The Lisbon Treaty, which came into force on 1 December 2009, represents the latest phase of the gradual transformation of the European Union (EU) from a rather inward-looking community to one with the ambition to be a global player. The Lisbon Treaty represents a shift in EU emphasis from peace, well-being and prosperity within the EU to a concern with addressing global challenges.

This note aims at providing global information on the institutional impact of the Lisbon Treaty and provides some indication on how some areas of ACP-EU and EU-Africa cooperation as well as EU-SA cooperation can be potentially impacted.

1. Impact of the Lisbon Treaty on the European institutional landscape

The entry into force of the Lisbon Treaty represents a significant evolution in the way the EU manages its relationship with the rest of the world. The enlarged objectives that are attributed to EU external action under the Lisbon Treaty correspond to a widening EU foreign policy agenda, which will be supported by new structures (See Graph 1) and executed with new roles.

1.1 A more political role for the EU on the global scene

The way the EU will relate to its international partners will change through the two new leading figures in external relations, firstly, the High Representative of the Union for Foreign Affairs and Security Policy (EUHR) – double-hatted as the Vice-President of the European Commission (EC) – with their diplomatic staff, the European External Action Service (EEAS) – and secondly, the President of the European Council. Those two figures are expected to guide a more political EU external action, in which a multitude of EU external policies and instruments, including diplomacy, defence, development cooperation and trade, are to be used in a complementary and consistent manner to achieve the set of overarching objectives of EU foreign relations, which now include conflict prevention, the eradication of poverty and the progressive abolition of restrictions on international trade.

1 This is now in the person of Baroness Catherine Ashton
2 This is now in the person of Herman van Rompuy
The new institutions and a number of new competences aim at allowing the EU to better represent the EU member states on some key issues, notably with respect to EU-Africa relations, e.g. in security, trade and migration policy, and move ahead in these agreed areas. The High Representative will also be chairing the EU Council of Development Ministers, which will allow the EEAS to take the lead (or a co-lead) on EU development policy, leading some observers to highlight the risk for the instrumentalisation of aid for political, foreign affairs and security interests.

1.2 Communitarisation of new areas of cooperation

The Lisbon Treaty has transferred a number of areas under the EU competences. As a result co-decision between the Council and the European Parliament will be the standard
legislative procedure and as such qualified majority voting will be extended to more than 40 areas, including migration policy, investments, etc. As a consequence the Treaty extends the role of some role players, such as the European Parliament.

1.3 Restructuring the institutional arrangements in EU external action

With the adoption of the Lisbon Treaty it has been agreed to create the European External Action Service. In recent weeks major progress has been realised in establishing this service. The EEAS, as a coordinating body of all EU external action, would bring together all the different strands of EU policy (environment, trade, security, migration and development). A unified geographical desk system, absorbing the geographical desks for Sub-Saharan African countries currently in the Commission, would allow it to focus on overall political strategic issues, leaving thematic expertise for development and implementation to the Commission (see Box 1). The division of responsibilities between the EEAS and the Commission will somewhat split the aid programming cycle in the middle but also overcome the historical geographic split between ACP countries and the rest of the world.

The debates and negotiations are moving fast and it is not certain when final agreements on these points will be reached. It is likely that many aspects that are important from a development perspective will need further clarification in the coming weeks and months.

Box 1: role of the EEAS in the new institutional set up

It is the intention that the EEAS shall contribute to the programming and management cycle of all geographic financial instruments in the external relations field. It shall in particular have responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle. The proposals and programming documents pertaining to the European Development Fund, the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument, shall be prepared by the relevant services in the EEAS and the Commission under the direct supervision and guidance of the Commissioners for Development and Neighbourhood respectively, and then jointly submitted with the High Representative for decision by the Commission. However, the instruments remain under the authority of the Commission. Thematic programmes shall be prepared by the appropriate Commission service under the guidance of the Commissioner responsible for Development and presented to the College in agreement with the High Representative and other relevant Commissioner. As is the case today, horizontal Communications on Development Policy will be prepared by the relevant Commission services under the guidance of the Commissioner for Development, and presented to the Commission in association with relevant Vice-Presidents and Commissioners.
The new European Commission took office on 9 February 2010 for five years. With the new Commission came a reshuffle of portfolios and functions, as well as an expansion in the number of external relations Commissioners. In the new set-up:

