

**GOVERNMENT RESPONSE TO THE FOREIGN AFFAIRS COMMITTEE
REPORT ON 'FOREIGN POLICY ASPECTS OF THE LISBON TREATY'
(THIRD REPORT OF SESSION 2007-08)**

Cm 7332

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CORRECTIONS

Recommendation 6: Last Paragraph of Response

Text should read:

Coherent implementation will be underpinned by the new High Representative for Foreign Affairs and Security Policy, who will have responsibility for external relations and be accountable to the Council of Ministers, while also being a Vice-President of the Commission.

Recommendation 23: First and Second Sentence of Response

Text should read:

The Government agrees that it will be important that the UK is properly represented within the European External Action Service (EEAS), as the Foreign Secretary set out in his evidence to the Committee in December 2007. The Government takes note of the Committee's helpful recommendations on facilitating secondments to and from the EEAS and will take these into account as it develops policy on the staffing of the Service.

Recommendation 27: Last Paragraph of Response

Text should read:

As the Committee notes, the Lisbon Treaty also recognises that the title of Union Minister for Foreign Affairs foreseen in the Constitutional Treaty was a misnomer and replaces it with the more accurate High Representative for Foreign Affairs and Security Policy.

Recommendation 28: Last Sentence of Response

Text should read:

However, it does not agree with the criticism that it is downplaying or underestimating the institutional changes in the Lisbon Treaty.

**February 2008
London: The Stationery Office**



**Government Response to the Foreign Affairs
Committee Report on ‘Foreign Policy Aspects of
the Lisbon Treaty’
(Third Report of Session 2007-08)**

**Presented to Parliament by the Secretary of
State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 2008**



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THIRD REPORT FROM THE FOREIGN AFFAIRS COMMITTEE

SESSION 2007-08

FOREIGN POLICY ASPECTS OF THE LISBON TREATY

RESPONSE OF THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

The Government welcomes the scrutiny by the Committee of the foreign policy aspects of the Lisbon Treaty. The Government is grateful for the Committee's informed analysis, and welcomes the important and helpful contribution the Committee makes on European affairs and foreign policy more generally.

This Command Paper sets out the Government's response to the Committee's 20 January 2008 Report on the Foreign Policy Aspects of the Lisbon Treaty. The Committee's recommendations are set out in bold. Unless otherwise indicated, references are to paragraphs in the Foreign Affairs Committee Report (HC120-1).

- 1. We conclude that, although we have some sympathy for the Government's stress on the EU's "delivery deficit" rather than its "democratic deficit", and for the Government's desire to bring the EU institutional reform process to a speedy conclusion, we accept that the loss of the Constitutional Treaty undermines the effort to make the EU's Treaty base more comprehensible and transparent. (Paragraph 27)**

The Lisbon Treaty is a classic amending treaty - rather than a consolidating treaty as the now defunct Constitutional Treaty was intended to be. As the December 2007 European Council conclusions made clear: *"the Lisbon Treaty provides the Union with a stable and lasting institutional framework. We expect no change in the foreseeable future, so that the Union will be able to fully concentrate on addressing the concrete challenges ahead"*. This reflects the common desire of all EU Governments to bring the EU institutional reform process to a rapid conclusion and to focus on the global challenges facing the EU.

As with all previous amending Treaties the Lisbon Treaty consists of a series of amendments to the existing EU Treaties. To help inform and clarify the debate on the Lisbon Treaty, the Government published a consolidated text of the Treaties in January 2008, as well as a comparative table of the current EC and EU Treaties as amended by the Treaty of Lisbon.

