

Working Group VII

Working document 21 REV 2

Working group VII – "External Action"

Subject: **Revised draft final report**

On behalf of the Chairman of the Working Group, Vice-President Jean-Luc Dehaene, the Secretariat herewith circulates a revised version for consideration by the Group at its meeting on 3-4 December 2002.

REPORT OF WG VII ON "EXTERNAL ACTION"

PART A

RECOMMENDATIONS

1. Principles and Objectives

There was consensus in the group on the need to define in the Treaty the underlying principles and general objectives of the EU external action, in a manner that would be clear to the public and the EU's partners. A text defining "principles and objectives" has been agreed upon by the Working Group (see Attachment on page 6). The Working Group recommends that this text should be included in the Treaty.

2. Specific objectives and interests

Once the overall principles and objectives are set in the Treaty, the EU should define specific objectives and interests, as well as strategies to pursue them actively. The Group recommends that the European Council should define the EU specific objectives and interests in relation to a specific country/region or situation and would establish parameters guiding the EU and Member States action. The European Council would then proceed to a periodic examination of the degree of realisation of these objectives and interests.

3. EU competence to conclude agreements covering issues falling under its internal competences

The Group noted that the Court of Justice has recognised implicit external Community competence when the conclusion of international agreements were necessary for the implementation of internal policies or the reflection of its internal competences in areas where it had exercised this competence by adopting secondary legislation. The Group concluded that:

- such a competence should now be made explicit in the Treaty;

- the new provision in the Treaty should also specify that the Council should deliberate on such agreements according to the same voting procedure which would apply to internal legislative deliberations on the same issues (normally QMV);

Such a provision should in no way modify the delimitation of competences between EU and Member States.

4. Enhancing coherence and efficiency between institutions and actors

In order to ensure better coherence between foreign policy decisions on the one hand, and deployment of instruments in the field of external relations on the other hand, the Group was of the opinion that the current roles of the HR for CFSP and the Commissioner responsible for external relations should be reconsidered. A large trend emerged in favour of a solution which would provide for the exercise of both offices by a "European External Representative".

This person, who would combine the functions of HR and Relex Commissioner, would

- be appointed by the European Council, deciding by QMV, with the approval of the President of the Commission and endorsement by the European Parliament;
- be full member of the Commission and possibly its Vice-President. In his/her capacity as Relex Commissioner, he/she would put forward proposals to the College and fully participate in decisions of the College; decisions within the College on Relex issues would follow the normal procedure;
- have a separate mandate from, and remain accountable, to the Council for issues relating to CFSP. In his capacity as HR, he/she would have formal, but not exclusive, right of initiative, but would not have the right to vote in the Council. His/her proposals in the field of CFSP would not be subject to prior approval by the College. Decisions on CFSP matters would continue to be taken in the Council according to relevant procedures.

A substantial body of opinion favoured the "European External Representative" ensuring the external representation of the Union below the level of the European Council, replacing the Troika.

The suggestion of creating such a new post having an institutional relevance, a number of members made their agreement on this suggestion dependent on a satisfactory solution on the whole institutional setting.

5. Enhancing coherence and efficiency in external action within each institution

The Working Group considered that in order to ensure coherence and efficiency of EU external action, the functioning of each institution should be considered. The Group recommends that:

- a specific External Action Council should be established, formally distinct from the General Affairs formation; this would not exclude that Member States could decide to be represented by the same Minister in the two formations. A large trend emerged in the Working Group in favour of the person holding the function of HR chairing the External Action Council.
- a focal point should be established within the Commission, which would oversee all external issues dealt with in the Commission (all areas of external relations as well as external aspects of internal policies). This task should be entrusted to the person who would hold the post suggested in recommendation No. 4.

6. Enhancing coherence and efficiency at the level of services

A large consensus emerged in the Working Group on some organisational recommendations which would accompany the creation of the new post of "European External Representative", but could also be implemented in the context of other institutional solutions:

- the creation of one joint service (European External Action Service) composed of DG Relex officials, Council Secretariat officials and staff seconded from national diplomatic services;
- the creation of an EU diplomatic service and of an EU diplomatic academy. The Commission's delegation would be turned into EU delegations, and would include officials of the Council Secretariat and members of national diplomatic services.

7. Instruments and decision-making

8. Development Cooperation Policy

9. Parliamentary control on CFSP/ESDP

10. Financing CFSP

11. International agreements

12. External representation

Principles and Objectives of EU External Action

1. The Union's action on the international stage will be guided by, and designed to advance in the wider world, the values which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the principles of human dignity, equality and solidarity, freedom from famine and fear, and respect for international law in accordance with the principles of the Charter of the United Nations. The Union will seek to develop relations and build partnerships with countries, and regional or global organisations, who share these values. It will promote multilateral solutions to common problems, in particular in the framework of the United Nations.
2. The European Union will define and pursue common policies and Union actions, and will work for a maximum degree of cooperation in all fields of international relations, in order:
 - (a) to safeguard the common values, fundamental interests, independence and integrity of the Union;
 - (b) to consolidate and support democracy, the rule of law, human rights and the principles of international law;
 - (c) to preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
 - (d) to foster the durable economic and social development of developing countries, with the aim, among others, to eradicate poverty;
 - (e) to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - (f) to develop international measures to preserve the environment and global natural resources, and ensure sustainable development;
 - (g) to assist communities, countries and regions confronting man-made or natural disasters;
 - (h) to promote an international system based on stronger multilateral cooperation and good global governance.

