

## **Briefing Paper: Foreign and Defence Policy**

**With reference to the European Union (Amendment) Bill Debates – House of Commons**

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### **Foreign and Defence Policy**

Under this Treaty the potential role of the EU in shaping and implementing a common foreign and defence policy is hugely extended – indeed this was a major objective for many proponents of the Treaty. The UK Government's claim is that it has preserved the requirement for unanimity – enabling the UK to maintain its own independent foreign policy.

However, there is no doubt that the intent behind the Treaty is to increasingly bring EU members into line behind a common EU policy and common representation, gradually subsuming independent national positions. Article 10A of the TEU sets out the objective: "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..". Furthermore, the claim that unanimity has been preserved is seriously breached in a number of areas, with 11 different areas of Foreign Policy subject to Qualified Majority Voting (QMV).<sup>1</sup>

### Specifically on foreign policy:

- The EU High Representative, or Foreign Minister, will be a member of the Commission. If the Council requests that he recommend a common position on any area, it can then adopt his (i.e. the Commission's) recommendations by QMV – creating a policy which would be binding on Member States, and which they would be required to uphold (Article 15b TEU). In practice it would be difficult for the UK to resist a request for the High Representative to consider policy in some broad area, and it would be equally difficult to then control how that remit might then be interpreted, or what recommendations might follow after the passage of time. [see Articles 15 and 18 of the Consolidated Text<sup>2</sup>]
- While the Treaty contains the safeguard that a Member State may block a QMV decision on a common policy for vital and stated reasons of national policy, it would clearly have to persuade other members that its opposition is a 'vital' matter – and in practice it would be difficult to use this frequently without retribution in other areas.
- If any topic on which the EU has a common position comes before the United Nations, the UK will be required to support the right of the EU Representative to take the place of national spokesmen in presenting the EU position. [Article 19 TEU; Article 32 and 34 Consolidated Text]
- The EU Foreign Minister will be supported by a new European External Action Service, clearly destined to become the dominant diplomatic representation for EU members. The diplomatic and consular missions of Member States are required to cooperate with EU delegations where they co-exist in advancing the common EU position. Since the organisation and functioning of this service will be determined by the Council on 'a proposal from the High Representative', it seems likely that this will be determined by QMV. [Article 13a TEU; Article 27.3 Consolidated Text]
  - Further to this, the External Action service will have claims on Foreign Office staff, and has no limits on size or proper definitions of its competences, according to a leaked Slovakian government document.<sup>3</sup>
  - In their recent report, the House of Commons Foreign Affairs Committee were:

*“...concerned that the Government risks underestimating, and certainly is downplaying in public, the importance and potential of the new foreign policy institutions established by the Lisbon Treaty, namely the new High Representative and the European External Action Service. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty.”*<sup>4</sup>

- In respect of the External Action Service, the Foreign Affairs Committee recommended that,

*“Parliament and its committees receive the information necessary to scrutinise on an ongoing basis the work of the European External Action Service.”<sup>5</sup>*

- Under Article 20, these EU delegations in third countries are empowered not only to represent the EU, but also to take on consular protection responsibilities for EU citizens – enabling them to become full service EU embassies.
- A new provision (under Article 28 TEU) allows for “start up funding” outside the EU budget for “financing common initiatives in the framework of Common Foreign and Security Policy”, with the funding procedures and amounts determined by QMV – essentially opening the door to independent funding of EU external initiatives.
- The Treaty sets out similar ambitions for an expanded role in defence – with the words in the previous Treaty that the development of a common security and defence policy ‘*might* lead to a common defence” replaced by the words “*will* lead to a common defence” (author’s emphasis) [Article 28a TEU; Article 42 Consolidated Text]. As a starting point, the Treaty carries forward the proposal from the draft Constitution for a group of states to set up ‘permanent structured cooperation’ of their military capabilities under the auspices of the EU (Article 28E).
  - The UK will be under pressure as the pre-eminent EU military power [“Those Member States whose military capabilities fulfil higher criteria” – Article 28A TEU; Article 42 Consolidated Text] to participate in Permanent Structured Cooperation, possibly further stretching our armed forces.
- Other areas where QMV will apply are on provisions to set up an inner core on defence, on the interpretation of the terrorism solidarity clause, on terrorist financing controls, on urgent financial aid, on humanitarian aid, on the election of the EU Foreign Minister, on EU responses to civil disasters, and on rules for diplomatic and consular protection.
  - The House of Commons Foreign Affairs Committee, commented on the extension of QMV powers<sup>6</sup>:

*“We welcome the Bill’s provisions giving Parliament the right to accept or reject individual proposals to extend qualified majority voting. However, we are concerned at the implications of the provisions whereby Parliament could be invited to set aside this right in respect of ‘any later draft decision’, as long as a Minister certifies that the decision in question is an amended version of the original decision. We*

*see nothing on the face of the Bill that would preclude this power being invoked in circumstances where the 'amended version' of the draft decision contains further transfers to qualified majority voting not found in the original decision. If this were to be the case, transfers to qualified majority voting might take place without specific Parliamentary approval. This could represent a breach of the undertaking given by the Prime Minister." (Paragraph 88)*

- The Foreign Affairs Committee report went on to say,

*"We recommend that further consideration be given to procedures which would allow Parliament to decide separately on "amended versions" of initial draft decisions to transfer items to qualified majority voting. We further recommend that all amendments to the Treaty, including extensions of qualified majority voting, should be done by primary legislation and not simply by a vote of the House." (Paragraph 112)*

- Article 16 of the Treaty of Lisbon limits freedom of national action with the commitment that,

*"Before taking any action on the international scene or entering into a 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. Members shall show mutual solidarity."*

- Finally, of course, the creation of the EU as a legal personality under this Treaty gives it new capacity to engage in legally binding Treaties on behalf of its Member States.

