

# Assessing the Potential Impact of the Lisbon Treaty on EU-ACP relations

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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. While the Union continues to emphasize peace, well being and prosperity as core values, addressing global challenges becomes an equally important matter in the Lisbon Treaty.

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 can be potentially impacted. The paper, however, is cautious in providing definite answers, as the changes in EU external action are not yet finalised.

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

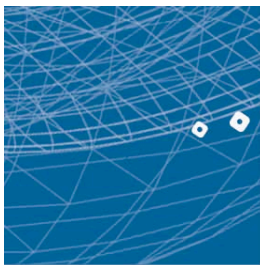
The entry into force of the Lisbon Treaty represents a significant evolution in the way the EU manages its relationship with the rest of the world. The enlarged objectives that are attributed to EU external action under the Lisbon Treaty correspond to a widening EU foreign policy agenda, which will be 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

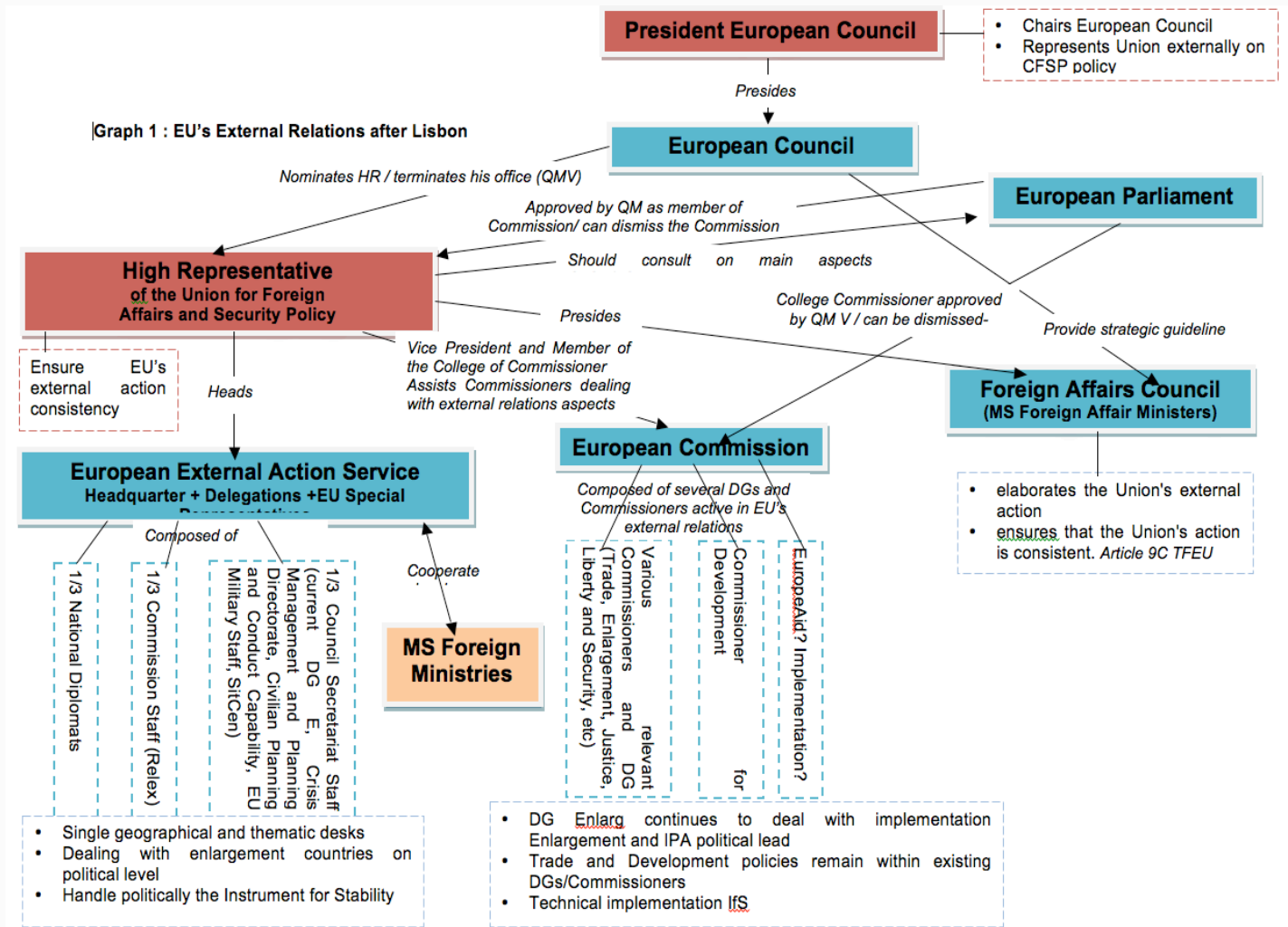
The way the EU will relate to its international partners will change through the two new leading figures in external relations, firstly, the High Representative of the Union for Foreign Affairs and Security Policy (EUHR)<sup>1</sup> – double-hatted as the Vice-President of the European Commission (EC) – with own diplomatic staff, the European External Action Service (EEAS) – and secondly, the President of the European Council<sup>2</sup>. 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

