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Note from the Editor

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Welcome to the first online issue of *CFSP Forum*. *CFSP Forum* was previously published in hard copy by the Institut für die Europäische Politik. FORNET has undertaken to produce and widen the distribution of *CFSP Forum* via its website.

This inaugural issue focuses on the foreign policy aspects of the EU Constitution proposed by the Convention on the Future of Europe, and contains analyses by experts from three FORNET partner institutions. The Constitution will be debated during the forthcoming Intergovernmental Conference, which is scheduled to begin in October 2004, and the analyses here are offered as a contribution to that debate.

The next issue of *CFSP Forum* will be published in September, and will focus on recent developments in the European Security and Defence Policy.

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A Foreign Minister without a Foreign Ministry – or with too many?

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The new draft treaty on the Constitution of the European Union envisages a new 'Union Minister of Foreign Affairs' chairing a Foreign Affairs Council which will draw up external policy on the basis of strategic guidelines defined by Heads of Government in the European Council, but separate from the 'General and Legislative Affairs Council'. The new Minister will fuse the two jobs currently carried out by Javier Solana and Chris Patten. Accordingly he or she will be appointed by and answerable to the European Council, and will wear the two hats of 'President of the Council of Ministers for Foreign Affairs' (especially important given the abolition of the rotating Presidency) and 'a Vice-President of the Commission' with the responsibility to 'ensure coordination between diplomatic action and development aid policy'.

So far so good – although the above formulation still begs the question as to whether development policy is to be subordinated to foreign policy, as some want and many fear. Institutionally the changes put an end to the potentially (but not so far) difficult competition between the High Representative and the External Relations Commissioner. They make things easier for European citizens to understand, and give the EU the famous 'one voice' (with or without a single telephone number) needed to simply relations with third parties. That there will inevitably be difficulties of implementation and

transition, or that the EU does not necessarily have a coherent foreign policy for its Minister to conduct is not a fatal handicap. All changes involve time and friction before they settle down, and there is no need to be unduly defeatist about this one. Moreover plenty of states have incoherent, or chaotic foreign policies even when they are fortunate enough to have a highly competent foreign minister in post.

There does remain, however, one glaring problem: the Foreign Minister is going to be appointed without a Ministry to back him or her up, and indeed without a set of embassies in the field. The Draft Constitution proposes to deal with this problem by setting up 'a European External Action Service'. In Annex III (only half a page long) the Convention agrees on 'the need for the Council and the Commission to agree, without prejudice to the rights of the European Parliament, to establish under the Minister's authority one joint service….composed of officials from relevant departments of the General Secretariat of the Council of Ministers and of the Commission and staff seconded from national Diplomatic Services'. The staff of EU delegations (ie proto-embassies) shall come from this pool, and the necessary arrangements should be made 'within the first year after entry into force of the Treaty establishing a Constitution for Europe'.

All this amounts to a pretty cool understatement of a series of formidable problems. How are the two sets of career streams in the Commission and the Council Secretariat to be fused, when we recall the problems that arose simply within the Commission during the 1990s as the result of attempts to rationalise its external relations staff? Given the fact that the two institutions will remain separately in existence, with the Commission still being in principle the guardian of 'the common European interest' and the Council being the main site of political power, how will the Minister be able to ride the two horses at once? How indeed will s/he cope with the new President of the Council, elected for two and a half years and inevitably backed up by a formidable staff, given what we know about the tendency of national heads of government to interfere in foreign policy-making? How will the Commission's external delegations be able to cope with the growing expectations of European embassies, given that they will have to compete with more politically-minded national representations? What about the national foreign ministries themselves, in many cases formidable operators in the game of bureaucratic politics, and even in the smaller and/or newer states increasingly adept at using the CFSP and other European for their national purposes?[1]

