

# EUROPEAN FOREIGN POLICY AFTER LISBON: STRENGTHENING THE EU AS AN INTERNATIONAL ACTOR

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## **Abstract**

*Following years of compromise, the Treaty of Lisbon finally came into force on December 1, 2009. This article analyses the new substantive law regulations and institutional arrangements of the Lisbon Treaty in the field of external relations and their impact on the effectiveness of the European foreign policy and the European Union as an international actor. For this purpose, this paper starts with analyses of the principle of coherence and continues with the reformed structure and legal personality of the EU, which was previously a serious challenge for the coherence of the EU's foreign policy. Finally, this article examines the functions and implications of institutional innovations, namely, the positions of the High Representative of the Union for Foreign Affairs and Security Policy, the President of the European Council and the European External Action Service. This paper argues that the Treaty of Lisbon improves the preconditions for a higher degree of coherence in European external relations and strengthens the EU as an international actor, even if the success of the European foreign policy, especially in the field of CFSP, still depends to a great extent on the Member States' willingness to cooperate.*

**Keywords:** *European Foreign Policy, Treaty of Lisbon, Common Foreign and Security Policy, legal personality of the EU, coherence*

## **Introduction**

After the failure of the Treaty establishing a Constitution for Europe and a “period of reflection”, the agreement on a “Reform Treaty” was reached at an informal summit in Lisbon on October 19, 2007. Three months later, on December 13, the Treaty of Lisbon was signed and came into force on December 1, 2009. The innovations of the Treaty of Lisbon are not as far reaching as those of the Constitutional Treaty. Nevertheless, they have the potential to increase the effectiveness of European foreign policy<sup>1</sup> and to strengthen the EU as an international actor. Coherence is a necessary precondition for the efficacy of foreign policy not only of the EU but of all international actors.<sup>2</sup> In the past, however, coherence constituted a challenge to European foreign policy. One of the reasons was the structure of the EU and the differences in the institutional involvement and procedures between different issue areas of the EU's foreign policy. The issue of the legal

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<sup>1</sup> For the purpose of this article, the term “European foreign policy” refers to the intergovernmental and supranational aspects of the EU's foreign policy, as well as the national foreign policies of the 27 EU Member States.

<sup>2</sup> See Clara Portela and Kolja Raube, “(In-)Coherence in EU Foreign Policy: Exploring Sources and Remedies” (Paper presented at the European Studies Association Bi-annual Convention, Los Angeles, April 2009); Uwe Schmalz, „Kohärenz der EU-Außenbeziehungen? Der Dualismus von Gemeinschaft und Gemeinsamer Außen- und Sicherheitspolitik in der Praxis“ [Coherence of the EU's External Relations? The Duality of Community and Common Foreign and Security Policy in the Praxis] (Arbeitspapier/working paper, Konrad Adenauer Stiftung, Sankt Augustin, 1997), 4.

personality of the EU, which is closely connected to the EU's structure, has been presented as a serious obstacle to the EU's foreign policy and to the perception of the EU as an international actor. On the other hand, there have also been discrepancies between the agreed Common Foreign and Security Policy (CFSP) at European level and the varying behaviour of the Member States at national level.

The Treaty of Lisbon has led to a simplification of the EU's structure, the explicit provision on the EU's legal personality and institutional amendments related to the European foreign policy, namely, the new position of the President of the European Council, the revised position of the High Representative and a new institution, the European External Action Service. These substantive and institutional innovations affect European external relations, particularly their coherence, in a positive way. In contrast, the Treaty of Lisbon has no effect on the principle of coherence codified in the Treaty on European Union (TEU), since the wording of the relevant Articles was marginally changed; the legal value of the principle of coherence remained unchanged.

Since coherence is a crucial precondition for the efficacy of foreign policy, it seems appropriate to begin this paper by examining the treaty's obligations related to the coherence of the European foreign policy. Subsequently, the article will analyse how the abovementioned amendments influence the European foreign policy and the role of the EU as an international actor. Starting with the analysis of the reformed structure and the legal personality of the EU, the article continues with the examination of the institutional innovations and their consequences for the European foreign policy.

## Coherence as a Principle of European Foreign Policy

As previously stated, coherence is a necessary precondition for the efficacy of foreign policy not only of the EU but of all international actors. Coherence can be defined as a principle that guides foreign policy. In the case of the EU, coherence indicates, on the one hand, the degree of congruence between the external policies of the Member States and that of the EU (vertical direction) while, on the other hand, it refers to the level of internal coordination of EU policies (horizontal direction).<sup>3</sup> Since the establishment of the EU with the Treaty of Maastricht, the principle of coherence in the external relations of the EU has been codified in the TEU. According to Article 3 of the Treaty on European Union in its consolidated version of Nice (2002)/TEU(N),<sup>4</sup> the Union "shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies". The Article therefore provides for the coordination of and coherence in the "external activities as a whole", while consistency has to be ensured within and between all components of the EU's external relations.<sup>5</sup> This provision can be understood as a principle of horizontal coherence since it refers to the level of internal coordination of the EU policies and implies that the various external policies of the EU should converge or at least not contradict one another. The Council and the Commission are

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<sup>3</sup> For the purpose of this article, the term "coherence" is used as a synonym of "consistency". For a discussion on the difficulties associated with the definition of "coherence" and with the delimitation between "coherence" and "consistency," see Simon Nuttall, "Coherence and Consistency", in *International Relations and the European Union*, ed. Christopher Hill and Michael Smith (Oxford: Oxford University Press, 2005), 91–112; Christian Tietje, "The Concept of Coherence in the Treaty on European Union and the Common Foreign and Security Policy", *European Foreign Affairs Review*, vol. 2 (1997): 211-233; Pascal Gauttier, "Horizontal Coherence and the External Competencies of the European Union", *European Law Journal*, vol. 10 (2004): 23-41.

<sup>4</sup> Article C of the Treaty on European Union in the Maastricht version /TEU(M).

