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Foreign, Security and Defence Policy and the Lisbon Treaty: significant or cosmetic reforms?

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Global Europe papers explore the relationship between Europe and the European Union and wider processes of global politics and the global political economy.

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The Lisbon Treaty was signed in Lisbon on the 13th December 2007. The Treaty includes a set of revisions to the Common Foreign and Security Policy and the European Security and Defence Policy and these changes are outlined and assessed below. A consolidated version of the changes to the Treaty on European Union made by the Lisbon Treaty can be found as an appendix and all the articles referred to below are the articles of the TEU post-Lisbon Treaty amendments unless otherwise indicated.

From Constitutional Treaty to Lisbon Treaty

The EU Heads of State and Government reached agreement on the Lisbon Treaty (LT), the successor text to the Constitutional Treaty, in Lisbon on 19th October 2007. The text of the LT is based heavily upon the text of the Constitutional Treaty. However, a key difference from the Constitutional Treaty is that the Lisbon Treaty will not replace the existing founding Treaties and the Treaty on European Union. Rather, the Lisbon Treaty is a set of amendments to the *Treaty establishing the European Communities* (to be renamed the *Treaty on the Functioning of the European Union - TFEU*) and *The Treaty on European Union* (TEU). The latter is heavily amended by the LT with 25 of the 62 amendments to the TEU pertaining to the CFSP and ESDP provisions of the existing Treaty. The overwhelming majority of the changes that were previously proposed in the Constitutional Treaty for the CFSP/ESDP have been retained in the LT.

Amendments to the Treaty on European Union

The changes to the CFSP/ESDP provisions of the TEU in the LT can be broken down into two main types: those that amend the CFSP/ESDP within the structure of the EU's policy universe; and those amendments that have consequences for the decision-making and implementation of the CFSP/ESDP. Each of these sets of changes will be examined in turn.

Remodelling the wider foreign policy

A key change to the existing arrangements of the CFSP/ESDP within the EU's panoply of foreign policy is the 'rebranding' of all aspects of the EU's foreign policy and external relations under the new heading of 'External Action'. This has implications for decision-making explored below. In terms of the Treaties the changes are that the old Title V of the TEU is replaced by two new chapters. The first of these chapters covers 'General Provisions on the Union's External Action' (and contains two new articles 10a and 10b that draw some wording from the old TEU article 11) and is an entirely new set of principles and general objectives for the wider External Action area and understood as covering the CFSP/ESDP; a new part V of the TFEU entitled 'External Action by the Union' (and which draws together the old EC Treaty provisions covering the Common Commercial

Policy, Cooperation with third countries and humanitarian aid, restrictive measures, international agreements, relations with international organisations and third countries and Union delegations and the solidarity clause); and 'external aspects of its other policy areas'. The second of the two new chapters contains the 'specific provisions on the common foreign and security policy'. The new CFSP chapter runs from articles 10c-31 (as opposed to 11-28 for the existing TEU). The CFSP chapter is also divided into two sections: 'Common Provisions' and 'Provisions on the Common Security and Defence Policy'. The consequence of this division (and the moving and re-ordering of treaty articles) is that the ESDP/CSDP provisions, and which are greatly expanded, are now separated out more than was the case previously. And the provisions dealing with expenditure matters are moved into the first chapter of the Treaty. Those dealing with enhanced cooperation are also removed (and now covered by a new Article 10 for the TEU that covers enhanced cooperation across all the Union's policy areas). Provisions covering agreements with third parties and international organisations are also greatly streamlined (Article 22).

External action provisions impacting on the CFSP/ESDP

It should also be noted that a number of other changes introduced that have implications for foreign policy but not contained within the CFSP/ESDP sections of LT. These include the grant of legal personality to the EU (article 32 of the revised TEU) and the creation of the position of President of the European Council. The latter only appears once in the CFSP chapter under article 13 on the basis that "If international developments so require, the President of the European Council 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 9b of the revised TEU that provides for the creation of the President of the European Council states that;

The President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union on 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 9b(6))

The degree of working harmony (or prejudice) established in the relationship between the first incumbent President and the HR remains to be seen. Much may depend on the personality of the two post-holders and the European Council President has the much less clearly defined job description in the revised TEU.

