct authority and responsibility of the HR.

As a *sui generis* service separate from the Commission and the Council Secretariat, bringing together all geographical and thematic desks, the EEAS constitutes an interface between the main institutional actors of the Union's foreign policy and a source of strengthened coherence for EU external relations. The EEAS, staffed by officials from the Council Secretariat, the Commission and national diplomatic services, is destined to become the centre of information-sharing on the latest political developments outside the Union and foreign policy-making with EU institutions and ministries. Serving the HR, the President of the Council and the Commission, it could complement and harmonize their activities and contribute to horizontal and vertical coherence in European foreign policy (Gaspers 2008: 33).

Furthermore, the EEAS could come to play an important role in coordinating the Union's activities in third countries and international organizations, as well as in facilitating cohesion and coordination within the Council. The EU Delegations, part of the EEAS and responsible for the representation of the Union at international organizations under the authority of the HR (Article 221 TEU), have, to a large extent, taken over the role of the rotating Presidency in international organizations.⁵² They make for a permanent actor, which enhances EU coherence and visibility in international *fora* and could imply a leading role for the EEAS in strategic decision-making (Council of the European Union 2009). As noted by Avery, the 'EEAS provides the EU with a more coherent, visible and effective way of conducting foreign policy both at headquarters and outside the EU' (2010: 1). Furthermore, noting that the coordination within EU Delegations essentially depends upon coordination within the Council, the EEAS could help the HR in generating a consensus within the Council by providing her with insights into the real starting points of Member States and ensuring that 'for any given quantum of "political will" from the Member States, the maximum possible degree of consensus can be extracted from it' (Donnelly 2010: 21). At its meeting of 9 December 2010, the Foreign Affairs Council stressed the need to take advantage of the post-Lisbon context, 'including the establishment of the European External Action Service, as a catalyst for reinforcing coordination leading to a better and more coherent utilization of resources' (Council of the European Union 2010b: 3).

Whilst officially established, the EEAS is still far from being fully up and running. On 1 January 2011, the relevant staff from the Council and Commission was transferred to the EEAS, but it will take time to establish a common identity. This exercise could prove troublesome, as despite personnel having pledged to 'carry out their duties and conduct themselves solely with the interests of the Union in mind', the

⁵² This replacement is significant given the former role of the rotating presidency of running the day-to-day EU internal coordination, representing the EU in negotiations and outreach meetings with non-EU countries, regional groups or organizations, and delivering the statements and explanations of vote on behalf of the EU at formal meetings of international organizations. Yet, the Presidency may still have a role in relation to representation and negotiations for Member State competences.

establishment of the EEAS witnessed an unfortunate display of nationalism by Member States (Avery 2011). The EEAS did not head prominently during the Libyan crisis, the first major security crisis after its establishment. According to EEAS staff, its work is tainted by bureaucratic competition and turf battles. Skepticism about bureaucratization of the exchange of information and the marginalization of crisis management structures within the EEAS runs high (Koenig 2011). As pointed out by O'Sullivan, there is a need to find 'synergies between the intergovernmental and community aspects in the preparation and implementation of crisis response, conflict prevention and peace building actions' (2011). There is a question as to whether the EEAS will be able to fulfill the many duties incumbent upon it on the basis of the resources available.⁵³ The draft budget for 2012 is still to be approved by the European Parliament.⁵⁴ Presently, the EEAS still does not have its own headquarters. Hence, despite the progressive transition, two years after the entry into force of the Lisbon Treaty, the EEAS is still far from being operational.

3.4. OTHER INSTITUTIONAL INNOVATIONS

3.4.1. Political and Security Committee

The PSC is one of the preparatory bodies of the Foreign Affairs Council. Established as a permanent body in 2001, it monitors the international situation in areas covered by CFSP, delivers opinions to the Council at the request of the Council, the HR or on its own initiative, and exercises, under the responsibility of the Council and of the HR, the political control and strategic direction of the crisis management operations stipulated in Article 43 TEU (Article 38 TEU). The PSC is usually authorized to take a number of decisions, such as to amend the planning documents, including the operation plan, the chain of command and the rules of engagement, as well as decisions to appoint the EU Operation Commander and EU Force Commander. The PSC receives military advice and recommendations on military matters from the EU Military Committee (EUMC). The EUMC is made up of Chiefs of Defence of the Member States, usually represented by their military representatives, and exercises military direction of all military activities within the EU framework. It receives support from the EU Military Staff, a permanent body essentially comprised of military personnel seconded by Member States. The Committee for Civilian Aspects of Crisis Management (Civcom) advises the PSC and provides policy recommendations on civilian missions and priorities.