<sup>5</sup> See Simon Duke, "Consistency as an Issue in EU External Activities" (working paper 99/W/06, European Institute of Public Administration, Maastricht, 1999). It is worth noting that the TEU did not refer specifically to "foreign policy" as might have been expected.

charged with the particular responsibility to “ensure such consistency and shall cooperate to this end”.<sup>6</sup> The objective of achieving coherence in the external activities of the EU is, therefore, to ensure that the Union can “assert its identity on the international scene”.<sup>7</sup>

Member States are also obliged to “support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity”, and to “work together to enhance and develop their mutual political solidarity”.<sup>8</sup> Furthermore, Member States are required to “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations”.<sup>9</sup> The abovementioned provisions of Article 11(2) of the TEU(N) apply to the CFSP and can be understood as a principle of vertical coherence. The Council is charged with the responsibility to ensure compliance with this principle of loyalty.<sup>10</sup>

The Lisbon Treaty maintains the principles of both horizontal and vertical coherence. According to Article 21(3) of the revised Treaty on European Union (TEU(L)), “The Union shall ensure consistency between the different areas of its external action and between these and its other policies”. As a result, the wording and the obligations of Article 21(3) of the aforementioned treaty are very similar to those of Article 3 of the TEU(N). Nevertheless, in contrast to the previous responsibility for compliance borne by the Commission and the Council, now, also the High Representative is responsible for horizontal coherence.<sup>11</sup>

With respect to vertical coherence, Article 24(3) of the TEU(L) can be therefore considered. Similar to the principle of horizontal coherence, the wording and the substance of the principle of vertical coherence, which was previously laid down by Article 11(2) of the TEU(N), was not amended significantly by the Lisbon Treaty. Article 24(3) of the TEU(L) states:

*The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.*

*The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.*

Alongside the previous responsibility of the Council for conformity, now the High Representative is also responsible for compliance with the principle of vertical coherence.<sup>12</sup>

Therefore, with respect to the principles of vertical and horizontal coherence, the Treaty of Lisbon did not bring significant changes since under the TEU the institutions of the EC/EU, as well as the Member States, were already obliged to cooperate and to coordinate their policies in order to achieve a higher degree of coherence in the European foreign policy. The Lisbon Treaty does not

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<sup>6</sup> Article (3) of the TEU(N).

<sup>7</sup> Article 2 of the TEU(N).

<sup>8</sup> Article 11(2) of the TEU(N).

<sup>9</sup> Article 11(2) of the TEU(N).

<sup>10</sup> See Article 11(2) of the TEU(N).

<sup>11</sup> See Article 21(3) of the TEU(L), which is nearly identical with Article III-292 of the Constitutional Treaty according to which “The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.”

<sup>12</sup> See Article 24(3) of the TEU(L).

influence the legal nature of the principle of coherence. The legal effect of the obligations to cooperate and to coordinate is still relativised by the fact that neither the principle of horizontal coherence of Article 21(3) nor the principle of vertical coherence of Article 24(3) of the TEU(L) are justiciable, because these Articles do not fall under the jurisdiction of the Court of Justice of the European Union (ECJ), which was the case concerning Articles 3 and 11(2) of the TEU(N).<sup>13</sup> The exclusion of the principle of vertical coherence in the CFSP from the supervision of the ECJ illustrates the lingering discrepancy between the Member States' general willingness to cooperate and their more specific willingness to determine the character of the European foreign policy in concrete situations, and continues to limit the legal aspects of the EU's foreign policy. With respect to vertical coherence, the Treaty of Lisbon has failed to discourage Member States from pursuing national foreign policies, diverging from the agreed European positions and, therefore, to increase the vertical coherence of the European foreign policy.

Furthermore, the explicit obligations of the Member States “to comply with the Union's action” and “to support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity”<sup>14</sup> appear to become ambivalent when taking into account Declarations 13 and 14 concerning the CFSP.<sup>15</sup> Declaration 13 states:

*The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, [...] do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.*

Moreover, Declaration 14 reiterates once again the sovereignty of national foreign policy by affirming that:

*The provisions covering the Common Foreign and Security Policy [...] will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations. (ibid.)*

In light of these Declarations, it is not clear how “an ever-increasing degree of convergence of Member States' actions”<sup>16</sup> and compliance with the EU's foreign policy can be achieved when the provisions on the CFSP do not affect the Member States' responsibility for the formulation and conduct of their foreign policies. Furthermore, the specific emphasis on the UN Security Council seems to reduce the added value of Article 34(2) of the TEU(L), according to which “when the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position”.<sup>17</sup> In view of the ongoing debates on strengthening the European profile within the UN and on the advantages and disadvantages of a single EU seat in the

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<sup>13</sup> According to Article 24 of the TEU(L) and Article 275 of the Treaty on the Functioning of the European Union (TFEU), the Court of Justice of the European Union (ECJ) has no jurisdiction in the field of the CFSP. See Hans-Holger Herrfeld, “Artikel 46 EUV” [Article 46 TEU], in *EU-Kommentar*, ed. Jürgen Schwarze, (Baden-Baden: Nomos, 2009, 229.

<sup>14</sup> Article 24(3) of the TEU(L).

<sup>15</sup> See TEU(L).

<sup>16</sup> Article 24(2) of the TEU(L).

<sup>17</sup> See Article 34(2) of the TEU(L).

UN Security Council,<sup>18</sup> this provision could potentially contribute to a more consistent and, therefore, more influential representation of the EU in the UN.<sup>19</sup> However, Declaration 14 seems to constrain the provisions of the abovementioned article, reducing the possibility of the High Representative, and the EU as a whole, to extend their influence within with the UN Security Council.

As a result, the overall impact of the Treaty of Lisbon on the codified principles of coherence in the European foreign policy is very moderate. Nevertheless, some positive effects can be expected from the reformation of the EU's structure and the explicit regulation of its legal personality, as well as from certain institutional innovations that will be discussed below.

## Structure and the Legal System of the EU after Lisbon

The relationship between the Treaty on European Union and the Treaty establishing the European Community (TEC) was a subject for discussion since the signing of the Maastricht Treaty. The prevalent form to describe the structure of the EU was a temple model featuring the three pillars.<sup>20</sup> The pillar structure of the EU and the differences in the institutional involvement and procedures between different issue areas of the European foreign policy constituted a challenge to the coherence of the EU's foreign policy in the past.