<sup>1</sup> This is now in the person of Baroness Catherine Ashton

<sup>2</sup> This is now in the person of Herman van Rompuy

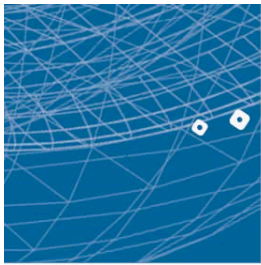


conflict prevention, the eradication of poverty and the progressive abolition of restrictions on international trade.



Source: forthcoming study, ECDPM and Clingendael for the Netherlands Environmental Assessment Agency, 2010

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-ACP 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 Development Ministers' meetings of the Foreign Affairs Council, 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**

A number of areas have become EU competence under the Lisbon Treaty. 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. Thus, the Treaty strengthens the role of some institutional 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 that is to assist the EUHR and to work in cooperation with the diplomatic services of the member states. The service will be staffed by officials from the current General Secretariat of the Council, the relevant services of the European Commission, while member states officials seconded from diplomatic services shall account for one third of the staff when it reaches full planned capacity of 7000 staff. There is little indication in the Treaty on what the EEAS should look like and what it will cover in terms of programming and implementation of EU development aid.

In recent weeks, major progress has been realised in reaching political agreement on the functioning of this service that is to be set up. The EEAS, as a coordinating body of all EU external action, would bring together all the different strands of EU policy affecting the EU's relations with third countries (environment, trade, security, migration and development). A unified geographical desk system, absorbing the geographical desks currently in the Commission's DG External Relations and DG Development, would allow it to focus on overall political strategic issues, leaving thematic expertise for development and implementation to the Commission. The EEAS and the Commission will be involved in different steps of the aid programming cycle. Relations with ACP countries will no longer be dealt with by a different Commission Service than relations with the rest of the world, as previously was the case. The historical geographic split will disappear. More information on the division of tasks related to aid programming and implementation is presented in Section 2.2.

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.

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 previous provision, which mentioned three other aims on equal footing.

Language in the Treaty about **Policy Coherence for Development** remained 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*".

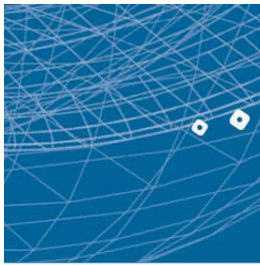
#### **1.5 The new EU Delegations and the practice of EU development cooperation**

The new **EU Delegations** will have a legal personality enabling them to **represent the Union in the full range of Union competencies**.<sup>3</sup> 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,<sup>4</sup> as stated in the Nice Treaty, they shall "*contribute to formulating and implementing the common approach*".<sup>5</sup> All of this **bolsters the role of the EU Ambassador in political**

<sup>3</sup> The Union Delegations also bear responsibility for consular protection of EU citizens (TEU, Art. 35)

<sup>4</sup> TEU, Art. 35

<sup>5</sup> TEU, Art. 32, par 3



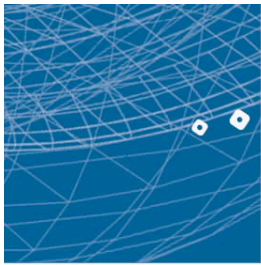
**dialogue** with partner countries, which is expected to become wider in scope, more strategic and deeper.

