

# **The Lisbon Treaty Evaluated: Impact and Consequences**

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## Consolidating Europe’s new intergovernmentalism

European Council and Council leadership in economic governance  
and CFSP under the Lisbon Treaty

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## **Introduction<sup>1</sup>**

This paper analyses the changes brought about by the Lisbon Treaty in the fields of the European Union’s (EU) Common Foreign and Security Policy (CFSP) and economic governance. It does so by highlighting in particular that these changes reflect a more substantial adjustment to the respective role of the European Council and the Council in the overall EU governance architecture. Most importantly, economic governance under Economic and Monetary Union (EMU)<sup>2</sup> and CFSP governance are interpreted as a system of deliberative intergovernmentalism which is based on consensus-oriented and intensive policy dialogue among independent actors (Puetter 2012). As policy implementation in the two policy areas requires the sharing and pooling of highly decentralised resources and the adjustment of national policy-making towards common guidelines and rules, policy-makers constantly struggle with rallying consensus behind common EU positions. In this context EMU economic policy-making and CFSP have led ever since their inception in the Maastricht Treaty to the development of a series of procedures and practices which seek to address the challenge to govern in a pre-dominantly intergovernmental setting.

In particular the leadership role assumed by the European Council and the Council as well as the development of an underlying committee system headed by the Economic and Financial Committee (EFC) and the Political and Security Committee (PSC) respectively reflect this challenge. The Lisbon Treaty is the latest in a series of attempts of institutional engineering which seek to enhance the EU’s capability to act within a decentralised policy setting which is not governed through the classical Community method and in which member states either cannot be at all formally sanctioned for non-compliance or only in very exceptional circumstances. More specifically, this paper reviews the new role of the High Representative within CFSP, the formal acknowledgement of the informal Eurogroup as well as the changed presidency arrangements in the European Council and the Council. It does so with a view to how these changes further consolidate a system of deliberative intergovernmentalism which is constituted by routinized and consensus-oriented policy dialogue and, thus, departs from previous notions of intergovernmentalism in EU policy-making. Similarly, the increased use of informal working methods in the Council context as well as the repercussions of the creation of the European External Action Service (EEAS) for enhanced administrative cooperation between national administrations are discussed. The paper is organised as a commentary of the relevant Lisbon Treaty provisions against the background of findings from new empirical research including a series of expert interviews with EMU and CFSP policy-makers in Brussels and member state capitals, which have been carried out over the last two years.

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<sup>1</sup> Parts of this paper focussing on the dimension of Treaty changes in the area of the European Union’s (EU) Common Foreign and Security Policy (CFSP) were also presented at the UACES workshop ‘EU External Relations Law and Policy in the Post-Lisbon Era’, University of Sheffield, 13-14 January 2011. The CFSP related analysis in this paper has benefited from collaborative research carried out and directed by the author and Antje Wiener, University of Hamburg, in the context of the Commission sponsored FP7 RECON project, WP6. I am also grateful to Stiftung Wissenschaft und Politik in Berlin for hosting me as a visiting fellow in the second half of 2009 when I undertook research on the changing role of the European Council and the Council in European Union governance.

<sup>2</sup> EMU is based on a two-pillar institutional architecture. Monetary policy is fully integrated and organised in a unified monetary pillar headed by the European Central Bank (ECB) – a supranational and independent EU body. The paper refers to the term ‘economic governance’ as the economic pillar of EMU. In contrast to the monetary pillar ultimate decision-making responsibilities in the field of economic policy rest with the member states while involving an obligation to coordinate and to adhere to a small set of common policy rules.

The paper reviews the Lisbon Treaty mainly from a political science perspective. At the same time it tries to indicate specific links between the political science and legal studies literatures in this field. To this end the paper is organised as follows. The first section provides a brief overview on potential research perspectives applicable to the analysis of the changes brought about by the Lisbon Treaty and discusses why deliberative intergovernmentalism is chosen as the conceptual framework for this commentary. The second section of the paper reviews those changes brought about by the Lisbon Treaty which are considered to constitute attempts of institutional engineering and highlight the main differences in comparison to the previously applicable institutional framework. The third section interprets these changes applying the analytical perspective of deliberative intergovernmentalism.

### **The Lisbon Treaty as an attempt of institutional engineering – conceptual perspectives**

There is no straightforward recipe as to how to set up a conceptual framework for interpreting Treaty changes and their relevance for EU policy-making. Most importantly, there are different disciplinary and theoretical perspectives which inform research on Treaty changes. For example, lawyers will ask about the implications of Treaty changes for the EU’s legal order and engage in interpreting specific provisions and discuss their repercussions for the role of specific actors such as the Court, member states or individual citizens. They may also reconsider the very notion of EU law as a core aspect of EU governance in the light of Treaty change (Armstrong 2011).

