

European Foreign and Security Policy

Increasing potential for reform – Overcoming blockades – Improving coherence

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Great expectations which have little or no chance of actually coming to fruition – to put it in a nutshell, this is the dilemma of the EU's foreign and security policy. It is also apparent in the draft articles for this policy area that have been submitted by the Praesidium of the Convention. In this sensitive policy area in particular there is a need for clear and transparent procedures and structures. Whereas the draft does in fact on several occasions demonstrate that it has far-reaching ambitions, it still on the whole reverts far too often to the status quo. The numerous repetitions in the Praesidium text of Part 1 and Part 2 of the draft constitution underline the fact that a coherent concept has not as yet materialized.

There are five preconditions for a European foreign and security policy which can overcome traditional blockades, demonstrate that it is able to take action, and be respected by partners throughout the world as an instrument of the Union's foreign policy:

- **Lucid structures**
- **Homogeneous foreign affairs representation**
- **Effective decision-making procedures/institutions**
- **Greater flexibility through alternative forms of action**
- **Secure financial resources**

Lucid structures

In Title B, Part II brings together for the first time the measures to be adopted and activities of the Union in the framework of the CFSP hitherto confusingly distributed throughout the treaties. The instruments of the CFSP no longer include common strategies and have been reduced to principles and general guidelines as well as decisions about actions and positions of the Union. However, this is an unimportant simplification in practical terms, since the instruments which are now described as decisions remain de facto common strategies. In this regard Article 9 (2) contains rules which are identical to the ones currently applied to common strategies.

Security and defence policy has now for the very first time been assigned to a chapter of its own. However, in the case of both the CFSP and the ESDP it is rather difficult to understand the various procedures and decision-making principles on account of numerous cross-references.

All in all the way they are distributed between Part I and Part II for the CFSP and the ESDP displays the same weaknesses as for the area of Justice and Home Affairs. In both instances Part I already contains detailed regulations that should quite clearly be assigned to Part II of the constitution, which should be operational in character. Part II should contain the provisions which, if necessary, could be amended with the help of a less complicated revision procedure. Thus, in order to achieve a more lucid structure, the provisions relating to the CFSP and the ESDP from Article 30 (3) onwards should be transferred to Part II. Retaining CFSP and Justice and Home Affairs policy in Part I to the present extent will also undermine the goal of abolishing the EU pillar structure.

Homogeneous foreign affairs representation

In future European foreign policy is to be in the hands of a **Minister for Foreign Affairs**, so that one person will have both the functions of the High Representative for the CFSP and bear responsibility for the competences assigned to the Commission in this area. However, such a position will only be of use for EU foreign policy if there is a clear distribution and definition of competences between the Minister for Foreign Affairs, the President of the Council, and the President of the Commission.

Thus whoever has this office will, in addition to the force of his personality, need to be able to rely on hard-and-fast competences that are stipulated in the treaty. Hitherto the treaties have not accorded the High Representative for the Common Foreign and Security Policy the **right to initiate** legislation. The minister is now able to do this in certain areas of the CFSP, either on his own or in cooperation with the Commission. Furthermore, in Article 10, Part II, which marks a new departure, the minister has been assigned the task of close coordination with the Ministers of Foreign Affairs of the member states in the case of joint decisions on the basis of Article 29 (5), which involve questions of general foreign and security policy importance. In addition to this the role of European Minister for Foreign Affairs has been enhanced by the possibility that he may represent a common EU position in the UN Security Council (Part II, Article 14, paragraph 2). This would certainly be an important step towards strengthening the Union's foreign policy coherence. However, the EU member states in the Security Council would first of all have to apply for this to happen. The extent to which the EU states represented in the Security Council will in fact be prepared to yield to the EU Minister of Foreign Affairs in the debates will in future be another unmistakable sign of the seriousness with which they wish to support a European foreign and security policy.

However, in the EU questions of power also crystallize decisively in regard to budgetary matters. Here the draft still lacks clarity. For this reason it must be stipulated in the treaty that the European Minister of Foreign Affairs has control over both the budgetary appropriations that have hitherto been assigned to the High Representative in the Council, and also the budgets of the Commissioner responsible for the foreign policy of the Commission.

In the course of his duties the Union's Minister of Foreign Affairs will to a crucial extent depend on the member states to support his policies, or at the very least to refrain from undermining them with unilateral activities. In Part I, Article 29 (5) now stipulates the **commitment to convergence of foreign policy actions**. This article calls for solidarity and coherent action in the foreign and security policy of the member states of the Union even more unmistakably than Article 11(2) of the Treaty of Nice. Such commitments are important, especially against the background of the Iraq crisis. However, experience shows that in times of crisis such articles merely have a decorative function if the member states lack the political will to come to an agreement.