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 relationship between the EU and the ACP Group may change on the basis of the Lisbon Treaty. As the EU broadens its objectives in the area of external action and its institutions handle more competencies, new institutions are being established and roles are being redefined, the ACP Group may want to examine its place in this new order. The Lisbon Treaty brings about the following changes for the ACP:

- ✓ **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 the 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 (see annex 1). These two changes could be politically significant as they 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 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 her 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...also opportunities:** The discussions on the Lisbon Treaty may give the ACP Group an opportunity to think about its joint interests in this new framework. It could lobby member states and EU institutions to include an ACP unit or an ACP desk in the EEAS, as a dedicated interlocutor at the political level. The European



Parliament as a stronger actor in the new set-up could be a potential ally in safeguarding ACP concerns and the ACP Group could consider developing a strategy to institutionalise regular consultation with the EP. In the upcoming discussions on the next multiannual financial framework and the future of the EDF, the ACP Group could examine how other types of instruments have benefited other regions and whether lessons from other regions could also benefit the ACP Group. On this basis and in the context of the possible re-emergence of the budgetization debate the ACP Group may want to reflect on ways of engaging the EEAS and the EP early on.

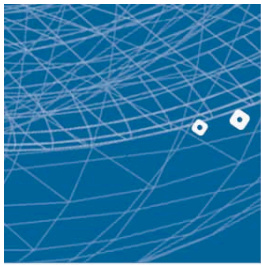
The broadening of EU external action means that a larger number of issues become subject to dialogue between Europe and its international partners. As a result, **political dialogue under article 8** of the Cotonou Agreement (CPA) could for instance gain importance, both, in terms of scope and political 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.**

More specifically, however, the Lisbon Treaty will have an impact on a number of areas that are of relevance to the ACP group.

### **2.1 Political dialogue**

Political dialogue between the EU and the ACP 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, the EEAS will take over from the rotating EU Presidency. At country level, the EU is expected to slowly start assuming the role of a political dialogue leader on behalf of EU member states (MS) notably in the existing EU-ACP forums (including bilateral forums). Until 30 June 2010, the EUHR has delegated Union representation to the Permanent Representation of Spain and the EU's Head of Delegation. At the multilateral level, i.e. with the UN, the EU Delegations are expected to also increasingly play the lead role. Previously, the rotating Presidency represented the Union at the UN. The Union itself only has observer status which is unlikely to change in the near future due to fact that the UN Charter only allows states to join. Technically, the EU will represent the member states on issues of exclusive EU competence, whose number was enlarged with the Treaty. But also in areas of shared competence, it is clear that in the future the EU will seek to join more international organisations and fora if member states agree. It remains to be seen whether member states are willing to be represented by the EU (as in the WTO) or whether they insist on representing themselves. On climate change, the Climate Action 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. This is currently under discussion.

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



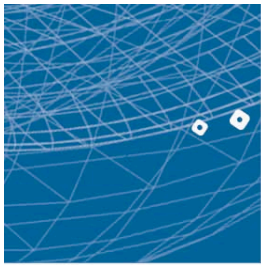
country. The limited capacity of EU field missions will also place a limit on what can be done.

In **Africa** specifically, the impact of the Lisbon Treaty in the area of political dialogue will be felt in a number of areas as processes and interlocutors may change (see example in Box 2). The first test of the impact of the Lisbon Treaty on EU-Africa relations will occur 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**.

## **2.2 Programming**

On 26 April 2010, the General Affairs Council agreed a framework for the EEAS. The framework gives the new EU diplomatic service a role in programming development cooperation. Key points of the political agreements reached are the following:

- The EEAS will contribute to the programming and management cycle of *all* geographic financial instruments in the external relations field, except the European instrument for pre-accession assistance. Hence, there is no geographical split between the EEAS and the Commission. The EEAS will have geographical desks covering all countries and regions of the world, including the ACP countries, as well as multilateral and thematic desks. Thematic desks likely to be transferred to the EEAS will be the ones currently being covered by DG RELEX whereas DG DEV will most likely keep its current thematic desks.
- The EEAS will particularly have responsibility for preparing:
  - the financial allocation decisions for *geographical* funds (e.g. which country and region gets how much);
  - the Country and Regional Strategy Papers
  - the National and Regional Indicative Programmes.Preparing the programming of the *thematic* funds will be the Commission Services responsibility. It furthermore implies that the EEAS will not have the authority over preparing the next step of the programming cycle, the implementation. As is the case today, this task is left to the Commission and its DG EuropeAid. Defining overall development policies will also remain being done by Commission Services, particularly DG Development. Both EuropeAid and DG Development fall under the responsibility of the Commissioner for Development. It has not yet been decided whether DEV and EuropeAid will be merged.
- While the EEAS has a responsibility for *preparing* the 3 steps of the programming cycle as described above, the *final authority* on all financial instruments remains with the Commission. All proposals are to be submitted to the College of Commissioners for approval.
- When the EEAS performs its tasks for the **European Development Fund** and the **Development Cooperation Instrument**, there is a special role for the Development Commissioner, as the EEAS is to work under his "*direct supervision and guidance*". He then submits proposals jointly with the High Representative to the Commission. As for the European Neighbourhood



Policy Instrument, this role is given to the Commissioner responsible for Neighbourhood Policy.

This political agreement provides the basis of consultations with the European Parliament. While the decision establishing the EEAS officially only needs backing of the member states, the European Parliament can make its voice heard, as it co-decides with the Council on the financial and staff rules required for the EEAS to function properly. The political agreement reached in the Council can therefore still be subject to changes in the coming months.

### **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 extends the Common Commercial Policy to explicitly apply to **trade in services, protection of intellectual property rights and Foreign Direct Investment** (see Annex 2). Trade in services and FDI come under community competence. However, few exceptions remain notably on non-trade related aspects of intellectual property rights (IPR) and transport issues, 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. In this respect, EU is expected to introduce transition measures acknowledging the existence of bilateral investment agreements of member states – but not necessarily their content. Although mixed trade agreements might become scarcer, they will not completely disappear as member states will preserve some prerogatives over some policy areas (i.e. possibly portfolio investments). In the future, the EU may be interested in negotiating comprehensive EU investment agreements with third countries – although there is so far no indication that there is an appetite for such process.

The adoption of trade agreements covering areas of exclusive EU competence will now have to be passed on a qualified majority vote within the Foreign Affairs Council (FAC) of the EU, and no longer on a unanimity vote. It also means that national parliaments of MS will no longer have to ratify all 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 as the EP was regularly briefed with respect to trade negotiations;
- 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.**

- ✓ **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.), although this is not reflected in the institutions – DG Trade remains outside the EEAS and the EEAS will seemingly not have trade expertise. However, the EUHR will be chairing the Joint EPA Councils but is likely to delegate this task to the Minister of the EU Presidency. The EUHR/ EEAS has a mandate to ensure 'consistency' of EU external action, which includes for example 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.

**Box 2: How will EU's engagement in peace and security be impacted as a result of the Lisbon Treaty?**

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) 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 emerged. The new post-Lisbon arrangements merge most of the



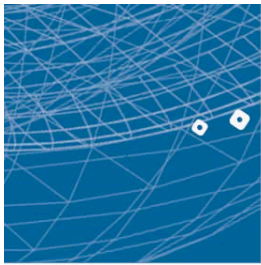
responsibilities of the two posts and institutions into that of the European External Action Service headed by the EUHR therefore reducing the risk of duplication and ending competition.

For many areas the EUHR in relation to peace and security will have a specific mandate on developing relationships and assessing options. For example, the EUHR 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. In addition EUHR Ashton’s first visit to Africa in May 2010 has also been focussed on addressing piracy on the Horn of Africa.