Although the Treaty of Lisbon sets out the relationship between the European treaties in a new way, the EU is still founded on two treaties as was the case prior to the Treaty of Lisbon. In contrast to the Treaty establishing a Constitution for Europe, which envisaged the incorporation of the TEU and the TEC into one treaty, under the Treaty of Lisbon the EU is founded on the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU(L)).<sup>21</sup> According to Article 1 of the TEU(L), both Treaties have the same legal value. They constitute a largely homogeneous core of the EU.<sup>22</sup>

Nevertheless, the Treaties' equal value does not, of course, mean a similar application of the supranational regulations and procedures in all areas. The Treaty of Lisbon does not change the CFSP's exceptional position; instead it systematically emphasises its special status by the fact that,

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<sup>18</sup> See Edith Drieskens, Daniele Marchesi, and Bart Kerremans, "In Search of a European Dimension in the UN Security Council", *International Spectator*, 42:3 (2007), 421–30.

<sup>19</sup> See Jan Gaspers, "The quest for European foreign policy consistency and the Treaty of Lisbon", *Humanitas Journal of European Studies*, vol. 2:1 (2008): 38.

<sup>20</sup> The TEU separates the three issue areas: according to Article 1 of the TEU(N) (Article A of the TEU(M)), "The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty". Thus, the intergovernmental areas of Titles V (CFSP) and VI (Police and Judicial Cooperation in Criminal Matters/PJCC) should "supplement" the supranational European Communities. The common provisions of the TEU should resemble the roof (Articles 1 to 7 of the TEU(N)) and the final provisions the bottom of the temple (Articles 46 to 53 of the TEU(N)), which are meant to connect the three pillars (see Rudolf Streinz, *Europarecht* [European Law] (Heidelberg, 2008), 34 – 35). Although the literature increasingly pointed to the fact that "the 'bits and pieces', which together make up the entity which is referred to as the European Union, are more connected" (Ramses A. Wessel, "The Inside looking out: Consistency and Delimitation in EU External Relations", *Common Market Law Review*, vol. 37 (2000): 1135) and that the metaphor of the Greek temple does not mirror the connection between pillars in an appropriate way (see Armin Hatje, *Loyalitätsprinzip als Rechtsprinzip in der Europäischen Union* [Principle of Loyalty as a Legal Principle in the European Union] (Baden-Baden: Nomos, 2001), 11); nevertheless, the EU's separated structure was not to deny, and the temple model continued to be a prevalent instrument to describe it.

<sup>21</sup> See Article 1(2) of the TFEU.

<sup>22</sup> See Jörg Philipp Terhechte, "Der Vertrag von Lissabon: Grundlegende Verfassungsurkunde der europäischen Rechtsgemeinschaft oder technischer Änderungsvertrag?" [The Treaty of Lisbon: Fundamental Constitutional Document of the European Law Community or Technical Revision Treaty?], *Europarecht*, vol. 2 (2008): 153.

in contrast to the Police and Judicial Cooperation in Criminal Matters (PJCC) which became part of the TFEU, the CFSP is an intergovernmental part of the TEU(L), with unanimity as a prevailing decision-making procedure.<sup>23</sup> The wording of the Treaty emphasises the exceptional status of the CFSP, which is further defined as “subject to specific rules and procedures” and “the specific role of the European Parliament and of the Commission in this area”,<sup>24</sup> which in turn is further determined by the Treaties. Thus, the Treaty of Lisbon does not abolish the separation of the issue areas, but it merely displaces the axis of separation, while the dualism of the EU’s supranational and intergovernmental external relations remains the same. In other words, the Treaty of Lisbon simplified the structure of the EU but it failed to unify it.

## The EU’s Single Legal Personality

The question of the EU’s legal capacity was closely connected to the debate on the relationship between the TEU and the TEC. In contrast to the expressly regulated legal personality of the European Community in Article 281 of the TEC, the issue of the EU’s legal personality was neither explicitly regulated in the Treaties of Maastricht and Amsterdam nor in the Treaty of Nice, while every previous revision of the EU’s legal basis reinforced the discussion on its legal capacity with strong arguments on both sides – in favour of an implicit derivation of the EU’s legal personality from the provisions of the TEU, as well as against it.<sup>25</sup> The ambiguity of the legal regulations with respect to the EU’s legal personality was a source of uncertainty in the international legal relationships.

By the Treaty of Lisbon, the High Contracting Parties established among themselves a new European Union,<sup>26</sup> which has – according to Article 47 of the TEU(L) – a legal personality. The acquirement of legal personality of the newly established EU was a logical consequence of the amendment of the three-pillar structure, since the EU replaced and succeeded the European Community (EC).<sup>27</sup> The fact that the EU’s legal personality is now formally recognised under

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<sup>23</sup> Although there is a small number of exceptions (Article 31(2) of the TEU(L)), unanimity is still the prevailing rule in the area of the CFSP (Articles 24(1) and 31(1) of the TEU(L)). Article 31(1) of the TEU(L) contains the option of “qualified abstention” as a flexible alternative to unanimity. “Qualified abstention” was already accepted by Article 23(1) of the TEU(N), where every Member State could abstain in a vote by making a formal declaration. Subsequently, the Member State “shall not be obliged to apply the decision, but [it] shall accept that the decision commits the Union”.

<sup>24</sup> See Article 24(1) of the TEU(L). Furthermore, the ECJ does not have jurisdiction with respect to the CFSP, with the exception of the monitoring of compliance with Article 40 of the TEU(L) and the review of the legality of certain decisions as provided for by Article 275 of the TFEU.

