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The Treaty of Lisbon

A reflection upon security policy in the EU Reform Treaty

On 13 December last year, EU Heads of State and Government signed “The Treaty of Lisbon”. The Treaty is the product of the EU’s eventful political highs and lows over the past few years. In 2003, the European Convention, chaired by the former French President Giscard d’Estaing, submitted the draft of an EU Constitutional Treaty. This was approved by Heads of State and Government in 2004 and the very complicated, comprehensive agreement was then forwarded to the then 25 EU Member States for ratification at the national level. Full of optimism, 18 Member States, including Germany, voted in favour of the Treaty in their national parliaments up until 2005. The negative outcomes of the referenda held in France and the Netherlands then resulted in the ratification process being brought to a halt. The EU was faced with a shambles and had little idea on what to do next so a pause for reflection was ordered. Germany had the courage to revisit the subject of a fundamental treaty for the Union during its presidency of the European Council in the first half of 2007. The EU was in urgent need of reform as a result of its expansion and global changes. It needed to become more efficient, more capable of acting and more powerful as a global player. On 21/22 June 2007, German Chancellor Angela Merkel, in her capacity as President of the European Council, obtained the approval of her EU partners, to launch a fresh attempt at a treaty based on the Constitutional Treaty using the new title “Reform Treaty” and to convene an intergovernmental conference. This intergovernmental conference then pressed ahead, under the Portuguese Presidency of the European Council, with the task of establishing a new treaty. On 18 and 19 October 2007, Heads of Government agreed upon the final draft of the treaty and the “Treaty of Lisbon” was born. The ratification process in the Member States, which is now underway for a second time, is expected to be completed before the 2009 European Parliament elections. Hungary was the first EU Member State to ratify the Treaty as early as 16 December 2007, and in doing so, set a trend. According to the opinions of politicians that have hitherto been made known, the overall progress of the ratification process is emerging as positive.

What significance does European security and defence policy now have as far as the Treaty of Lisbon is concerned? Security policy can now mainly be seen in its new, broad form, i.e. internal and external security, in particular, are to be understood as an imperative combination. Security policy-related activities are not only governed by the Common Foreign and Security Policy (CFSP) and the Common European Security and Defence Policy (CESDP), but a broad range of other political areas also enter the equation. The preamble to the Reform Treaty details, among other things, what the treaty means for the Union as a whole: the treaty is intended to increase efficiency and democratic legitimacy and improve the coherence of the Union’s actions.

By way of introduction, Article 2 of the Treaty sets out the aim of the EU, as follows: “The Union’s aim is to promote peace, its values and the well-being of its peoples.” All of the components that are relevant to security policy can then be found in the further statements regarding the Union’s aim. These can be summarised using the following key words: security, protection of values and interests, prevention of climate change, protection of external borders, immigration and asylum, the fight against crime, making a contribution to peaceful, global development and the upholding of the fundamental principles of the United Nations. What is surprising is that there is no mention of terrorism at this point, which poses the greatest threat to the international community of states. However, the Treaty dedicates its full attention to this subject in Articles 28 b and 188r, which are discussed in detail in another section of the Treaty.

Following a general consideration, this article shall focus on the parts of the Foreign and Security Policy and Security and Defence Policy that have been removed *expressis verbis* from the wording of the Treaty.

General Consideration

The “European Council” shall be the supreme authority. The Council shall provide the Union with the necessary impetus for its development, shall define its strategic interests and general political objectives, priorities and guidelines and shall formulate corresponding decisions that shall be pronounced by consensus (Article 9b/10b). This body of Heads of State and Government will be chaired in the future by a “President of the European Council” who will be elected for a term of two and a half years. The President will also work to promote cohesion and consensus within the European Council. This system will replace the system that has been in place up until now, whereby the Union is personally led for a limited period of 6 months by a Head of State/Government and promises to deliver a greater degree of continuity. The President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union in 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 (Article 9 b).

The most important working body is the “Council” at the level of the specialised ministers of the Member States. The Council will act as a legislative authority together with the European Parliament. The major amendment is the introduction of majority voting in this body. Article 9c states that “The Council shall act by a qualified majority except where the Treaties provide otherwise.” This method of making decisions, which is also referred to as “double majority”, is scheduled to enter into force on 1 November 2014. Transitional provisions shall apply in the period prior to this, some of which shall also remain in force up until 2017. A qualified majority shall be defined as “a majority of at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union” (Article 9c).

