

# The institutional future of the European Union within and beyond the Treaty of Lisbon

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Foreign Policy – Outline

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## ***Introduction***

The purpose of the enquiry.

The distinctive character and the purpose of the institutional framework for EU foreign policy.

## ***International agreements***

### *Fields of external competence:*

The Lisbon Treaty was intended to systematise the competence-conferring provisions, and to some extent this was achieved.

- (i) The consolidation of treaty-making practice; use of key express competences.
- (ii) The extension of the Common Commercial Policy.
- (iii) The continued but limited use of internal policy competences as a basis for external action.
- (iv) The invisibility of Art 216(1) TFEU.

### *Procedure for concluding agreements:*

The Lisbon Treaty consolidated the procedure for negotiating and concluding international agreements in a revised Art 218 TFEU. Significantly, this now includes CFSP agreements. The requirement of Parliamentary consent for an increased number of agreements, including trade agreements, has altered the negotiation dynamic. Although the Parliament's consent is not required for CFSP agreements, it must be kept informed and a failure to do so is a breach of an essential procedural requirement.

- (i) The role of the European Parliament. Consent and information.
- (ii) The negotiation of agreements with a quasi-legislative or regulatory character.
- (iii) Decisions establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects.

(iii) Mixed agreements. Negotiation, conclusion and 'hybrid' decisions.

### ***The boundaries of the CFSP***

The Lisbon Treaty incorporates the CFSP into the overall decision-making structures of the Union, albeit with 'specific rules and procedures' (Art 24 TEU). A number of changes introduced by the Lisbon Treaty make drawing the boundary between CFSP and non-CFSP external action both necessary and more difficult. What are the implications and why does it matter?

- (i) Challenging a CFSP legal basis.
- (ii) Marginalising the external dimension of the JHA.
- (iii) A combined legal basis for international agreements? Or for autonomous acts?
- (iv) Possible future approaches.

### ***Representation and policy-setting***

- (i) How satisfactory is the current position on external representation, especially in areas of shared competence?
- (ii) Policy making through Council conclusions, Guidelines, strategic statements. Is there more scope for joint adoption in appropriate cases (c.f. the European Consensus on Development)?
- (iii) Should we reconsider the roles of the Commission, the EEAS, the European Parliament and the Council in proposing policy direction and setting policy priorities?
- (iv) EEAS and policy coherence. The role of Union Delegations.

### ***Differentiation and flexibility***

- (i) The opt-outs and their effects on external policy, especially in the field of JHA. How should the scope of Protocol 21 be determined? How does the opt-out operate in the case of mixed agreements? What is the attitude of partner countries?
- (ii) The use of flexibility in CFSP and CSDP: unused potential?