Similarly, political scientists will focus on different sets of questions when analysing Treaty changes. Classical integration theory, for example, will ask in how far a particular Treaty alters the character of the EU as a supranational polity (Majone 1997; Mancini 1998; Moravcsik 1998; Schmitter 2004). In short, do we get more or less integration from it? Others will discuss in how far a new Treaty empowers specific actors and deprives others from their influence. In addition and partially related to this question political scientists will also ask in how far a new Treaty changes the rules of the game (Héritier 2007; Tallberg 2006) or the modes of interaction and policy practice in EU policy-making. Finally, there is a larger scholarship out there dealing with the question of the process of Treaty change itself (Christiansen and Reh 2009). In other words, this particular scholarship is occupied with the question of how did we get there and who got what? The latter perspective particularly gained ground in relation to the work of the Convention and drafting of the Constitutional Treaty.<sup>3</sup>

This paper concentrates on the question of what repercussions the Lisbon Treaty has for the overall *governance method* and the institutional set-up of CFSP and economic governance respectively. In doing so the paper seeks to interpret both the formal legal framework constituted by the Treaty as well as established practices and routines in decision-making. Such a focus on both the *formal* and *informal* aspects of a given governance context is compatible with previous researches in the legal studies and political science fields alike. In particular the large literature on the role of new modes of governance and soft law in EU policy-making as established such a dual perspective in contemporary EU studies (see e.g. Armstrong 2010; Trubek and Mosher 2003).

More specifically, the two policy areas are understood to constitute two of several new fields of EU activity which have been first introduced by the Maastricht Treaty and have

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<sup>3</sup> For a review of the actual process of Treaty revision in the field of EMU economic governance in the context of the European Convention, the Constitutional Treaty and, eventually, the Lisbon Treaty see Puetter (2007).

evolved since then under the premise that they will not be governed through the traditional community method for the foreseeable future. This means in particular that while member states largely share the determination to develop common policies in these fields and to respond collectively to key policy challenges they remain reluctant to transfer ultimate decision-making competences to the EU level. Economic governance and CFSP are the most prominent examples for this institutional formula but they are by far not the only ones as the examples of employment policy and social inclusion policy coordination.<sup>4</sup> This does, however, not imply that these policy fields have not undergone changes with regard to the way they are governed. All Treaty changes following the Maastricht Treaty have reflected this. Instead of uploading new final decision-making competences to the EU level, Treaty changes have focused on regulating policy coordination procedures and reconfirmed the model of a decentralised decision-making system which is based on close intergovernmental policy coordination. In this context Commission input is a crucial aspect of policy coordination but does not amount to the full right of legislative initiative the Commission has in other policy areas which are governed under the community method. Similarly, with the exemption of EMU’s excessive deficit clause there are no sanctioning mechanisms for those member states which do not comply with commonly defined policy objectives. Moreover, although the excessive deficit clause constitutes an exception in this regard it is embedded in a wider system of policy coordination which is geared towards peer review and the generation of voluntary self-commitment rather than coercive implementation. Until today there is not a single case in which the provisions on financial sanctions for a non-compliant member state have been invoked by the Council.<sup>5</sup>

Given the decentralised nature of the decision-making process and the dispersed character of the resources for policy implementation the generation of consensus over common policy action has become a constantly reoccurring challenge for EU decision-makers. As it is only through voluntary commitment that EU member states can act collectively in the above cited policy fields and orient their national policies towards commonly agreed objectives the emphasis is on refining working methods, coordination procedures and the administrative underpinnings of such a coordination process. This process is conceptualised here as *deliberative intergovernmentalism*. Instead of understanding intergovernmental relations in the EU primarily as a process of negotiation between member states about the limited transfer of power to the EU level through the means of creating supranational competences in the tradition of the Community method, this paper interprets intergovernmental relations in the field of CFSP as driven by the paradoxical struggle for policy consensus in a decentralised policy framework. As policy-makers cannot retreat to the instrument of supranational law (Haltern 2003) which would institutionalise their policy consensus for a longer period of time the only alternative which is left for them is to adjust the instruments for policy coordination with a view to improving their potential to foster consensus orientation and close intergovernmental coordination at all levels of bureaucracy. It is only this way that member states can formally reserve the right to ultimate decision-making while making progress on joint policies in response to foreign and security policy challenges.

In short, this paper starts from the assumption that the Lisbon Treaty has not changed the fundamental character of the institutional set-up of CFSP and economic governance alike as areas of intergovernmental policy coordination in which decision-making ultimately rests

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<sup>4</sup> Policy coordination in the latter two policy fields was introduced as the main governance method by the Treaties of Amsterdam and Nice respectively.

<sup>5</sup> It is also noteworthy that contrary to the community method the excessive deficit procedure does not delegate the authority to sanction non-compliant behaviour through the imposition of fines to the Commission.

with the member states. However, the Treaty brings about a series of changes as to how decision-making in these two policy fields is organised and carried out. The Lisbon Treaty is therefore understood as an attempt of *institutional engineering* in the sense that the new provisions are aimed at addressing dysfunctional aspects of the previously existing institutional framework without however changing the general character of the allocation of formal decision-making competences in this policy field.