Changes to decision-making

The second set of changes to the TEU by the RT are those amendments that have consequences for the decision-making and implementation of the CFSP/ESDP.

Remaining distinctive

Although there are changes to arrangements for the decision-making and implementation of the CFSP/ESDP the underlying principle of a distinctive decision-making regime for the policy area is retained. The CFSP/ESDP remains a distinctive 'pillar' in that the roles of the Commission, European Court of Justice and European Parliament are very heavily circumscribed (and explicitly indicated in a revised Article 11 and in a new Article 240a of TFEU explicitly spelling out that the ECJ has no jurisdiction over the CFSP provisions). Most of the existing references to the Commission are removed (e.g. existing Article 14) and Commission initiatives on CFSP matters are to be directed through the HR (Article 16). The European Parliament is also enjoined to increase its annual debate on the CFSP to twice per annum and to expand this debate to encompass the ESDP (Article 21).

Seeking a common approach

There is, however, a substantively new article (revised Article 16 now renumbered Article 17a) making it incumbent on member states to seek a 'common approach' on matters of foreign and security policy and to be pursued by member states through their diplomatic representation in third countries and in international organisations. It also places greater obligations on Member States to ensure that any policies that may be pursued and 'affect the Union's interests' require consultation either in the European Council or Council and member states are required to show mutual solidarity. Whether this Article is a 'paper tiger' provision remains to be seen but there is no provision for formal sanctions on a member state that does not comply. Member States that are members of the UN Security Council are also tasked with using the HR to represent collective policy in the UNSC where the Union has defined a position (Article 19).

Limited revisions to procedures of decision making

Unanimity remains the norm in decision-making except where otherwise explicitly provided for (in article 17.2) and there is the addition of one new area in which member states may take decisions by a qualified majority. This is for where the Council is adopting a decision defining a Union action or position, on the basis of a proposal "which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request to him or

her from the European Council, made on its own initiative or that of the High Representative". The provision that previously allowed for majority voting in the implementation of Common Strategies is retained in a revised form (to cover the replacement arrangement noted above) and by still permitting implementation of actions or provisions by voting. There is also now a provision allowing the European Council to (unanimously) adopt a decision allowing for the extension of areas covered by majority voting.

Constructive abstention is retained in Article 17 but with the change that the existing blocking minority of one third of member states now also needs to comprise at least one third of the population of the Union. The 'Emergency Brake' is also retained for member states opposed to the move to a decision to be taken on the basis of a majority vote. The HR is given the role to seek a solution for the state concerned before the issue would be referred to the European Council.

The existing institutional hierarchy of the CFSP is retained with the European Council (unanimously) setting broad objectives. The change to the implementation is that the HR is now given a much more prominent role. Common Strategies (and which, in recent years, have become a redundant device) have been removed from the Treaty. The European Council does, however, still retain the role to take formal 'decisions' to 'identify the strategic interests and objectives of the Union' (Article 10b and Article 13).

Joint Actions and Common Positions are reworked within the LT and with the reference now to adopt 'decisions' taken to facilitate 'actions' to be undertaken and 'positions' to be held by the EU and its member states (Articles 12, 14, 15).

High Representative

The most significant set of changes to decision-making concern the revamped role of the High Representative. The 'new' *High Representative of the Union for Foreign Affairs and Security Policy* has already attracted attention as the post-holder will also simultaneously 'double-hat' as a Vice-President of the Commission (LT Article 9e). The High Representative will be a personification, and the animus, of the new gathering together of all aspects of External Action, formally responsible for its consistency across the Treaties and institutions (LT Article 9e(4)) and clearly key to achieving the ambition of greater synergy across all aspects of External Action. The HR is appointed by the European Council (under majority voting provisions) for the same five year term as the Commission and subject to the European Parliament vote of consent on the