It does not take much foresight to see where the ambitions of the Commission lie in this area. In practice it can only be a one way street in which Member States are progressively bound in and circumscribed by EU actions.

### Further implications for Foreign and Defence Policy:

- Article 4.3 [Consolidated Text; 3a (3) from Lisbon Treaty] commits Britain to acting in “full mutual respect” in carrying out tasks flowing from the Treaties, which includes every aspect of foreign relations. Britain is also committed by this to taking all appropriate measures resulting from acts of the institutions of the EU – including the possible engagement of British armed forces. And the Treaty binds the UK from any actions which jeopardise the attainment of the Union’s objectives.
- The Treaty gives the European Council power to define and pursue common policies and actions in order to safeguard its values and fundamental interests (Articles 21, 22 and 26 of the Consolidated Text). This is extremely loose in its terminology, and the UK could be placed under pressure in Council meetings to pursue avenues that may not be in the UK’s best interests.
- Article 24 of the Consolidated Text [Article 11 of the Lisbon Treaty] states that the CFSP shall cover “all areas of foreign policy and all questions relating to the Union’s security”. It goes on to state that the aim is to achieve “...an ever-increasing degree of convergence of Member States’ actions”, binding Member States to supporting EU action “...unreservedly in a spirit of loyalty and mutual solidarity”. This shows the potentially all-encompassing scope of the policy, which is likely to undermine the independence of British foreign policy. Further to this, future action, potentially involving the UK and the US but opposed by some major EU member states (such as the removal of Saddam Hussein )could be made impossible, as such action may be deemed “likely to impair its (*the EU*) effectiveness as a cohesive force in international relations”.
- Article 16 of the Consolidated Text [Article 32 of the Treaty of Lisbon] means that the UK is bound to consult with the EU members over any nautical actions it may take. This could lead to conflicts of interest between the UK and other member states.
- Article 27 of the Consolidated Text [Article 13a of the Treaty of Lisbon] states that the High Representative shall represent the Union for matters relating to common foreign and security policy. All of this is in direct contrast to Tony Blair’s statement of 18 June 2007 when he said: “*we will not agree to something which displaces the role of British foreign policy and our foreign minister*”
- The European Parliament is given the option of expressing viewpoints, but the High Representative is only obliged to take their opinions into consideration and nothing more. There is thus little democratic control of the High Representative [Article 21, Treaty of Lisbon; Article 36 Consolidated Text]– even at the EU level.
- The CFSP incorporates the Common Security and Defence Policy (CSDP). The CSDP is mandated to “provide the Union with an operational capacity drawing on

civilian and military assets” and makes Member States “make civilian and military capabilities available to the Union” [Article 28 TEU; Article 42 Consolidated Text].

- Article 43 of the CSDP also places ‘peace-making’ as an EU competence. The Treaty provides that: “The High Representative may propose the use of both national resources and Union instruments...” [Article 28 TEU; Article 42 Consolidated Text]. This means that, in order for the High Representative to be able to propose usage of national resources belonging to Member States, that the High Representative must have full knowledge of the UK’s national defence resources, thus releasing national secrets and national security information to him/her.
- The European Defence Agency (EDA) [Article 28D TEU; Article 45.1 Consolidated Text], according to the Treaty, shall have power to promote the harmonisation of European defence, and has power to be “identifying the Member States’ military capability objectives”, meaning the EDA will have to have intrusive knowledge of UK military capabilities and will thus compromise national security. The EDA is also mandated to promote harmonisation of procurement, which could lead to the UK’s obligation to purchase European equipment instead of, arguably superior, US technology.<sup>7</sup>
- The House of Commons Foreign Affairs Committee concluded that the Lisbon Treaty is poorly drafted with “clumsy” and “ambiguous” references to a European Security and Defence Policy, which contains the words “might” and then “will” in relation to leading to a common defence.<sup>8</sup>
- The Committee concluded that “there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied<sup>9</sup>”

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<sup>1</sup> See Open Europe’s publication, *A Guide to the Constitutional Treaty*, pp. 21-22.

<sup>2</sup> *Consolidated Texts of the EU Treaties as amended by the Treaty of Lisbon*, referred to in this briefing as ‘Consolidated Text’.

<sup>3</sup> [http://www.dailymail.co.uk/pages/live/articles/news/news.html?in\\_article\\_id=510705&in\\_page\\_id=1770](http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=510705&in_page_id=1770)

<sup>4</sup> Paragraph 67, House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, 3<sup>rd</sup> Report of Session 2007-2008, HC 120-I, January 2008.

<sup>5</sup> Paragraph 190, House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, 3<sup>rd</sup> Report of Session 2007-2008, HC 120-I, January 2008.

<sup>6</sup> Paragraphs 88 and 112, House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, 3<sup>rd</sup> Report of Session 2007-2008, HC 120-I, January 2008.

<sup>7</sup> See Richard North (2005) *The Wrong Side of the Hill: The Secret Realignment of UK Defence Policy with the EU*, London: Centre for Policy Studies.

<sup>8</sup> Paragraph 207, House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, 3<sup>rd</sup> Report of Session 2007-2008, HC 120-I, January 2008.

<sup>9</sup> Paragraph 219, House of Commons Foreign Affairs Committee, *Foreign Policy Aspects of the Lisbon Treaty*, 3<sup>rd</sup> Report of Session 2007-2008, HC 120-I, January 2008.