<sup>25</sup> See Roland Bieber, Astrid Epiney and Marcel Haag, *Die Europäische Union. Recht und Politik* [The European Union. Law and Politics], 7. Auflage, (Baden-Baden: Nomos, 2006), 99 & 534; Oliver Dörr, “Zur Rechtsnatur der Europäischen Union” [On the Legal Nature of the European Union], *Europarecht*, vol. 4 (1995): 334-348; Jan Klabbers, „Presumptive Personality: The European Union in International Law“, in *International Law Aspects of the European Union*, ed. Martti Koskeniemi (The Hague: Martinus Nijhoff, 1998), 231 – 253; Daniel Thym, „Die völkerrechtlichen Verträge der Europäischen Union“ [The International Agreements of the European Union], *Zeitschrift für Ausländisches Öffentliches Recht*, vol. 66 (2006): 863 – 925; Christian Tomuschat, „Die Europäische Union als ein Akteur in den internationalen Beziehungen“ [The European Union as an Actor in International Relations], in *Verhandeln für den Frieden – Negotiating for Peace, Liber Amicorum Tono Eitel*, eds. Jochen Frowein, Klaus Scharioth, Ingo Winkelmann and Rüdiger Wolfrum (Berlin: Springer, 2003), 799 – 821; Ramses A. Wessel, “The International Legal Status of the European Union”, *European Foreign Affairs Review*, vol. 2 (1997): 109 – 130; Matthias Pechstein, “Rechtssubjektivität für die Europäische Union?” [Legal Personality for the European Union?], *Europarecht*, vol. 31 (1996): 137 – 144.

<sup>26</sup> See Article 1 of the TEU(L).

<sup>27</sup> See Article 1 of the TEU(L).

Article 47 of the TEU(L) “simplifies its status and appears as an important step towards legal certainty”.<sup>28</sup> In other words, the EU became indisputably an actor under international law.

Furthermore, the Treaty of Lisbon clarifies the controversy surrounding the institutions of the EU/EC, which are now listed in Article 13(1) of the TEU(L), and includes, alongside the European Parliament, the Council and the European Commission, the European Council, the position of which within the institutional framework was long a subject of debate in the literature.<sup>29</sup>

As a consequence of this legal personality being acquired by the EU, the diplomatic representation came under the Union’s authority: the Commission’s delegations became the Union’s delegations under the authority of the High Representative and are part of the structure of the European External Action Service (EEAS).<sup>30</sup>

These amendments clearly strengthen the EU’s status as an international actor, since the Treaty explicitly regulate the legal personality of the EU, and, furthermore, it clarifies the question concerning the Union’s diplomatic relations and the status of its institutions, which solidifies the EU’s position in the international arena under international law.

## Consequences of the EU’s Legal Personality for the CFSP

Regarding the CFSP, the explicit regulation of the EU’s legal personality has at least two consequences: first, it refers to the question concerning the person who acts as a European party in international relations, particularly as a “European contracting party” in international agreements, and second, it corresponds to the external means of the EU to implement the CFSP.

Uncertainty with respect to the EU’s legal capacity prior to the Treaty of Lisbon meant uncertainty concerning first abovementioned question. Accepting the arguments in favour of the implicit derivation of the EU’s legal personality from the provisions of the TEU meant that the activities in the field of the CFSP were – from a legal point of view – to be classified as the EU’s activities in accordance with the TEU. Rejecting these arguments meant that the EU’s Member States, rather than the EU itself, were acting jointly on the legal basis of the TEU. The subsequent ambiguity with regard to the EU’s legal personality gave rise to uncertainty with respect to the European legal partner in international legal relationships. Following the entering into force of the Lisbon Treaty, it is now the EU that always acts “without regard to the question whether a specific action is a matter of European competency or of Member States’ responsibility – or of both”.<sup>31</sup>

The second consequence of Article 47 of the TEU(L) corresponds to the EU’s external means to implement the CFSP. The main instruments to implement the CFSP, such as common strategies, joint actions or common positions, were previously listed in Article 12 of the TEU(N). The Treaty of Lisbon reorganises the system of the instruments of the CFSP by listing the general guidelines

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<sup>28</sup> Ingolf Pernice, “The Treaty of Lisbon: Multilevel Constitutionalism in Action”, *Columbia Journal of European Law*, vol. 15: 3 (2009): 396.

<sup>29</sup> See Andreas Haratsch, Christian Koenig and Matthias Pechstein, *Europarecht* [European Law] (Tübingen: Mohr Siebeck, 2006), 42; Cordula Stumpf, „Artikel 3 EUV“ [Article 3 TEU], in *EU-Kommentar*, ed. Jürgen Schwarze, 2. Auflage, (Baden-Baden: Nomos, 2009), 77.

<sup>30</sup> See Council of the European Union, “Presidency Report to the European Council on the European External Action Service” (Brussels, 23 October 2009, 14930/09).

<sup>31</sup> Ingolf Pernice, “The Treaty of Lisbon: Multilevel Constitutionalism in Action”, *Columbia Journal of European Law*, vol. 15: 3 (2009): 397.

and decisions as the central instruments of the CFSP in Article 25 of the TEU(L).<sup>32</sup> The instruments of Article 12 of the TEU(N), as well as those of Article 25 of the TEU(L), have as primary internal function the coordination of the Member States' external activities:

*Although the external dimension of those competences in Title V [CFSP] and VI [PJCC] TEU is obvious, it is ironic to note that [...] they basically relate to the relationship between the Union and its Member States rather than its relationship with third states and other international organisations. This means that explicit external competencies are largely absent in these areas [...].*<sup>33</sup>

With regard to the external means for the implementation of the CFSP, the authority to conclude international agreements may be considered, which was previously regulated by Article 24 of the TEU(N):

*When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title [CFSP], the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency. (ibid.)*

In contrast to Article 300 of the TEC, Article 24 of the TEU(N) contained no explicit reference to the contracting party and let the question unanswered about whether the EU or the Member States acting jointly could conclude such international agreements. On the one hand, these could be understood as an "abbreviated formulation" for the conclusion of a series of treaties of the Member States'; however, such interpretation does not explain why the Member States that abstained from voting became a contracting party.<sup>34</sup> This contradiction would be resolved if one considered the EU as a contracting party to an international agreement concluded under Article 24 of the TEU(N). Nevertheless, this interpretation is again not convincing in light of Article 24(5) of the TEU(N), according to which

*No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally. (ibid.)*

This provision supports the interpretation that it is not the EU but the Member States, that act within a framework of the EU, conclude international agreements under Article 24 of the TEU(N).

In light of the debates on international agreements and the EU's legal capacity, the provision of Article 24(6) of the TEU(N), according to which agreements concluded under Article 24 of the TEU(N) "shall be binding on the institutions of the Union", was ambivalent. On the one hand, this provision was understood as evidence of the EU's legal personality.<sup>35</sup> On the other hand, it has been argued that the institutions listed in Article 5 of the TEU(N) are institutions of the EC, and the

<sup>32</sup> The previous instruments of common action and common position fall under the category of "decision", which is further differentiated into "decisions" and "arrangements for the implementation of the decisions"; see Article 25(b) of the TEU(L).