DETAILED REPORT OF DISCUSSIONS

PART B

I. Introduction

1. The Working Group on EU external action has carried out a systematic examination of the issues set out in its mandate (CONV 252/02). The discussions took place against the background of the results of the Convention's plenary debate on EU external action (11 and 12 July 2002) and the reflection paper on this issue presented by the Praesidium (CONV 161/02). The Working Group heard evidence from Chris Patten, member of the Commission responsible for external relations, Javier Solana, Secretary General of the Council and High Representative for CFSP, Pascal Lamy, member of the Commission responsible for commercial policy, Poul Nielson, member of the Commission responsible for development cooperation and humanitarian aid, and Pierre de Boissieu, deputy Secretary General of the Council.
2. The discussions of the Group were based on the general acknowledgement that the Union as international player has come a long way and that over the years its role has been increasingly recognised on the global stage. At the same time, expectations continue to grow, both within and outside the EU. The challenges of globalisation and increased interdependence of States and regions require the Union to be a strong and credible player on the international stage, not only in economic but also in political terms. The central question was therefore not whether the Union had a role to play but how it should organise itself in order to effectively and coherently promote fundamental values, defend common interests and contribute to the overall objective of global peace, security, and sustainable development.

3. The Group held [8] meetings, one of which was held jointly with Working Group VIII on Defence on the issue of civil crisis management. Members have submitted a considerable number of written contributions in the form of working documents and the Secretariat has prepared a number of documents that were used as an input to the debate. It is noted that issues relating to defence were dealt with by a separate Working Group.
4. The broad range of issues examined by the Group can be brought under the following general headings:
 - common interests, objectives and principles
 - competences
 - coherence and efficiency of action, through structures, instruments and decision making procedures
 - international agreements
 - external representation and services

The Group has formulated a number of recommendations for consideration by the Convention (see part 7), some of which would require Treaty changes, as well as a detailed summary of the discussions held in the Working Group.

II. Preliminary remarks

5. During the discussions, a number of general observations was brought forward by members of the Group. There was first of all a general acknowledgement that the Union had much to gain from acting collectively on the international stage. It was increasingly difficult for individual Member States to influence international developments when acting on their own. In addition, the process of European integration has led to more shared interests and values, the defence of which called for an integrated approach on the global stage.

6. Secondly, it was recognised that acting collectively on the global stage depended to a large extent on political will and solidarity among Member States. This was particularly true for foreign policy, which was considered by many a core issue to national sovereignty. It was acknowledged that the perception of international events sometimes clearly differed from one country to another and often led to different reactions, or intensity of reactions. The usefulness of mechanisms that foster convergence of views and a sense of solidarity was underlined in this respect.
7. Thirdly, it was underlined that external action covered a wide range of policy areas, that some areas were more subject to divergent national views than others, and that some policy areas or actions within certain international organisations were more adapted to legal instruments and regulation than others. This required different arrangements and procedures in EU decision making and implementation.
Having different arrangements and procedures made the coordination of the different policy areas essential. This was particularly true in relation to crisis management and defence issues.
8. Fourthly, it was recognised that although there were considerable collective resources at the EU level, the national resources that Member States could use internationally - both financial and human - were far larger. It was therefore underlined that policy making at the European level should aim at mobilising the whole range of available resources in a coherent manner, and that it should function as a catalyst for the use of national resources to pursue shared EU objectives.
9. Fifthly, it was recalled that considerable progress had been achieved over the last years. It was important that when considering how the current system could be further improved, one should identify the elements of success and build upon the progress achieved so far.

III. Common interests, principles and objectives

10. The Group exchanged views on how the EU could best identify common interests and set priorities for its action on the global stage. The Group pointed to the need to better define in the Treaty the underlying principles and general objectives of all areas of EU external action, in a manner that would be clear to the public and the EU's partners.
11. The Group examined a paper by the Secretariat, which contained a proposal for principles and objectives of EU external action on the basis of current Treaty language on different policy areas and recommendations presented by members of the Group. The Group reached agreement on the following principles and objectives of EU external action to be included in the Treaty:
 1. *The Union's action on the international stage will be guided by, and designed to advance in the wider world, the values which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the principles of human dignity, equality and solidarity, freedom from famine and fear, and respect for international law in accordance with the principles of the Charter of the United Nations. The Union will seek to develop relations and build partnerships with countries, and regional or global organisations, who share these values. It will promote multilateral solutions to common problems, in particular in the framework of the United Nations.*
 2. *The European Union will define and pursue common policies and Union actions, and will work for a maximum degree of cooperation in all fields of international relations, in order:*
 - (a) *to safeguard the common values, fundamental interests, independence and integrity of the Union;*