incoming college of Commissioners. The HR will replace the Presidency as the key animating force of the CFSP (Article 16). Consequently a number of changes to the TEU concern the powers and responsibilities of the High Representative and place the post holder at the centre of coordinating (including within international organizations and conferences under Article 19), directing and implementing the CFSP. A new article (13b) sets out strengthened responsibilities and powers for the HR and which include the chairing of the (new) Foreign Affairs Council (and nominating the chair of the PSC under Declaration 3 of the LT), representing the Union with third parties and within international organizations and conferences and providing for support through the new European External Action Service (EEAS). The HR also takes on the responsibility (previously exercised by the Council) for proposing and managing Special Representatives (Article 18), the facility to task the PSC with work (Article 23) and replacing the Presidency in representing the CFSP to the European Parliament (Article 21).

External Action Service and Union delegations

One of the more eye-catching innovations of the LT is the introduction of the European External Action Service (EEAS) tasked with assisting the HR (Article 13(3)). The EEAS is intended as the '28th' diplomatic service of the EU and, under the LT provisions, intended to be staffed by officials from the General Secretariat of the Council, the Commission and staff seconded from the diplomatic services of the Member States. The exact organization and modus operandi of EEAS is to be determined by the Council acting on the basis of a proposal from the HR and after there has been consultation of the European Parliament and 'the consent' of the Commission. Under Declaration 22 of the LT preparatory work on the EEAS is to commence after the LT is signed and so before ratification has been concluded. The current European Commission delegations in third countries and international organizations are to be re-titled Union delegations and placed under the authority of the HR (TFEU article 188q) but explicit provision is not made for them to become a part of the EEAS.

New provisions on financing

There is an important change to the arrangements for funding expenditure for the CFSP. In addition to the existing provisions for charging administrative and operating expenditure to the Union budget there are new provisions covering circumstances in which the EU may wish to have rapid access to the Union budget, in particular for matters covered by ESDP articles 27(1) and 28), and if not charged to the Union budget then chargeable to a start-up fund to be financed by the member states. The arrangements to govern both of these

circumstances are to be determined by the Council in due course (Article 26(3)) and on the basis of a proposal from the HR.

Changes to the ESDP

The RT changes to the TEU provision dealing the common defence policy represent a significant proportion of the new articles introduced. Article 17 of the TEU that, feeling increasingly threadbare, governed the ESDP is expanded to create a new section of the TEU and contained within new Treaty articles 27-31. These new articles provide for five main changes to the ESDP: to expand the aims and ambitions of the ESDP; to expand the range of Petersberg tasks; to provide for the creation of the European Defence Agency; to introduce permanent structured cooperation; and to introduce sub-contracting to 'coalitions of the able and willing' member states.

The aims and ambitions of the ESDP are much more expansively outlined in a greatly expanded Article 17(1) and contained in a new Article 27(1)-(7). Notably there is considerable attention given to the member states committing to progressively enhance their military capabilities. Commitments to the Atlantic Alliance remain in the Treaty – and with a stronger reference to NATO as the 'foundation for collective defence'. The remaining reference to the WEU is removed and there is the introduction of a very soft WEU article V-type guarantee and which reads "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, in accordance with Article 51 of the United Nations Charter...".

The Petersberg tasks are greatly expanded, from what was formerly contained in 17(2), in a new Article (28) to now read as follows: "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-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories."

The European Defence Agency is formally introduced to the Treaty, under Article 27(3), and with Article 30 detailing the aims and ambitions for the Agency. The provisions also make clear that membership of the Agency is on an 'opt-in' basis and that sub-groupings of member states are envisioned for joint projects.

Articles 27(6) and 30 provide for permanent structured cooperation among member states (and also with arrangements for its functioning specified in an additional LT Protocol no.4). The decision for the establishment of permanent structure cooperation is to be that for the full Council under a qualified majority. There are also provisions provided for the expansion of such a group (on the basis of a qualified majority of those already engaged in structured cooperation) and provisions for suspending a member for failing to fulfill obligations on the same decision-making basis. The governing arrangements for permanent structured cooperation do not convey the impression of streamline decision-making and there may be a repeat of the experience of enhanced cooperation with the CFSP which has been a device of insignificance.