I raise these questions not out of negativism, but because it is all too easy to start at the top by announcing some grand innovation. The problem comes in delivering the systems which can make it work. Here, there is a real danger not just of delays, back-biting, and general chaos, all of which will undoubtedly ensue, but of a further serious loss of credibility for European foreign policy because the 'Minister' responsible for it will not only be seen to be wearing no clothes, but even to lack the wardrobe from which to get dressed. If the Minister of Foreign Affairs finds that s/he cannot construct a foreign service with which to work effectively, or that even progress in that respect simply produces heightened competition with national services, then s/he will be reduced to the level of one of the EU's Special Representatives, wandering alone in purgatory while the real action, for good or ill, takes place elsewhere. This would amount to a back-sliding even on the role performed shrewdly by Javier Solana, who has known the limits of his role and has stretched them only so far as they can sensibly go.

It is too late to disinvent the Minister for Foreign Affairs. But we should try at least to lower expectations by announcing the need for studies of how to integrate the various staffing systems, and how to promote cooperation in the field between national and EU embassies. This will take the pressure off the Minister to produce instant results, and it might lessen the incentives for cut-throat conflicts between national, Council and Commission staffs, the ultimate outcome of which would probably be a further renationalisation of foreign policy, as the convenient screen of cooperation provided by the current rotating presidency was finally stripped away. ◇

1. Brian Hocking and David Spence, eds, *European Foreign Ministries in the European Union: Integrating Diplomats* (Houndmills: Palgrave, 2002).

External Action and the Role of the European Parliament: Still Pending

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The draft Constitutional Treaty will herald significant changes in the definition and implementation of the Union's foreign policy, which will have profound effects for the efficacy and coherence of the European Union. But the Constitutional Treaty does not significantly change one area: the mechanisms for accountability in the area of foreign action, which remain almost the same. The Constitutional Treaty could have reinforced the role of the European Parliament and the Court of Auditors, but it did not do so. Therefore in the realm of accountability there is still room for improvement, both as regards CFSP and ESDP (the intergovernmental pillar) and as regards economic external relations (the supranational pillar). This is thus a pending issue.

Essentially, the competences for political and budgetary control already provided in the Community Treaties to the European Parliament remain the same. Although the Constitutional Treaty was a window of opportunity to reform these competences, in fact, nothing has changed. For instance, taking the issue of political control, it could have been possible to allow the European Parliament to have a direct role in the appointment of the new Union Minister of Foreign Affairs, who will assume the duties of the High Representative for CFSP and the External Relations Commissioner. Instead, the External Action Working Group only recommended that the European Parliament endorse the appointment of the Minister. The EP will also not take part in the appointment of the President of the European Council, who is in charge of the European Union's external representation for Common Foreign and Security Policy.

Furthermore, the Constitutional Treaty does not reform the European Parliament's decision-making competences. On the one hand, the European Parliament still has its information and control competences, provided for in article 21 of the Treaty on European Union (TEU), and its traditional role in external relations issues. But it has not strengthened its consultative role under article 21 TEU, which limits it to formulating recommendations for the CFSP, posing questions to the Council, and conducting an annual debate on progress in implementing the CFSP. On the other hand, the Parliament was not given the opportunity to take part in decisions on issues particularly sensitive to national interests, such as CFSP agreements and commercial agreements, which still do not need the EP's approval. As a result, collaboration between the European Parliament and national parliaments will be essential, but, we should remember, such collaboration has not been very easy in the past. As regards budgetary issues, the European Parliament's powers will still be limited to those stemming from the budgetary commissions and budgetary control (regarding the execution of the budget). In the CFSP domain, the EP can still only approve administrative and operative expenses, and not expenses for operations related with military and defence.

The traditional control competences of the Court of Auditors in the execution of the budget also remain essentially the same. Despite the fact that the Tribunal has disappeared from article I-18 of the Constitutional Treaty, in which the institutions of Union (including the European Council) are defined, the Court of Auditors continues to have an institutional character, as shown in article I-30. Nevertheless, its powers remain almost the same as they were when it was established in the 1960s.

