

Working Group VII

Working document 21 REV 3

## **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 of the draft final report for consideration by the members of the Group. Members are invited to submit any comments they may have on the text in writing by Thursday 12 December (please send comments to the following e-mail address: [verena.schubert@consilium.eu.int](mailto:verena.schubert@consilium.eu.int)).

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# **REPORT OF WG VII ON "EXTERNAL ACTION"**

## **PART A**

### **RECOMMENDATIONS**

#### 1. Grouping of external action articles in the Treaty

The Group agreed that it would be useful to group in a section of the new Treaty the relevant articles of the current Treaties, which cover the different aspects of EU external policy.

#### 2. Principles and Objectives

There was a very large consensus in the Group on the need to define in the Treaty the underlying principles and general objectives of EU external action, in a manner that would be clear to the public and the EU's partners. The Group reached agreement on the following text defining "principles and objectives" of EU external action:

#### *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 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.*

The Group also recommended that, to ensure consistency in EU external and internal action, these principles and objectives should be taken into account when considering external aspects of EU internal policies.

### 3. Strategic objectives and interests

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

#### 4. 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 reflecting its internal competences in areas where it had exercised this competence by adopting secondary legislation. The Group reached a very large consensus on the following recommendations:

- the Treaty should indicate that the Union is competent to conclude agreements dealing with issues falling under its internal competences;
- 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).

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

#### 5. 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"<sup>1</sup>.

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<sup>1</sup> Other titles have also been put forward in the course of discussion, notably "EU Minister of Foreign Affairs" and "EU Foreign Secretary". The prevailing view was that the title of "European External Representative" had the advantage of not corresponding to a title used at national level.

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

- be appointed by the Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, with the approval of the President of the Commission and endorsement by the European Parliament;
- have a direct mandate from, and be accountable to, the European Council for issues relating to CFSP. He/she would implement this mandate working under the guidance of the Council. In his/her capacity as HR, he/she would have the formal, but not exclusive, right of initiative. When he/she exercised his/her right of initiative on CFSP, the Commission will abstain from taking a competing initiative. His/her initiative on CFSP would not be subject to prior approval by the College of Commissioners. Decisions on CFSP matters would continue to be taken in the Council according to relevant procedures. He/she would not have the right to vote in the Council;
- be a full member of the Commission and possibly its Vice-President. In his/her capacity as External Relations Commissioner, he/she would put proposals to the College and fully participate in decisions of the College; decisions within the College on Relex issues would follow the normal procedure.
- ensure the external representation of the Union, replacing the current 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.

## 6. Enhancing coherence and efficiency in external action within each institution

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

- 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 significant number of members

were in favour of the person holding the function of HR chairing the External Action Council.

- a focal point should be established within the Commission, possibly the Vice President, who would coordinate all external issues dealt with in the Commission (all areas of external relations as well as external aspects of internal policies).

## 7. Enhancing coherence and efficiency at the level of services

A large consensus emerged in the Working Group on some organisational recommendations aimed at enhancing the coherence and efficiency and which could be implemented independently of the solution adopted regarding the institutional framework:

- the establishment of one joint service (European External Action Service) composed of DG Relex officials, Council Secretariat officials and staff seconded from national diplomatic services. In the hypothesis of the creation of a new post of European External Representative (see point 5), this service would work under his/her authority;
- the creation of an EU diplomatic academy and an EU diplomatic service, alongside those of Member States. The Commission's delegations would become EU delegations/embassies, and would be staffed by officials of the Commission, the Council Secretariat and members of national diplomatic services. These EU delegations/embassies would work formally under the authority of the person holding the function of HR for issues concerning CFSP and under the direct authority of the Commission for the other aspects of external action.

## 8. Instruments and decision-making

### a) Instruments

With a view to promoting coherent use of the EU's external action instruments, the Group considered it useful to create the possibility of "joint initiatives" which could be put forward by the European External Representative (or the HR) and the Commission.

## b) Decision-making in CFSP

- The Working Group underlines that, in order to avoid CFSP inertia and encourage a pro-active CFSP, maximum use should be made of existing provisions for the use of QMV, and of provisions allowing for some form of flexibility, such as constructive abstention.
- In addition, the Working Group recommends that a new provision be inserted in the Treaty, which would provide for the possibility of the European Council agreeing by unanimity to extend the use of QMV in the field of CFSP;
- Some members consider that "joint initiatives" should be approved by QMV.