- (b) *to consolidate and support democracy, the rule of law, human rights and the principles of international law;*
- (c) *to preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;*
- (d) *to foster the durable economic and social development of developing countries, with the aim, among others, to eradicate poverty;*
- (e) *to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;*
- (f) *to develop international measures to preserve the environment and global natural resources, and ensure sustainable development;*
- (g) *to assist communities , countries and regions confronting man-made or natural disasters;*
- (h) *to promote an international system based on stronger multilateral cooperation and good global governance.*

12. It was understood that these principles and objectives would also be taken into account when considering external aspects of EU internal policies to ensure consistency in EU external and internal action. The Group noted that these principles and objectives should also guide the relation of the Union with neighbouring countries and regions.

13. In the discussion about the status of this text, different options were presented. Some proposed that the draft text be included in the second part of the future Treaty. Others considered that it should remain a general background guide until the final version of the Praesidium constitutional Treaty was available.

14. In this context, members agreed that it would be useful to group in the new Treaty the relevant articles of the current Treaties, which constitute the legal bases of EU external policy.

15. Once the overall principles and objectives were set, it would be easier for the EU to define common interests and agree upon a strategy to defend them. The Group was of the opinion that common interests had to be defined collectively in the Council. The possibility of giving the person holding the function of HR for CFSP more power in identifying common EU interests in foreign policy was mentioned as well. The Group pointed to the role of the Commission as defender of the common interest and called for its role to be strengthened in this respect. Members of the Group agreed that it was important to establish an adequate mechanism that allowed, on the basis of general objectives, to identify specific objectives and interests, as well as strategies to pursue them actively.
16. In this context, the role of the European Council in defining the principles and general guidelines was recalled. Members also underlined the importance of the Commission's annual strategic priorities document and the Council's annual debate on the EU's foreign policy, as well as the work of the European Parliament in this respect, which had exceeded in practice by large the limited role conferred upon it by the existing Treaties. The Group also noted the decisions adopted by the Seville European Council on the pluriannual programming of Council activities, and the active role played by the Commission in that exercise. It was further proposed that the European Council adopt an annual strategic plan specifically defining the objectives of the Union in the field of external action, to be included in the Council's work programme, in coherence with the Commission's annual strategic priorities document. [An additional idea would be to introduce in the Treaty a "Pact of Convergence" for CFSP, in the framework of which a periodic examination at the level of the European Council would enable the identification of areas where Member States would either reinforce their cooperation or conduct a common policy.]

IV. Competences

17. With regard to Union competence in CFSP, the Treaty stipulates that Member States shall support the Union's foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. Member States were thus bound to ensure that national policies conform with positions agreed at EU level. The Group agreed that there is no need to set down in a list which powers the Union should have in the field of CFSP, and it was recalled that the Treaty sets no limits on the potential scope and intensity of a common policy in this area. In CFSP and in police and judicial cooperation in criminal matters (title VI TEU, JHA), the Treaty currently enables the Council to conclude agreements on behalf of the Union. Conferring one single explicit legal personality on the Union, as proposed by the Working Group III, would clarify the possibility for the Union to conclude agreements in the field of its competences.
18. The Group noted that the EC Treaty attributed explicit competences to the Community in external action, including for the conclusion of international agreements, and that the Court of Justice had recognised implicit external Community competences when the conclusion of international agreements were necessary for the implementation of internal policies or as a reflection of its internal competencies in areas where it had exercised this competence by adopting secondary legislation. The Group saw merit in making explicit the jurisprudence of the Court to facilitate the action of the Union in a globalised world, in particular when dealing with the external dimension of internal policies and action. Therefore, the Group agreed that the Treaty should indicate that the Union is competent to conclude agreements dealing with

issues falling under its internal competences, under the same decision-making mechanism within the Council as the one applied for internal legislative action (normally QMV). The Group agreed that making this explicit in the Treaty should be without prejudice to the delimitation of competences between the Union and the Member States. In the field of explicit external competences, the Group acknowledged that the delimitation of competences between the Community and the Member States varied from one policy area to another. One member considered that more external policy areas as well as more external aspects of internal policy areas should become exclusive competences of the Union.

V. Coherence and efficiency of action

19. Notwithstanding the varying delimitations of competences between the Union/Community and Member States, and varying roles of actors (institutions and Member States) and decision making procedures in the different fields, it is essential to ensure and maximise the coherence and efficiency of the EU's external action.
20. Members of the Group agreed that in order to maximise its influence on the global stage, the Union had to use all its instruments, political and economic alike, in a coordinated and mutually reinforcing manner. It was also underlined that a coherent approach in international affairs increased the Union's credibility vis-à-vis its partners. It was pointed out that the Union had a vast variety of instruments and tools at its disposal: e.g. programmes for technical and economic cooperation with third countries, funds for humanitarian assistance, funds for development cooperation programmes, arrangements to agree upon and undertake joint diplomatic action, actions by the Presidency and the HR, tools aimed at conflict prevention, dispositions to conclude different types of bilateral and multilateral agreements, different possibilities for action in international organisations and multilateral fora, and it has recently started to establish a crisis management capacity, including the possibility to deploy personnel on the ground. In addition, many of the Union's internal policies and action could have an impact on its relations with the wider world.