- Baroness Catherine Ashton is the **High Representative for Foreign Affairs and Security Policy** and Vice President of the European Commission. She is responsible for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), chairing the Foreign Affairs Council and ensuring consistency of EU external action. She will be assisted by the EEAS, which will include the EU Delegations;
- **DG External Relations** (DG RELEX) will continue to exist until the EEAS is adopted. Its functions will then be split between the EEAS and the Commission;
- Andris Piebalgs is the **Development Commissioner**. He is responsible for DG Development which initiates development policy and DG EuropeAid which implements external aid programmes and projects around the world. Development policy-making and implementation have been placed under one Commissioner. Yet it is still unclear whether the structures will be integrated in order to enhance the link between policy and practice. The Development Commissioner will represent the Commission at the Foreign Affairs Council;
- Karel De Gucht is the **Trade Commissioner**. He is responsible for DG Trade;
- European **Neighbourhood Policy** which covers North Africa (formerly managed by DG RELEX) and enlargement have been housed under the same roof. Štefan Füle is the Enlargement and European Neighbourhood Policy Commissioner. He is responsible for DG Enlargement as well as the services of DG EuropeAid dealing with the European Neighbourhood and Partnership Instrument;
- DG ECHO reports to Kristalina Georgieva, the Commissioner for **International Cooperation Crisis Response and Humanitarian Aid**;

### 1.4 Provisions on Development cooperation

The Treaty of Lisbon clearly states that the fight against poverty is at the heart of the Union's development cooperation policy: “**Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty.**” This focus is a major change from the current provision, which mentioned three other aims on equal footing.

Language in the Treaty about **Policy Coherence for Development** remains literally unchanged, requiring other EC measures to be consistent with development policy. But given the new focus on poverty reduction, the claim to take into account the objectives of development cooperation in policies likely to affect developing countries has become a much stronger demand.

Development cooperation and humanitarian aid remain “shared parallel competences” between the EU and its member states. Hence, it is crucial that the **complementarity and coordination** provisions have been strengthened in the Lisbon Treaty. A new element is that complementarity goes both ways: Previously the Community had to complement MS development policies, now the two “complement and reinforce each other”.
4.4 The new EU Delegations and the practice of EU development cooperation

The new EU Delegations will have a legal personality enabling them to represent the Union in the full range of Union competencies. Hence, the EU Ambassador will take over the former role of the EU’s rotating Presidency at country level (at least after a transition period). This implies combining the Council’s Delegations (i.e. in New York) with the Commission’s Delegations worldwide, into one service. Under the authority of the High Representative, the Delegations are required to cooperate closely with the member states’ representations. Together with the member states’ representation, they are also responsible for ensuring that the EU’s policies are complied with and implemented; as stated in the Nice Treaty, they shall “contribute to formulating and implementing the common approach”. All of this bolsters the role of the EU Ambassador in political dialogue with partner countries, which is expected to become wider in scope, more strategic and deeper.

The practice of the EU’s development cooperation is likely to change. Further deconcentration of development cooperation is desirable and would be logical in the context of the newly empowered Delegations. EU member states may be more willing to delegate cooperation or channel funds for budget support to Delegations with a greater capacity and stronger mandate for political dialogue. Hence, if the new Union Delegations can strengthen their political and technical capacities through the EEAS, the Commission may be able to establish its added value in managing budget support and coordinating EU member states in-country. However, the latter task may prove difficult in the short-term as member states might need time to adjust to the new leadership of the EU Delegation. There are also concerns regarding the capacity of the EU Delegations, which have been given a range of new tasks without the adequate additional resources and staffing.