- 2. We recognise that the compressed timetable during which the most important decisions on the EU's new Treaty were taken, over a few days in June, was driven by the EU's Presidency-in-office. The Government could and should have provided more information to Parliament during Spring 2007 about its approach to the renewed EU Treaty reform process. It should also have pressed for a less compressed timetable in June. Parliament was entitled to expect adequate time to be consulted and to be able to make an input into the contents of the Treaty, through the Government. After the Treaty was finalised,**

Parliament was also entitled to have adequate time to make a thorough examination of the Treaty's detailed impact on the EU and the United Kingdom constitution. Parliament has been denied these opportunities, on both counts. We conclude that the procedure followed meant that the 2007 Intergovernmental Conference mandate was agreed with little scope for UK public or Parliamentary debate and engagement. This sets an unfortunate precedent which is in our view damaging to the credibility of the institutional reform process itself. (Paragraph 38)

As the Foreign Secretary has said, the German Presidency took an unusual approach to reaching agreement on the Intergovernmental Conference (IGC) mandate at the June 2007 European Council and this approach did lead to a more compressed timetable for reaching agreement on the Lisbon Treaty than had been the case for previous treaties. But it also led to a tightly defined IGC mandate that the Portuguese Presidency was able to translate successfully into the text of the Lisbon Treaty, bringing an end to EU institutional reform for the foreseeable future and allowing the EU to focus on delivery on the issues which matter to people - jobs and growth, security, climate change and energy security. And it produced both an IGC mandate and a treaty which fully protected all of the UK's red lines.

The Government was committed to keeping Parliament fully informed throughout the IGC process. As the Committee records in its report, the FCO forwarded all IGC documents to Parliament as soon as they were available and both the Secretary of State and Europe Minister gave evidence - and wrote - to the FAC and the European Scrutiny Committee as the IGC progressed.

3. We conclude that the Government is correct to argue that political positions and political will among the Member States are more important than institutional changes in determining the quality of EU foreign policy. We are also sympathetic to the Government's wish to see the end, for at least some years to come, of further EU institutional reform. However, we are 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. (Paragraph 67)

The Government agrees with the Committee on the centrality of Member States' political will to the development of the Common Foreign and Security Policy and on the need to draw a line under EU institutional reform.

It disagrees, however, that it is downplaying or underestimating the institutional changes in the Lisbon Treaty. As the Foreign Secretary told the Committee during his evidence session on the foreign policy aspects of the Treaty in December 2007 "*we think the treaty makes some important and good changes*". The Government considers that the reforms of the EU's external policy structures in the Lisbon Treaty are important as a means of improving coherence within the EU institutions working on foreign and external policy and therefore a useful strengthening of the EU framework for delivering on the global agenda set out in the December Council's Declaration on Globalisation.

More broadly, the Prime Minister and Foreign Secretary have been clear on the importance the Government attaches to the EU's external agenda – including in statements to the House and the 'Global Europe' pamphlet which they published in October 2007 (<http://www.fco.gov.uk>).

- 4. We conclude that the insertion of principles and objectives for all EU external action into the Treaty on European Union is a sensible way of encouraging greater EU policy coherence while two main EU Treaties remain in place. (Paragraph 71)**

The Government agrees with the Committee. The Lisbon Treaty helpfully clarifies the framework and objectives of the EU's external policy while ensuring that the Common Foreign and Security Policy remains in the hands of the Member States and based on consensus.

- 5. We conclude that the European Council's new ability under the Lisbon Treaty formally to determine "strategic interests and objectives" for all areas of EU external action represents a symbolically important assertion of Member State authority over "Community" policy areas, although it remains to be seen whether this will have any significant impact in practice. (Paragraph 81)**

The Government agrees. The Lisbon Treaty's assertion of the Member States' responsibility for setting the strategic direction of EU external action through the European Council is an important development, which underlines the Government's success in ensuring that foreign policy will remain an intergovernmental area of activity controlled by the Member States while strengthening the Member States' authority over other areas of EU external action.

- 6. We conclude that the section of the amended Treaty on European Union giving authority to the European Council to make strategic determinations for EU external action is unnecessarily ambiguous and should be clarified by the Government in its response to this Report. (Paragraph 84)**

The Government believes the Treaty is clear on the role of the European Council in external actions and its relationship with the Council of Ministers, and that it strengthens the framework for deciding EU external action.

