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THE LISBON TREATY AND THE COMMON FOREIGN
AND SECURITY POLICY:
A leap forward or more of the same?

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The Lisbon Treaty and the Common Foreign and Security Policy: a leap forward or more of the same?

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This article retraces the main institutional changes made to the EU architecture to deal with external affairs and explores the EU's ability to deploy its new tools in the recent crisis in Tunisia and Egypt.

The institutional structure

The Lisbon Treaty left mainly unaltered the decision-making structure for foreign policy matters. New provisions did not give the Commission 'new powers to initiate decisions' or to 'increase the role of the European Parliament' (Declaration 14 annexed to the Treaty of Lisbon).¹ The European Court of Justice does not have jurisdiction in CFSP, with the exception of reviewing the legality of certain decisions and settling conflicts over competences (Article 24(1) of the Treaty on the European Union (TEU)). Therefore, as was the case in the past, general Guidelines for CFSP and CSDP are unanimously decided on by the European Council (Article 26(1) TEU). The Council of Ministers adopts decisions and actions on the basis of these guidelines (Article 26(2) TEU) and the Commission maintains its power of initiative in its areas of competence, such as trade, development and humanitarian aid.

The abolition of the rotating Presidency for the European Council and for the newly established Foreign Affairs Council provoked a major reorganization of the Council structure. The reorganization of the Presidency of the Council was pursued through a plural arrangement for different Council configurations due to a triple organization of functions: the new permanent Presidency of the European Council, main organ for political direction in foreign and security matters (Article 22(1) TEU); the Chair provided by the High Representative to the newly established Council for Foreign Affairs; and the rotating Presidency, which still chairs all other Council configurations.

Therefore, while leaving unaltered the decision-making structure, the Lisbon Treaty caused a massive institutional and bureaucratic reorganisation. The new figure of the High Representative/Vice President of the Commission (HR/VP) brought about the most astonishing change in the organization of services dealing with the external relations at the European level. The HR/VP chairs the new Foreign Affairs Council. In parallel, she is one of the Vice-Presidents of the Commission. The HR/VP contributes to the CFSP through her power of initiative (Article 30 TEU) and her role in implementation (Article 27(1) TEU), assisted by the EEAS, the Commission and the Member States. She also contributes to the definition and implementation of first pillar competences, while ensuring diplomatic representation to all institutions of the Union.²

¹ The Declaration concerning the Common Foreign and Security policy states: 'In addition to the specific rules and procedures referred to in paragraph 1 of Article 11 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations. The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament. The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States'. Available at: <http://eur-lex.europa.eu/en/treaties/dat/12007L/htm/C2007306EN.01025502.htm>

² Article 5(7) of the the Council Decision *Establishing the organisation and functioning of the European External Action Service (2010/427/EU)* of 26 July 2010 states: 'the Union delegations shall have the capacity to respond to the

National diplomats explained that it took time to get used to this new structure. In a first place, at the higher levels, the Council still has a bicephalous structure to deal with foreign affairs, with EEAS chairing the COPS and the rotating Presidency chairing the COREPER I and II and some other relevant Working Groups, such as CODEV, the Group of External Relations Counsellors (RELEX, responsible for horizontal issues and sanctions) and the Trade Policy Committee.

This hybrid institutional arrangement also concerns the division of competence between the Commission and the EEAS: the former still manages the Directorates General dealing with Enlargement (DG ELARG), which also has competences on the European Neighbourhood Policy, DG Trade, DG AIDCO and part of DG Development. DG RELEX, responsible for main geographical and thematic desks within the Commission was absorbed by the new EEAS, together with the bulk of the Council Secretariat General, DGE, the newly established Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability, the Military Staff, and, not exclusively, the Situation Centre.³ National diplomats confess that understanding “who does what” can be extremely puzzling, even if the two institutions have established a good degree of inter-institutional coordination. According to diplomats, coordination tends, generally, to work well and the EEAS effectively provides for a sound chair and useful information.

The merger of services from the Council Secretariat General and the Commission and the incorporation of national diplomats in to the EEAS not only fuelled turf battles and rivalries, but also absorbed energies of the EU for a long period of time. The beginning of the new year abruptly obliged the EU to look beyond its lengthy internal path of reform. The blaze that set on fire Mohammed Bouazizi in front of a local municipal office in Sīdī Bū Zīd in mid December 2010, soon flared up in several Maghreb and Gulf countries and is still burning throughout the region.

The era of revolution in the Mediterranean region and the Middle East: a first test for the EU's new external action architecture

Brussels, 16 February 2011, roundpoint Schuman: eight distinguished diplomats are discussing animatedly in a café. Not far from there, with nineteen other colleagues of the Maghreb-Mashrek Working Group (MaMa WG) of the Council of Ministers, they negotiated the terms of the EU-Israel Association Agreement. It was a tour de force, one of them confessed later, which witnessed the obvious division between “pro Palestinian” and “pro Israeli” fronts, in a moment of great turmoil for the entire region. Far from being merely a procedural and economic issue, the decision on how to reinvent the association with Israel reveals the urgency to tackle all dossiers on the Mediterranean and the Middle East region with a long-term, strategic view.