The concept of deliberative intergovernmentalism can help to understand this particular institutional dynamic (Puetter 2012).<sup>6</sup> It implies that intergovernmental relations in key EU policy areas such as economic governance and CFSP evolve around the permanent search for policy consensus. The output efficiency of these settings may be considered to be limited by default when they are compared to a top-down hierarchical decision-making structure and the classical community method. Deliberative intergovernmentalism holds that they never the less can be studied in terms of their evolution over time. Institutional change in this regard is understood as the adjustment of a given context’s potential to foster consensus seeking and policy dialogue among formally independent actors. As a result policy consistency and the effectiveness of the decision-making process may increase. Moreover, deliberative intergovernmentalism expects a concentration of policy dialogue at the most senior levels of bureaucracy as common policies in such important fields like CFSP and economic governance can only be implemented provided that enjoy clear endorsement by the most senior members of the member state governments. The European Council and the Council are therefore at the centre of political gravity and it is in these settings that we should expect to witness the increasing importance of policy deliberation as a key method of decision-making. Moreover, CFSP is an evolving policy field in which core policy norms are relatively broadly defined and remain inherently contested (Puetter and Wiener 2009). The same applies to the field of economic governance. Although it can be considered to be more advanced than CFSP it continues to experience significant challenges to the viability of existing institutional structure as policy-makers face the ups and downs of EU and global economic development (Hodson 2011). As long as these broad parameters apply, the evolution of CFSP and economic governance mechanisms can be analysed in terms of their capacity to generate policy consensus among independent actors. Deliberative intergovernmentalism as an analytical framework provides a set of criteria for engaging in such a review of the CFSP governance framework and the changes brought to it by the Lisbon Treaty. Most importantly, deliberative intergovernmentalism distinguishes between the impact of the negotiation setting and the policy content.

The negotiation setting will be more conducive towards policy deliberation if informal settings which create room for frank and interactive policy dialogue complement formal decision-making procedures. The most prominent example for such an evolution has been the creation of the informal Eurogroup (Puetter 2006). Moreover, the degree of routinization of policy review procedures, which address diverse national policy responses, matters as much as the socialisation of actors into the practice of open and consensus-oriented debate does. Similarly, deliberative intergovernmentalism assumes that the combination of technical knowledge and the ability to exercise political leadership is crucial. Therefore, group membership and the closeness of senior policy experts and the most high-ranking political representatives of member state governments and the relevant EU institutions matter. These

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<sup>6</sup> This forthcoming publication develops the concept of deliberative intergovernmentalism in greater detail and applies it to the analysis of the changing role of the European Council and Council in economic governance after the Maastricht Treaty and in connection with the EU’s reactions to the global economic and financial crisis.

factors need to be considered together with more technical aspects such as the duration and frequency of negotiations. – The content of policy debates will matter with regard to the question of whether and to what extent it can be framed as a common problem by the involved actors. This essentially depends on individual actors and whether they can play a certain role under the above specified parameters of a given negotiation setting. However, some policy issues may be better suited than others for being framed in such way.

Thus, Treaty changes can only partially contribute to the creation of such an environment as it very much also depends on informal practices and routines. However, Treaty changes can have significant repercussions for such an already existing environment as they may alter the conditions under which it develops in the first place or create new opportunities for further informal adjustments. This is particularly true for provisions defining certain decision-making procedures and assigning specific roles to individual actors therein. As it was visible with the Amsterdam and Nice Treaties in the fields of employment and social inclusion policy coordination Treaty changes may also simply codify an informal or semi-formal policy practice which existed before. Finally, with regard to the policy content dimension Treaty changes may affect the range of issues which are dealt with in a given policy field and the way they are framed at the level of constitutional norms.

### **How the Lisbon Treaty defines CFSP as a decentralised governance set-up**

This section starts out with briefly recapturing what the Lisbon Treaty actually does *not* change with regard to the overall CFSP governance architecture. In other words, the new Treaty essentially confirms the overall governance structure and policy orientation of CFSP as it was set out previously. This means that EU foreign and security policy is based on an underlying normative framework which highlights the fundamental norms of democracy, rule of law, human rights and international law as well as the principles of the United Nations Charter (Article 21, TEU) and is not limited to particular aspects of foreign and security policy (Article 24.1, TEU, first sentence). Moreover, this normative framework is related to the EU’s own history as a specific regional integration project among democratic states. In this sense the Lisbon Treaty does not change the fundamental policy orientation and thus the policy content dealt with in the CFSP arena.<sup>7</sup> The Lisbon Treaty – as the preceding Treaties – refrains from specifying further policy objectives beyond these fundamental foreign policy norms. Concrete steps in the development of CFSP therefore need to be taken on the basis of case-by-case agreement among the member states and the involved actors. In other words, CFSP remains based on a rather thin policy framework as regards the Treaty provisions related to this policy field. The fundamental norms specified under Article 21 (TEU) can be considered as inherently contested. Research shows that while they receive wide recognition and appraisal among core elites in EU foreign and security policy (Puetter and Wiener 2007, 2009), policy-makers derive diverging policy options from them when it comes to actual decision-making on common positions and joint actions.

The Lisbon Treaty, therefore, can be seen as a continuation of the idea of a decentralised policy framework for CFSP in which independent actors agree on common policies based on a rather thin institutional framework. The real challenge for CFSP governance, therefore, continues to rest with foreign policy practice and the need to forge policy consensus in response to particular foreign policy scenarios. The Lisbon Treaty brings

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<sup>7</sup> This does not mean that there are no changes to the policy content dealt with in the CFSP arena. As CFSP practice shows an expansion of the scope of foreign and security policy activity this is certainly the case. However, this development is currently not determined by Treaty changes.

about a few smaller and mainly editorial changes with regard to the way it describes the overall organisation of the CFSP governance set-up and the allocation of competences. – In this context the new wording included in Article 24.1 (TEU) starting with the second sentence is noteworthy:

*“The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded.” (Article 24.1, TEU)*