The Lisbon Treaty charges the European Council with '*provid[ing] the Union with the necessary impetus for its development and defin[ing] the general political directions and priorities thereof*' (Lisbon Treaty 1.16) – across the range of EU internal and external action.

This is an important legal and practical strengthening of the authority of the Member States as the FAC observe (para 81). But it is also a formalisation of an important development within the EU, which has seen the European Council and the Member States increasingly setting the strategic agenda for the EU institutions to implement.

In the external field, the December 2007 European Council set out the strategic direction for EU external action on, for example, the Western Balkans, the development of relations with the EU's neighbours to the east and south and Iran, covering both CFSP and Community aspects.

The Lisbon Treaty is clear that *'the Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent'* (Lisbon Treaty 1.17.6 – inserting a new Article 9c TEU).

Coherent implementation will be underpinned by the new High Representative for Foreign Affairs and Security Policy, who will have responsibility for external relations, accountable to the Council of Ministers, while also being a Vice-President of the Commission.

- 7. 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. 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 88)**

As the FAC acknowledges, the EU (Amendment) Bill makes clear that Parliament will have prior control over any decision to trigger the amending provisions ('passerelles') listed in clause 6 of the Bill.

Clause 6 sets out an important and significant new power for Parliament. In most cases, such as a proposal to move to QMV or co-decision, the decision will simply be either to support or reject the measure. There may, however, be cases where the substance of the proposed decision is clear, but Parliament may wish to allow Ministers latitude as regarding the negotiation of the precise language. As the Bill makes clear,

the decision to allow that latitude is entirely a matter to Parliament. However, if this provision is removed from the Bill, Parliament will not be able to take account of the wider negotiating process where it considers this to be in the wider interests of the United Kingdom.

8. We conclude that the simplification of the nomenclature for Common Foreign and Security Policy decisions introduced by the Lisbon Treaty represents an improvement on the current situation. (Paragraph 95)

The Government agrees with the Committee that the move from to the Lisbon Treaty will helpfully simplify CFSP terminology without changing the intergovernmental basis of decision-making. As such, the Government hopes that this reform will make the system of CFSP decisions more easily comprehensible to UK and other EU Member States' citizens.

9. We conclude that the Commission's loss of the right to make Common Foreign and Security Policy proposals is welcome because it represents an important assertion of the intergovernmental nature of the Common Foreign and Security Policy. (Paragraph 97)

The Government agrees with the Committee that the change from the current Treaty provision, which gives the Commission a right to make proposals in CFSP, is a helpful assertion of the continuing intergovernmental nature of the CFSP.

10. We conclude that greater clarity would have been helpful in the Lisbon Treaty wording on the Council of Ministers' new ability to vote by qualified majority on proposals from the High Representative. (Paragraph 105)

The Lisbon Treaty is clear that the High Representative for Foreign Affairs and Security Policy can only make such a proposal when invited to do so, by unanimity, by a **specific** request from the European Council. This relevant provision in Article 15b(2) of the Amended TEU, states that QMV shall apply:

'...on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative'

As now, Member States will be able to refer the proposals back to the European Council for a unanimous decision if they find it to be in vital national interests:

'If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative of the Union for Foreign Affairs and Security Policy will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified

majority, request that the matter be referred to the European Council for decision by unanimity.' Article 15b(2) of the amended TEU.

11. We conclude that the Government's confirmation that any movement of further Common Foreign and Security Policy decisions from unanimity to qualified majority voting under the "passerelle" procedure would be subject to a prior vote in Parliament, even where the Lisbon Treaty itself does not provide for national Parliamentary involvement, is welcome, although we recommend elsewhere that all Treaty changes are the subject of primary legislation. However, our concerns remain about the possible use of the provision in the Government Bill which would allow "amended versions" of decisions moving items from unanimity to qualified majority voting to avoid a separate Parliamentary vote. (Paragraph 112)

See answer to question seven above.