According to several national diplomats working in the MaMa WG, the EU managed, against all bets, to have a common position on the support of democratic entreaties both in Tunisia and in Egypt. According to several diplomats from the MaMa WG, the EEAS presented an option paper on Tunisia on Monday 16 January, two days after Ben Ali had fled from Tunisia. This option paper served as basis for negotiation for the decisions taken by the EU. In the case of Tunisia, the EU was

needs of other institutions of the Union, in particular the European Parliament, in their contacts with the international organisations or third countries to which the delegations are accredited.’ Interestingly, in the Proposal for a Council Decision, dated 25 March 2010, the wording of the same article was quite different: ‘the Union delegations shall have the capacity to service the needs of other EU institutions, in particular the European Council and the European Parliament, in their official contacts with the international organisations or third countries to which they are accredited.’

³ The Council Decision *establishing the organisation and functioning of the European External Service*, 1165/1/10, Brussels, 20 July 2010, specifies that the EU Situation Centre (SitCen) has been transferred to the EEAS, with the exception of those Staff in the SITCEN supporting the Security Accreditation Authority.

effectively able to deploy both first and second pillars instruments in an efficient and relatively fast manner.

The EU's first reaction was political support for the self determination of the people in Tunisia and Egypt and of condemnation of political repression. After this, the EU promptly launched restrictive measures (second pillar instruments) and announced a recasting of assistance for Tunisia. Accordingly, the Council adopted a regulation imposing the freezing of assets owned or controlled by the members of the former establishment, “responsible for the misappropriation of state funds in Tunisia”.⁴ In addition to this, Catherine Ashton announced the intention to recast assistance to the country up to €258 million, to add up some €17 million of new resources and to open discussions with the European Investment Bank in the attempt to mobilise €1 billion of finance this year to help develop small and medium businesses and transport infrastructure.

As several diplomats of the MaMa WG reported, while there was political agreement on the necessity to act, the Member States worked hard to agree on how to best support a democratic transition. Diplomats reported a division among those who favoured an immediate response and those who suggested waiting for the Tunisian provisional government (and, more recently, the Egyptian military junta) to suggest what kind of restrictive measures adopt and against whom. The latter position prevailed.

While waiting for the details of new financial instruments, it seems possible to affirm that the EU was able to speak with one voice, or better, several voices that sing the same tune. A senior diplomat in the MaMa WG subtly pointed out that all EU institutional actors did not refrain from “speaking in the name of the EU”, with a proliferation of statements on all fronts – from the joint statement of UK, France, Germany, Italy and Spain on Egypt⁵ to those of the High Representative; from the President of the EU, to the Commissioner for Enlargement Štefan Füle; from the President of the Commission until joint statements from Commissioner for Enlargement and the High Representative and one by President of the European Council, President of the European Commission, and EU High Representative on recent developments in Egypt.⁶

The dramatic developments in Libya and Bahrain questioned the ability of the EU to deliver a convincing response to the ongoing crisis in the Mediterranean and Middle East. As with other international players, the EU at all levels is now frantically working on how to interpret and cope with the domino effect that is occurring in the Middle East, in Egypt and elsewhere.⁷ The crucial question is how to sustain, rather than lead, the emergence of an endogenous model of democracy in the Arab world, while taking into account the potential impact on the Middle East Peace Process; on the possibility of (democratically elected) Islamic extremist governments and of the increase of illegal migration and refugee flows towards Europe. This requires a joint collective effort of intelligence and information sharing, where the development of joint intelligence and strategic planning capabilities is still under construction in the EU.

In a speech delivered in Bruges last year, the new President of the European Council compared European foreign policy to a convoy of 27 ships with 27 captains who need to ‘find consensus about where to go’, in order to ‘establish a sense of strategic direction’. This metaphor effectively

⁴ The decision and the regulation, which target a list of 48 persons, including former president Zine El Abidine Ben Ali and his wife, were published on 5 February 2011 in the EU Official Journal. [OJ L 31, 5.2.2011, p. 40], http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/119202.pdf

⁵ <http://www.number10.gov.uk/news/statements-and-articles/2011/02/joint-uk-france-germany-italy-and-spain-statement-on-egypt-60125>

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/118752.pdf

⁷ MaMa diplomats all confirmed that are meeting up to four times per week to agree on a common strategy on these unexpected and whirling events.

captures the puzzles that the plural and multi-faceted EU institutional identity poses to foreign-policy. The long gestation of the new EU external relations architecture, therefore, seemed in a first instance to have coped with an unexpected and highly delicate situation, even if the challenge of “thinking strategically” on behalf of the most sophisticated multilateral forum has just started and has still a ways to go.