The Lisbon Treaty confirms the principle of unanimity as well as the exclusion of legislative acts from the range of decision-making options. These are the key features of CFSP governance and correspondent to the thin normative and constitutional framework of CFSP as discussed above. Without enjoying legislative competences in the field of CFSP the EU is short of a mechanism to further specify binding policy objectives and legislation beyond the broad CFSP principles provided by the Treaty. CFSP, therefore, lacks the main element of the classical community method and cannot evolve based on the concept of integration through law. The European Council and the Council are the key institutions in this governance set-up as only they represent those actors in the CFSP setting who have ultimate decision-making power. Only the heads of state and government and the foreign ministers are in a position to agree on common policy options and to ensure implementation with the help of the disperse and decentralised foreign and security policy resources of the member states. In the absence of an instrument to introduce legally binding decisions the mobilisation of these resources can only come about through the voluntary commitment of the member states. To the extent that the Commission commands itself relevant policy resources in this area it is equally involved in this process. Yet, it remains one among many actors sharing responsibility for policy execution and implementation. – Compared to the previously applied wording the Lisbon Treaty is more pointed in summarising this key method of CFSP governance and its special character compared to other areas of EU activity. This in itself may be considered as an expression of the firm intention to govern CFSP in a particular way for the foreseeable future. Article 24.1 (TEU) continues:

*“The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions...”*

As previously and as in the case of the provisions on economic governance (see below) the European Parliament is only assigned a limited role in CFSP governance.<sup>8</sup> The specific involvement of the Commission was outlined above. The special role of the two institutions is reflected in the above quote. In other words, the Treaty refrains from making a general statement on competence allocation – something one would expect in areas governed by the community method. – Crucially, the Court continues to be deprived of the role it plays in areas other than CFSP and economic governance. Again, with regard to these fundamental parameters the Lisbon Treaty does not change the previously existing institutional framework but is more pointed in distilling the essence of CFSP governance.

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<sup>8</sup> This is not to say that the EP cannot use competences it enjoys in other areas to exercise pressure on the Council and the European Council to recognise more explicitly the parliament’s point of view. The example of the discussion about the establishment of the EEAS was instructive in this regard.

## **The new role of the High Representative**

After taking stock of how the Lisbon Treaty prescribes the previously established fundamentals of the CFSP institutional framework it is important to highlight for which aspects the Treaty brings about more substantial changes. Again, the above quote from Article 24.1 (TEU) is instructive in the sense that it includes the High Representative besides the member states for being responsible for putting “into effect” CFSP. The fact that the High Representative is mentioned on equal footing with the member states constitutes a departure from the Amsterdam and Nice Treaties, which had introduced the role of the High Representative as one of assisting the Council and the presidency in running CFSP. It is therefore worth looking into the main changes regarding the provisions concerning the High Representative in greater detail.

The above formula “[t]he Council and the High Representative” is now also applied to the responsibility to “ensure compliance” with the fundamental principles of CFSP (Article 24.3, TEU). Previously, only the Council was mentioned as being responsible for this task (Article 11.2 (TEU Nice)). Also Article 26.2 (TEU) reiterates that the Council and the High Representative “shall ensure the unity, consistency and effectiveness of action by the Union” as CFSP is based on the mixed use of “national and Union resources” (Article 26.3, TEU).

The Lisbon Treaty ends the central role of the rotating Council presidency in CFSP governance. The presidency was in charge of chairing the Council meetings, representing the EU in CFSP matters to the outside world (Article 18.1, TEU Nice) and was responsible for the implementation of policy decisions (Article 18.2, TEU Nice). Prior to the Lisbon Treaty the High Representative only “assisted” the presidency in relation to these tasks (Article 18.3, TEU Nice). The same applied to the “formulation, preparation and implementation of policy decisions” (Article 26, TEU Nice) and the task of “conducting political dialogue with third parties”. Now the Treaty clearly reserves these roles for the High Representative (Article 27, TEU). The provisions allow the High Representative to play a more pro-active role at all stages of the policy process.

The field of CFSP governance is now removed from the immediate influence of the rotating Council presidency. The High Representative can exercise all functions of an active chair of the Council including the right to table own proposals and the responsibility to “ensure implementation” of policy decisions taken by the European Council and the Council (Article 27.1, TEU). She also has the right to call extraordinary Council meetings (Article 30, TEU). The Lisbon Treaty now also explicitly assigns the role of a mediator to the High Representative in cases of severe disagreement with a CFSP decision on part of a member state (Article 31.2, TEU). Previously such a case could have been only resolved through transferring the matter to the European Council – which still remains a possibility.

Finally, the Lisbon Treaty equips the High Representative with an own administrative infrastructure: the European External Action Service (EEAS). The service reflects the decentralised nature of CFSP as it is composed of officials from both the Commission and the General Secretariat of the Council as well as seconded diplomats from the member states (Article 27.3, TEU). The service is also not supposed to act independently but in “cooperation with the diplomatic services of the Member States.” – It can be best described as integrated intergovernmental bureaucracy which further institutionalises the functional integration of decentralised resources without fully transforming them into a supranational and fully independent bureaucratic resource. We, therefore, should also expect the EEAS to both rely internally on policy deliberation as a mode of governance as well as to trigger the further spread of this governance mode with regard to processes of transgovernmental policy

formulation involving the EEAS and various sub-units of the relevant ministerial bureaucracies of the member states and the Commission.