21. Notwithstanding the progress achieved over the past years, members of the Group were of the opinion that current arrangements in the European architecture could be improved further to allow a more coordinated use of the different instruments. Several options were put forward in the course of the discussions. The proposed changes related to structures within institutions, relations between institutions and actors, as well as instruments and decision making.

a) Structures within and between institutions

22. Several members underlined the importance of establishing arrangements within the European Parliament, the Council and the Commission, that facilitated and encouraged a coordinated approach in the preparation, consideration, implementation and control of EU external action.
23. In this context, the Group considered that ensuring coherence of EU external action was a shared responsibility by the institutions as well as by Member States when acting in the framework of the EU. The need of effective coordination mechanisms at the national level was underlined, to ensure a more coherent approach by individual Member States in the work of the different Council formations, Coreper, PSC, working groups and the comitology.
24. The Group furthermore underlined the importance of the role of the European Council in defining the general orientations and strategic guidelines for the EU's foreign policy and considered that it constituted an essential element to ensuring the overall coherence of the EU's action on the global stage.
25. With regard to the functioning of the Council of Ministers, which is entrusted with the implementation of the orientations and general guidelines set by the European Council, the Group welcomed the decision by the Seville European Council to create a General Affairs and External Relations Council formation responsible for issues related to EU external action. The Group considered that it would be useful to go further and to formally separate the external relations dimension from the general affairs dimension in two separate Council formations, which did not exclude that Member States could be represented by the same Minister.

26. Most members expressed the view that the external relations Council should be chaired by the person holding the function of HR, who would no longer be charged with the function of Secretary General of the Council. Other members, while agreeing to de-link the functions of the HR from those of Secretary General of the Council, had doubts about him/her chairing Council meetings. They considered that this specific task would be difficult to reconcile with other tasks entrusted to him/her, such as policy initiation, external representation etc. Others saw no problem in this respect and pointed to the advantages this proposal would have for the continuity and consistency in the work of the external relations Council as well as in external representation. The Group agreed that this question could also be looked at from the angle of the wider institutional context at a later stage.
27. The Group underlined the importance of having in the Commission one focal point that oversees all external issues within the services of the Commission, where different DGs were dealing with external action and where internal policies could have an external dimension. The Group agreed that this task could possibly be entrusted to a Vice President of the Commission.
28. With respect to the issue of relations **between institutions and actors**, the discussion focussed on the roles of the HR for CFSP and the Commissioner responsible for external relations. The Group felt that more needed to be done to ensure coherence between foreign policy decisions on the one hand and the deployment of instruments and policy making in the field of external relations on the other hand. Different options were presented ¹:
29. **One option** recommended practical measures to further strengthen the role of the HR and to enhance the synergy between the functions of the HR and the role of the Commission in external relations, while keeping their functions separate. Advocates of this option underlined that the creation of the post of HR had helped to better define and pursue a

¹ The Group noted that the specific arrangements for issues falling under defence would be discussed in Working Group VIII.

more pro-active and effective foreign policy. Building on this positive experience, they considered that one should seek to strengthen the role of the HR, while at the same time enhancing the synergy with the work of the Commission. A number of practical proposals were formulated:

- formal recognition of the right of proposal of the HR (alongside the right of proposal by the Presidency, Member States and the Commission);
- granting the HR adequate means to implement his/her tasks (see also below);
- participation by the HR in all meetings of the Commission concerning external action (some have suggested to grant him/her the status of 'observer' to the College);
- more joint work by the HR and the RELEX Commissioner, including the preparation of joint initiatives to be submitted to the Council (see also below) and joint addresses to sessions of the European Parliament;
- enhanced cooperation between their services (notably in the framework of policy analysis, joint reporting etc.), as well as possible merger of services in certain areas and the creation of EU delegations / EU Embassies.

In addition, it was proposed to split the functions of HR from those of SG of the Council, to allow him/her to concentrate on his/her CFSP tasks. Some also considered that the HR should chair the external relations Council (see above).

30. A considerable number of members felt that closer cooperation, while maintaining the two distinct functions of HR and RELEX Commissioner, would not be sufficient to ensure coherence across the board of EU external action. They considered that more bold institutional changes were needed to meet the challenge of increasing coherence.
31. Therefore, **a second option** was put forward recommending the full merger of the functions of the HR into the Commission. Advocates of this option felt that the Community method, which had been successful for many areas, notably trade policy, should be introduced to the widest extent possible into all areas of external action. The merger would provide the Union with a

single centre for policy preparation in the field of external action (including CFSP), which would be situated in the Commission. Decision-making would remain in the hands of Member States through the European Council and the Council of Ministers, as was now the case for community matters. The Commission would be responsible for policy initiation and implementation, as well as for external representation in all areas of Union external action. There would be one single administration and full parliamentary control. The merger would not cover issues related to ESDP, which would be subject to a different arrangement.