The Lisbon Treaty maintains the PSC's original responsibilities but introduces a few changes, essentially tailored at accommodating the new role of the HR. Whereas previously the monitoring by the PSC was to be exercised 'without prejudice to the responsibility of the Presidency and the Commission' (Article 25 former TEU), after the Lisbon Treaty it is to be carried out 'without prejudice to the powers of the HR'. The role of the PSC in the political control and strategic direction of the crisis management operations is no longer to be done under the sole responsibility of the Council, but now also under that of the HR (Article 38 TEU). The most significant amendment is the PSC's chairmanship. Whereas previously the Committee was chaired by the six-monthly rotating presidency, under the new TEU the PSC is

⁵³In particular, the responsibilities taken over from the rotating presidency, the chairing of the PSC and the different geographical and thematic Council Working Groups, political dialogue meetings with third countries and international organizations, amount to literally hundreds of meetings a year.

⁵⁴ According to the Draft Budget, contribution of the European Union to the financing of the expenditure of the European External Action Service for the financial year 2012 amounts to a total of € 456,102.129 (European Union 2011).

presided by a representative of the HR (European Council 2009: Article 2). This new chairmanship implies that impulses will no longer originate primarily from the Member States, but from the HR. Member States may continue to propose measures as the CFSP agenda remains largely driven by international events. However, the new chairmanship calls for more pro-activeness on the part of the PSC. Moreover, it could strengthen the preconditions for more stability and coherence in the PSC's workings. On 18 November 2010, the HR appointed Swedish Ambassador Olof Skoog as first permanent chair of the PSC.

3.4.2. European Defence Agency

The Lisbon Treaty elevates the EDA to treaty level, incorporating it in the legal framework of CSDP. The EDA was established by the Council on 12 July 2004 on the basis of a joint action (Council of the European Union 2004) 'to support the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management and to sustain the ESDP as it stands now and develops in the future' (Article 2).⁵⁵ The EDA was envisaged as a 'capabilities agency' not solely concerned with defence procurement, as was the case with national armaments agencies, but also with research and development. In addition, the EDA was given an important political component, namely to direct and evaluate Member States' progress towards fulfilling their capability commitments (Grevi *et al.* 2009). A new joint action was adopted on 17 July 2011 to consolidate and implement Article 45(1) TEU governing the EDA, including its tasks.⁵⁶ The HR became the new chair of the EDA. She is responsible for the overall organization and functioning of the Agency and 'shall ensure that the guidelines issued by the Council and the decisions of the Steering Board are implemented by the Chief Executive, who shall report to the Head of the Agency' (Article 7.2). The HR chairs the EDA's Steering Board, which acts within the framework of the guidelines issued by the Council (Article 8) and can exercise the tasks defined in Article 9 of the Joint Action (Council of the European Union 2011c).⁵⁷

Whilst the Lisbon Treaty did not strengthen the Agency's role with new competences, more active involvement of the EDA in relation to PSCo is anticipated. Although its exact role is still unclear, the cooperation of the EDA and Member States in the framework of PSCo might boost the former's initiatives to strengthen European military capabilities. The decision-making power involving the operationalization of PSCo remains firmly vested in the Council, but the EDA can promote the concept by using its expertise in its implementation, as well as in tackling shortfalls in capability standards. Moreover, the EDA is likely to play an important role in the evaluation of the performances of Member States committed to

⁵⁵ Council of the European Union (2004).

⁵⁶ Article 45(1) TEU defines the tasks of the EDA as follows: 'i) contribute to identifying the Member State's military capability objectives and evaluating observance of the capability commitments given by the Member States; ii) promote harmonization of operational needs and adoption of effective, compatible procurement methods; iii) propose multilateral projects to fulfill the objectives in terms of military capabilities, ensure coordination of programmes implemented by the Member States and management of specific cooperation programmes; and iv) support defence technology research, and coordinate an plan join research activities and the study of technical solutions meeting future operational needs; contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of defence sector and for improving the effectiveness of military expenditure'.

⁵⁷ On 9 December 2010, the EDA Steering Board agreed upon the work plan stating that the work of the EDA until 2013 will be governed by the Capability Development Plan, its strategic tool, and three long-term strategies: the European Defence and Research and Technology (EDRT) Strategy, The European Armaments Co-operation (EAC) Strategy and the European Defence Technological and Industrial Base (EDTIB) Strategy (European Defence Agency 2010a).