Effective decision-making procedures/institutions

In general, in the draft that has been submitted measures adopted within the framework of the CFSP and the ESDP also require unanimity. In the CFSP it is possible to deviate from this rule when the preconditions stipulated in Part II, Article 9 (2) have been met. However, there is the following restriction:

“If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.”

Thus a considerable barrier to the use of qualified majority decision-making has been retained (Art. 23, para. 2 TEU). Under the most favourable conditions a decision about the matter can, after much delay, be reached unanimously in the European Council. In the worst-case scenario, there will be no decision at all.

The additional matter inserted in Article 9 (3):

“The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 above”

continues to prescribe unanimity as the gateway to qualified majority voting.

The unanimity requirement also applies to the ESDP and is stipulated in Part II, Article 17 (2). This means that all member states must first reach agreement before there can be progress by a group of states in the area of military and security policy.

The unanimity barriers for the CFSP and the ESDP now contained in the draft treaty will prevent fast and effective decision-making on the EU level. In a Union of 25 it will be virtually impossible to generate momentum or dynamism in policy areas where unanimity prevails. **For this reason qualified majority voting should become the rule for the CFSP and the ESDP insofar as the treaty does not specify exceptions where unanimity must prevail, especially in questions related to military or defence policy.**

Article 17 (1) of the Treaty of Nice states: *“The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.”* In the draft treaty this aim has now become more specific as a result of the establishment of a **European Armaments and Strategic Research Agency** – Art. 30 (3), Art. 19 (Part II) – specially designed for this task. The declaration issued after the four-nation summit on 29 April was also in favour of such an agency.

Greater flexibility through alternative forms of action

The draft constitution defines three principal forms of flexible cooperation for the ESDP:

- **cooperation on the basis of Art. 30 (5) Part I, according to which the Council “...can entrust the execution of a task ... to a group of Member States“ which possess the required capabilities and wish to take part in this mission;**
- **structured cooperation on the basis of Art. 30 (6) exclusively for military measures;**
- **structured cooperation on the basis of Art. 30 (7) to fulfil the solidarity commitment (based on Article V of the Brussels pact).**

Structures and procedures for this are stipulated in Part II (see inter alia Art. 18, 20 and 21). The term “enhanced cooperation” used in the Treaty of Nice is now completely absent. In order to attain greater transparency and coherence in this area, the stated possibilities of civil and military cooperation should be preceded by a single article which:

- reverts to the term “enhanced cooperation”, since this was extended to cover the CFSP in the Treaty of Nice and should also be applied to the ESDP;
- applies qualified majority voting to action in the framework of enhanced cooperation;
- stipulates in the treaty the option of constructive abstention for member states which are unable to subscribe to these decisions.

In connection with military support in the context of Art. 30 (7), there is a need to discuss the **solidarity clause** newly introduced in the draft treaty (Article X, Part I). The solidarity clause is capable of imparting a new quality to the treaty. It envisages

concrete support – also of a military kind – in the case of a terrorist threat. Here, as in the case of Article 29, it again becomes clear that the way in which it is formulated stems from an assessment of the current security situation. However, the restriction to terrorist threats, which in an emergency could be interpreted differently by the various member states, means that the clause falls short of what is needed. The EU, which, according to its treaties, has been moving towards a Defence Union, should have a homogeneous solidarity clause in its treaty which also includes armed aggression on the sovereign territory of member states. This eventuality has been incorporated into the draft treaty in Art. 30 (7), Part I, in conjunction with Art. 21, Part II, and in the past was covered by the voluntary support of member states accorded without reference to the treaties. **A homogeneous solidarity clause would provide for both eventualities – terrorist threats and armed aggression on the sovereign territory of a member state – in one article.**

Secure financial resources

The reforms in the area of the CFSP and the ESDP contained in the draft treaty need to be complemented by a corresponding financial structure. Measures adopted within the framework of the CFSP should continue to be financed via the community budget, though they are for the first time summarized in an article of their own. For initiatives with a military or defence policy character, a so-called start-up fund (see Art. 22, Part II) will be set up, which is designed to make action without reference to the treaties possible within a group of states. The suggestion that such a fund should be established separately from the EU budget is a step in the right direction, for this is the only way to ensure that in a crisis the states able to take action will have direct access to these financial resources.

The future of the European foreign and security policy is not only dependent on clear decision-making structures and institutions, but also and to a crucial extent on the political will of the member states to implement it. The extent of the reforms which will be incorporated into the constitution in this area is thus an unmistakable yardstick of the willingness to strengthen the Union in this policy area.