A further key amendment is the reduction in the number of commissioners from 27 at present to 18 from 2014 onwards; this promises to make the Union more effective.

The High Representative of the Union for Foreign Affairs and Security Policy

This position represents an amendment that is of central importance to the security policy. The High Representative shall have, above all, a right of initiative towards the European Council and the Council. 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 and he/she shall be one of the Vice-Presidents of the Commission (Article 9e). The extensive duties of the High Representative shall be as follows (Articles 9e/10b/13/21):

- He or she shall conduct the Union's common foreign and security policy,
- He or she shall contribute through his or her proposals towards the framing of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council,
- He or she shall also perform the above in respect of the common security and defence policy,
- He or she shall preside over the "Foreign Affairs Council",
- He or she shall ensure the consistency of the Union's external action,
- He or she shall conduct political dialogue with third parties on the Union's behalf and shall represent the Union's position in international organisations and at international conferences
- He or she shall regularly consult the European Parliament on the main aspects of the common foreign and security policy and common security and defence policy and inform it of how those policies evolve,
- He or she shall be responsible for foreign relations within the Commission and shall coordinate the other aspects of foreign affairs (he or she shall assume the former role of a Commissioner of Foreign Affairs).

Common Foreign and Security Policy

The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, "including the progressive framing of a common defence policy that might lead to a common defence" (Article 11/28b). The details of the common defence policy have been kept deliberately vague as the political and strategic provisions required in order for the European Council to reach a unanimous decision on this matter have not yet been achieved. The principles underpinning the Union's handling of foreign affairs and security matters are solidarity, adopting a common approach and convergence. These principles are reflected in many articles of the Treaty. These principles also strengthen the Union's external position as a global player.

The Union's operational activities

Decisions shall be adopted based on the guidelines defined by the Union. These decisions shall set out details regarding how a specific mission is to be carried out (Article 12). International developments shall be the trigger for operations of this kind. The Union's activities shall be initiated by its President, who shall convene an extraordinary meeting of the European Council in order to define the strategic lines of

the Union's policy in the face of such developments (Article 13). The aforementioned necessary decisions shall then be adopted (Article 14). The "Political and Security Committee" has a central operational function; under the authority of the Council and the High Representative, it shall assume the political control and strategic management of crisis operations (Article 25).

Common security and defence policy

A separate section of the Reform Treaty is dedicated specifically to the common security and defence policy, the key features of which are detailed in Article 28. In brief, these are as follows:

- The common security and defence policy is an integral part of the common foreign and security policy. "It provides the Union with operational capacity drawing on civil and military assets" (Article 28a). This is a key statement of the highest political and strategic significance, which particularly distinguishes the Union from other international organisations.
- It relates to missions outside the Union including peace-keeping, conflict prevention and strengthening international security. The Union "performs these tasks using capabilities provided by the Member States" (Article 28a).
- "The Member States shall undertake progressively to improve their military capabilities" (Article 28c). This obligation is, on the one hand, an urgent necessity, but its progressive enforcement allows for a very flexible approach.
- The European Defence Agency (EDA), the founding of which was agreed by Heads of State and Government in 2004 and which is already currently carrying out intensive work, is singled out in particular. In addition to its main tasks which include determining the Union's operational military requirements, strengthening the industrial and technological basis of the defence sector, helping to establish a European Armaments Policy and strengthening common research and development, the EDA shall support the Council "in assessing the improvement of its military capabilities" in the Member States (Article 28c, 3). Current development will show whether the latter comes close to a certification process. Article 28d contains a detailed description of the aforementioned range of tasks.
- Decisions regarding the common security and defence policy and the initiation of missions shall be made by the Council in line with the proposals put forward by the High Representative.

Solidarity/Duty of mutual assistance

The significance of this component forms the central theme of Title VII, Article 188r. It takes the form of the "solidarity clause" and relates to terrorist attacks, natural disasters or man-made disasters. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, "the other Member States shall assist it at the request of its political authorities." What is referred to as the "duty of mutual assistance" in Article V of both the North Atlantic Treaty and the WEU Treaty and forms one of the central components of the respective treaties now also forms part of the Reform Treaty. "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power" (Article 28a, 7). At first glance, this does

not sound very binding. However, it does carry real weight if one considers that the defence aspect of the EU is only a possibility at present (Article 17) and, for the majority of EU Member States, NATO forms the fundamental basis of their collective defence (Protocol on permanent structured cooperation).