<sup>33</sup> Andrea Ott and Ramses Wessel, "The EU's External Relations Regime", in *The European Union and Its Neighbours*, eds. Steven Blockmans and Adam Lazewski (The Hague: Asser Press, 2006), 29.

<sup>34</sup> The possibility of "qualified abstention" is regulated by Article 23(1) of the TEU(N).

<sup>35</sup> See Jörg Philipp Terhechte, „Artikel 24 EUV“ [Article 24 TEU], *EU-Kommentar*, ed. Jürgen Schwarze, 2. Auflage, (Baden-Baden: Nomos, 2009), 146.

European Council mentioned in Article 4 of the same treaty is not independent enough to be considered as an institution of the EU.<sup>36</sup> Thus, from a legal point of view the EU had no institutions of its own that could be bound by international agreements under Article 24 of the TEU(N).

The increasing praxis of international agreements, concluded in the name of the European Union on the basis of Article 24 of the abovementioned treaty, put forth arguments in favour of the EU's legal personality.<sup>37</sup> On the other hand, even if the EU acted as if it had the legal capacity, the lack of commitment by the Member States to grant the EU its legal personality explicitly or implicitly through the amendment of the Treaty could not be substituted through the Council's varying contractual practice. As a result, the Member States jointly, and not the EU, constituted a contracting party to international agreements concluded on the basis of Article 24 of the TEU(N), while the external instrument of legal international agreements on the CFSP was not a legal instrument of the EU.

With an explicit provision on its legal personality in the Treaty of Lisbon, the EU is now able to take legal actions concerning itself, while the legal actions taken on the basis of the TEU(L) – including those in the area of the CFSP – are actions of the EU and not of the Member States. Since the Lisbon Treaty entered into force the EU became a contracting party to international agreements. Article 216(1) of the TFEU contains an explicit provision on the conclusion of international agreements by the EU in the scope of its responsibilities:

*The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope. (ibid.)*

Furthermore, Article 216(2) of the TFEU stipulates that international “agreements concluded by the EU are binding upon the institutions of the Union”, which are now expressly listed in Article 13(1) of the TEU(L), as well as on the Member States.<sup>38</sup>

The Union's authority to conclude international agreements on the CFSP is explicitly regulated by Article 37 of Chapter 2 on “Specific Provisions on the Common Foreign and Security Policy” of the TEU(L), according to which “The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter”.<sup>39</sup>

The procedure for the conclusion of an international agreement within the framework of the CFSP is still based on unanimity,<sup>40</sup> and thus differs from the general procedure for the conclusion of international agreements based on qualified majority.<sup>41</sup> Nevertheless, with the explicit treaty-making authority in the scope of the CFSP the EU acquired for the first time an external legal instrument to execute the CFSP, which goes beyond the instruments for coordination of the Member States' external activities within the EU framework.

<sup>36</sup> See Andreas Haratsch, Christian Koenig and Matthias Pechstein, *Europarecht* [European Law], 5. Auflage, (Tübingen: Mohr Siebeck., 2006), 40.

<sup>37</sup> See Daniel Thym, „Die völkerrechtlichen Verträge der Europäischen Union“ [The International Agreements of the European Union], *Zeitschrift für Ausländisches Öffentliches Recht*, vol. 66 (2006): 863 - 925.

<sup>38</sup> See Article 216(2) of the TFEU.

<sup>39</sup> Article 37 of the TEU(L).

<sup>40</sup> See Article 218(8) of the TFEU and Article 31(1) of the TEU(L).

<sup>41</sup> See Article 218(8) of the TFEU.

## **Institutional Reforms and their implications for European Foreign Policy**

With regard to the EU's foreign policy, the Treaty of Lisbon introduced three major institutional innovations, namely, the position of the High Representative of the Union for Foreign Affairs and Security Policy, the position of the President of the European Council and the European External Action Service. In this part of the paper, the functions of each of these institutions and their influence on the coherence and the effectiveness of European foreign policy will be analysed in view of the provisions of the Lisbon Treaty.

### ***High Representative of the Union for Foreign Affairs and Security Policy***

Compared with the position of the High Representative for the CFSP, the Lisbon Treaty strengthens the new position of the High Representative of the Union for Foreign and Security Policy (FASP), who is responsible for conducting the Union's foreign and security policy. The High Representative for FASP enjoys the right to submit proposals for the development of the CFSP and the common security and defence policy (CSDP), which he or she shall carry out as mandated by the Council.<sup>42</sup>

Furthermore, the High Representative for FASP chairs the newly established Foreign Affairs Council<sup>43</sup> and is simultaneously one of the Vice-Presidents of the Commission.<sup>44</sup> Consequently, the formation previously known as "the Troika" is now incorporated into the one position of the High Representative for FASP.<sup>45</sup>

The incorporation of the supranational and intergovernmental elements into the one position of the High Representative aims at increasing the horizontal coherence of the European foreign policy. The High Representative "shall ensure the consistency of the Union's external action" and is – as one of the Vice-Presidents of the Commission – "responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action".<sup>46</sup> On the one hand, the wide scope of the High Representative's responsibility for coherence in external relations can be understood as a single mandate over the external relations of the Commission,<sup>47</sup> which would constrain the power of certain Commissioners. On the other hand, it seems to be more appropriate to interpret this position as an overall coordinating function enclosing all external dimensions of the Commission's policy.<sup>48</sup> Nevertheless, the High Representative obtains a special status within the Commission, which results from his or her appointment by the European Council. This exceptional status, as well as the responsibility for overarching coordination of the Commission's policies with an external dimension, is a potential source of tension between the High Representative and certain Commissioners, as well as the

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<sup>42</sup> See Article 18(2) of the TEU(L).

<sup>43</sup> See Articles 18(3) and 27(1) of the TEU(L). After the Lisbon Treaty entered into force, the previous General Affairs and External Relations Council is now divided into a General Affairs and a Foreign Affairs Council. The previous General Affairs and External Relations Council was chaired by the Presidency which rotated every six months. Now the rotating Presidency continues to chair the General Affairs Council.