PSCo.⁵⁸ Whereas this may prove useful if projects materialize (Vasilis 2010), the EDA can only act if the Council decides on the establishment of PSCo.⁵⁹ Political will remains troublesome for the EDA, since it operates in a policy environment with diverging views on what institutional arrangements are appropriate in the light of the political order of defence. As Bátorá points out, 'the EDA has been a flashpoint of institutional logics representing different visions of how various aspects of defence integration in the EU should be organized' (Bátorá 2009: 1076).⁶⁰

4. CONCLUSION

This paper analyzed the constitutional and institutional changes that were introduced by the Lisbon Treaty, examining how the novelties condition the EU's coordination, flexibility and coherence with regard to CFSP and CSDP, to assess ultimately whether the changes enhance the EU's capacity as a multilateral security actor.

Despite the de-pillarization introduced by the Lisbon Treaty, CFSP and CSDP remain separate from other areas of external relations and retain their essential intergovernmental nature. Differentiated institutional dynamics are upheld and decision-making by unanimity in the Council and the European Council is still the rule. The vague terms of the Lisbon Treaty on new 'flexibility procedures' such as permanent structured cooperation are to be further clarified in order to make effective implementation possible. Also, Member States need to show the political will to live up to their commitments. The explicit introduction of legal personality clarified that the EU is capable of concluding international treaties in the field of CFSP in its own name and on its own behalf. Furthermore, the EU's legal personality allows the EU to join international organizations, to take action and to speak in international *fora*. This innovation could significantly enhance the Union's visibility in international *fora* active in the field of security and defence, an essential prerequisite for the EU in becoming an effective multilateral security actor. Yet, the Treaty does not take away the 'patchwork power Europe', as different EU actors remain competent to represent the EU's security and defence interests on the international scene.

The Lisbon Treaty provides the institutional ingredients for generating a higher degree of coherence in the EU's multilateral security relations. However, can the new actors deliver? As fulltime President of the European Council, Herman van Rompuy has the capacity to reconcile diverging national interests through his agenda-setting power, proper preparation and follow-up of meetings. He could ensure continuity to the Council's work in defining the strategic interests and objectives of the Union relating to CFSP and CSDP. The vague description of his responsibilities *vis-à-vis* the High Representative and the President of the Commission, however, calls for some fine-tuning. The quadruple-hatted High Representative presents a valuable tool to enhance consistency and the visibility of

⁵⁸ Article 3 of the Protocol on Permanent Structured Cooperation Established by Article 28A of the Treaty of the European Union states that 'the European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, *inter alia*, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 28 E of the Treaty on European Union'.

⁵⁹ The need for enhancing the Agency's activities on Pooling and Sharing of national military capabilities was reaffirmed by European Defence Ministers in December 2010 (European Defence Agency 2010b).

⁶⁰ Bátorá argues that there are tensions between i) the logic of supranational regulation and the logic of intergovernmental networking; ii) the logic of defence sovereignty and the logic of pooled defence resource; iii) the Europeanist and the Euro-Atlanticist logic; and iv) the logics of liberalization and Europeanization of the defence market (Bátorá 2009).

the EU in multilateral *fora*, as well as coordination between the Member States through her close engagement with all actors involved in the development and delivery of CFSP and CSDP. In practice, however, this role proves highly challenging and Catherine Ashton's ability to live up to the job has been questioned on multiple accounts. Skillful diplomacy on the part of the High Representative will be essential to harmonize national positions in the Council and to generate the necessary will for capability development in the CSDP field. As interface between the EU external actors and exercising an important coordinating role in third countries and in international organizations, the EEAS and Union delegations could prove instrumental, once fully operationalized. Whether these new players have the ability to enhance the capacity of the EU to act as a multilateral security actor is only one side of the coin. Practice today shows that EU Member States are not willing to give up their national stances when an EU position has been agreed upon. This practice has the potential to undermine the relevance of common EU positions and the effectiveness of the newly introduced actors.

More than two years after its entry into force, the implementation of the Lisbon Treaty is still ongoing. The integration and coherence of EU policy-making, especially in such politically sensitive areas like security and defence, is a long-term process. One thing is certain: the political will of all EU actors involved and of the Member States is key to push EU integration further and to put the principles set forward by the Lisbon Treaty into practice.

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Leuven Centre for Global Governance Studies

Huis De Dorlodot, Deberiotstraat 34, 3000 Leuven, Belgium

Tel. ++32 16 32 87 25 Fax ++32 16 37 35 47 info@ggs.kuleuven.be