## c) Decision-making in Commercial Policy

There was a very large consensus in the Working Group in favour of the use of QMV in all areas of commercial policy, including services and intellectual property.

## 9. Development Cooperation Policy

The Working Group recommends that the administrative and legal instruments for managing EC/EU development programmes should be simplified and enhanced, with a significant reduction of the number of regional and sectoral regulations.

A large consensus emerged in favour of the integration of the European Development Fund (EDF) into the overall EU budget and thus be subject to the same procedures applicable to other areas of financial assistance. Such an integration must be accompanied by improvements to the effectiveness and poverty focus of EU development programmes in general.

The Working Group, while recognising that development policy has its specific purposes, which are reflected among the principles and objectives of EU external action, underlines the need for ensuring coherence between development cooperation and other aspects of EU external action, since development assistance could be considered as an element of the global strategy of the Union vis-à-vis third countries.

## 10. Parliamentary control of CFSP

The Working Group recognised that the current provisions of Art. 21 TEU were satisfactory. They should, however, be complemented to stipulate that the person holding the function of HR should be answerable in writing to the EP.

## 11. Financing CFSP

The Working Group, noting that the current CFSP budget has proved to be insufficient, and that current procedures are too heavy to allow prompt financing of activities, recommends that:

- the CFSP budget should have sufficient funds to meet unexpected crises or new political priorities on the international scene;
- the person holding the function of HR should be granted a certain degree of autonomy in financing activities necessary to the carrying out of his/her mandate. In particular, an effective mechanism within the EU budget should allow the person holding the function of HR to finance, on an urgent basis, steps preparatory to civilian crisis management operations, subject to clear guidelines from the Council and clearance from PSC, and this should respect the budgetary ceilings set by the budgetary authority <sup>2</sup>;
- a bigger margin of unallocated expenditure in the main assistance programmes should be provided to respond to unexpected developments;
- appropriate procedures should be established to allow prompt disbursement and action in real time.

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<sup>2</sup> Means of financing crisis management operations having a defence component should also be identified (see recommendations of Working Group VIII).



## 12. International agreements

- The Group recommends that the new Treaty include one single set of provisions on the negotiation and conclusion of international agreements that would indicate that the Council authorises the opening of negotiations, issues negotiating directives, and concludes the agreements and would indicate who would act on the behalf of the EU according to the subject of the agreement.
- Where the scope of an agreement falls within both the current community domain and under current Titles V and/or VI TUE, the Group recommends that one should aim as much as possible to conclude one single agreement, and that the procedure for the negotiations would be decided by the Council, on the basis of the main object of the agreement and its legal basis. In that respect, the Council would also indicate who would negotiate on behalf of the Union: i.e. the person holding the function of HR and the Commission together, or the Commission alone, under the supervision of a committee.

## 13. External representation

- The Group recommends that the Union should work for changes in statutes of international organisations to allow for membership by the Union.
- The Group recommends that when there is a position of the Union, the Union should have a single representation in international fora.
- The Group expresses support for a single representation of the Eurozone in IFI's and recommends that a solution should be identified in order to organise the articulation between single representation and obligations incumbent on Member States.
- In order to improve the visibility, clarity and continuity of EU external representation vis-à-vis third countries, the Group considered that this task should be entrusted to the person holding the function of HR, in particular in political dialogue meetings.

## 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 effectively and coherently to 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

## **II. Preliminary remarks**

5. During the discussions, a number of general observations were 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 of national sovereignty. It was acknowledged that perceptions of international events sometimes differed sharply 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 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, when considering how the current system could be further improved, to identify the elements of success and build upon 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 for better definition in the Treaty of 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 a very large consensus on a text defining "principles and objectives", which is reproduced in part A of the report, and recommended that this text should be included in the Treaty.
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 of external and internal action. The Group noted that these principles and objectives should also guide the Union's relations 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, the Group agreed that it would be useful to group in a section of the new Treaty the relevant articles of the current Treaties, which cover the different aspects 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. The Group agreed that it was important to establish an adequate mechanism to identify, on the basis of general objectives, 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 EU foreign policy, as well as the work of the European Parliament in this respect, which had in practice gone well beyond the limited role conferred on 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 line with the Commission's annual strategic priorities document. The External Action Council would be in charge of the implementation of these strategic objectives and interests as defined by the European Council.