2. The Impact of the Lisbon Treaty on the ACP

The Lisbon Treaty will certainly represent a significant evolution in the way the EU manages its relationship with the rest of the world including with Africa, Caribbean and the Pacific (ACP). This is mostly driven by the broadening of the objectives of EU external action, more competencies being granted to the EU and the role and mandate of new actors in the EU’s institutional landscape. These new dynamics resulted in the following:

✓ **Removal of reference to the ‘ACP’ from the Treaty:** it is noteworthy, that the reference to the ACP, in place since the Treaty of Maastricht of 1992 that safeguarded the intergovernmental nature of EU-ACP relations, has been removed from Lisbon Treaty. The ‘Declaration on the European Development Fund [EDF]’, part of the Treaty of the EU under the Final Act since the Maastricht Treaty, stipulating that the EDF should be outside the budget, has also been removed. These two changes are symbolically/politically significant and give some indication of the ACP sliding from the EU agenda. They also remove some formal barriers to budgetization of the EDF – without necessarily promoting budgetization.

✓ **New challenges for the ACP as a group:** With a view to addressing the whole

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3 The Union Delegations also bear responsibility for consular protection of EU citizens (TEU, Art. 35)
4 TEU, Art. 35
5 TEU, Art. 32, par 3
spectrum of global challenges the EU High Representative (EUHR) will coordinate the interplay of the intergovernmental EU Common Foreign and Security Policy and the European Security and Defence Policy with the European Commission’s external action areas. The ACP as a partner – and development cooperation as a topic – will have to assert their space in the dialogue with the EUHR and his diplomatic staff in more direct competition with other international actors and other global issues. This is particularly observed as a result of the unification of all geographic desks under EEAS, which will bring an end to the current special treatment of the ACP manifested in the traditional geographic identification of DG Development with the ACP. Indeed, regionalisation will become more prominent as the EU seeks to structure its cooperation along the line of EU-Africa, EU-Latin America, etc.

- Yet...More opportunities: the broadening of EU external action means that a larger number of issues become subject to dialogue between Europe and its international partners. As a result, political dialogue under article 8 of the Cotonou Agreement (CPA) could for instance gain importance, both, in terms of scope and political weight. Furthermore, within the provisions on development cooperation, there is increased prominence of the aim of poverty reduction, strengthened provisions on policy coherence for development, complementarity, coordination and an expanded mandate for the new EU Delegations. This provides an opportunity to the ACP to build on the precedent set with the recent first-time use of article 12 of the CPA, pertaining to policy coherence, to request formal consultations on EU policies that could affect ACP countries’ development.

In Africa, specifically, the impact of the Lisbon Treaty will be felt in a number of areas as processes and interlocutors may change (see example in Box 2). But the first test of the impact of the Lisbon Treaty on EU-Africa relations will be felt during the forthcoming EU-Africa Summit, which is due to take place in Tripoli in November 2010. Already, the clear change is that the EU Troika format has now been replaced by the EUHR.

As it evolves, the EEAS is expected to play a significant political role and ensure greater coherence in the action of the EU with regards issues relevant to Africa. Indeed, one of the main criticisms of EU-Africa relations is the lack of coherence in the manner in which Europe engages with Africa. Furthermore, progress on the Joint Africa-EU Strategy (JAES) has been hampered by the lack of a common EU position on issues such as migration. The Lisbon Treaty and the EEAS have the potential, in the medium-to-long term, to address the lack of such common position as a result of the increased competencies granted to it (i.e. in the areas of trade, migration, etc.).

However, it remains to be seen if the EEAS has the political appetite to prioritise EU-Africa relations and to provide the political push to take the Joint Africa-EU Strategy to the level of a genuine strategic partnership.
What was previously the European Security and Defence Policy (ESDP) becomes the Common Security and Defence Policy (CSDP), thus reflecting the intention to have a more unified and integrated approach particularly in the EU’s own ‘neighbourhood.’ As security issues institutionally were previously dealt with at the political level by the High Representative for Security Policy (Javier Solana) (HRVP) with the staff of the Council Secretariat of the European Union while non-military aspects were also led by the Commission from the Directorate General for External Relations, competition and duplication at the Brussels and field level have emerged. The new post-Lisbon arrangements merge most of the responsibilities of the two posts and institutions into that of the European External Action Service headed by the HRVP therefore reducing the risk of duplication and ending competition.