12. We conclude that it seems highly likely that, under the Lisbon Treaty, the Common Foreign and Security Policy will remain an intergovernmental area, driven by the Member States. We welcome this. (Paragraph 118)

The Government agrees fully with the Committee's conclusion. The Common Foreign and Security Policy will remain in the hands of the Member States and driven by consensus. Legally, it will continue to have a distinctive decision-making process in a separate Treaty (the Treaty on European Union). This will be spelt out in Amended Article 11(1) TEU:

"The common foreign and security policy is subject to specific rules and procedures"

Further, the role of the European Parliament, the European Commission and the European Court of Justice will be clearly circumscribed. On the latter the Lisbon Treaty contains explicit provision excluding the CFSP from European Court of Justice jurisdiction except in two specific areas.

In addition to the important safeguards contained in the Treaty, the two Intergovernmental Conference Declarations, agreed by all 27 Heads of State and Government at the December 2007 European Council, make clear that Member States' own foreign policy responsibilities remain unaffected.

"In addition to the specific procedures referred to in [paragraph 1 of Article 11] of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN".

"The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions or increase the role of the European Parliament."

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

13. We conclude that the process of the EU's enlargement to now 27 Member States has been a success. (Paragraph 130).

The Government agrees with the Committee's conclusion that EU enlargement has been a success. Article 49 usefully confirms the need to take into account the 1993 'Copenhagen Criteria' through the reference to 'the conditions of eligibility agreed upon by the European Council'. The Copenhagen Criteria requires that a candidate country has achieved stability of institutions guaranteeing democracy and a functioning market economy. It presupposes the candidates' ability to take on the obligations of membership including adherence to the aims of the political, economic and monetary union. It follows that prospective EU Member States should be 'committed to promoting the EU's principles'-something which is wholly uncontentious.

14. We conclude that the inclusion for the first time of a Treaty reference to the EU's neighbourhood policy represents a welcome expression of the importance of the Union's relationships with states surrounding it. (Paragraph 133)

The Government agrees that the inclusion of a reference to the special relationship with neighbouring countries for the first time in the Treaty on European Union is a welcome recognition of the importance of the EU's relations with its neighbours. The Government strongly supports a European Neighbourhood Policy (ENP) as a tool for promoting prosperity, stability and security in the neighbourhood and enabling EU neighbours to deepen their relations with the EU, not least through approximating to EU regulations and standards. We also support the principle of differentiation between countries included in the policy, focussing on each individual country's particular circumstances, needs and aims.

15. We conclude that the new post of High Representative of the Union for Foreign Affairs and Security Policy has the potential to give the EU a more streamlined international presence and to contribute to the more coherent development and implementation of external policy. We further conclude that it is clear that the High Representative is there to enact agreed foreign policy. (Paragraph 154)

The Government agrees with the Committee's assessment. The current High Representative for the CFSP has demonstrated that his role complements and reinforces

that of the Member States where there is an agreed common policy. This has been particularly evident in the implementation of EU policy in the Western Balkans, in his role as the EU representative in the Middle East Quartet and in the presentation of agreed E3 and EU positions to the Government of Iran. Like the Committee, the Government considers that it is sensible to bring together the role of the High Representative for the CFSP and the External Relations Commissioner to strengthen and simplify the current institutional arrangements for the implementation of external policy decisions taken by the Member States.

16. We conclude that there are grounds for concern that the holder of the new post of High Representative of the Union for Foreign Affairs and Security Policy could face work overload. We recommend that the Government engages with the other Member States and—when known—the nominee for the post to ensure that the potential benefits of the new post are not jeopardised by a plethora of duties and excessive workload. (Paragraph 155)

The Government takes note of the Committee's concern, and agrees that it will be important that the High Representative's responsibilities and workload are effectively prioritised.