#### 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; shall work together to enhance and develop their mutual political solidarity, and 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 voting procedure 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. One member was of the view that this mention in the Treaty should not affect the provisions relating to commercial policy in the Nice Treaty. 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, the varying roles of the actors (institutions and Member States), and different decision making procedures in different fields, it is essential to maximise the coherence and efficiency of EU external action.
20. 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 emphasised 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 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 past years, the Group was of the opinion that the current architecture could be further improved to allow more coordinated use of the different instruments. Several options were put forward in the course of discussions, relating to structures within institutions, and 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 would facilitate and encourage 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 responsibility shared 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 formally separate the external action 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 in both.
26. A significant number of members expressed the view that the External Action 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, and that it would represent too great a



concentration of responsibility in one individual. 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 action Council and would provide a single voice in 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 to coordinate 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 <sup>3</sup>:
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 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 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 suggested giving him/her the status of 'observer' to the College);

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<sup>3</sup> The Group noted that the specific arrangements for issues falling under defence would be discussed in Working Group VIII.

- 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 a 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 there was no consensus among Member States to turn foreign policy into an exclusive/shared competence, as they had done in the field of the common commercial policy. Proponents of this option, while insisting that it should remain the ultimate goal, considered that they could agree to the third option 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 could carry the title of "European External Representative"<sup>4</sup>. He /she would be appointed by the Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, with the approval of the President of the Commission and endorsement by the European Parliament. The "European External Representative" would receive a mandate from and remain accountable to the European Council for issues relating to CFSP, implement this mandate working under the guidance of the Council, and at the same time be a full member of the Commission, preferably with the rank of Vice President. 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.
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. The "European External Representative" would in his/her capacity of HR have the formal, but not exclusive, right of initiative in the Council. When he/she exercised his/her right of initiative on CFSP, the Commission should abstain from taking a competing initiative. His/her initiatives on CFSP would not be subject to prior approval by the College of Commissioners. Decisions on CFSP matters would continue to be taken in the Council, following procedures established for that policy area (see below). He/she would not have the right to vote in the Council. 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 ensure the external representation of the Union, replacing the current Troika.

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<sup>4</sup> Other titles have also been put forward in the course of discussion, notably "EU Minister of Foreign Affairs" and "EU Foreign Secretary". The prevailing view was that the title of "European External Representative" had the advantage of not corresponding to a title used at national level.

35. Considering the scope of tasks conferred on 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 unnecessary duplication of services should be avoided as much as possible. A large orientation emerged in favour of the establishment of one joint service composed of DG RELEX officials, Council Secretariat officials and seconded staff from the national diplomatic services. This service would work under the authority of the European External Representative, if this post were to be created. 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.
38. The Group 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, **a fourth option** was presented, consisting of the creation of the post of "EU Minister of Foreign Affairs", who would be placed under the direct authority of the President of the European Council and who would combine the functions of HR and Relex Commissioner. He/she would chair the external action Council. Under this option, 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 instruments and decision making:
- In view of increasing coherence, the Group examined the use of instruments that covered different policy areas, both CFSP and other aspects of external action.
  - As to the efficiency of action, the Group examined decision-making procedures in CFSP and in community policy areas.
42. The Group noted that Working Group IX, considering simplification of instruments and decision-making procedures, had recommended that in the framework of CFSP legal acts take the form of decisions.
43. 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. They confirmed that 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.

44. The Group pointed out that voting procedures, and subsequently the use of QMV, had been established for policy areas based on legislation and harmonisation of laws. CFSP was not a policy area that advanced by legislation, and was thus less adapted to the use of QMV. However, the Group agreed that QMV, as an instrument of last resort to de-block a stalemate, could have a positive effect on consensus building within the Council. It was pointed out in this respect that even in Community policy areas, the Council very rarely proceeded to a vote. In addition, the Group confirmed that the current Treaty already provided for the use of QMV in CFSP, in the framework of common strategies and for decisions implementing joint actions and common positions, although these possibilities had not been used in practice in the framework of common strategies.
45. A large number of members added 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 Member State 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 in exceptional cases 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.
46. Notwithstanding the different positions, the Group in general was favourable to better use of the existing provisions for QMV. While noting that there was no consensus yet on the further extension of QMV, the Group could agree that the future Treaty should include a provision, which would allow the European Council to extend (on the basis of unanimity) the use of QMV in CFSP. This would facilitate the flexibility and evolution of a stronger CFSP.