### **Formalising informality – the Eurogroup and economic governance**

Compared to the case of CFSP the core provisions on economic governance under EMU have undergone even fewer changes when comes to outlining the commitment to the already existing overall governance method and the related institutional set-up. Following the direct intervention of EU finance ministers in the constitutional politics of the European Convention and the following intergovernmental negotiations related to the Constitutional Treaty and the Lisbon Treaty the wording of existing Treaty provisions remained untouched (Puetter 2007). Nonetheless, as the in the case of CFSP, this institutional conservatism sends a clear signal that member states overwhelmingly remain committed to the decentralised character of the economic governance set-up and the emphasis on enhanced policy coordination.<sup>9</sup>

The Lisbon Treaty only provides for modest adjustment of the Commission’s role as a watchdog in economic governance. Even this smaller adjustment to an already existing Treaty provision caused considerable debate and member states largely resisted a more comprehensive strengthening of the Commission’s powers. Article 121.4 (TFEU) now includes the possibility of the Commission issuing a direct warning to a member state not complying with common coordination objectives and policy guidelines established through the broad guidelines on economic policy. Previously such a step required the consent of the Council. However, the Council still remains in charge of issuing the actual set of recommendations regarding any potential corrective measures to be taken by the concerned member state. Similarly, Article 126.6 (TFEU) gradually strengthens the role of the Commission in the so-called excessive deficit procedure. The provision now enables the Commission to issue a “proposal” rather than a “recommendation” to the Council when proposing a decision by the latter on whether a member state has an excessive deficit. Again, it remains within the political discretion of the Council what ultimate decision it takes on such a proposal. The new arrangement only binds the Council to treat a proposal under Article 126.6 (TFEU) as a regular Commission proposal issued under the community method, i.e. the Council is obliged to react and to take a formal decision on it. Moreover, an amendment of the proposal itself becomes more difficult as this now requires a unanimous decision on part of the Council (Article 293.1, TFEU).

The other major changes in the Treaty sections relating to economic governance under EMU concern the extension of Council decisions relating exclusively to the euro area and the formal acknowledgment of the long existing practice of informal policy dialogue among the euro area member states. To this end the Lisbon Treaty introduces the new chapter 4 into “Title VIII on Economic and Monetary Policy”. This chapter assembles Treaty provisions on institutional matters “specific to Member States whose currency is the euro”. Article 136.1 (TFEU) now enables the Council to take decisions only related to euro area member states with regard to the strengthening of “the coordination and surveillance of their budgetary discipline” and the adoption of “economic policy guidelines for them”. Moreover, Article 136.2 (TFEU) gives euro area member states an exclusive right to vote on these matters, thus excluding other EU member states from the final stage of the decision-making process. *De facto* euro area member states have always used their Eurogroup meetings to debate those

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<sup>9</sup> Even the proposed small Treaty adjustment following the experience of the global economic and financial crisis will remain within the confines of the overall decentralised institutional architecture. A discussion of the proposed financial stability mechanism is beyond the scope of this paper.

draft provisions of the economic policy guidelines of particular relevance to them ahead of the EU-27 decision-making in the Council and the European Council. Other member states then were presented with a *fait accompli* at the occasion of the full EU-27 discussion. The new provisions thus codify this practice and extend it to the actual voting procedure. They may even encourage the further separation of the preparatory process for the euro area related economic policy guidelines and surveillance mechanisms as both the Commission and the concerned member states no longer need to pretend that they are involved in an inclusive process which extends to all 27 member states. – This leads to the discussion of another new provision introduced by the Lisbon Treaty.

The practice of informal Eurogroup meetings “between ministers” is recognised by the new Article 137 (TFEU) which refers to the provisions of a specific protocol annexed to the Treaty.<sup>10</sup> Protocol No. 14 (TEU/TFEU) on the “Euro Group” acknowledges “the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union”. Article 1 of the protocol stipulates that the “Ministers of the Member States whose currency is the euro shall meet informally”. The wording “shall meet informally” considers a departure from the previous practice. So far, the Eurogroup has operated without a Treaty mandate. More precisely, the arrangement to have exclusive euro area meetings among finance ministers contradicted the Treaty provisions on EMU which clearly stated that the Council is the forum for economic policy coordination – and therefore the only one. The *de facto* basis for the Eurogroup’s work was a European Council conclusion from 1997 stating that the “Ministers of the States participating in the euro area may meet informally”.<sup>11</sup> The Lisbon Treaty thus implies the transition from a semi-legal enabling clause to a formal obligation to conduct informal policy dialogue among euro area ministers. Article 1 of the protocol also states that the “Commission shall take part in the meetings.” In addition, it reproduces the formula previously applied by the European Council namely that the European Central Bank (ECB) “shall be invited to take part in such meetings”. The protocol also regulates the preparation of Eurogroup meetings by charging the Commission and “representatives of the Ministers with responsibility for finance” with the related work. This again codifies the already existing arrangement which was problematic in legal terms to the extent that it involved the use of resources of the Community institutions – notably the Commission and the EFC – in preparing the work of an informal body which itself was formally not part of this institutional framework. – The protocol on the Eurogroup also stipulates that the group is chair by an elected president with a 2 ½ year mandate (Article 2). In practice, the Eurogroup already introduced the office of an elected president in January 2005.