The provisions facilitating 'coalitions of the able and willing' member states under articles 27(5) and 29 are a potentially more interesting innovation especially (and in contrast to those on permanent structured cooperation) because they are much more light-touch. It is a decision of the Council to authorize such a grouping and for the group to liaise with the HR on management arrangements for the task in-hand.

Concluding comments

The LT revamps, rather than revolutionises, the existing arrangements for the CFSP/ESDP. A key determinant of the effect of the changes introduced will be whether the future occupants of the position of HR are able to fully utilise the additional powers that now accrue to the position.

The ambition is for the ratification of the Lisbon Treaty to be complete for entry into force of the revised TEU and TFEU treaties on 1st January 2009. The member states have negotiated the new Treaty with the express intention of overcoming the ratification problems associated with the Constitutional Treaty (as illustrated by changing the original name of the HR away from the 'Union Minister for Foreign Affairs'). And with an eye to potential ratification difficulties, two new Declarations (nos 30 and 31) are attached to the LT and provide political cover for governments that wish to convey the impression that nothing in the LT hinders their existing ability to define or implement national foreign policy. Whether the LT will enhance the CFSP/ESDP waits to be seen.

Appendix

CFSP provisions of the Treaty on European Union (as amended by the Lisbon Treaty).

Additions to the Treaty are indicated in bold and deletions are indicated by ~~crossed-through~~ text.

TITLE V

~~PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY~~

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY.

CHAPTER 1 GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 10a

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.
2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:
 - (a) safeguard its values, fundamental interests, security, independence and integrity;
 - (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
 - (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
 - (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
 - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
 - (g) assist populations, countries and regions confronting natural or man-made disasters; and
 - (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 10b

1. On the basis of the principles and objectives set out in Article 10a, the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

CHAPTER 2 SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

SECTION 1 COMMON PROVISIONS

Article 10c

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.

Article 11

~~1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:~~

- ~~- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,~~
- ~~- to strengthen the security of the Union in all ways,~~
- ~~- to preserve peace and strengthen international security, in accordance with the principles~~

- of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,
- to promote international cooperation,
 - to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

1. 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.

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. 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, with the exception of its jurisdiction to monitor the compliance with Article 25 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 240a of the Treaty on the Functioning of the European Union.

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

~~2.~~ 3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity **and shall comply with the Union's action in this area**

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

~~The Council shall ensure that these principles are complied with.~~

The Council and the High Representative shall ensure that these principles are complied with.

Article 12

~~The Union shall pursue the objectives set out in Article 11 by:~~

- defining the principles of and general guidelines for the common foreign and security

- ~~policy,~~
- ~~deciding on common strategies,~~
- ~~adopting joint actions,~~
- ~~adopting common positions,~~
- ~~strengthening systematic cooperation between Member States in the conduct of policy.~~

The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting decisions defining:
 - (i) actions to be undertaken by the Union;
 - (ii) positions to be taken by the Union;
 - (iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);
- (c) strengthening systematic cooperation between Member States in the conduct of policy.

Article 13

1. The European Council shall ~~define the principles of and general guidelines for~~ **shall identify the Union's strategic interests, determine the objectives of and define general guidelines for** the common foreign and security policy, including for matters with defence implications. **It shall adopt the necessary decisions.**

If international developments so require, the President of the European Council 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.

2. ~~The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.~~

~~Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.~~

2. ~~3~~ ~~The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.~~

The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council.

~~The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.~~

The Council shall ensure and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

Article 13a

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his or her mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

Article 14

1. ~~The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required.~~ **Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions.** They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

2. If there is a change in circumstances having a substantial effect on a question subject to ~~joint action~~ **to a decision as referred to in paragraph 1**, the Council shall review the principles and objectives of ~~that action that decision~~ and take the necessary decisions. ~~As long as the Council has not acted, the joint action shall stand.~~

3. ~~Joint actions~~ **Decisions referred to in paragraph 1** shall commit the Member States in the positions they adopt and in the conduct of their activity.