47. With respect to coherence and efficiency, 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 such common strategies 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.) were used in a manner consistent with that strategy. Some considered that efficiency could be increased if the Council, rather than the European Council, were to adopt strategies of this kind. The Group noted that WG IX recommended that common strategies, as other instruments of CFSP, take the legal form of "decisions" in the future Treaty.
48. The Group discussed the possibility, which was also raised by HR Solana and Commissioner Patten, of introducing a new type of initiative for EU external action. A joint initiative which would present an approach integrating foreign policy aspects and external relations instruments could be put forward by the European External Representative (or the HR) and the Commission. Therefore, it was underlined that his new form of initiative could be used regardless of institutional solutions. 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.
49. Several members could support the use of QMV by the Council when it was presented with this type of joint initiative. There was a common understanding that such joint initiatives were likely to reflect a common EU interest and would benefit from a maximum degree of support by individual Member States. One member indicated that extending the use of QMV to this type of proposals would only be acceptable if joint initiatives were presented by a HR, whose functions would not be combined with those of RELEX Commissioner, and by the Commission.

50. 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", which would be in line with increased political solidarity. Member States should not oppose action by the EU, unless their vital national interests were at stake. It was pointed out that recourse to constructive abstention should not discharge a Member State from its obligation to refrain from any action contrary to the interests of the Union or likely to impair its effectiveness on the global stage. It was indicated that constructive abstention could be seen as a way of contributing to reaching consensus and building mutual trust.
51. Some members considered that forms of operational cooperation between a limited number of Member States, as a "coalition of the willing" to take forward specific operational actions in the framework of implementation of Council decisions, could contribute to enhancing CFSP.
52. With respect to efficiency in commercial policy, the Group took note of the comment made by Commissioner Lamy that in spite of the fact that commercial policy was an exclusive competence of the EC/EU and for some aspects a shared competence, not all areas of trade were subject to decision making by QMV. This oddity was considered an impediment to the Union's efficiency in multilateral and bilateral trade negotiations. There was a very large consensus in the Working Group in favour of the use of QMV in all areas of commercial policy, including services and intellectual property. One member was of the view that this should not affect the provisions relating to commercial policy in the Nice Treaty.
53. The Group discussed the urgent need to clarify both the purpose and role of the EC's/EU'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 competence complementary to that of the Member States, it was underlined that the objectives of EU development programmes needed to be clarified further and the added value of EC/EU activities in securing poverty reduction ensured. The administrative and legal instruments for managing EC development programmes should be simplified and enhanced, with a significant reduction in the number of regional and sector regulations. The Group stressed the importance of confirming poverty eradication as the central aim of the EU's



development policy, and the importance of focusing efforts on low-income countries. Some underlined that promotion of, and respect for, human rights was of key importance. EC/EU programmes should therefore be refocused to reflect these objectives, and subsequently, resource allocation decisions should reflect a long-term strategic approach based on objective criteria for promoting development.

54. Some argued that decision-making at EU level should extend to the use of aid at national level. 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 a situation in which 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 to reduce the risk of overlapping activities. Member States should aim to establish a common position or view in international fora where international development policy is established. Member States should continue to exercise their responsibilities in international development organisations in accordance with their membership but should respect common policy positions adopted by the EU.
55. The Group, while recognising that development policy has its specific purposes which are reflected among the proposed principles and objectives of EU external action, also underlined the need to ensure coherence between development cooperation and other aspects of EU external action, since development assistance could be considered as an element of the global strategy of the Union vis-à-vis third countries. Equally, it was important to ensure that all EU internal and external policies were mutually supportive and coherent. 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.
56. A large consensus emerged in favour of the integration of the European Development Fund (EDF) into the Community budget and thus be subject to the same

procedures as other areas of Community financial assistance. Such an integration must be accompanied by improvements in the effectiveness and poverty focus of EC development programmes. It was also pointed out by some that such integration into the budget should not create any problems in the volume of aid directed towards ACP countries.

57. 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 but also to ensure that aid is delivered effectively and without additional risks to the lives of the providers.

**c) Financing CFSP**

58. 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 insufficient to implement actions that were deemed necessary in support of the EU's foreign policy, and current procedures were too heavy to allow 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 for simplifying and improving the current system, making it better match 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. It was also suggested that there should be a bigger margin of unallocated expenditure (5-10%) in main assistance programmes to enable the Union to act promptly to meet unexpected crises or new political priorities.
59. 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 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. 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 steps preparatory to civilian crisis management operations. The use of these resources should rest on clear guidelines from the Council and require clearance from the PSC, and it should respect the budgetary ceilings set by the budgetary authority<sup>5</sup>. 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 intended to ensure a rapid response in crisis management. The Group further agreed that budget management activities should remain with the Commission services and that any unnecessary duplication should be avoided and furthermore that the principles of budgetary control and discharge should remain applicable.