17. We conclude that the Lisbon Treaty provision for the new High Representative to speak at the UN Security Council will make little difference to current practice. It will not undermine the position of the UK in the United Nations system nor the UK's representation and role as a Permanent Member of the Security Council. (Paragraph 157)

The Government agrees entirely with the Committee's conclusion on the implications of the Lisbon Treaty for the UK role in the UN Security Council. As the Committee is aware, the Presidency and the High Representative for the Common Foreign and Security Policy already address the UN Security Council on occasion where there is an agreed EU position. This has not in any way affected the UK's rights and responsibilities as a member of the Security Council or our ability to speak on those occasions, nor will the arrangements foreseen by the Lisbon Treaty. In addition to the accompanying Declaration quoted in answer to recommendation 12 above, the Lisbon Treaty explicitly states that its provisions shall be "without prejudice to *[the]* responsibilities of *[Members of the Security Council]*" under the provisions of the United Nations Charter .

18. We conclude that it is regrettable that the Lisbon Treaty does not state explicitly that the new European Council President may not simultaneously hold any other office. (Paragraph 162)

As the Committee notes, the concern is to avoid any possibility that an individual might seek to hold the posts of both European Council President and President of the Commission. It is absolutely clear from the Treaty, that membership of the Commission, including the post of Commission President, precludes serving as European Council

President. Article 9D(2) explicitly states that “the Commission shall be completely independent. Without prejudice to Article 9E(2), the members of the Commission shall neither seek nor take instruction from Government or **other institution**, body, office or entity” [emphasis added]. The fact that explicit exception needs to be made for the provision in Article 9E(2) in relation to the High Representatives underlines that such “double-hatting” is otherwise precluded.

In addition, Article 213 TFEU underlines that "Members of the Commission may not, during their term of office, engage in any other occupation".

The Government notes the Committee’s reference to Lord Cockfield holding the position as a Member of the Commission while remaining a member of the House of Lords. It does not accept that this in any way qualifies the legal obligation on members of the Commission to be wholly independent.

19. We conclude that the reshaped role of the President of the European Council could help to generate consensus among EU leaders and lead to greater continuity in the chairing of the European Council. However, we are concerned by the current degree of uncertainty which surrounds the role and by the potential for conflict with the High Representative in representing the EU externally. This could undermine one of the main aims of the current Treaty reform process in the external field. We recommend that in its response to this Report, the Government sets out more clearly its conception of the role of the new European Council President, and its assessment of the likelihood that this will be realised. We further recommend that the Government initiates, in the course of discussions with its counterparts on the appointments to the new posts, the drawing-up of a memorandum of understanding on the respective roles which the European Council President and the High Representative are to play in the external representation of the Union. (Paragraph 170)

The Government welcomes the Committee’s judgement that the European Council President will ‘help generate greater consensus among EU leaders’. But we do not accept that there is insufficient certainty surrounding the role of the President of the Council. Although the Lisbon Treaty does not list the specific areas or occasions where the Council President will represent the EU externally, this provides necessary flexibility when deciding on appropriate representation to extraordinary or ad hoc meetings. The provision (new Article 9b TEU) will also allow the EU to respond to possible future changes to international institutions.

As the Committee acknowledges, the Foreign Secretary has set out the Government's view of the role of the President of the European Council in evidence to the Committee. The President of the European Council will bring greater coherence and consistency to the EU’s actions, give Member States greater capacity to give direction and momentum to the EU’s agenda and be appointed by and accountable to the Heads of the 27 EU Member State governments.

It is clear from Article 9B(6) TEU as amended by the Lisbon Treaty that the President of the European Council ensures the external representation of the Union on issues to do with CFSP at his or her level. That is, at the level of Head of State or Government (see Article 9B(2)) and in the capacity of president of the European Council. Unlike

the High Representative for Foreign Affairs and Security Policy, he/she does not have a role in ensuring the external representation of the Union on issues outside the CFSP.

The Government is grateful for the Committee's suggestion of a memorandum of understanding on the separate roles of the European Council President and the High Representative. We do not at this time believe that this will be necessary, but will keep the recommendation under review in the course of discussion among EU Member States.