~~4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.~~

5. ~~4. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, pursuant to a decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow,~~ if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

6. ~~5. In cases of imperative need arising from changes in the situation and failing a Council decision—failing a review of the Council decision as referred to in paragraph 1,~~ Member States may take the necessary measures as a matter of urgency having regard to the general objectives ~~of the joint action of that decision.~~ The Member State concerned shall inform the Council immediately of any such measures.

7. ~~6. Should there be any major difficulties in implementing a joint action—decision as referred to in this Article,~~ a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the ~~joint action decision referred to in paragraph 1~~ or impair its effectiveness.

Article 15

~~The Council shall adopt common positions. Common positions shall define~~ **The Council shall adopt decisions which shall define** the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the ~~common positions~~ **Union positions**.

~~Article 22~~ Article 16

1. ~~Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy~~ **Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit proposals to the Council.** ~~submit to it initiatives or proposals as appropriate~~

2. In cases requiring a rapid decision, ~~the Presidency, of its own motion—the High Representative, of his or her own motion, or at the request of the Commission or a Member State or at the request of a Member State,~~ shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

~~Article 23(4)~~ Article 17

1. ~~Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.~~
Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. ~~If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.~~ **If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.**

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- ~~when adopting joint actions, common positions or taking any other decision on the basis of a common strategy,~~
- **when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 10b(1),**
- **when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request to him or her from the European Council, made on its own initiative or that of the High Representative,**
- ~~when adopting any decision implementing a decision defining a Union action or position—a joint action or a common position,~~
- **when adopting any decision implementing a joint action or a common position, a decision defining a Union action or position,**
- when appointing a special representative in accordance with Article 18(5).

If a member of the Council declares that, for ~~important~~ vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. ~~The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.~~ **The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.**

~~The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members(5).~~

~~3. For procedural questions, the Council shall act by a majority of its members. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.~~

~~This paragraph shall not apply to decisions having military or defence implications.~~

~~4. This paragraph shall not apply~~ Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

5. For procedural questions, the Council shall act by a majority of its members.

~~Article 16~~ Article 17a

~~Member States shall inform and consult one another within the Council in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.~~ **Member States shall inform and consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.**

When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach.

~~Article 17(3)~~ [Moved to become article 27]

~~1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the~~

~~Member States the adoption of such a decision in accordance with their respective constitutional requirements.~~

~~The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.~~

~~The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.~~

~~2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.~~

~~3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.~~

~~4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this title.~~

~~5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.~~

Article 18

~~1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.~~

~~2. The Presidency shall be responsible for the implementation of decisions taken under this title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.~~

~~3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.~~

~~4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.~~

5. The Council may, whenever it deems it necessary on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his or her mandate under the authority of the High Representative.

Article 19

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold ~~the common positions~~ **the Union's positions** in such forums. **The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination**

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold ~~the common positions~~ **the Union's positions**.

2. ~~Without prejudice to paragraph 1 and Article 14(3),~~ **In accordance with Article 11(3),** Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter **as well as the High Representative** informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States **and the High Representative** fully informed. Member States which are ~~permanent~~ members of the Security Council will, in the execution of their functions, ~~ensure the defence of the positions~~ **defend the positions** and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be asked to present the Union's position.

Article 20

The diplomatic and consular missions of the Member States and the ~~Commission delegations~~ **Union delegations** in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the ~~common positions and joint actions adopted by the Council~~ **decisions defining Union positions and actions adopted pursuant to this Chapter** are complied with and implemented.

They shall step up cooperation by exchanging ~~information, carrying out joint assessments~~ **information and carrying out joint assessments** and contributing to the implementation of the ~~provisions referred to in Article 20 of the Treaty establishing the European Community.~~

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 17b(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 20 of that Treaty.