With the introduction of Article 137 (TFEU) and the related protocol the Lisbon Treaty also ends a debate on the formalisation of the Eurogroup. What is important in this regard is that the Treaty formalises the principle of informality, i.e. it institutionalises the Eurogroup as a forum for informal policy dialogue among the finance ministers of the euro area, the Commission and the ECB. Thus, formal decision-making remains the responsibility of the Council. The Eurogroup itself does not obtain any legislative competences although the Treaty at the same time extends the scope of exclusive formal euro area decision-making in

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<sup>10</sup> The wording “meetings between ministers” is noteworthy in particular with regard to the long-debated but established the post-Lisbon practice of informal euro area European Council meetings (see below the section on the European Council).

<sup>11</sup> European Council, presidency conclusions, paragraph 44, Luxembourg, 12-13 December 1997.

the Council.<sup>12</sup> – Thus the Lisbon Treaty codifies and further develops the already existing practice to conduct policy debate in the field of economic governance by using to different working methods at the same time – formal Council meetings and informal meetings in a restricted context which allows only the minister and one adviser to represent the relevant member state. Moreover, informal meetings are not televised and minuted.

Finally, the Lisbon Treaty emphasises the issue of the external representation of the euro area so as “to secure the euro’s place in the international monetary system” (Article 138.1, TFEU). In particular, it stresses that the “Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences” (Article 138.2, TFEU). What is interesting in this regard is that the actual competence to decide on new representation arrangements, for example in the context of the IMF, already existed before. The Lisbon Treaty only introduces new language. It now emphasises the principle of “unified representation”. Moreover, Article 138.3 (TFEU) also guarantees euro area members exclusive voting rights on that matter. Such an arrangement does, however, leave open the question of resolving potential conflicts between the euro area and EU-27 external representation agendas in forums such as the G8 and the G20.

### **The role of the European Council**

Research on the changing character of intergovernmental relations in the EU shows the evolution of the European Council as the virtual centre of political gravity in EU governance (Puetter 2012). Over the last 15 years or so the European Council has become a major actor in day-to-day decision-making at the EU level as in particular the areas of economic governance under EMU and CFSP constantly require agreement at the highest political level. Otherwise policy decisions lack the necessary political backing to become implemented at the national level or cannot be reached at all. At the same time economic governance and CFSP are prime examples for policy areas which are considered to form integral parts of national sovereignty. Member states have made clear that they are not ready to render them to community method decision-making for the foreseeable future. In such a situation in most circumstances only the most senior representatives of member state governments can bring about policy decisions and, therefore, become involved in a routinized and intense policy dialogue. This is well reflected in the agenda, duration and frequency of European Council meetings which now are almost always dominated by economic governance and CFSP issues. Thus, the European Council obtains a central role in the day-to-day decision-making process. The Lisbon Treaty acknowledges this central role by introducing new policy area specific provisions related to the European Council as well as new general provisions regarding the functioning of the institution. In the field of economic governance the policy area specific provisions have remained unchanged. Already prior to the Lisbon Treaty reference to the European Council has been extensive compared to other policy areas governed under the classical community method. The latter also applies to CFSP. Here, the Lisbon Treaty did, however, alter some of the existing provisions. In the following the paper briefly reviews the CFSP related changes and then turns to the general provisions which are relevant for both policy areas.

The Lisbon Treaty reconfirms the crucial role of the European Council in CFSP decision-making by reserving the institution the right to “identify the Union’s strategic

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<sup>12</sup> The concept of exclusive voting rights for euro area member states with regard to certain areas of Council decision-making is not a new one. It exists since the entering into force of the Maastricht Treaty. The Lisbon Treaty only extends its scope.

interests, determine the objectives of and define general guidelines” for policy-making (Article 26, TEU). It reproduces almost entirely the language of the old Article 13 (TEU Nice). However, the Lisbon Treaty adds the term “the Union’s strategic interests”. The new Treaty also reproduces the definition of the division of labour between the Council and the European Council in CFSP by making clear that the Council acts “on the basis” of political guidance provided by the European Council. It is up to the Council to “frame” policy – a new term – and to take decisions regarding its definition and implementation (Article 26.2, TEU). As previously, the European Council appoints the High Representative but now does so in agreement with the Commission president – (Article 18, TEU). Similarly, the European Council also has the right to dismiss the High Representative.

The hierarchical relation between the European Council and the Council is also reflected in a catalogue of decisions the Council shall take by qualified majority. Although the field of CFSP in general is subject to the unanimity principle the Council decides based on a qualified majority whenever the European Council has established a clear framework for such decision-making in the first place. Article 31.2 (TEU) reproduces this principle as stated previously although the wording has slightly changed. What is new is that the European Council can now directly charge the High Representative with proposing a particular decision on an EU action or position to the European Council. The European Council can now also specify other cases in which the Council will act based on qualified majority decision-making. Once such a proposal is adopted by the European Council the Council again operates under qualified majority voting rules regarding any further decision-making following from this act.