20. We conclude that the personal characteristics of the individuals who are appointed to the key posts of European Council President, High Representative for Foreign Affairs and Security Policy, and President of the Commission—in particular, their capacity for teamwork and hard work—will play a critical part in determining whether the new EU foreign policy arrangements work effectively. We recommend that the Government should place a high priority on working constructively with its European partners to ensure that the right individuals are selected for these posts. (Paragraph 177)

The Government agrees that personal characteristics of the individuals chosen as the European Council President and the High Representative for Foreign Affairs and Security Policy will be important and will, as the Committee recommends, place a premium on ensuring that the right individuals are selected for the posts.

21. We conclude that the new European External Action Service may serve a useful function as a means of reducing duplication between the Council Secretariat and the Commission and facilitating the development of more effective EU external policies, operating in parallel with rather than as a substitute for national diplomatic services. However, the Lisbon Treaty gives only a bare outline of the role of the new External Action Service, leaving most of the details of its functioning to be determined. This could well be a case of “the devil is in the detail”. We conclude that the establishment of the European External Action Service will be a highly complex and challenging exercise. Given the scale and significance of the issues that remain to be resolved, it is vitally important for the Government to be fully engaged in negotiations on these matters, in order to ensure that the European External Action Service works as effectively as possible, and in a way concomitant with UK interests. (Paragraph 189)

22. We recommend that the Government reports regularly to Parliament during 2008 and beyond on the progress of the discussions with other Member States and the EU institutions on the establishment of the European External Action Service, and on the positions it is adopting. Parliament should be kept informed of developments in resolving all the practical, organisational, legal, diplomatic status and financial issues which we have specified in paragraph 182 above. We further recommend that, in its response to this Report, the Government informs us of the arrangements which it proposes to put in place to ensure that Parliament and its committees receive the information necessary to scrutinise

**on an ongoing basis the work of the European External Action Service.
(Paragraph 190)**

The Government agrees with the Committee that the European External Action Service (EEAS), which will support the High Representative for Foreign Affairs and Security Policy in the exercise of his functions as mandated by the Council, should help to reduce bureaucratic duplication and improve the coherence and effectiveness of policy implementation.

The detailed organisation and functioning of the External Action Service will be decided by the Member States by unanimity on the basis of a recommendation from the High Representative of the Union for Foreign Affairs and Security Policy. Discussion of this detailed mandate for the EEAS has yet to start among the Member States, but the Government notes the Committee's views on the complexity of the challenge and its request that Parliament be kept fully informed.

The Slovene Presidency has proposed that various issues relevant to implementation of the Lisbon Treaty be discussed informally among Member State Permanent Representatives to the European Union, during the course of the next few months. Following these initial discussions we anticipate that more detailed discussions of the EEAS will take place under the French Presidency.

The Government will ensure that Parliament is updated regularly on discussion of the EEAS during the French Presidency by letter to the House of Commons' Scrutiny Committee and the House of Lords' European Union Select Committee. The Foreign Secretary and the Minister for Europe will of course be pleased to supplement these written briefings during their regular appearances before the Committees.

- 23. We welcome the opportunity that the new European External Action Service will offer for a greater intermingling of national and EU personnel and careers. We conclude that it would be beneficial to the UK for national secondees to be well represented among the new Service's staff. We recommend that the FCO encourages high-quality candidates among its staff to undertake secondments to the European External Action Service, by assuring them that they will have a "right of return" and that the experience will form a valued part of an FCO career. We recommend that the FCO should also reciprocally encourage European External Action Service staff to undertake secondments within the UK diplomatic service, in the interests of maximising the European External Action Service's collective understanding of UK national interests and foreign policy. (Paragraph 194)**

The Government agrees that it will be important that the UK is properly represented within the European External Action Service (EEAS), as the Foreign Secretary set out in his evidence to the Committee in December 2007, the Government takes note of the Committee's helpful recommendations on facilitating secondments to and from the EEAS and will take these into account as it develops policy on the staffing of the Service.