Article 21

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He or she shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may ask questions of the Council or make recommendations to it **and the High Representative of the Union. It shall hold an annual debate Twice a year it shall hold a debate** on progress in implementing the common foreign and security policy **including the common security and defence policy.**

Article 22

~~1. Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.~~

~~2. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.~~

Article 23(4)

~~1. Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.~~

~~When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.~~

~~2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:~~

- ~~- when adopting joint actions, common positions or taking any other decision on the basis of a common strategy,~~
- ~~- when adopting any decision implementing a joint action or a common position,~~
- ~~- when appointing a special representative in accordance with Article 18(5).~~

~~If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.~~

~~The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members(5).~~

~~This paragraph shall not apply to decisions having military or defence implications.~~

~~3. For procedural questions, the Council shall act by a majority of its members.~~

~~Article 24(6)~~ Article 22

~~1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency.~~

~~2. The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions.~~

~~3. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2).~~

~~4. The provisions of this Article shall also apply to matters falling under Title VI. When the agreement covers an issue for which a qualified majority is required for the adoption of internal decisions or measures, the Council shall act by a qualified majority in accordance with Article 34(3).~~

~~5. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally.~~

~~6. Agreements concluded under the conditions set out by this Article shall be binding on the institutions of the Union.~~

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

~~Article 25(7)~~ Article 23

Without prejudice to Article 207 of the ~~Treaty establishing the European Community~~ **Treaty on the functioning of the European Union**, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council **or of the High Representative of the Union for Foreign Affairs and Security Policy** or on its own initiative. It shall also monitor the implementation of agreed policies, ~~without prejudice to the responsibility of the Presidency and the Commission~~ **without prejudice to the powers of the High Representative.**

~~Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.~~ **Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 28**

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, ~~without prejudice to Article 47.~~

Article 26 Article 24

~~The Secretary General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.~~

In accordance with Article 15a of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 27 Article 25

~~The Commission shall be fully associated with the work carried out in the common foreign and security policy field.~~

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for

the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Article 27a(8)

~~1. Enhanced cooperation in any of the areas referred to in this title shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect:~~

- ~~- the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy,~~
- ~~- the powers of the European Community, and~~
- ~~- consistency between all the Union's policies and its external activities.~~

~~2. Articles 11 to 27 and Articles 27b to 28 shall apply to the enhanced cooperation provided for in this article, save as otherwise provided in Article 27c and Articles 43 to 45.~~

Article 27b(9)

~~Enhanced cooperation pursuant to this title shall relate to implementation of a joint action or a common position. It shall not relate to matters having military or defence implications.~~

Article 27c(10)

~~Member States which intend to establish enhanced cooperation between themselves under Article 27b shall address a request to the Council to that effect.~~

~~The request shall be forwarded to the Commission and, for information, to the European Parliament. The Commission shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies. Authorisation shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.~~

Article 27d(11)

~~Without prejudice to the powers of the Presidency and of the Commission, the Secretary General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.~~

Article 27e(12)

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 27c shall notify its intention to the Council and inform the Commission. The Commission shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Council shall take a decision on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.~~

~~For the purposes of this Article, the Council shall act by a qualified majority. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the members of the Council concerned as those laid down in the third subparagraph of Article 23(2).~~

~~Article 28 Article 26~~

~~1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.~~

~~2. 1. Administrative expenditure which the provisions relating to the areas referred to in this title entail to which the implementation of this Chapter gives rise for the institutions shall be charged to the budget of the European Communities **Union budget**.~~

~~3. 2. Operating expenditure to which the implementation of those provisions the implementation of this Chapter gives rise shall also be charged to the budget of the European Communities **Union budget**, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.~~

~~In cases where expenditure is not charged to the budget of the European Communities **Union budget**, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under ~~Article 23(1)~~, **Article 17** second subparagraph, shall not be obliged to contribute to the financing thereof.~~

~~4. 3. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities **Union budget**.~~

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory

activities for the tasks referred to in Article 27(1) and Article 28. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 27(1) and Article 28 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:

- (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
- (b) the procedures for administering the start-up fund;
- (c) the financial control procedures.

