

Европската/Заедничка безбедносна и одбранбена политика по Договорот од Лисабон: Европска но не заедничка

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Апстракт

Трудот има за цел да ја објасни институционалната поставеност на оперативниот дел на Заедничката надворешна и безбедносна политика – Европската/Заедничка безбедносна и одбранбена политика. Договорот од Лисабон вовеле некои измени и новини во начинот на кој се спроведува надворешната, безбедносната и одбранбената политика на Европската унија, правејќи ја последната политика каде меѓувладиниот пристап е институционализиран.

Трудот ги објаснува потешкотиите со кои се соочуваат институциите и државите-членки, имајќи ги во предвид принципот на суверенитет и процесот на одлучување во оваа специфична област. Високиот претставник, Европската комисија, Европскиот совет, Советот на министри и Европскиот парламент, според Договорот од Лисабон учествуваат во развојот на безбедносната и одбранбена политика, но државите-членки и натаму се владетели на својата надворешна, безбедносна и одбранбена политика. Оттаму, многу зависи од волјата на државите-членки за подобрување на перформансите на Европската унија како надворешен и безбедносен актер.

Клучни зборови: политика, безбедност, одбрана, Лисабон, Институции

European\Common Security and Defence Policy after the Lisbon Treaty: European but not Common

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Abstract

The paper aims to explain the institutional designation of the operational part of the Common Foreign and Security Policy – The European/Common Security and Defence Policy. The Lisbon Treaty introduced certain changes and innovations in the way the foreign, security and defence policy of the European Union is guided, making it the last policy where the inter-governmental approach is institutionalized.

The paper explains the difficulties that institutions and member-states are facing, having in mind the sovereignty principle and the decision-making process in this specific area. The High Representative, the European Commission, the European Council, the Council of Ministers and the European Parliament, according the Lisbon Treaty participate in the Security and Defence Policy development, but member-states are still “masters” of their foreign, security and defence policy. By that, much depend on the member-states will for improvement of the European Union performances as a foreign and security actor.

Key words: policy, security, defence, Lisbon, institutions.

Introduction

The European Security and Defence Policy was created at the European Council Summit in Cologne in June 1999, when started the development of military and civilian capabilities for conflict prevention and crisis management. As far as the military capabilities, member-states at the Helsinki Summit in December 1999, introduced the Headline Goal declaring that EU is capable of setting 60.000 troops, deployable for 60 days and sustainable for one year. At the Nice Summit in December 2000 new innovations were created such as the High Representative for Common Foreign and Security Policy (CFSP), the Political and Security Committee (PSC), the EU Military Committee (EUMC) and the EU Military Staff (EUMS). In 2004, the Headline Goal was further elaborated introducing the battle groups, European Defence Agency and civil-military cells.

At the European Council Summit in Santa Maria de Feira in June 2000, EU made major steps in developing ESDP modalities in the civilian crisis management. First, a Committee responsible for civilian aspects of the crisis management was established, and second, the EU member-states agreed in creating an Action Plan for introducing four priority areas for civilian crisis management: police, rule of law, civil administration and civil protection. Civilian Headline Goal 2008 combines the achievements of concrete targets in four above mentioned priority areas with the introduction of two new areas: monitoring and support for EU's Special Representatives. Also, Civilian Response Teams were created and the European Gendarmerie Force as a special formation that can be designated under civilian or military command as an integrated police unit in the ESDP framework.

Unanimous decision-making by the European Council and the Council is needed, main instigator is the PSC; major military body the EUMC; the EUMP ensures competence and support; while the CIVCOM plans and supervise the progress of civilian operations. Decisions often implicate use of financial programmes with the involvement of the European Commission and each operation has financial coverage through *ad hoc* mechanism included in the common action. Administrative expenses are drawn out of the EU budget, while operational expenses from member-states according their GDP or other way adopted by the Council.

Common Security and Defence Policy in the Lisbon Treaty

According the Lisbon Treaty, the EU's competences in the CFSP are simultaneously increased. The Treaty anticipated the position of the High Representative to be coupled with the Commissioner for External Relations, introducing the "High Representative of the Union for Foreign Affairs and Security Policy", at the same time being Vice-President (HR/VP) of the Commission and supported by the European External Action Service. Additionally, the Lisbon Treaty made innovations for CSDP that are potentially of great significance for development of capabilities: creating the function of the HR; establishing the European External Action Service; mutual assistance and solidarity clause; introducing the Permanent Structured Cooperation. Some elements of the Treaty need to be mentioned:

- The Treaty stipulates that "the 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. It shall in that case recommend to the Member States the adoption of ... a decision in accordance with their respective constitutional requirements".
- The Treaty recalls on NATO: "commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation".
- The Treaty "institutionalize" the Petersberg tasks: "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management,

including peace-making and post-conflict stabilization.” Also, the Treaty underlines the contribution which these missions and operations may have in “the fight against terrorism, including by supporting third countries in combating terrorism in their territories.”

