

THE IMPACT OF THE INSTITUTIONAL INNOVATIONS INTRODUCED BY THE TREATY OF LISBON ON THE EUROPEAN UNION'S EXTERNAL ACTION

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Abstract: *The Treaty of Lisbon has brought major innovations in the institutional framework of the EU. The purpose of this paper is to highlight the possible consequences of these institutional innovations on the management and the implementation of the European Union's external action, particularly in the field of Common Foreign and Security Policy (CFSP).*

Keywords: Treaty of Lisbon, EU's external action, Common Foreign and Security Policy, European Service of External Action

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INTRODUCTION – WHAT BRINGS NEW THIS TREATY?

The Lisbon Treaty has brought significant changes both in the institutional and the procedural framework of the EU, in the area of external relations and security policy. In this respect, I would like to mention some of the most substantial institutional innovations in the structure of the EU: the legal consecration of the European Council, the establishment the Office of the President of the European Council, the establishment of the Office of the High Representative for Foreign Affairs and Security Policy/HR FASP who is also the Vice President of European Commission, and the creation of so-called “EU diplomatic service” - European Service for External Action¹.

The strengthening of the role of the European Council as regards the CFSP decision-making process, the assumption by the HR FASP of the Permanent Presidency of the Council of Foreign Relations, the establishment of the mutual defence clause and the solidarity clause, or defining the legal

¹ *Treaty on European Union*, Articles 13, 15, 18 and 27

framework for permanent structured cooperation on defence are other procedural and regulatory innovations which brought the Lisbon Treaty in the area of external relations and security policy.

All these institutional and procedural innovations as well as others not mentioned here may be the prerequisites to consolidate the role of the European Union in the international arena, regardless of the current theoretical perspective on EU's international role and place. Neo-functionalism or liberal inter-governmentalism, to name two of the representative schools of thought on European integration (Rosamond, B, 2000, pp. 50-73, pp. 130-156), could find sufficient arguments in post-Lisbon institutional design to support its own interpretation on the development of the European construction, including the area of its foreign and security affairs.

Of course, if we look at some of the provisions of the Treaty, we find that the EU tends to adopt an international normative behavior, whereas its external action must be based „by the principles that have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for principles of United Nations Charter and international law”².

Considering the above mentioned premises, the purpose of this paper is to highlight the possible consequences of these institutional innovations on the management and the implementation of the European Union's external action. Priority will be given to investigate the possibility of EU to become a genuine international political actor, i.e. a strategic competitor, to be able to add at a classic hypostasis of the champion of global trade, development assistance and of multilateralism, a new aspect - the real center of power, even in *soft* power option, as stated most comments in the literature, including those belonging to the most knowledgeable researchers in the field of CFSP (de Vasconcelos *et al.*, 2010, p. 3).

1. EU BETWEEN LEGAL PERSONALITY AND STRATEGIC IDENTITY

Besides the innovations listed above, the Lisbon Treaty comes to simplify the complicated three pillars arrangement agreed at Maastricht. The legal personality which has been a Union, to the detriment of the Communities, is an important step towards defining a clear identity in its relation with other international players. And this step is not only a symbolic one but also a legal one, because even

² *Treaty on European Union*, Article 21

the symbolic and the communication aspects have relevance on the international scene. Without doubt, the "treatment" language, which followed the implementation of the Lisbon Treaty which "removed from Treaties the word the *Community*" and its derivatives, is a subtle action but not a strong enough argument to strengthen the effectiveness and the coherence of EU's international relations.

However, deconstructing the old institutional building based on three pillars and merging them into a single entity - the Union - is the real challenge of the next period of time, with significant implications in the security and the foreign relations sector. Successful political and institutional merger of former three pillars could generate both internal cohesion and the necessary consistency to define a clear institutional identity and effectiveness and coherence of EU relations with its international partners.

It remains to examine briefly below, if institutional adjustments made by the Lisbon Treaty are likely to affect the effectiveness, coherence, identity and cohesion in EU external action or in the terms proposed by the researchers from specialized institute in the EU CFSP „autonomy, consistency and coherence" (de Vasconcelos *et al.*, 2010, p. 3).

2. A UNION IN SEARCH OF COHERENCE

Lack of coherence has been one of constant criticisms made both favorable and negative comments concerning the functioning of the external relations and security policy of the European Union, since its emergence in the Maastricht Treaty until the entry into force of the Lisbon Treaty. The multitude of institutions that considered themselves entitled to speak and act on behalf of external relations - HR CFSP, the Six-months Presidency of the Council, the European Commission President, the Commissioner for External Relations - require a considerable effort to achieve the lowest common denominator both in defining the mere position papers and statements and especially the actions of the EU in international area.