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 (APSA) 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, 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 by the EU Delegations. Politically this would still have to be 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 unilaterally by the EUHR 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?, E!Sharp Magazine, 25th of February 2010). Yet while the Lisbon Treaty does propose for a more coherent, collective and robust action in the realm of security several EU member-states are officially neutral (Ireland, Finland, Austria, Sweden, Cyprus and Malta). The EU’s ability to become an offensive military power is also limited by the Treaty, which restricts the nature of the EU’s missions –“the Union may use them [civilian and military assets] 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.” (Article 42 Consolidated Version of Treaty of European Union). Also independent experts have noted that the EU (compared to others such as NATO) does not currently have the comprehensive military planning capability required to fulfil a more robust role and there is “general resistance to the creation of a fully-fledged and



permanent military OHQ [Operational Headquarters” (see Luis Simon, Planning for EU Military Operations, EU Institute for Security Studies Occasional Paper 81, January 2010).

### **3 Some key questions for discussion**

- How could the post-Lisbon set-up with a bigger emphasis on policy coherence and a more coordinated and consistent EU approach be beneficial to the ACP?
- What are the implications of losing the ACP privileged position in the EU's institutional set-up?
- How will the ACP, as a group and as countries individually, engage with key EU actors in the new EU set-up post-Lisbon (e.g. the HR, the EEAS and the EP) in view of ACP-EU cooperation on regional, continental and global issues?
- How best can the ACP Secretariat be organized to deal with the post-Lisbon set up?
- How can the ACP prepare itself for the debate on budgetisation of the European Development Fund?
- What are the implications for the ACP of a possible reintegration of DG Dev and AIDCO?



## Annex 1: Comparison between stipulations of the Nice and the Lisbon Treaties with respect to the EDF

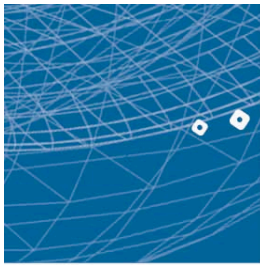
Treaty of Nice	Treaty of Lisbon
Treaty establishing the European Community	Treaty on the Functioning of the European Union
<b>Article 179</b>	<b>Article 209</b>
<ol style="list-style-type: none"> <li>Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.</li> <li>The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.</li> <li><b>The provisions of [article 179] shall not affect cooperation with African, Caribbean and Pacific countries in the framework of ACP-EC Convention</b></li> </ol>	<ol style="list-style-type: none"> <li>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.</li> <li>The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 of the Treaty on European Union and in Article 208 of this Treaty. The first subparagraph shall be <b>without prejudice to Member states' competence to negotiate in international bodies and to conclude agreements.</b></li> <li>The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.</li> </ol>

## Annex 2: Further competencies in the area of trade and investment under the Lisbon Treaty

Treaty of Nice	Treaty of Lisbon
Treaty establishing the European Community	Treaty on the Functioning of the European Union
<b>Article 133</b>	<b>Article 207, paragraph 1</b>
<ol style="list-style-type: none"> <li>The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of <b>tariff and trade agreements</b>, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.</li> <li>The Commission shall submit proposals to the</li> </ol>	<ol style="list-style-type: none"> <li>The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of <b>tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment</b>, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade, such as those to be taken in the event of dumping or subsidies.</li> <li>The <b>European Parliament and the Council</b>,</li> </ol>



<p>Council for implementing the common commercial policy.</p> <p>3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations. The relevant provisions of Article 300 shall apply.</p> <p>4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.</p> <p>5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6. By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules. The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6. This paragraph shall not affect the right of the Member states to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.</p> <p>6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in</p>	<p>acting by means of regulations in accordance with the <b>ordinary legislative procedure</b>, shall adopt the measures defining the framework for implementing the common commercial policy.</p> <p>3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article. The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the <b>European Parliament</b> on the progress of negotiations.</p> <p>4. For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.</p> <p>The Council shall also act <b>unanimously</b> for the negotiation and conclusion of agreements:</p> <p>(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;</p> <p>(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member states to deliver them.</p> <p>5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.</p> <p>6. The exercise of the competences conferred by this Article in the field of the common commercial policy <b>shall not affect the delimitation of competences between the Union and the</b></p>
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particular by leading to harmonisation of the laws or regulations of the Member states in an area for which this Treaty rules out such harmonisation. In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member states. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member states. Agreements thus negotiated shall be concluded jointly by the Community and the Member states.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

**Member states**, and shall not lead to harmonisation of legislative or regulatory provisions of the Member states insofar as the Treaties exclude such harmonisation.

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