32. For a considerable number of members this option would represent the most effective solution to overcome the challenge of coherence and consistency in external action. At the same time they noted that it might not be attainable at this stage, as Member States would not be prepared to pool sovereignty in foreign policy at the supra-national level, as they had done in the field of the common commercial policy (exclusive/shared EU competence). Proponents of this option, while insisting that it should remain the ultimate goal, considered that they could agree to alternative solutions in the meantime.
33. **The third option**, which was presented as a compromise solution to bridge the gap between the first and second options, recommended the exercise of both offices (HR and RELEX Commissioner) by one person, who would carry the title of "European External Representative"². He /she would be appointed by the European Council (deciding by QMV) with the approval of the President of the Commission and endorsement by the European Parliament. The "European External Representative" would be a full member of the Commission, preferably with the rank of Vice President, but at the same time receive a mandate from and remain accountable to the Council for issues relating to CFSP. By combining the functions of HR for CFSP with those functions currently carried out by the RELEX Commissioner, the "European External Representative" would ensure the coherence between the EU's foreign policy and concrete measures and instruments that the EU could deploy in the field of external action.

² Other titles have also been put forward in the course of discussion. The Group felt that the title of "European External Representative" had the advantage of not corresponding to a title used at national level.

34. Proponents of this option recognised that for decisions and actions in CFSP a close link was required with Member States through the Council. They therefore considered that the procedures for matters falling under CFSP on the one hand and Community issues on the other hand should remain distinct. Decisions on CFSP matters would continue to be taken in the Council, following procedures established for that policy area (see below). The "European External Representative" would in his/her capacity of HR have the formal, but not exclusive, right of initiative in the Council, but not have the right to vote. His/her initiatives on CFSP would not be subject to prior approval by the College of Commissioners. With regard to issues falling under the competence of the Community, the "European External Representative" would in his/her capacity of RELEX Commissioner put forward proposals to the College and fully participate in decisions of the College. Decisions within the College would follow the regular procedures in place (majority voting). The "European External Representative" would replace the Troika in external representation of the Union below the level of the European Council.
35. Considering the scope of tasks conferred to the "European External Representative" the following arrangements have been proposed. He/she would have a number of deputies / assistants for CFSP or Special Representatives with specific / thematic responsibilities, who would be nominated by the Council on his/her proposal and work under his/her authority. At the same time, there would be a distribution of tasks among members of the Commission for portfolios relating to Community aspects of external action, as is currently the case.
36. As to the organisational aspects of the services, there was a general orientation that duplication of services should be avoided as much as possible. It was recommended to establish one joint service composed of DG RELEX officials, Council Secretariat officials and seconded staff from the national diplomatic services. It was also proposed that the current Commission delegations be transformed into EU delegations/embassies.

37. Those who had doubts about this option questioned its compatibility with the principle of collegiality and felt that the scope of responsibility was too large for one person. Proponents of this option however underlined that the "European External Representative" would not be bound in the Council by decisions of the Commission with the exception of cases in which he would speak for the Commission on issues falling under its competence. In addition he/she would have no voting right in the Council.
38. Some members pointed to the predominant role of the European Council in defining the orientations and general guidelines of the EU's foreign policy and the central role of the Council of Ministers in relation to its implementation. On this basis, one member presented **a fourth option**, which consisted of creating the post of "EU Minister of Foreign Affairs", who would combine the functions of HR and RELEX Commissioner and be placed under the President of the European Council. It was also proposed that he/she would chair the external relations Council. Proponents of this option underlined that the actions of such a "EU Minister of Foreign Affairs" would be underpinned by operational measures, which would ensure the efficiency and the coherence of policies agreed upon by the European Council and the Council. The aim would be to increase coherence between policy guidelines agreed by the Council and the operational responsibilities of the Commission in the field of external action, while respecting the competences attributed to each institution.
39. Members of the Group acknowledged that there could be a link between reform of the functions of the HR and the RELEX Commissioner and the organisation of the Presidency of the European Council. The Group noted however that the organisation of the European Council had wider institutional implications, which would need to be discussed by the Plenary.

40. After discussion, the Group concluded that there was a large trend in favour of the creation of the post of "European External Representative", as described in option three. Because of the institutional relevance of this question, a number of members wished to make their agreement dependent on satisfactory solutions on the whole institutional setting.

b) Instruments and decision making

41. In addition to structural changes within and between institutions, members felt that more coherence could be achieved through the application of instruments that covered different fields of action. As to the efficiency of action, the Group examined decision-making procedures in CFSP and in community policy areas. [The Group noted the work carried out by Working Group IX on simplification of instruments and decision-making procedures.]

42. All members agreed that it was important for the EU to have a dynamic foreign policy that was capable of responding promptly to international developments. The need to be able to respond in 'real time' was underlined in this respect.