- In the Treaty is underlined that the provisions covering the CFSP do not give new powers to the Commission to initiate decisions nor do they increase the role of the EP. This means that the EP shall be regularly consulted and informed by the HR/VP on the main aspects and the CFSP and CSDP development. Still, the fact that the HR is also the Vice-President of the Commission ensures the EP with additional democratic control regarding the appointments, motion of censure and resigns of the Commission and the HR/VP.
- The Lisbon Treaty provision that the EU shall have legal personality is not going to result in changes in the decision-making process. Unanimity shall remain necessary for the decisions having “security and defence implications”. As a general rule, the Treaty shall “not influence on competences and responsibilities of the member-states in the security and defence area, nor over veto competences of each member-state on CFSP decisions, thus remaining subject specific rules and procedures.” There is a possibility for qualified majority voting when the Council adopts decision “defining a Union action or position, on a proposal which the High Representative ... has presented following a specific request from the European Council, made on its own initiative or that of the High Representative.”

The Function of the HR/VP of the Commission

The EU’s HR for CFSP, at the same time the Vice-President of the European Commission, is the successor of the Minister for Foreign Affairs as anticipated by the Constitutional Treaty. It may be noticed that the HR/VP will wear two hats, but if we consider his/her tasks and responsibilities according the Lisbon Treaty, a third hat should be added: the HR/VP shall chair the Foreign Affairs Council. Further, “The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.” This means that the HR/VP shall undertake the responsibilities of the EU’s Presidency regarding the CFSP issues.

Also, the HR/VP shall “contribute through his proposals towards the preparation of the Common Foreign and Security Policy and shall ensure implementation of the decisions adopted by the European Council and the Council” and “shall be put into effect by the High Representative and by the Member States”. Finally, his/her capacity as the VP of the Commission, 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. In completing these tasks, the HR/VP shall “ensure consistency and effectiveness of action by the Union.” He/she “may refer any question relating to the common foreign and security policy to the Council and may submit to it, respectively, initiatives or proposals.”

The Lisbon Treaty confirms the actual practice. In theory, the HR now does not have the right on initiatives and may only speak on behalf of the EU upon the request of the Presidency. In practice, the HR/VP mostly leads the EU on international meetings and conferences; meets and talks with foreign officials; make statements reflecting the EU’s position; submits to the Council reports containing ideas and recommendations; and seats on the negotiating table with third parties. But, the Lisbon Treaty empowers the HR/VP with bigger mandate and authority, while regarding his/her foreign representation responsibilities, the actual format is not ideal for clearness and continuity, as the priority changes with every Presidency rotation.

On the other side, there shall be *checks and balances*. The HR/VP shall have important role in shaping the decision-making process, but when the policy is implemented, shall be bound by the Council's decisions, except those unanimously adopted by the member-states. Also, he/she shall be responsible in front of the European Council and the Council, as well as in front of the EP in his/her capacity as the VP of the Commission. The difficulties that the HR/VP may have:

- Without the representation system, the President of the European Council shall take part in crisis situations and in representing the EU, which can worry the Commission regarding EU's external representation. Certain mechanisms are necessary where EU member-states are kept out of the equation.
- Another complex issue may be the internal coordination in the Commission, especially between the HR/VP and those commissioners still having important responsibilities in the external representation area.
- The connected role between the Commission and the Council may theoretically end badly if these institutions find each other in disagreements about certain political issues. In such case, the HR/VP shall need to use its knowledge and experience to sustain closest possible cohesion among different actors.
- The HR/VP shall be charged with huge work and responsibilities, needing large amount of time and energy. Further, the difficult schedule which the HR/VP needs to endure in attempt to listen the EU's voice abroad, entail the three hats and the job description to outstrip even the best abilities of every individual.
- Another important risk is that the HR/VP may spend a lot of time facing with the inner disputes in attempt everyone to be satisfied, regarding the transfer of EU messages to third parties and on the international scene. His/her main target shall be removing the difficulties or securing the compromise.