In conclusion, the Constitutional Treaty maintains the current situation in the domain of external action of the European Union. This means that some proposals coming from the European Convention and academic fora were rejected. Among these proposals we reiterate the following:

- the direction intervention of the Parliament in the appointment of the institutional actors of the external action of the Union, particularly the President of the European Council and the new Foreign Affairs Minister;

- the provision of a fluid and permanent cooperation mechanism between the

European Parliament and the national parliaments, especially in areas of intergovernmental cooperation; and

- a strict collaboration regarding EU expenses between the Court of Auditors and budgetary control organisations at national level. Decentralised management needs an integrated control system. ◇

The Provisions on ESDP in the Constitutional Treaty: No Revolution in Military Affairs

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The provisions of the Constitutional Treaty on the European Security and Defence Policy (ESDP) add some interesting and innovative elements to the existing rules. They provide ESDP with a particular set of instruments and procedures, which have been missing from the Treaty on European Union. But the Constitutional Treaty does not create a separate policy area, instead embedding ESDP into the broader framework of CFSP.

ESDP is defined by the Constitutional Treaty as an integral part of the Common Foreign and Security Policy (Art. 40 (1) Constitutional Treaty). Thus, the general provisions on CFSP are of relevance for ESDP. It will be particularly crucial to observe the way in which the newly-created role of Foreign Minister provides a more coherent approach to CFSP and ESDP, by better coordinating civil and military aspects in crisis-management.

The decision-making rules in ESDP remain strongly intergovernmentalist; even the cautious provisions allowing for qualified majority voting in CFSP (Art. III-196 (2)) do not cover issues having military or defence implications (Art. III-196 (4)). Still, constructive abstention can be used in ESDP, although the wording does not represent decisive progress compared to the present situation. Within the framework of CFSP, ESDP represents a still harder 'hyperintergovernmentalist' core.

Concerning missions by the EU, the Petersberg tasks have been widened and specified, to include joint disarmament operations, military advice and assistance tasks, conflict prevention, and tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation (Art. III-205 (1)). In fulfilling these tasks, the fight against terrorism represents a major objective (Ibid.).

Given the fact that qualified majority voting

is generally excluded, other options have been chosen for rendering ESDP workable by introducing different options for flexibility:

- The Council will be allowed to entrust the execution of a mission to a group of countries having the necessary capability and the desire to undertake it (Art. III-206 (1). This rather parsimonious provision leaves some questions open, such as the way in which the group of countries will be constituted, and how it will take decisions.

- Member states will be allowed to establish "structured cooperation", but they will have to fulfil higher criteria for military capabilities and be ready to enter more binding commitments in this regard (Art. III-208 (1)). The 'tricky issue' will be how the member states, the criteria and the commitments are defined, and if there is a balance between political and military requirements in this regard.

- The provisions on enhanced cooperation (Art. I-43) can be applied to ESDP, which might offer further opportunities for flexible solutions and represents a major achievement given the resistance still evident at Nice. It is, however, not totally clear which voting rules will be applied in this case.

- Member states that wish to do so will be allowed to adopt a mutual defence clause (Art. I-40 (7) and Art. III-209). This clause has only rather symbolic value at the moment, as NATO is still regarded as the primary provider for collective defence; it could however, contribute to the taking over of the WEU's Article 5 commitment if all EU states who are also members of WEU adopt this clause; the status of present WEU associate members, observers and associate partners would still have to be clarified.

- A European Armaments, Research and Military Capabilities Agency (Art. I-40 (3) and Art. III-207) is created, open to participation by all member states who wish to do so. One option could be to bring the Organisation for Joint Armaments Cooperation (OCCAR) under the Treaty, thus opening it to other EU countries.

In general, the options for flexible solutions represent the major innovation in the Constitutional Treaty regarding ESDP. It could bring about a more efficient handling of military and defence issues, but it could also lead to higher fragmentation and reduce transparency. ESDP thus is an integral, but also a peculiar part of CFSP within the Constitutional Treaty. ◇