While the specific provisions on external action and CFSP under Title V of the Lisbon Treaty do not indicate more substantial adjustments to the role of the European Council in CFSP apart from the smaller changes outlined above other TEU sections related to the European Council more generally do so. Similarly, these sections have repercussions for the field of economic governance. In fact, the Lisbon Treaty provides for a number of new provisions on the European Council. Most of these provisions take stock and codify the *de facto* role the European Council has acquired in EU policy-making ever since the entering into force of the Maastricht Treaty. In addition, the European Council itself has undergone a process of institutional engineering. Most importantly, it is now chaired by an elected permanent president and thus operates the same presidency regime as the Foreign Affairs Council (Article 15.5, TEU) and the Eurogroup (Protocol No. 14, TEU/TFEU). Moreover, the High Representative “shall take part” (Article 15.2, TEU) in the work of the European Council. In practice this arrangement implies that the High Representative plays a crucial role for linking the work of the European Council and the Council provided that the foreign ministers now no longer participate in European Council sessions unless they are explicitly required to do so. The participation of the High Representative in European Council meetings also shows the importance CFSP has gained with regard to the agenda of this forum.<sup>13</sup>

Similar to the High Representative and the Eurogroup president the president of the European Council enjoys the role of an active chair. He/she has the authority to call extraordinary meetings and is in charge of ensuring “the preparation and continuity of the work of the European Council” (Article 15.6, TEU). This may also imply an adjustment of the European Council’s working methods. The first president of the European Council Herman Van Rompuy used one of his first major programmatic speeches to make clear that he intends

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<sup>13</sup> The Lisbon Treaty does not foresee a similar arrangement for the president of the Eurogroup. However, the current president of the Eurogroup is Luxembourg’s prime minister Jean-Claude Juncker who is a member of the European Council. He has been chairing the Eurogroup since 2005 when the office of an elected president was created for the first time. His appointment became possible because he also acted as Luxembourg’s finance minister at the time.

to use this instrument and that the adjustment of European Council working method is a priority of his term. He highlighted that this is particularly relevant for the work of the institution in the areas of economic governance and CFSP.<sup>14</sup>

The president of the European Council now formally represents the EU at the level of heads of state and government on CFSP matters (Article 15.6, TEU) – a function which may overlap with the competences of the High Representative as the Treaty indicates. The president of the European Council also can “convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union’s policy” in the light of specific foreign policy developments which may require so (Article 26.1, TEU). Again, this prerogative will require close coordination with the High Representative. The procedure, however, also clearly establishes the hierarchy between the president of the European Council and the High Representative as the former presides over the institution which defines the “strategic lines” of CFSP.

### **What next? How the Lisbon Treaty affects EMU and CFSP governance**

Deliberative intergovernmentalism provides a conceptual framework for analysing the changes the Lisbon Treaty introduced to economic governance under EMU and CFSP governance respectively. Most importantly, the Lisbon Treaty did not alter the overall governance model which is applied in the two policy areas and which is constituted as a system of close intergovernmental policy coordination and, thus, different from the traditional community method. Seen from the point of view of classical integration theory which would measure closer integration by the transfer of ultimate decision-making power to the supranational level the Lisbon Treaty can only be classified as a total disappointment. Deliberative intergovernmentalism takes a slightly different analytical perspective. It assumes that governments are not ready to agree to a further substantial transfer of ultimate decision-making power to the EU-level but share a growing desire to increase their ability to act collectively in this policy field. Under these conditions economic governance under EMU and CFSP can only flourish based on the generation of voluntary commitment on part of the member states as the latter control most of the dispersed resources for policy implementation. Thus, the strengthening of policy coordination is the key method through which economic governance and CFSP are developed. Such measures cannot overcome the underlying dilemma that the EU seeks to establish coherent and effective economic and foreign policies against the background of a system of decentralised decision-making. In this context the notion of policy deliberation as the search for a reasoned consensus on common policy preferences which is reached on the basis of initially diverging policy preferences is crucial. The evolution of the EMU and CFSP governance set-ups with regard to their capacity to generate policy consensus and implement policy decisions reached outside the formally binding framework of EU law can be analysed in terms of increasing or decreasing the consensus formation capacity of the overall governance set-up through institutional adjustments. This final section briefly reviews the Treaty changes outlined in the previous sections accordingly and discusses their potential to improve the potential of EMU and CFSP governance mechanisms to generate policy consensus and effective implementation.

The transformation of the High Representative into a full-time chair of the Foreign Affairs Council and main spokesperson for CFSP constitutes an important change to the

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<sup>14</sup> See “The challenges for Europe in a changing world”, speech delivered by Herman van Rompuy, president of the European Council, Collège d’Europe, Bruges, 25 February 2010, press release of the European Council PCE 34/10.

CFSP set-up. The same applies to the Eurogroup context although here the Lisbon Treaty only codifies an institutional adjustment which was already implemented at an earlier stage. In a decentralised decision-making setting which relies on constant consensus formation and lacks legislative decision-making power a permanent chair can make a difference. A permanent chair can be crucial in framing policy issues for debate and introducing them as common problems – a key precondition for successful policy deliberation. He/she can also remind the members of the relevant decision-making forum on previously reached (informal) agreements and discussion outcomes. It is noteworthy that with regard to the High Representative the Lisbon Treaty further specifies core tasks and responsibilities related to the concept of an active chair. The Eurogroup protocol does not devote attention to this but it is clear from the past development path of the Eurogroup that its presidency arrangement is based on a similar – although informal – understanding (see Puetter 2006: 81-83). This includes in particular responsibility to ensure compliance and consistency. In the absence of a legally binding policy framework this is one of the instruments which can be applied in a decentralised policy setting.