24. We conclude that the emergence in third countries of EU delegations which may be active in Common Foreign and Security Policy areas will at the least require careful management by UK Embassies on the ground. This might be of particular importance in those countries where there is no resident UK diplomatic representation. We recommend that in its response to this Report, the Government sets out its position regarding the conversion of Commission delegations into Union delegations, and informs us of the guidance which it is giving to British posts on working with the new EU bodies. (Paragraph 199)

The Commission has over 120 delegations in third countries and at international organisations, which, since Maastricht, have been charged with co-operating with Member States' embassies to ensure that CFSP decisions are complied with and implemented. As such, British posts around the world already work closely with Commission delegations on issues to do with the CFSP as well as areas of Community competence.

Under the Lisbon Treaty those delegations that are already under the responsibility of the Commission will be renamed Union delegations and placed under the authority of the High Representative for Foreign Affairs and Security Policy. The Government considers that this is a sensible reform of the existing structures, which will help to ensure that the existing overseas network of the Commission is more effectively brigaded with the Union's other external policy resources and made more accountable to the Member States through the High Representative. British posts will be encouraged to continue to work closely with the Union delegations to ensure that, where we have an agreed EU policy, the resources of the Union are effectively deployed to ensure its implementation in third countries and at international organisations.

25. We recommend that in its response to the present Report, the Government sets out its reaction to the proposals that there should be "common offices" of EU Member States in third countries and that the new EU delegations may take on consular tasks. We also recommend that the Government clarifies the role and responsibilities of EU delegations in countries where the UK has no Embassy or High Commission. (Paragraph 203)

The Government shares with other EU Member States the view that the provision of consular assistance to their citizens is primarily a matter for national authorities. We welcome efforts to improve co-operation and co-ordination between Member States in this area, including those under Article 20 TEC, which requires Member States to treat requests for consular assistance by unrepresented nationals of Member States on the same basis as requests by their own nationals.

This is not a new provision. EU citizens have been able to seek consular assistance from other Member States, where their own country has no representation, since 1993. This supplements the high standard of consular assistance already available

from British embassies and consulates. The UK enjoys a similar arrangement with Commonwealth partners. We are aware that, in some parts of the world, delivering consular assistance to British nationals is only possible through the consular and diplomatic networks of our EU Partners.

The concept of “common offices” for EU consular work in third countries, which is included in the Commission’s Green Paper of November 2006 and the Commission’s Action Plan of December 2007, has not been clearly defined. Co-location of Member States’ consular offices already takes place in a number of countries, as do local arrangements for allocation between Member States’ missions of unrepresented EU nationals. However, these and any other such arrangements for co-operation are for the Member States concerned to decide on.

While the UK welcomes the role of the Union in facilitating co-operation and ensuring non-discrimination in the provision of consular assistance, the provision of consular assistance remains a matter for Member States.

26. We conclude that the Lisbon Treaty retains from the Constitutional Treaty a wording that on the surface at least is clumsy and ambiguous in its references to the prospect that the European Security and Defence Policy both “might” and “will” lead to a common defence. We therefore recommend that in its response to this Report the Government states whether or not it agrees that this is the case, providing such clarification as is necessary. (Paragraph 207)

The Lisbon Treaty has two references to common defence:

‘The Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence’ Title V, Article 24, TEU

‘The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.’

The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework’. Title V, Article 42 (2), TEU

Whilst there is a difference in wording between the two references as identified in the Committee's report, their meaning and significance are the same. Both references reflect the fact that a common defence cannot come into existence unless two requirements, which may never be satisfied, are met: the decision to move to a

common defence must be reached by unanimity and that decision must be adopted in accordance with the constitutional requirements of every Member State. The first reference in the section to do with a common foreign and security policy reflects these requirements by using the term 'might'. The second reference, in the section dealing with the specific provisions of the common security and defence policy, states what would occur if and, only if, the two requirements which are set out in that provision are met. This provision does not, however, impose any obligation, or expectation, that such a step would be taken. It is clear that the progressive framing of a common defence cannot lead to a common defence unless every Member State agrees to this and the constitutional requirements of each Member State, including the involvement of national parliaments, are satisfied.