43. For a number of members the capacity to act on an issue of foreign policy was determined by the existence of political will and convergence of views among Member States. Others pointed out that the current need for unanimity restricted the Union's capacity to act and that it resulted in a policy dictated by the least ambitious position. They feared that in an enlarged Union the risk of 'CFSP inertia' would increase if the requirement of unanimity were maintained. To overcome this problem, a considerable number of members advocated extending the use of QMV in CFSP. Many advocated introducing QMV as a general rule (without prejudice to decisions in the military/defence area), and considered that the mere existence of decision making by QMV would trigger more consensus within the Council. Some members, however,

expressed the opinion that foreign policy issues were not adapted to decision making by voting since it would be difficult for a country to find itself in a minority position on an issue in which precisely its national interests were at stake. Some pointed out that QMV in CFSP would heighten third country awareness of internal EU disagreement, thus rendering CFSP less effective. However, it was also suggested by some that the first concern could be met by providing for an emergency brake that would enable a Member State to invoke a vital national interest to prevent a vote and refer the decision to the European Council. Some members suggested a safeguard clause along the lines of the current article 23.2 TUE.

44. Notwithstanding the different positions, the Group in general was favourable to better use the existing provisions for QMV, including in common strategies and decisions.
45. In this respect, it was noted that the instrument of "common strategies", which was introduced by the Amsterdam Treaty and aimed at covering Community policy and CFSP, had not been used very often in practice and that the way they had been drafted had not led to the desired effect. Several members were disappointed that the possibility of more QMV, which had been introduced by the creation of common strategies, had not been used in practice. The importance of such an instrument, whether or not under the specific name of common strategy, was nevertheless stressed as a concrete and operational tool to ensure an integrated approach in the external action of the EU and to ensure that, once a common strategy had been defined, all instruments of action, regardless of their nature (commercial, humanitarian, migration etc.) are used in a manner consistent with that strategy. Some considered that efficiency could be increased if the Council, rather than the European Council, would adopt strategies of that kind.
46. The Group discussed the possibility of introducing a new type of initiative within EU external action in the form of joint proposals by the person holding the function of HR and the [Commission] [RELEX Commissioner]. This shared right of initiative would present an integrated approach of foreign policy considerations and concrete supporting measures. These

proposals could concern the EU's relations with a particular country or region, or have a more thematic approach. The joint proposal would be submitted for adoption by the Council and implemented by the different institutions/actors in the field of competences attributed to them. A [large] number of members pointed out that this potentially complex procedure would not be necessary if the EU had an External Representative holding the functions of both HR and external relations Commissioner (as described in section Va).

47. [Some] [A large number of] [A majority of] members supported the use of QMV by the Council when it was presented with [this type of joint initiatives by the HR and the [Commission] [RELEX Commissioner]] [a CFSP initiative by the EU External Representative]. There was a common understanding that initiatives proposed by the EU External Representative would reflect a common EU interest and benefit from a maximum degree of support by individual Member States.
48. Other options aimed at reducing the negative effects of the general rule of unanimity were raised as well. These included more use of "constructive abstention" and forms of closer cooperation between a limited number of Member States. [Some members considered that increasing the threshold for constructive abstention could have a positive effect on efficiency of decision making in CFSP]. It was pointed out that recourse to constructive abstention should not discharge a Member State from its obligation to refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness on the global stage. [Some have suggested the introduction of a system of sanctions against any Member States who takes unilateral action in defiance of agreed EU foreign policy.]
49. Some members considered that forms of closer cooperation between a limited number of Member States as a "coalition of the willing" should be possible in all areas of CFSP, including in the area of defence. This would enable those who wish to achieve a higher degree of integration and cooperation within the Union to do this in pursuit of a common EU objective.

50. With respect to efficiency in community policy areas, [some] members of the Group agreed that the use of QMV should be extended to as many areas as possible. The Group took note of the comment made by Commissioner Lamy that in spite of the fact that trade policy was an exclusive competence of the EC/EU and for some aspect a shared competence, not all areas of trade were subject to decision making by QMV. This oddity was considered [by some] an impediment to the Union's efficiency in multilateral and bilateral trade negotiations. [However, some members believed that changing the current arrangements could have unwelcome effects on the distribution of internal competences within the EU and others pointed to the reasoning behind the changes to the TEU adopted in the Nice Treaty]. [Other members considered that QMV and co-decision should apply to all trade matters and more generally to all external aspects of internal policies where QMV applied.]
51. The Group discussed the urgent need to clarify both the purpose and role of EC's development policy, both in relation to those of Member States and in relation to other external policies. To improve the efficiency and coherence of development cooperation policy, which was a complementary competence to that of the Member States, it was underlined that the objectives of EU development programmes needed to be clarified, their management simplified and enhanced, and the added value of EC/EU activities in securing poverty reduction ensured. Several members of the Group stressed the importance of confirming poverty reduction as the central aim for EU's development policy and the importance of focusing efforts on low-income countries. EC programmes should therefore be refocused to reflect this objective, and subsequently, resource allocations decision be done through a long-term strategic approach based on objective criteria for promoting development.