<sup>44</sup> See Article 18(4) of the TEU(L).

<sup>45</sup> The formation known as "the Troika" referred previously to the High Representative for CFSP, the Commissioner for External Relations and the Minister for Foreign Affairs of the Presidency-in-Office, who changes every six months.

<sup>46</sup> See Article 18(4) of the TEU(L).

<sup>47</sup> First in the areas of the European Neighbourhood Policy, Enlargement and Trade, Development and Humanitarian Aid.

<sup>48</sup> See Graham Avery, "The new architecture for EU foreign policy", in *The people's project? The new EU Treaty and the prospects for future integration*, ed. Graham Avery et al. (Brussels: European Policy Centre, 2007), 20.

President of the Commission.<sup>49</sup> Concerning the latter, tension may arise because the High Representative challenges the President's *primus inter pares* position within the Commission.<sup>50</sup>

Despite possible conflicts, the new position of the High Representative for FASP is an answer to criticism regarding the previous failure to address the incoherence and ineffectiveness of the EU associated with the pillar-structure and the separation of the issue areas, as well as the EU's "fragmented" representation in international relations. As argued by Pernice, the "double hat" and "double role" of the High Representative "in some way mirrors the unity of the supranational (Commission) and the intergovernmental (Council) logic of the Union, it combines in one person the European and the Member States' lines of interest".<sup>51</sup> The responsibility of the High Representative for ensuring the coherence and consistency of the Union's external action<sup>52</sup> "precisely describes what the Treaty of Lisbon is aiming at: The Union shall be perceived as one unit, speak with one mouth and implement consistent policies in external matters".<sup>53</sup> At the same time, the High Representative may contribute to more vertical coherence in the European foreign policy, taking into account his or her chairmanship in the Foreign Affairs Council with a potentially positive effect on the harmonisation of the Member States' positions.<sup>54</sup>

Catherine Ashton was appointed as the first High Representative for FASP on November 19, 2009 by the European Council, with the agreement of the President of the Commission.<sup>55</sup> Comments on this appointment vary. On the one hand, Ashton is referred to as a weak figure because of her lack of visible experience for the post of foreign policy chief. Her appointment can be understood as the unwillingness of the Member States to underpin the strengthened position of the High Representative by a strong personality. On the other hand, her previous experience may shift the working style in the field of the CFSP in favour of a greater consideration of the European interests, since Ashton was a Commissioner for Trade prior to her appointment to the post of High Representative. As a member of the Commission, she worked in the EU's supranational institution and was accustomed to advocate the European idea and European interests. Moreover, it has been argued that the first incumbent of the post of High Representative for FASP would have a personal bias in favour of promoting the foreign policy interests of the Council and the Member States

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<sup>49</sup> See Jan Gaspers, "The quest for European foreign policy consistency and the Treaty of Lisbon", *Humanitas Journal of European Studies*, vol. 2:1 (2008): 24.

<sup>50</sup> The authority of the President of the Commission within the Commission, as well as in relation to the High Representative, is challenged, for instance, by the fact that the Commission's President no longer has the authority to request the resignation of the Commissioner for External Relations without having obtained the prior consent of the European Council (Article 17(6) of the TEU(L)). See Graham Avery, "The new architecture for EU foreign policy", in *The people's project? The new EU Treaty and the prospects for future integration*, ed. Graham Avery et al (Brussels: European Policy Centre, 2007), 19; Brian Crowe, *Foreign Minister of Europe*, (London: Foreign Policy Centre, 2005), 5.

<sup>51</sup> Ingolf Pernice, "The Treaty of Lisbon: Multilevel Constitutionalism in Action", *Columbia Journal of European Law*, vol. 15: 3 (2009): 399.

<sup>52</sup> See Article 18(4) of the TEU(L).

<sup>53</sup> Ingolf Pernice, "The Treaty of Lisbon: Multilevel Constitutionalism in Action", *Columbia Journal of European Law*, vol. 15: 3 (2009): 399.

<sup>54</sup> See Jan Gaspers, "The quest for European foreign policy consistency and the Treaty of Lisbon", *Humanitas Journal of European Studies*, vol. 2:1 (2008): 24.

<sup>55</sup> According to Article 18(1) of the TEU(L) "the European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy". Concurrent with Ashton's appointment as High Representative, she becomes a Vice-President of the Commission, which is subject to confirmation by the European Parliament (Article 17(7) of the TEU(L)). After the Treaty of Lisbon entered into force, the posts of the High Representative and the Secretary-General of the Council of the European Union are held by two different people. Subsequently, Pierre de Boissieu was appointed as Secretary-General.

instead of acting as an honest broker between the Council and the Commission.<sup>56</sup> The appointment of Ashton to the position may have a positive effect on the balance between the external policies of the Council and those of the Commission.

As a result, in spite of possible conflicts regarding the delimitation of responsibilities between the High Representative, on the one hand, and the members of the Commission, on the other hand, the Treaty of Lisbon strengthens the institutional preconditions for more coherence and efficacy of the European foreign policy by introducing the “double position” of the High Representative for FASP.

### *President of the European Council*

One of the most important innovations introduced by the Lisbon Treaty concerns the formal introduction of the European Council as one of the EU’s constituent institutions<sup>57</sup> and the introduction of the position of the President of the European Council.

Prior to the Treaty of Lisbon, the European Council had never officially acquired the status of an EU institution.<sup>58</sup> Nevertheless, its declarations have served as important reference points for the formulation and implementation of the foreign policy by the institutions of the EC/EU and those of the Member States, and it has therefore served as an important instrument to increase the coherence in foreign policy.<sup>59</sup> The formal introduction of the European Council as an institution of the EU is accompanied by the manifestation of the right of the European Council to identify the strategic interests and objectives of the Union, which relate to the CFSP and to other areas of the Union’s external action.<sup>60</sup> In legal terms, this constitutes a significant extension of the European Council’s authority, although it already exercised those functions before the Lisbon Treaty entered into force.<sup>61</sup>

The introduction of the new position of the President of the European Council affects first the continuity of the European foreign policy. Before the Treaty of Lisbon entered into force, the Head of State or Government of the Member State that held the Presidency of the Council of Ministers also held a chairmanship during the meetings of the European Council; however, this position was not explicitly set out in the Treaty.<sup>62</sup> The Presidency of the Council of Ministers rotates every six months between the Member States in an order defined by the Council, and all positions related to the Presidency also rotate. According to the reforms of the Lisbon Treaty, the President of the European Council will be elected by the European Council by qualified majority for the period of two and a half years that can be renewed once,<sup>63</sup> thus the post is no longer subject to alternation

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<sup>56</sup> See Jan Gaspers, “The quest for European foreign policy consistency and the Treaty of Lisbon”, *Humanitas Journal of European Studies*, vol. 2:1 (2008): 26.