Reinventing, following the former position held since a decade by J. Solana, an "innovative" HR FASP institution, seems to be a simplified institutional solution. The fact that this institution aggregated a Permanent Presidency of External Relations Council and a position on Vice-President of European Commission radically changes the inter-institutional relations in the CFSP area and apparently resolved the dilemma of authorized voice to speak on behalf of the European Union in International Relations. However, this solution that brings coherence inside and in EU relations with

other international players and that seems to solve the dilemmas of chronic incoherence Union's CFSP could be challenged from several directions. One of them is the foreign relations powers conferred by a new institution - TEU of the President of European Council. The specification of the Treaty which seeks to clarify the nature and limits of the powers of the President "at his level and in that capacity, ensure the external representation of the Union on issue concerning its common foreign and security policy, without prejudice to the powers of High Representative of the Union for Foreign Affairs and Security Policy"³ may lead to differences in interpretation. It is expected, of course, that people occupying these offices to make their mark on how powers is exercised and interpreted. To stake a priori only the wisdom of those who occupy and will occupy the two functions might be insufficient to have a well represented and well coordinated entity in world politics.

In addition, a structural characteristic of EU external relations and security area is the preservation of the sovereign prerogatives of the Member States under the conditions defined by the Treaty. It maintains the provision according to which legislation is not adopted in the field of CFSP⁴. This provision weakens CFSP. No doubt this feature of CFSP asks HR FASP and his team a huge capacity of negotiation and a good command of the art of consensus building. From this perspective, most often, Member States prefers to retain some discretion and to accommodate their policies with the Union's positions, because EU membership is a real multiplier of influence and prestige in international arena. There are some Member States which never misses an opportunity to highlight the specificity of the EU security and foreign relations. Polichinelle's secret is that the British approach in this regard emphasizes the priority given to foreign policy in the UK compared with EU CFSP. Recently, the British Foreign Affairs Minister, William Hague, has not hesitated to emphasize this priority "The EU could not or should not act as if it were a nation state with a national foreign policy"⁵. British example is followed by other Member States, depending on specific interests and approaches. It seems that the post-modernity of EU which was highlighted with a rare talent few years ago by Robert Cooper (Cooper, 2003, p. 6), sometimes leaves some place for the Member States as modern behavior.

³ *Treaty on European Union*, Article 15 (5)

⁴ *Treaty on European Union*, Article 24 (1)

⁵ Rettman, A., *UK champions own diplomacy over EU 'action service'*, EUobserver, 5 May, 2011,

3. IT'S TIME FOR THE EU EFFECTIVENESS AND PRAGMATISM IN INTERNATIONAL POLITICS?

A question like the one above generates a wide range of responses. If you look at two of the innovations introduced by the Treaty of Lisbon – setting up an EU diplomatic service and introducing the legal basis for a permanent structured cooperation on defense - you might be tempted to formulate a positive response. The launching of the European Service for External Action, after difficult negotiations between the Council, the Commission and the European Parliament could bring increased international representation and effectiveness for the Union. But achieving this goal depends on achieving at the level of the newly inter-institutional agency of the necessary synergy between the skills and abilities of structures and resources from the Council, from the Commission and from Member States' diplomatic services. The ESEA's organization scheme, brought to public's attention early April, indicate a very complex mechanism which requires a strong leadership in order to ensure its functionality. Without this leadership, the newly established institution could simply rely on the administration's wide network of the Union delegations in different parts of the globe. The emergence of the comprehensive legal framework that facilitates the cooperation in defense⁶ could give the necessary impetus for creating an indispensable tool for the EU as a real center of power. Even for the status of a soft power, an idea postulated by the researchers and informally agreed by the Member States, the Union would need a nucleus of *permanent military forces*, the appropriate command and intelligence capabilities and strategic transport capabilities to enable the development of crisis management missions, at least in neighboring regions. The experience gained in achieving the Headline Goal 2003 and the Headline Goal 2010, including the implementation of the Battle Groups concept, as well as carrying out military operations and civilian crisis management operations on three continents is a definite purchase of Union's security and defense area. If based on this practical experience, would be built a permanent structured cooperation, in conjunction with the willingness and potential defense policy of certain Member States, only then we might speak about the development of the pragmatic dimension of the Union, crucial for the development of power, even in its soft version. Of course, the development of this pragmatic dimension requires some further reflections. First of all, the pragmatic potential of the Union is dependent on the political will of the Member States, especially those with adequate defense capabilities. Secondly, it should be noted the risk arising from such a development for

⁶ *Treaty on European Union*, Article 42 (5)

the Union's internal coherence. Of course, multi-speed Europe has already been experienced in establishing the single currency or the Schengen area. Defense seems, however, an area more complicated and baroque, an area where more Member States are reluctant to put together the sovereignty. Apparently the Member States appear to re-fold the last resources of traditional sovereignty.

CONCLUSION

The above reflections and evaluations on institutional innovations introduced by the Treaty of Lisbon and their potential consequences in the field of EU's external action, in particular the CFSP, lead us to an ambivalent conclusion. On one hand, the Foreign and Security Policy of the European Union has emerged strengthened from an institutional perspective. The European Service of External Action and the HR SPF with his triple quality represents new opportunities to bring more coherence in the EU's external actions. On the other hand, the absence of binding rules, of a legislation on the security and the external relations dimension of EU and the inability of the Member States to transcend the sovereignty' classical rules, maintain the structural weakness of this dimension of the European construction.

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