Changes in the European External Action Service

The European External Action Service (EEAS) shall be significant asset for supporting the HR/VP regarding the external representation. Together, the HR/VP and the EEAS may contribute for the decrease of different dichotomies which traditionally hampered the Union's external representation. The Service shall assist the HR/VP in formulating the messages by the EU institutions in appropriate manner. Therefore, the Service must be organized in a manner for securing the necessary impulse for convergence, harmonization, coherence and policy implementation.

The Lisbon Treaty foresees no clear mandate for the EEAS: "In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service ... and shall comprise officials from ... the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning ... shall be established by a decision of the Council ... shall act on a proposal from the High Representative after consulting the EP and after obtaining the consent of the Commission."

Most of the organizational and functioning details of the EEAS need to be worked out. Generally, there is an agreement for the *sui generis* nature of the new service, although it is a fact that it does not completely connects with some of the EU pillars. Therefore, there is a lack of clear image for what this mean in the institutional structure frame, as well as for the EEAS degree of autonomy. Ideally, the Council's and Commission's departments with competences in the external relations should unite in the EEAS with all the competent political units of the Council's General Secretariat and the Commission's General Directorates. This means that all the commissioners with external relation responsibilities shall submit reports to the HR/VP.

Regarding the external representation, the Commission delegations must be enforced to become EU's delegations representing it in international organizations and third countries. Appropriate mechanisms needs to be worked out in order to enable the

delegations to perform its tasks, as well as effective liaison offices and cooperation with diplomatic missions of member-states. In international organizations where the EU have a status of an observer, working arrangement shall be very important in order to secure that the EU messages are of some importance.

These organizational aspects over the future position of the EEAS concerns the different actors involved in the shaping and the creation of the EU's external acting. The Commission is concerned over the possible loss of its general responsibilities, as well as the specific competences regarding the external representation. The Council's General Secretariat fears the "centre of gravity" may incline towards the Commission. The member-states are concerned about the EEAS impact, particularly by the possible degradation of national diplomatic services. The middle and small member-states, those not able to be present in all parts of the world are aware of the possibility for the enforcement, thorough EEAS, of their external representation and the decrease of administration expenses. Also, however, they are concerned that the important messages, influencing their crucial national interests, may be adopted by the new bureaucratic machinery in which they are misrepresented, especially at the highest administrative and decision levels.

Accordingly, the main challenge is going to be the protection of the original nature and role of the EEAS, thus needing to face with tensions which are inherent of its *sui generis* nature; achieving perfect centre between the accepted degree of autonomy and the necessary confidence among different institutions; avoiding the complications in EEAS as a consequence of conflicts among different actors; and minimizing the possible duplication of political responsibilities and support functions. Further, member-states shall certainly express their desires to enjoy certain degree of supervision and administrative-budgetary control of the EP.

As a conclusion, there are insecurities regarding the exact shape of EEAS and lot will depend from the political will of member-states and the consensus degree. If it is adequately equipped and with support of member-states, the EEAS shall effectively rise above challenges it faces and play important role in search of greater consistency regarding policy formulation and decision implementation. From CSDP point of view, while the EEAS might be of some use for the general EU approach, there are strong chances for the Service to insist towards more traditional external representation and the civilian dimension of the crisis management.

Mutual Assistance Clause and the Solidarity Clause

Regarding mutual assistance, the Treaty provides that "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter". Member-states have the obligation to secure aid and secure on national basis and shall decide, again on national basis, what kind of aid are going to offer. Theoretically, EU as a whole shall not be involved, but upon the request of the member-state concerned or the HR/VP, General Affairs Council emergency meeting shall be held. The proposal for implementing the clause, which needs to be put into effect upon the request of the member-state victim of terroristic attack or man-made disasters, is submitted by the HR/VP, while the Council adopts decisions with qualified majority and especially in cases with defence implications requesting unanimous decisions. Then member-states are coordinating in the Council. Further, as a response to the fears that the clause might undermine NATO the Treaty stipulates that the solidarity "shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation."

Also, several issues refer to the range and nature of the solidarity clause, such as the civil protection, police or military units preventively mobilized in activities for crisis management. But, do these actions apply "out of area" or on the EU territory and

whether the solidarity clause is legal provision or political principle? From one side, the European Court of Justice jurisdiction implicitly covers the area of the clause, while from the other side military assets mobilized on the EU territory may be viewed in the frame of political and coordinated Council's actions. As the implementation of the solidarity clause might prove difficult because of the political disagreements, the lack of progress might enforce some member-states to move towards accelerated cooperation or the ECJ to extend its jurisdiction on implementation of the clause.