<sup>57</sup> See Article 13 of the TEU(L).

<sup>58</sup> For a discussion on the institutional status of the European Council, see Andreas Haratsch, Christian Koenig and Matthias Pechstein *Europarecht* [European Law] (Tübingen: Mohr Siebeck, 2006), 42; Simon Hix, *The Political System of the European Union* (Basingstoke: Palgrave Macmillan, 2005), 35 – 38; Philippe de Schoutheete and Helen Wallace, „The European Council,“ *Research and European Issues*, vol 19 (2002) [http://www.note-europe.eu/uploads/tx\\_publication/Etud19-en.pdf](http://www.note-europe.eu/uploads/tx_publication/Etud19-en.pdf) (accessed December 13, 2009); Cordula Stumpf, „Artikel 3 EUV“ [Article 3 TEU], in *EU-Kommentar*, ed. Jürgen Schwarze (Baden-Baden: Nomos, 2009), 77.

<sup>59</sup> See Simon Nuttall, “Coherence and Consistency,” in *International Relations and the European Union*, ed. Christopher Hill and Michael Smith (Oxford: Oxford University Press, 2005), 104.

<sup>60</sup> See Article 22(1) of the TEU(L).

<sup>61</sup> See Stephan Keukeleire and Jennifer MacNaughtan, *The Foreign Policy of the European Union* (Basingstoke: Palgrave Macmillan, 2008), 68-69.

<sup>62</sup> For the chairmanship of the European Council refer to Article 4 of the TEU(N).

<sup>63</sup> See Article 15 of the TEU(L). On November 19, 2009, Herman Van Rompuy was nominated as the first “permanent” President of the European Council.

every six months. In other words, this innovation now has a positive effect on the continuity of the European foreign policy.

Furthermore, the President chairing the European Council should endeavour to facilitate cohesion and consensus within the European Council and to ensure the preparation and continuity of its work in cooperation with the President of the Commission, as well as on the basis of the work of the General Affairs Council.<sup>64</sup> Thus, according to the provisions of the TEU(L), the President of the European Council is supposed to increase the coherence of the supranational and intergovernmental aspects of the EU's external relations, while the cooperation between the President of the European Council and the President of Commission is of particular importance for the facilitation of coherence.

Stressing the importance of the Presidency of the European Council for the coherence of European foreign policy, the amendments of the Lisbon Treaty are, at the same time, ambiguous with respect to the delimitation of responsibilities. The responsibility of the President of the European Council for the preparation and continuity of the work of the European Council, as well as for driving forward its work, means that he or she is involved in the formulation and implementation of the intergovernmental or even the Community aspects of the EU's foreign policy,<sup>65</sup> which bear potential conflicts and tensions with the authority of the High Representative.

The provisions of the Lisbon Treaty are particularly ambiguous with respect to the EU's external representation. Article 15(6) of the TEU(L) stipulates that the President of the European Council "shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy".<sup>66</sup> The delimitation of responsibilities between those of the President of the European Council and those of the High Representative is difficult from a legal perspective and could be rendered impossible in the praxis,<sup>67</sup> which may result in the incoherence of European foreign policy.

The function of the EU's external representation at the highest level is exercised not only by the President of the European Council but also by the President of the Commission in the areas under the Union's authority. Following the argumentation of Ingolf Pernice, this means that the unity achieved at the ministerial level by uniting the Troika representation in the one position of the High Representative is not realised at the level of Heads of State or Government.<sup>68</sup>

The Treaty of Lisbon, on the one hand, consolidates the representative function with respect to the CFSP at the ministerial level and, on the other hand, bears new potential for conflicts between the President of the European Council and the High Representative, and, to a lesser extent, the President of the Commission. Thus, the effectiveness of the European foreign policy greatly depends on a possible agreement between single institutions.

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<sup>64</sup> See Article 15(6) of the TEU(L).

<sup>65</sup> See Jan Gaspers, "The quest for European foreign policy consistency and the Treaty of Lisbon", *Humanitas Journal of European Studies*, vol. 2:1 (2008): 30.

<sup>66</sup> Article 15(6) of the TEU(L).

<sup>67</sup> See Jörg Philipp Terhechte, "Der Vertrag von Lissabon: Grundlegende Verfassungsurkunde der europäischen Rechtsgemeinschaft oder technischer Änderungsvertrag?" [The Treaty of Lisbon: Fundamental Constitutional Document of the European Law Community or Technical Revision Treaty?], *Europarecht*, vol. 2 (2008): 167; Daniel Thym, "Die neue institutionelle Architektur der Europäischen Außen- und Sicherheitspolitik" [The New Institutional Architecture of the European Foreign and Security Policy], *Archiv des Völkerrechts*, vol. 42 (2004): 64.

<sup>68</sup> See Ingolf Pernice, "The Treaty of Lisbon: Multilevel Constitutionalism in Action", *Columbia Journal of European Law*, vol. 15: 3 (2009): 400.