52. Some argued that decision making at EU level should engage more the use of aid at national level. The EC/EU funds represented a considerable proportion of total global aid (10 %), but the sum of the Members States' national budgets represented an even larger percentage (45 %) adding up to 55% of world wide ODA. The current arrangements and delimitation of competencies often led to the situation that the EU was a sixteenth donor in addition to the donor programmes of EU Member States. This reinforced the need for close collaboration and complementary activities in order to improve the efficiency of overall EU aid (financed from the EU budget and on a national basis) and reduce the risk of overlapping activities. Equally, it was considered important to ensure that all EU's external policies are mutually supportive and also in coherence with the EU's internal policies. The Group took note of the comment by Commissioner Nielson that in order for the EU to be more efficient in development policy, policy making at the EU level should to a greater extent commit the Member States in what they did at the national level.
53. It was further suggested by the Group that the EDF be integrated into the Community budget and thus be subject to the same procedures as other areas of Community financial assistance. Some members felt that this integration could only occur if adequate guarantees were given on the effectiveness and poverty focus of EC development programmes, and if it did not create any problems in the volume of aid directed towards ACP countries.
54. [The Group further noted the specific nature of humanitarian aid, on which the principles of independence and impartiality applied, not only because of international obligations (Oslo Convention) but also to ensure that the aid is delivered effectively and without additional risks for the life of the providers.]

55. [Regarding the Parliamentary control on CFSP/ESDP, some members pointed out that the current provisions of Art. 21 TEU should be modified in order to provide for better information to the European Parliament on CFSP issues. In addition, regular exchange of views between the EP and national parliaments on CFSP/ESDP issues should be ensured (with association of non-EU NATO members). Some members requested that the obligation of the Presidency of the Council to notify and consult the EP under art. 21 TEU be reinforced by making the person holding the function of HR answerable in writing, and that his accountability must also cover matters of security and defence policy, considering that the Council's annual report so far on the financial implications of decisions taken within the framework of CFSP was not sufficient.]

c) Financing CFSP

56. The Group agreed that efficiency in CFSP was closely linked to the issue of adequate resources, both in term of volume and procedures. The current CFSP budget had proved to be insufficient to implement actions that were deemed necessary in support of the EU's foreign policy and that current procedures were too heavy to allow a prompt financing of activities. Sufficient budgetary flexibility both in terms of volume and procedure was necessary to enable prompt and appropriate action by the Union. There was strong support in the Group to simplify and improve the current system and to make it more compatible with the EU's needs. The example of financing Special Representatives was mentioned in particular, and it was underlined that appropriate funding for these should be made available from the Community budget, possibly with faster procedures.

57. The Group felt that the person holding the function of HR should have more say in how the CFSP budget was used and that he/she should be allowed to propose initiatives. Some proposed that he/she should have a certain degree of autonomy in financing under the Community budget certain activities considered necessary for the implementation of his/her

mandate. Some members proposed that this person should be given such autonomy over a specified, limited part of the CFSP budget. The use of these resources should rest on clear guidelines from the Council and require clearance from the PSC. In particular, the Group noted the need to establish an effective mechanism within the Community budget, which would allow the person holding the function of HR to finance on an urgent basis the preparatory steps of crisis management operations. The Group took note of current procedures in humanitarian aid, where a certain degree of power of decision was conferred to the Director of ECHO/the Commissioner. [The Group further took note of the Commission's information regarding the rapid reaction mechanism that aimed at enabling a rapid response in crisis management.] The Group further agreed that the budget management activities should remain with the Commission services and that any duplication should be avoided and furthermore that the principles of budgetary control and discharge should remain applicable.

VI. International agreements

58. The Group noted the importance of the work of WG III on legal personality and its relevance for the issue of external representation. It recalled the support of the Convention to the recommendation to confer an explicit single legal personality on the European Union. It was furthermore noted that in a possibly regrouped section on EU external action in the Treaty (see paragraph 12), it would be useful to have provisions and preferably one single provision on the negotiation and conclusion of international agreements that would indicate who would act on behalf of the Union in this respect. Such provision(s) could, as recommended by WG III, indicate that the Council authorises the opening of negotiations, issues the negotiating directives, and concludes the agreements. This would not necessarily involve changes to the specific arrangements of the procedures according to the subject covered by the agreement. Some members pleaded in favour of an European Parliament assent on any international agreement including agreements in matters of international trade policy (therefore deleting the current exception set out in article 300.3 TEC).