For many areas the HRVP in relation to peace and security will have a specific mandate on developing relationships. For example, the **HRVP was recently given a mandate to open negotiations for concluding an agreement with South Africa** (among a host of other “third” countries with Morocco being the only other one in Africa), which would allow for their participation in the EU’s CSDP military or civilian missions. Also, through the new EU Delegations, there will be increased possibilities to take on peace and security tasks and promote greater coherence between them and other EU actions.

Given the strategic position of the **EU Delegation to the African Union** and the importance that the EU attaches to African Peace and Security Architecture there is now a “Peace and Security Section” including a military advisor within the EU Delegation to the African Union – which will provide the EU with greater “on the ground” political and technical back up on the investment of its financial resources in APSA. At the EU strategic level the follow through on objectives already articulated in the AU/EU Peace and Security Partnership of the Joint Africa EU Strategy could be made easier by the greater coherence brought by the HRVP, EEAS and EU Delegation to Addis Ababa.

There is also the potential for better coherence between EU’s civilian and military crisis management missions and the EU’s political and development activities at the country level. In the DRC, Guinea, Chad, Somalia there has been a past criticism that the EU’s CSDP Missions associated with these countries have not been ‘integrated’ in a coherent EU approach – on paper there are greater possibilities to address this under Lisbon. There is also the possibility that rather than “launching” costly and politically complicated CSDP missions that activities with a non-lethal / armed mission focus such as those with certain aspects of security sector reform (as characterised by those CSDP mission in Guinea, DRC) could be run from the EU Delegations. Politically this would still have to be somewhat negotiated with the EU member-states on a case-by-case basis.

Despite these adjustments, launching official CSDP civilian or military crisis management missions will still be the ultimate preserve of member-states through formal EU committees (Political and Security Committee) - they cannot be launched by HRVP or EEAS. Furthermore, there have been concerns expressed in some quarters that civilian crisis management, and longer-term peacebuilding objectives of the EU have suffered in the current institutional arrangements for the EEAS, with an increasingly militarised crisis management focus predominating – a point raised by European NGOs and Parliamentarians (see Franziska Brantner, 2010, A military takeover in the EU Council?, EShar Magazine, 25th of February 2010).

### 3. The Impact of the Lisbon Treaty on areas relevant to South Africa

Besides (in)direct impact resulting from the overall impact of the Lisbon Treaty on Africa, South Africa will also observe other changes in practice. Indeed, the entry into force of the Lisbon Treaty has already started impacting on the manner in which European actors organize themselves in-country and in international fora. The EU is progressively being introduced as a lead player, often times, however, as a co-chair with the rotating EU Presidency. In the case of South Africa for instance, the EU Mission to Pretoria has already taken up responsibilities over from the EU presidency (currently Spain) notably in chairing the coordination meetings (except for counsellor services). Other changes are
also foreseen for the near future where the EU and the EEAS will take up a stronger role (i.e. chairing of the Political and Security Committee (PSC)). Some of these changes have the potential of creating more stability by providing South Africa with one interlocutor.

Other areas of EU-SA relations, which may be more particularly affected by the Lisbon Treaty include:

### 3.1 Political dialogue

Political dialogue between the EU and South Africa is conducted at different levels ranging from Troika level to dialogue on specific issues. The entry into force of the Lisbon Treaty may impose a change of the interlocutor with whom the political dialogue is conducted. For instance, at Troika level, it is Baroness Ashton who will take over from the rotating EU Presidency. At country level, the EU Delegation to Pretoria is expected to slowly start assuming the role of political dialogue leader on behalf of EU Member States (MS) notably in the existing EU-SA bilateral forums (i.e. Annual Consultations on Development Cooperation, Trade Cooperation Council, Migration Dialogue Forum, Peace and Security Dialogue Forum, etc.). At the multilateral level, i.e. with the UN, the EU Delegations are expected to also increasingly play the lead role beyond the areas of exclusive EU competence. For example on climate change, the Energy Commissioner remains in charge of working out the technical proposals, yet the High Representative and the EEAS are expected to take the lead in forging EU positions and negotiating on behalf of the European countries in international climate change negotiations. It can be expected that the EEAS and the EU Ambassador will take the lead in engaging with South Africa on the topic of climate change, e.g. ahead of the negotiations in Mexico in 2010, but also in coordinating political dimensions with financial and technical support for adaptation.