When the task planned in accordance with Article 27(1) and Article 28 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

SECTION 2 PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY.

~~Article 17(3)~~ Article 27

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

~~1. 2. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.~~ The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised

in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

~~The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.~~

~~2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.~~

~~3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.~~

~~4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this title.~~

~~5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.~~

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 29.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 31. It shall not affect the provisions of Article 28.

7. 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, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Article 28

1. The tasks referred to in Article 27(1), in the course of which the Union may use civilian and military means, shall 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-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article 29

1. Within the framework of the decisions adopted in accordance with Article 28, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary decisions.

Article 30

1. The European Defence Agency referred to in Article 27(3), subject to the authority of the Council, shall have as its task to:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
 - (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
 - (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.
2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article 31

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 27(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.
2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.
3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205(3)(a) of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205(3)(a) of the Treaty on the Functioning of the European Union.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

PROTOCOLS

PROTOCOL (No 4) ON PERMANENT STRUCTURED COOPERATION ESTABLISHED BY ARTICLE 27 OF THE TREATY ON EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article 27(6) and Article 31 of the Treaty on European Union,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States;

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article 28 of the Treaty on European Union outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;
CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;
RECALLING the importance of the High Representative of the Union for Foreign Affairs and Security Policy being fully involved in proceedings relating to permanent structured cooperation,
HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The permanent structured cooperation referred to in Article 27(6) of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, to:

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and
- (b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 28 of the Treaty on European Union, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- (d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

Article 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 31 of the Treaty on European Union.

PROTOCOL (No 10) ON TRANSITIONAL PROVISIONS (EXTRACTS)

TITLE IV PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

Article 5

The members of the Commission in office on the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community shall remain in office until the end of their term of office. However, on the day of the appointment of the High Representative of the Union for Foreign Affairs and Security Policy, the term of office of the member having the same nationality as the High Representative shall end.

TITLE V PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL

Article 6

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community. The Council shall appoint a Secretary-General in conformity with Article 207(2) of the Treaty on the Functioning of the European Union.

DRAFT

DECLARATIONS

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

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2. Declaration on Articles 9b(5) and (6), 9d(6) and (7) and 9e of the Treaty on European Union
In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and High Representative of the Union for Foreign Affairs and

Security Policy, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

3. Declaration on Article 9c(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, and should give its political approval within six months. A draft decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

**Draft decision of the European Council
on the exercise of the Presidency of the Council**

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council. The Chair of the Political and Security Committee shall be held by a representative of the High Representative of the Union for Foreign Affairs and Security Policy. The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

22. Declaration on Article 13a of the Treaty on European Union

The Conference declares that, as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

23. Declaration on Article 188n of the Treaty on the Functioning of the European Union concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Chapters 3, 4 and 5 of Title IV of Part Three insofar as such agreements comply with Union law.

24. Declaration on Article 280d of the Treaty on the Functioning of the European Union

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article 280h providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

25. Declaration on Article 311(6) of the Treaty on the Functioning of the European Union

The High Contracting Parties agree that the European Council, pursuant to Article 311(6), will take a decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article 311(1) and Article 299, when the French authorities notify the European Council and the Commission that the evolution currently under way in the internal status of the island so allows.

30. Declaration concerning the common foreign and security policy

The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

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.

It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security.

31. Declaration concerning the common foreign and security policy

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 UN.

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.

32. Declaration concerning the legal personality of the European Union

The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.

38. Declaration on practical measures to be taken upon the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community as regards the Presidency of the European Council and of the Foreign Affairs Council

In the event that the Treaty amending the Treaty on European Union and the Treaty establishing the European Community enters into force later than 1 January 2009, the Conference requests the competent authorities of the Member State holding the six-monthly Presidency of the Council at that time, on the one hand, and the person elected President of the European Council and the person appointed High Representative of the Union for Foreign Affairs and Security Policy, on the other hand, to take the necessary specific measures, in consultation with the following six-monthly Presidency, to allow an efficient handover of the material and organisational aspects of the Presidency of the European Council and of the Foreign Affairs Council.