Moreover, the two references, when taken together, are not substantially different to the existing common defence reference in TEU (Title V, Article 17 (1))¹, including the key provision of unanimity of decision making and adoption of a decision in accordance with the constitutional requirements of Member States. The references do not establish any greater likelihood of a decision being taken to move to EU common defence. This clearly remains for Member States to decide, with the UK retaining its veto. In addition, and as clearly provided for by the Treaty, any government decision to move to a common defence would require laying before parliament in accordance with our constitutional requirements.

The Treaty goes on to restate the existing TEU provision that the EU's policy on a common defence shall respect the obligations of Member States who are NATO members, who see their common defence realised through NATO. Therefore, even if there were to be a unanimous agreement to establish an EU common defence, it would need to be compatible with the common security and defence policy established within NATO.

27. We conclude 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. (Paragraph 219)

The Government disagrees with the Committee's assessment. Unlike the Constitutional Treaty, the Lisbon Treaty maintains distinct pillar structure and a separate Treaty (the Treaty on European Union) for the CFSP. Further, there will be a new Article 11(1) [amended TEU] which clarifies that CFSP has 'specific procedures

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

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

and rules' and is therefore distinct from other areas of Union activity and underlines the distinct institutional and decision-making arrangements for CFSP. This is in addition to the accompanying Declarations on CFSP agreed by all 27 Heads of State and Government which confirm that the CFSP remains the responsibility of the Member States and that the foreign policy provisions of the Lisbon Treaty shall not affect the national responsibilities of the Member States for their foreign and security policy.

As the Committee notes, the Lisbon Treaty also recognises that the title of Union Minister for Foreign Affairs foreseen in the Constitutional Treaty was a misnomer and replaces it with the title to the more accurate High Representative for Foreign Affairs and Security Policy.

28. We conclude that the creation of the post of High Representative for Foreign Affairs and Security Policy, and of the European External Action Service, represent major innovations in the EU's foreign policy-making machinery. We further conclude that although their establishment does not risk undermining the Common Foreign and Security Policy's intergovernmental nature, the Government is underestimating, and certainly downplaying in public, the significance of their creation. This is unlikely to be beneficial to the UK's position in the EU. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty. (Paragraph 220)

The Government agrees with the Committee that the creation of the post of High Representative for Foreign Affairs and Security Policy, and of the European External Action Service are a helpful simplification of the EU machinery for implementing foreign policy decisions. However, it does not consider agree with the criticism that it is downplaying or underestimating the institutional changes in the Lisbon Treaty.

29. We conclude that the new institutional arrangements for EU foreign policy created by the Lisbon Treaty have the potential to encourage more coherent and effective foreign policy-making and representation. However, the way in which the new arrangements will work in practice remains unclear. Much will depend on the individuals chosen to fill the new posts and how they choose to interpret their roles. We recommend that the Government engage actively with its EU partners to minimise the short-term disruption involved in the introduction of the new arrangements created by the Lisbon Treaty, and to help them contribute to the EU's development as a more effective international entity. It is particularly important that the Government and the FCO should not neglect the critical opportunities that are likely to arise over the next 12 months to influence the detailed planning of the new foreign policy arrangements, so as to ensure that they operate in ways which are fully compatible with UK interests. (Paragraph 221)

The Government will of course engage fully in discussion and detailed planning of the new foreign policy arrangements to ensure that they are compatible with UK interests. It particularly agrees with the Committee on the importance of minimising disruption involved in implementing the amended institutional framework, to ensure that the EU's energies are not diverted from delivery of the vital external agenda set out in the Declaration on Globalisation agreed at the December European Council.



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