However, these changes will not occur immediately as some transition is required. While the EU may partner with the local EU Presidency, the transition phases may see some individual MS conducting their political dialogue with limited or no involvement of the EU Mission in the country. The limited capacity of EU field missions will also place a limit on what they can do.

### 2.2 Programming

Currently, development cooperation to South Africa is financed through the Multiannual Indicative Programme (MTI) with funds drawn from the Development Cooperation Instrument (DCI). It has so far been managed by the Directorate General for External Relations of the European Commission (DG Relex).

However, the creation of the EEAS and the integration of DG RELEX within the EEAS will result in South Africa dealing with a new actor when discussing its programming. The EEAS, under the guidance and supervision of the Development Commissioner will now be responsible for allocation of funds, programming of the Country Strategy Paper and the MTI.

The European Development Fund (EDF), which governs the financing of the Cotonou Partnership Agreement (CPA) will also be affected by these changes. The programming cycle – including for regional funds – will partially be dealt with by the EEAS (see Box 1).

### 2.3 Trade policy
The Lisbon Treaty will introduce a number of changes that have a bearing on the EU’s Common Commercial Policy (trade policy). The changes will be introduced in the following areas:

- **Exclusive EU competence has been expanded to new areas**: The Lisbon Treaty further expands the Common Commercial Policy to explicitly apply to trade in services, protection of intellectual property rights and FDI. Trade in services and FDI come under community competence. However, there remain a few exceptions notably on non-trade related IPR, which will remain under mixed competence. Also, there is a lack of clarity at the moment on the definition of FDI and if it includes post-establishment issues. There is an important qualification to the exclusive EU competence, ring-fencing member states’ competencies (art. 206(6)). Hence, rather than clarifying the situation, the Lisbon Treaty may add more uncertainty to the question of who holds the power to conclude international investment agreements.

- **Changes relevant for international trade agreements**: The expansion of exclusive EU competence to services and FDI will have implications for the capacity of the EC to negotiate trade and investment agreements with third countries. As Member states lose the mandate to conclude FDI agreements (bilateral investment treaties), the EU is expected to at first ‘grandfather’ existing bilateral agreements to create legal certainty. There will be no more mixed trade agreements concluded by both the EU and the member states. In the future, the EU may interested in negotiating comprehensive EU investment agreements with third countries. It also implies that the adoption of trade agreements will now have to be passed by qualified majority vote within the Foreign Affairs Council of the EU, and no longer by unanimity as was the case for some services and the TRIPs. It also means that national parliaments of MS will no longer have to ratify the agreements and the European Parliament (EP) will take up the parliamentary oversight through co-decision.

- **Co-decision powers for the European Parliament (EP)**: under the Lisbon Treaty, it is the European Parliament that will play a more significant role in trade policy. The EP and the Council will be co-legislators in determining the framework for implementing the Common Commercial Policy.
  - Co-decision on all trade legislation (art. 207 (2)): shared with the Council and allows the EP to have a say on the adoption of trade agreements pertaining to Generalised Systems of Preferences, anti-dumping, countervailing duties, amendments to EPAs market access regulations;
  - Enhanced powers to ratify trade agreements (art. 218 6a and 6i to 6v): by simple majority before the Council can adopt a decision concluding a trade agreement. In other words the EP will have increased powers with regard to the final text of a Free Trade Agreement (FTA), which may de facto translate into an increased influence ahead of negotiations - in shaping the negotiation mandate - as well as during the negotiations;
  - Obligation of the Commission to report to the EP’s International Trade Committee (INTA) on a regular basis (art. 207 (3)). However, this change in the text simply codifies existing practices ad the EP was regularly briefed with respect to trade negotiations; and
  - Some powers granted to the EP to play an oversight on the Commission’s role in amending and implementing legislation (this was previously done by the comitology committees).
Nonetheless, there are limits to the European Parliament’s role, as the Lisbon Treaty did not give it powers to be directly involved in negotiations or to authorize negotiations.