To sum up, the inclusion of mutual assistance and solidarity bears significant burden, but most important is that they exist.

Permanent Structured Cooperation

The Lisbon Treaty gives opportunity for member-states to establish Permanent Structured Cooperation (PSCo) in the defence area, but only for capabilities development and operation assets.

The Lisbon Treaty provisions regarding the modalities for establishing the PSCo and the membership criteria are not fully determined, which is not the case with the decision procedures. Within three months, the Council, after consulting the HR/VP, shall adopt a decision by a qualified majority establishing PSCo and determining the list of participating member-states. Any member-state which wishes to participate in the PSCo shall notify its intention to the Council and to the HR, after which the member-states shall adopt a decision by qualified majority confirming the participation based on the fact whether it fulfils the criteria and makes the commitments referred to in Protocol 10 on PSCo. If a participating member-state no longer fulfils the criteria or is no longer able to meet the commitments regarding Protocol 10, other participating members may adopt a decision by qualified majority for suspending the participation of the member-state concerned.

The establishment of the PSCo, the participation of new members and the suspension of a member are the three areas where the decisions are adopted by qualified majority voting, which means that no single individual member-state has the right of veto, while all other decisions regarding the substance of the PSCo shall be adopted unanimously by participant states. Still, crucial question remains: when and by who shall be the PSCo being established? Protocol 10 refers that the momentum for defying the aims and commitments of the PSCo starts on the day when the Treaty enters in force. Having in mind the existing lack of clearance regarding the commitments and criteria, the possible establishment within three months after entering the Treaty into force means that: (1) preparatory work shall be undertaken; (2) the details of criteria and commitments previously needs to be clarified; and (3) initiative by a small group of capable and/or willing.

According relevant provisions, the PSCo is established in the Council frame, but only participating members may adopt decisions. Also, possibilities are missing on how the relevant Council bodies are going to be involved in the PSCo. In its Preamble, the Protocol 10 recalls on the importance of the HR being fully involved in proceedings relating to PSCo. The Treaty mentions the notification to the HR about the intention of member-states to participate, as well as the consultations with the HR before establishing the PSCo. This represents that the HR shall be in charge of the PSCo meetings in the Council formation. The Council's Secretariat, EUMP, EEAS and the EDA, shall be capable of securing the support for the work and the meetings in the PSCo frame. Since the PSCo must face with structural weaknesses of the European defence, it is important for the member-states to receive larger part of the actions in shaping the relevant decision of special interest.

The membership criteria are defined in article 1 of protocol 10 as general aims, stipulating that PSCo is opened for any member-states which undertake, from the date of entry into force of the Treaty, to:

- proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments; and
- have the capacity to supply, either at national level or as a component of multinational force groups, combat units, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks, within a period of 5 to 30 days, in particular in response to requests from the UN, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2 of Protocol 10 indicates the ways for achieving the objectives pointed out in article 1. More specifically, the member-states:

- a) cooperate, as from the entry into force of the Treaty, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;
- b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics.
- c) Take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures.
- d) Work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the NATO, the shortfalls perceived in the framework of the Capability Development Mechanism.
- e) Take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

Existing Institutional Problems and Shortfalls

Pulling out the competences of the HR and External Affairs Commissioner and uniting them is a solution that avoids the basic conflict among federal and inter-governmental ideas. The HR shall serve the Commission and the Council and such duplication, in practice, is expected to be more challenging for the position holder. Another important issue refers on how the HR is going to balance its role with the President of the European Council, the Commission and the Council. Regarding the fact that with the Treaty a very little is changed in the position of the HR, the restraint is illustrated by member-states in challenging their sovereignty in this area. Change in the name of the HR is with intention to stress that the EU is not becoming a super-state with its own ministers and that the new architecture is not going to replace national politics with common EU policy.

Further, it is not clear how the EEAS is going to be designated in the institutional EU frame. In this regard, it is suggested to be given the status of agency or common service, subordinate to the Council and the Commission. However, it remains unclear the range of representation and the involvement of the Commission and the Council. This is evaluated as of crucial importance regarding the bridging of division between national and European diplomacy for the inclusion of the member-state's Foreign Affairs ministers as "stakeholders" and enforcement of their relation with the High Representative. Still, it needs to be decided how the national diplomatic services and the EEAS are going to complement each other.