Indeed, expectations have been running high with regard to the new role envisaged for the High Representative under the Lisbon Treaty. Member states have emphasised this ever since the debates in the Convention and the negotiations leading to the Constitutional Treaty. The transformation of the position of High Representative the Lisbon Treaty provides for is, however, no guarantee that the above listed functions of a permanent chair will be actually performed in way that is conducive towards fostering consensus oriented policy dialogue among ministers. The example of the Eurogroup shows that such arrangements can give a mandate to a permanent president but they cannot engineer personal qualification and interaction dynamics among ministers. The recognition and general acceptance of the chair within the relevant setting is something which cannot be taken for granted but evolves through practice. Most importantly, successful presidents need to command respect among their group members and be considered to be impartial and/or particularly competent. They also need to be willing to actually act as a pro-active chair. The example of the first elected president of the Eurogroup Jean-Claude Juncker shows that even a president who is able to ‘tick’ all these boxes in the first place may fail later in performing the role of an active chair (see Hodson 2011, chapter 3). Here, not only the individual commitment and qualification matters but also the behaviour of other influential group members. This applies internally for the function of policy dialogue and externally for the role of the spokesperson. Although it is important to have a formal endorsement of this function in the first place it does not hinder others to publicly contest or compete with the permanent chair.

Ironically, the EU’s first High Representative Javier Solana might have been just the right individual to fulfil such a role as foreseen by the Lisbon Treaty. It is beyond the scope of the paper to speculate about how Catherine Ashton may perform this task. However, given the above it can be said that it would be much too early to judge her on this at this point in time. In other words, the Lisbon Treaty indeed provides significantly more scope for the High Representative to become a key structuring element of the CFSP set-up but it will be left to policy practice to decide on the actual role played by this individual. From the perspective of deliberative intergovernmentalism the potential of the position of the High Representative to further the evolution of CFSP is not related to her ultimate decision-making competences but to her ability to act as a pro-active chair of CFSP coordination who reminds actors of their previously made commitments, shapes their focus on common policy challenges and acts as single spokesperson for the EU.

In being both spokesperson and chair of the Foreign Affairs Council the High Representative may also better link senior expert discussions in the PSC and debates among

ministers. The PSC is now also chaired by a representative of the High Representative. Compared to the current situation the EEAS will certainly increase the High Representative’s potential to more pro-actively issue policy proposals herself and set the agenda. However, the service as a hybrid model of a supranational bureaucracy and a highly developed intergovernmental network of expertise may also absorb the attention of the High Representative and render her vulnerable in the Council context at least for the immediate future as she may be seen as a representative of a potentially uncontrollable institutional resource.

The other major institutional adjustment to EMU and CFSP governance is hidden in the new Lisbon Treaty provisions on the European Council. The European Council is now dealt with by the Treaty as a regular EU institution and receives full attention in the text. Previous Treaties have been rather careful to further specify the institutional role of the European Council. That the role of the European Council was changing was nevertheless visible in the way specific reference was made to the body in policy area specific provisions – notably within those relating to EMU and CFSP. The new wording on the European Council introduced by the Lisbon Treaty, therefore, can be considered as taking stock of a striking development of the European Council, which took place ever since the introduction of the Maastricht Treaty. The European Council plays a pivotal role in EU decision-making. The cases of economic governance and CFSP demonstrate that this senior policy-making forum is indispensable for processing day-to-day decision-making – a role which was not envisaged by the classical community method. Again, the Lisbon Treaty does not change an already existing political practice. However, the relevant editorial changes acknowledge a new reality of contemporary EU decision-making and, thus, consolidates the EU’s new intergovernmentalism.

As in the case of the High Representative and the permanent president of the Eurogroup the Lisbon Treaty the creation of the office of a permanent president of the European Council by the Lisbon Treaty can be seen as an attempt to enhance the deliberative potential of the European Council as a forum for policy dialogue at the highest political level. Again, it remains to be seen how the respective individual holding the office will perform the role of a pro-active chair. The Lisbon Treaty provides him/her with a mandate to act this way. Herman Van Rompuy has made clear from the beginning that this may involve far-reaching adjustments to the European Council’s own working methods. He has already convened informal meetings and announced a further extension of this working method.

Finally, there is now a clear hierarchy between the European Council on the one hand, and the Council and the Eurogroup, on the other hand. The CFSP provisions make it quite clear how and when the European Council instructs the foreign ministers and the High Representative. They mirror in many ways the Maastricht provisions on the role of the European Council in economic policy coordination but are perhaps even closer to the current reality of the division of labour between European Council and the ministers meeting in the Foreign Affairs Council and the Eurogroup. It is therefore worth comparing more closely the way political leadership is exercised in the two fields of economic governance and CFSP respectively. Moreover, the Lisbon Treaty has created a troika of permanent presidents as regards the European Council, the Foreign Affairs Council and the Eurogroup. This may foster policy coherence and coordination between the three bodies. However, the three office holders may also compete with each other depending on how each of them is able to fulfil his/her role as a spokesperson and active chair in the relevant context. It is far too early to assess the repercussions the Lisbon Treaty may have with regard to such institutional dynamics.

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