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**Trade integrated under EU external action:** Another change in the area of trade under the Lisbon Treaty is its integration under the broader theme of EU external action (together with foreign and security policy, international environmental policy, development assistance, technical cooperation, etc.). The High Representative/EEAS has a mandate to ensuring ‘consistency’ of EU external action, which includes for example in ensuring that EU trade policy takes into account the objectives of EU development cooperation especially poverty eradication. How is the High Representative going to fulfil this mandate of coordinating other policy areas with trade policy in practice? Possibly, the actors in the new set-up of EU external action, especially the High Representative, the EEAS and the EP, will exert more political influence on the EU’s trade policy and its trade negotiations. That could for instance mean more pressure to use EU trade policy to serve broader foreign policy interests, to put more emphasis on environmental issues or labour standards or human rights. Some have expressed concern over a possible new conditionality in EU trade policy and FTAs.

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### 3.4 Migration Policy

One of the areas of cooperation between the EU and South Africa is migration as exemplified in the agreement for the conduct of a structured dialogue on migration. In this respect, one of the most profound reform under the Lisbon Treaty is Justice and Home Affairs, where increasing EU integration is expected to accelerate the creation of a common immigration and asylum policy and has the potential to impact on the capacity of the EC to negotiate agreements with third countries, including on Mode 4 on the temporary movement of workers in trade agreements. All EU decisions on asylum, immigration and integration will be subject to qualified majority voting in the Council and the European Parliament is given joint decision-making, including on new laws on entry requirements for non-EU nationals. The European Parliament is already on equal footing with the Council regarding most EU legislation dealing with immigration, border and visa issues. But under the Treaty it will gain a stronger say in both legal and illegal migration measures. However, EU Member states remain to have an exclusive right to determine the numbers of foreign nationals admitted to their territory. Also, cooperation on integration is supplementary to national regulation and not about the harmonisation of laws (subsidiarity principle). The Lisbon Treaty also strengthens the role of the European Court of Justice (ECJ) abolishing the current restrictions that limit the right to appeal to the ECJ concerning asylum and immigration decisions of the supreme courts in member states. One aim in the Lisbon Treaty as mentioned in the preamble is to develop a legislation that ensures uniform status of asylum for nationals from third countries, that is valid throughout the Union, and rights of third country nationals who are residing legally in a Member State. The text also strengthens the Commission’s legal standing to negotiate agreements with home countries on readmission - taking back illegal immigrants.

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6 Britain, Ireland and Denmark continue to opt out of many migration-related policies under the Lisbon Treaty.

7 The competence of the EU in the immigration issues is shared with the Member States and is confirmed by the Lisbon Treaty. This situation makes the legislative initiative of the EU Commission complicated.
Some key questions for discussion

✓ How will SA engage the key actors, the HR, the EEAS and the EP in the new EU set-up post-Lisbon in view of SA-EU cooperation on regional, continental and global issues of mutual concern (such as mediation and conflict resolution in the region and on the continent, the African-led Peace Support Operations, the African Peace and Security Architecture, the EU-Africa dialogue fora on migration, the international climate change negotiations, etc.)?

✓ How will EU member-states pursue their interests in practice in certain geographic contexts in relation to the new EU competences, structures and institutions?

✓ How will the transition phase (until the EEAS takes up its role) be managed by partner countries?

✓ How to take advantage of the potential of the Lisbon Treaty in ensuring Policy Coherence for Development and meeting the needs of partner countries?

✓ As trade is integrated under external action how will SA engage with the EP and the EEAS as the new important actors expected to exert political influence on the EU’s trade policy and its trade negotiations?

✓ How will SA stay informed of dynamics following new decision-making processes and new EU competencies in key areas of EU-Africa relations, such as trade and migration?

✓ How to ensure that SA exploits the opportunities and is prepared for the dynamics that may arise for partner countries, i.e. from the new EU competence to negotiate EU-wide investment agreements?