59. Regarding the conduct of the negotiation, the current Article 300 TEC would apply if the agreement under consideration fell solely within the Community domain; and Articles 24/38 TEU would apply if the agreement came solely under Title V or Title VI. Where the scope of an agreement would fall within both the community domain and under Titles V and/or VI TUE ("cross-pillar mixity"), the majority of members of the Group noted that one could resort either to the conclusion of two different agreements or to the conclusion of a single agreement. In this last case, the Council, when authorising the opening of negotiations, taking into account the main object of the agreement and its legal basis, would indicate whether negotiations would be conducted by [the person holding the function of HR and the Commission together or the Commission alone under the supervision of a committee]. Some members nevertheless wanted to exclude the possibility to conclude two different agreements indicating that in case of cross-pillar mixity, one should strive to always have a single agreement, some among these members wanting the negotiation to be conducted in principle further to the current Article 300 TEC except if the agreement came exclusively under Title V or Title VI.

VII. Services and External representation

60. The Group agreed that it was essential for the person holding the function of HR to have sufficient staff at his/her disposal in Brussels, and underlined the importance of strengthening his/her staff with seconded diplomats and officials of the Commission and the Council Secretariat. The secondment of members of the national diplomatic services on a temporary basis would help to enhance synergy with Member States and further strengthening of the policy analysis capacity. Some proposed that the role of the Political and Security Committee in providing the HR with political guidance should be reinforced.

61. The Group was of the opinion that the current arrangements in external representation of the EU lacked clarity and some considered that a single representation would improve the Union's capacity to act effectively and convincingly on the global stage. It was underlined that a single representation of the Union would be without prejudice to the Member States' competence as subjects of International law and to their status in International organisations. Several believed that diversity in representation was unavoidable, given the different fields of action and differences in delimitation of competences between the Union and its Member States, and that instead of introducing single representation, the Union should aim at delivering a single message, even if this had to be done through different actors. Some expressed the view that, on occasion, this can result in the Union deriving additional influence in international organisations.
62. The Group considered that the issue of EU representation in international organisations was both complex and sensitive. Members welcomed the clarity and efficiency of EC representation by the Commission in the field of commercial policy. Several members considered that in the other policy areas where Member States had agreed that competences would be exercised at the supranational level, representation in international fora should be in conformity with internal arrangements. It was welcomed in the Group that the Union would succeed to the present observer membership of the Community in a number of international organisations. While several members advocated full membership of international organisations of the EU, some members viewed this proposal as problematic as they considered that it would conflict with the rights of Member States without significantly enhancing the influence of the Union. [Some proposed that Member States enhance the existing arrangements for coordination of their positions in international organisations including through the introduction of a forward-looking element.] Several members of the Group expressed support for a single representation of the Eurozone in IFI's while others saw disadvantages and practical difficulties. Some members considered that this task should be entrusted to the Commission, which should inform the European Parliament and the Council regularly on the state of such relations. Other members preferred to entrust this task to the ECB and others to the Presidency.

63. Some members pleaded for the Commission to ensure the maintenance of all appropriate relations with the United Nations bodies and specialised agencies, except the UN Security Council. The Commission should in their view also maintain such relations as appropriate with other international organisations (Council of Europe, Organisation for Economic Cooperation and Development, etc.).
64. Some members requested that the Constitutional Treaty allow the Union to join and act in international organisations, provided the rules of such organisations allow it, or at least encourage further steps toward a more coherent EU voice in international organisations, particularly in the case of those international organisations directly linked to matters covered by CFSP/ESDP.
65. Some suggested that the EU coordination in the UN, especially in the UN Security Council, could also be improved. Others suggested that, in order to avoid conflict with Member States wishing to preserve their prerogatives in international organisations, the Union would become a member of such organisations alongside the Member States, [leaving aside the question to know who should have voting rights and noting that the Union and the Member States would coordinate their positions in advance.]
66. When considering external representation in bilateral relations, members felt that current arrangements could be improved with a view to enhancing clarity and continuity. The situation was particularly unsatisfactory with respect to political dialogue meetings, where [too] many spoke on behalf of the EU (Presidency, the HR, the Troika, the Commission, Member States). It was pointed out that in diplomacy a lot depended on trust and personal relationships. The Group considered in this respect that the person holding the function of HR should assume the representation of the Union, which would improve the visibility, clarity and continuity of the Union on the global stage.

67. Some considered that representation at the highest political level (heads of State or Government) should be the responsibility of a permanent President of the European Council. A majority of members expressed opposition against the proposal of a permanent President of the European Council. The Group considered that this proposal had wider institutional implications and that it should therefore be discussed in Plenary.
68. With respect to overseas representation, a number of members advocated the creation of an EU diplomatic service and an EU diplomatic academy as well as the development of a closer cooperation between the external services of the Union and of the Member States. Others highlighted the importance of using existing resources and avoiding duplication. A great number of members proposed that the current Commission delegations should be turned into EU delegations, and some suggested EU Embassies, which would work formally under the authority of the person holding the function of HR for issues concerning CFSP and would include members of national diplomatic services and officials of the Council Secretariat. These EU delegations / Embassies could also be tasked with servicing Member States that were not represented in a particular country. Some members however were opposed to the proposal to change EC delegations into EU Embassies, considering premature the creation of an EU diplomatic service. It was also pointed out that diplomatic representations of Member States should cooperate closely with EU delegations and that they should also be encouraged to provide support and information to the person holding the function of HR.
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