### *European External Action Service*

The establishment of the European External Action Service (EEAS) is of paramount importance in order to ensure the coherence of the EU's external relations and the strengthening of its role as an international actor. According to the Presidency report, the EEAS "should play a leading role in the strategic decision-making".<sup>69</sup> Article 27(3) of the TEU(L) stipulates that "the High Representative shall be assisted by a European External Action Service". Taking into account the scope of tasks and the responsibilities of the High Representatives, the creation of the EEAS was a necessary step to ensure the capacity of the High Representative to perform his or her functions. The scope of the EEAS "should allow the [High Representative] to fully carry out his/her mandate as defined in the Treaty".<sup>70</sup> At the same time, to ensure the coherence of European external relations, the EEAS "should also assist the President of the European Council and the President as well as the Members of the Commission" in the areas of external relations and closely cooperate with the Member States.<sup>71</sup>

With regard to the scope of the EEAS, the service "should be composed of single geographical [...] and thematic desks, which will continue to perform under the authority of the High Representative the tasks [previously] executed by the relevant parts of the Commission and the Council Secretariat".<sup>72</sup> At the same time, the Commission's exclusive authority in trade, development and enlargement policy will not be transferred to the EEAS; however, the service will have "desks" on those issues. Regarding the European Security and Defence Policy, the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC) and the Military Staff (EUMS) should constitute parts of the EEAS and form an entity placed under the direct authority and responsibility of the High Representative.<sup>73</sup> Even if the separation of the issue-related decision-making powers and the duality of the supranational and intergovernmental dimensions of the EU's external relations still remain, the allocation of all issue areas to one institution has without doubt the potential for a more coherent European foreign policy once the development of the EEAS is completed.<sup>74</sup> The composition of the EEAS may likewise contribute to a higher degree of coherence in the EU's external relations, since the service should comprise officials from relevant departments of the Council's General Secretariat and of the Commission, as well as staff seconded from national diplomatic services of the Member States.<sup>75</sup> The EEAS is thought to play a "unique role" and should be "a service of a *sui generis* nature"<sup>76</sup> that is separate from the Commission and the Council Secretariat. However, although the High Representative and

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<sup>69</sup> Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>70</sup> See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>71</sup> See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>72</sup> See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>73</sup> See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>74</sup> The final proposal on the formation of the EEAS should be made by April 2010, and the institution is supposed to become fully operational by 2012. See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>75</sup> See Article 27(3) of the TEU(L); see also Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

<sup>76</sup> See Council of the European Union, "Presidency Report to the European Council on the European External Action Service" (Brussels, October 23, 2009, 14930/09).

the EEAS can prepare initiatives, Member States make the final decisions and the Commission also plays a part in the technical implementation.

## Conclusion

The analysed numerous innovations of the Lisbon Treaty aim at enhancing the coherence of EU's external actions and at expanding its resource base, thus increasing the effectiveness of European foreign policy and strengthening the role of the EU as an international actor. At the same time, the Lisbon Treaty does not bridge the duality of European Foreign Policy while the separation between the CFSP and the other issue areas of external relations remains in place. Concerning the CFSP, unanimity is still the prevailing decision-making procedure, which protects national interests and bargaining behaviour at the expense of common European interests. In this area, the implementation of the European foreign policy in concrete situations continues to depend, to a great extent, on the Member States' willingness to cooperate and compromise. Nevertheless, the Lisbon Treaty considerably strengthens the EU as an international actor through the explicit provision of the EU's legal personality by equipping the EU with its own external instruments to implement the CFSP and its own institutions, and by reorganising the EU's diplomatic relations as the successor of the European Community. All these amendments simplify the international status of the EU and constitute an important step towards legal certainty in international relations.

By revising the institutional arrangements related to European foreign policy, the Treaty of Lisbon expands the institutional preconditions for more a coherent, and thus more effective, foreign policy, even if it does not change the legal nature of the principles of horizontal and vertical coherence, which is still non-justiciable and depends on the willingness to cooperate among the Member States and the EU institutions. Positive effects are supposed to result first from the strengthened position of the High Representative for FASP and his or her "double hat", which contribute to more coherence in European external relations and may enhance the effectiveness of European foreign policy and the EU's credibility as an international actor. At the same time, the High Representative – in his or her function as chairman of the Foreign Affairs Council – may facilitate the vertical coherence in the European foreign policy by contributing to the harmonisation of the Member States' positions. The new position of the President of the European Council also aims at facilitating the coherence of the supranational and intergovernmental aspects of the EU's external relations, while the cooperation between the President of the European Council and the President of Commission is of particular importance. Furthermore, by extending the term in office of the President of the European Council from six months to two and a half years, the Lisbon Treaty improves the institutional preconditions for continuity of the European foreign policy.

By stressing the importance of coherence and creating "new faces" of European foreign policy, the Lisbon Treaty, at the same time, creates new potential for conflicts between the High Representative, the President of the European Council and the President of the Commission. This is because the provisions of the Treaty are ambiguous with respect to the delimitation of their responsibilities. Institutional tensions could be expected first between the coordinating function of the High Representative for FASP and Members of the Commission with responsibilities for external policies, and second, between the High Representative and the President of the European Council. These tensions may concern the particular function of the EU's external representation.

Despite possible conflicts, the Treaty provides a stronger institutional basis for a more effective foreign policy of the EU, through the creation of the EEAS, among others. This institution is supposed to play a "unique role" and should be "a service of a *sui generis* nature" that is separate from the Commission and the Council Secretariat and should ensure the coherence and better

coordination of the Union's external action. Supporting the High Representative in carrying out his or her mandate as defined in the Treaty, the EEAS should also assist the President of the European Council, the President and the Members of the Commission, as well as closely cooperate with the Member States, thus contributing to horizontal and vertical coherence. The service should be composed of geographical and thematic desks, which should perform the tasks previously performed by the Commission and the Council Secretariat. Even if the exclusive authority in trade, development and enlargement policy executed by the Commission is not transferred to the EEAS, the service should have "desks" on those issues. This allocation of all issue areas to one institution has a strong potential for an increase in the coherence of European external relations, although the duality of the supranational and intergovernmental dimensions of the EU's external relations still remains. The composition of the EEAS may similarly facilitate coherence since the service should comprise officials from the General Secretariat of the Council and the Commission, as well as national diplomatic staff of the Member States.

In conclusion, the main finding of the article is that the Treaty of Lisbon contributes to a more coherent foreign policy of the EU, thus strengthening the EU as an international actor. With its contributions, the Treaty is a positive step towards a higher degree of coherence in the EU's external relations, even if it is still far away from achieving its goal of a truly common European foreign policy. Currently, there are no reasons to believe that this kind of policy can be reached in the future. Nevertheless, coherence in the formulation and implementation of foreign policy at national level also constitutes an exception rather than the norm.