Changes regarding flexible arrangements and the CSDP structural cooperation have shown especially controversial, leaving many open questions. UK and some Central and Eastern Europe member-states still have concerns that this might lead to creating blocks in EU, which would be critical for NATO. However, although the functional arrangements of the PSCo are specified in special protocol in the Lisbon Treaty, more of the provisions are still unclear and remains open which membership criteria, with which participants and by which means is the PSCo going to be implemented in practice.

In addition, introducing the mutual assistance clause was disputed among member-states. Not only it was not supported by neutral states, undertaking all efforts for rephrasing this clause in voluntary commitment, but faced with significant contradiction by states closer to NATO. That is why in the Lisbon Treaty the mutual defence clause is clearly relieved: it is specified that the mutual defence shall not prejudice the specific character of the security and defence policy of certain member-states and that this commitment shall be implemented in close cooperation with NATO, which remains the foundation of collective defence for its member-states.

Since the Maastricht Treaty there was a struggle among member-states on issues regarding which decision-making modalities are able to ensure fast reaction and firmness in CSDP. On one side, are the supporters of the unanimous voting because of the reasons of national sovereignty, while on the other side, there is a group of member-states favouring qualified majority voting. Losing the battle on several occasions during the Lisbon Treaty negotiations, there is no possibility to reach widespread of qualified majority voting in all CFSP/CSDP areas.

Although almost 50% of the EU Treaty amendments, contained in the Lisbon Treaty, refer to the foreign, security and defence policy, does not mean that revolutionary changes are achieved. As the controversies among member-states and their national emotions are permanent and intensive, CFSP provisions, and specifically CSDP, still have no potential to be an obstacle in the constitutionalization of the European integration process.

Instead of Conclusion: What is Next?

The Lisbon Treaty provisions regarding the CSDP and the institutions involved, so far failed to answer the fundamental and controversial questions for the course of the European defence.

In the past years since the Lisbon Treaty entered into force, EU stood aside and watched as the France and UK participated in the North Africa crises, without even considering the possibility for intervention according the CSDP frame. If the lesson is learnt, member-states must follow more comprehensive and contemporary regional strategies. In this context, the PSCo and the Solidarity clause have the best implementing potential. In the meantime, the more controversial provisions for mutual assistance and the possibility to entrust the execution of a task to a group of member-states as a last resort, should remain on the agenda.

It was not meant to be like this. On the contrary, the Lisbon Treaty should give the CSDP better institutional arrangements for defining the EU's foreign policy strategic interests. In practice, the Treaty stopped the CSDP in its course. Even in 2012 there was a possibility for renewal process for the CSDP after the initial 20 crisis management operation from 2003 till 2009. The EEAS concluded that the EU's role as a security actor is rapidly expanding, only to confirm that the missions - all civilians - are comprised of around 60 member personnel. In the meantime, the CSDP mission in Libya is facing difficulties; while in Mali the EU did not response and left the risky operation to France.

The abovementioned institutional issues are not completely solved with the Lisbon Treaty as the rivalry among institutions continue despite introducing the new novelties. Having in mind that it is impossible by the Treaty text to pull out the

distribution of responsibilities between institutions, Treaty provisions aim to draw out bigger influence for the newly created structures. Also, member-states get in this picture. Since the beginning it was clear that the political competition instead of actual will for enhancing the effectiveness shall change their conduct towards the implementation of the Treaty provisions and national governments are shaping them according their own fashion.

The Treaty increased the HR's responsibilities in the expense of the Commission and the Presidency, but it does not give bigger authority for the EP, except that the new position of the HR shall be approved by the EP. Also, the Treaty does not exclude the unanimous voting regarding the CSDP, whether about missions, initiatives or contractual arrangement with security or defence implications. While the Lisbon Treaty formally removed the pillar structure, CSDP is still far from other EU politics.

To sum up, the EU performances in security and crisis management according the Lisbon Treaty might be categorized as slow, minimal and timid. EU must prove that CSDP provisions in the Lisbon Treaty are not just symbolic, but consistent and with desired aim. European and national policy-makers must seat on the same table and arrange the details for further implementation of the Lisbon Treaty provisions. On the other side, if the Lisbon Treaty provisions are used in practice, for example, the mutual assistance and the solidarity clause, the EU's profile shall start to gain its significance and cooperation among member-states. But, for this to happen and for EU to become a true security and defence actor, there is a need of more ambitious arrangement among member-states and the new CSDP provisions of the Treaty might just show the way.

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