Reference to NATO

The Treaty states that the Union is convinced that the common security and defence policy, in conjunction with the Berlin Plus agreement, will contribute “to the vitality of a renewed Atlantic Alliance” (Protocol on permanent structured cooperation). This statement must be considered to be particularly valuable, given that dialogue between the EU and the Alliance is not functioning at its optimum at present. Apart from that, the Treaty contains several references to the fact that all Member States that are bound by the Alliance shall fulfil their obligations under NATO.

Permanent Structured Cooperation

This area should enable those Member States that wish to satisfy more demanding criteria with regard to their military capabilities, and which enter into more binding commitments to one another for the EU missions with the highest requirements, to implement “Permanent Structured Cooperation” (Article 28 a and 28 e). States that would like to participate in this form of cooperation indicate this to the Council and the High Representative. A Council ruling then forms the basis for the “Permanent Structured Cooperation” and its participants. The council now rules on the needs of this cooperation with a qualified majority, whereby only the participating Member States are entitled to vote. The Council may also exclude a State from taking part, in the event that said State no longer fulfils the commitments it has entered into. Throughout the entire complex of “Permanent Structured Cooperation”, the High Representative plays a central role. The importance of structured cooperation is further underlined by the fact that a separate protocol covering this area has been appended to the Reform Treaty. Article 1 of this protocol once again makes it clear that any Member State may participate in the cooperation, if it undertakes, among other things, to expand its defence capabilities and to take part in the most important European armament programmes and in the activities of the EDA. The commitments will become more specific with a view to 2010, when a state must possess capabilities that ensure it can participate in armed tactical combat groups, including the logistics and transport of said groups. The description of these groups is very much based on the current EU “Battle Groups” that have been established since January 2007. Article 2 continues the catalogue of obligations and refers to the following requirements, among others:

cooperation in implementing investment expenses that have still to be determined for defence goods, regular assessment of capabilities, harmonisation of assessment of military demand, reinforcement of the interoperability, flexibility and deployment capability of troops and cooperation in the areas of training and logistics. Article 3 describes the EDA in its role as a body that regularly undertakes an assessment of the capabilities that must be developed.

Overall, this area presents a bold and hopeful step towards the future, which requires concrete material and financial implementation at this time.

The Petersberg tasks

The Petersberg tasks, which were concluded by the WEU in 1992 and are now valid for all EU operations, describe the range of missions. The Reform Treaty redefines the spectrum of tasks, without mentioning the term “Petersberg”, as follows (Article 28 b):

Tasks in the course of which the Union may use civilian and military means may include:

- Joint disarmament operations
- Humanitarian and rescue tasks
- Military advice and assistance tasks
- Conflict prevention and peace-keeping tasks
- Tasks of combat forces in crisis management, including peace-keeping and post-conflict stabilisation
- Combating terrorism, including by supporting third countries with this task in their territories.

The decisions regarding missions in the aforementioned areas determine the objective, scope and generally applicable implementing rules. In collaboration with the Political and Security Committee, the High Representative is responsible for coordinating the civil and military aspects. This coordination function is of supreme importance for organising missions in an effective manner. The Council may also delegate responsibility for implementing a mission to a group of Member States that wish to carry out this task. However, these Member States must possess the required capabilities (Article 28 c).

A decisive step for the future

The Treaty of Lisbon is a very complex document comprising approximately 300 pages. In this document, Europe’s security policy features predominantly. In particular, the important position of the High Representative and the way that the Treaty looks in depth at the operative components of the Union in the form of missions point the way forward. Here, the use of civil and military resources is of particular importance. The possibility of “Permanent Structured Cooperation” within CESDP brings additional substance to the Union’s security policy. With the Reform Treaty, the Union is establishing a reliable and credible position for itself as a global player. In a speech given in Berlin on 17 September 2007, the President of the European Parliament, Professor Hans-Gert Pöttering, referred to CESDP as a central element in European politics. The Treaty of Lisbon represents a decisive step for the future of the Union. Let us hope that a smooth ratification process allows this step to become a reality in 2009.

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