



Defining the EU's Management and Implementation of its External Actions in Accordance with the Provisions of the Treaty

The purpose of the Lisbon Treaty was to increase the ability of the European Union to function efficiently as a community of sovereign European states and thereby to increase the effectiveness of its actions, both within the EU and towards the rest of the world. One key objective in adopting the Lisbon Treaty was to increase the effectiveness of its external actions through enhancing the use of the Union's common foreign and security policy. For the EU's cooperation with developing countries this provides important opportunities to strengthen its capacity to pursue the Union's development policy objectives, which the Treaty defines as the principal framework for such cooperation (Art. 208 TFEU). The Treaty recognises the distinct role and contribution of the different external policy areas towards achieving these objectives. Its provisions also recognise the need for each of these policies to be implemented in accordance with their distinct roles and purposes, with the dedicated capacity that is required. This briefing paper identifies the provisions of the Lisbon Treaty for putting this into practice¹.

Legal Mandate of the High Representative

The Lisbon Treaty establishes the new function of High Representative (HR) for Foreign Affairs and Security Policy, which is placed within the intergovernmental framework. (Art 18.2 TEU) The nature of this arrangement reflects the broad consensus among EU Member States and European citizens that while foreign affairs and security policy are areas of national sovereignty, European cooperation should be pursued in both areas where it is in the common interest.

Legal Mandate of the European External Action Service

The sole objective of the European External Action Service (EEAS) is to assist the HR in this task. (Art 27.3 TEU) In her role as representative of the EU's foreign policy and security interests, the HR is fulfilling an intergovernmental mandate. The same is the case for the EEAS, being set up to support this part of her mission.

Ensuring clarity of roles in Democratic Scrutiny

The Treaty on European Union (TEU) identifies foreign policy, security policy and defence policy as inter-governmental policies. The democratic scrutiny relating to all

¹ The briefing draws on the Note on the Legal Inclusion of Aspects of the EU's Development Cooperation and Humanitarian Assistance within the European External Action Service written by Dr. Mirjam van Reisen, Europe External Policy Advisors

three refers back therefore to the member states, who give consent to intergovernmental cooperation in the Council (Art 24.1 TEU).

The “Community areas”, as they are called in the TEU, such as fisheries, agriculture, trade, investment policies, development cooperation and humanitarian assistance are not affected by the Lisbon Treaty, which consolidates and confirms the *acquis communautaire* (the existing arrangements stand in terms of budget authority, implementation responsibilities and democratic scrutiny) (TITLE I TFEU).

These policies remain therefore under a common framework, implemented by the European Commission and with discharge provided by the European Parliament. The Lisbon Treaty does not include any article that identifies the possibility of policies being split between institutions with different budgetary and democratic scrutiny arrangements.

Relevance

As the discussions on how the provisions of the Treaty for the management and implementation of the EU’s external policies are put in place it is important to reflect on the following issues:

1. European citizens endorsed the Lisbon Treaty after much initial resistance. It is of paramount importance that both the spirit and the letter of the treaty be respected;
2. EU citizens are worried about a centralisation of policy;
3. The Lisbon Treaty explicitly identifies foreign and security policy as a nationally owned policy that should NOT be transferred to European Community decision-making (Art 24.1 TEU);
4. The purpose of the High Representative has been to allow cooperation on foreign and security policy without transfer of national sovereignty in these areas;
5. Intergovernmental policy should NOT be mixed with community policies (trade, fisheries, development cooperation, humanitarian assistance) as it will increase a democratic gap;
6. Democratic control requires that Community policies are being implemented by the Commission with discharge by the European Parliament, in conformity with the Treaty;
7. The EEAS should not become a institution with a blank cheque that has the power of uncontrolled allocation and/or spending of the Community Budget – the democratic control over the EEAS’s activities needs to be clearly defined
8. Community policy areas can not be split between institutions with different accountability structures as this would increase the democratic gap.

Conclusion

The provisions of the Lisbon Treaty to increase the effectiveness of the EU’s role in the world is an important innovation in the evolution of the Union. However, for the outcome to deliver what was intended the institutional changes that are put in place must be firmly rooted on the spirit and letter of the Treaty. Many of the current proposals being put forward involve combining the management of aspects of the different policies across the institutional structures. This will lead to a mixing of policies that the Treaty clearly defines as being within the intergovernmental framework with others which are within the remit of the European Commission. The inherent danger is that this will weaken the position of the Parliament at a time when there is already concern over the effectiveness of the democratic scrutiny on EU programming towards developing countries. It would also weaken the role of the Commission in fulfilling its mandate reflecting a full range of competences of the Union. Finally, it could also lead to an undermining of national scrutiny of the intergovernmental decision-making process.

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