#### **d) Role of the European Parliament**

60. Regarding Parliamentary control on CFSP, the Group noted that the current provisions of Art. 21 TEU requires consultation on main aspects and basic choices, and information on the development of CFSP. It agreed to complement this article to make the person holding the function of HR answerable in writing to the EP. In addition, the Group agreed that regular exchange of views between the EP and national parliaments on CFSP issues should be ensured.
61. With regard to commercial policy, some members considered that the involvement of the EP should be enhanced.

#### **VI. International agreements**

62. The Group noted the importance of the work of WG III on legal personality and its relevance to the issue of external representation. It recalled the support of the Convention for 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 14), it would be useful to have provisions, and preferably one single provision, on

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<sup>5</sup> Means of financing crisis management operations having a defence component should also be identified (see recommendations of Working Group VIII).

the negotiation and conclusion of international agreements which 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 procedural arrangements 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 (i.e. the deletion of the current exception set out in Article 300.3 TEC).

63. Regarding the conduct of the negotiation, the current Article 300 TEC would apply if the agreement under consideration fell solely within the current Community domain; and Articles 24/38 TEU would apply if the agreement came solely under current Title V or Title VI. Where the scope of an agreement would fall within both the current Community domain and under current Titles V and/or VI TUE (now known as "cross-pillar mixity"), the Group noted that one could resort either to the conclusion of two different agreements or to the conclusion of a single agreement and recommended that the aim should be to conclude a single agreement whenever possible. In this last case, the procedure for the negotiation and conclusion of the agreement would be decided by the Council on the basis of the main object of the agreement and its legal basis. In that respect, the Council would indicate whether negotiations would be conducted by the person holding the function of HR and the Commission together, or by the Commission or the HR alone under the supervision of a committee.

## **VII. Services and External representation**

64. With respect to organisational aspects of services, the Group considered that a number of recommendations could be agreed upon independently of institutional solutions at the top. It agreed that there was a need to avoid duplication of services. With regard to the person holding the function of HR, the Group agreed that it was essential for him/her 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 national diplomatic services on a temporary basis would help to enhance synergy with Member States and further strengthening of policy analysis capacity. Some proposed that the role of the Political and Security Committee in providing the HR with political guidance should be reinforced.

65. The Group was of the opinion that current arrangements in external representation of the EU lacked clarity and considered that a single representation would improve the Union's capacity to act effectively and convincingly on the global stage. Some believed that diversity in representation was however unavoidable, given the different fields of action and differences in delimitation of competences between the Union and its Member States. Nevertheless, the Group agreed that when there was a position of the Union, the Union should have a single representation, speaking on its behalf. Representation of the Union would be without prejudice to Member States' competence as subjects of International law and to their status in International organisations.
66. 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. The Group 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. While several members advocated full EU membership in international organisations, some members viewed this as problematic as they considered that it would conflict with the rights of Member States without significantly enhancing the influence of the Union. Nevertheless, the Group agreed that the Union should work for changes to the statutes of international organisations to allow for membership by the Union. This would contribute to overall enhancing the capacity of international organisations to improve global governance. The Group expressed support for a single representation of the Eurozone in IFI's. Some members underlined that decisions in IFIs would entail actions by Member States and the Group therefore suggested that a solution should be identified in order to organise the articulation between single representation and obligations incumbent on Member States. The Commission was invited to look into the issue and formulate proposals.
67. The Group agreed that Member States should enhance the coordination of their positions in international organisations and conferences with a view to agreeing on EU positions and a strategy to promote them. It also suggested that the EU coordination with regard to the UN Security Council could be improved.

68. 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.
69. 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 to the proposal for 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.
70. With respect to overseas representation, the Group advocated the creation of an EU diplomatic academy, providing training to young diplomats as well as mid-career training, and an EU diplomatic service, alongside those of Member States, as well as the development of a closer cooperation between the external services of the Union and of the Member States. The Group proposed that current Commission delegations should be turned into EU delegations, and some suggested EU Embassies, which would work under the authority of the person holding the function of HR for issues concerning CFSP and under the authority of the Commission for the other aspects of external action. They would be staffed by officials of the Commission and the Council Secretariat as well as members of national diplomatic services. These EU delegations/Embassies could also be tasked with servicing Member States not represented in a particular country. It was also pointed out that the 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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