

The Common Foreign and Security Policy of the European Union

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Preliminary Remarks

The European Union is presently exploring new territory through the operation of the Common Foreign and Security Policy (CFSP). However, politicians, lawyers and journalists are still divided into two camps when evaluating Title V of the Treaty on European Union (TEU) and its prospects for practical implementation. On the one hand, a rather negative attitude is voiced, according to which the CFSP is nothing but a further formal codification of the policy alignment of EPC. According to this view, the CFSP will not lead to any substantive changes, because intergovernmentalism has been maintained. Consequently, the first camp argues that the modified institutional and legal framework, though constituting a formal reform, will not add anything in practice, because the achievement of objectives will continue to be entirely dependent on the political will of the partners involved.

The opposite conclusion is reached by another line of thought, which stresses the most obvious new elements of the CFSP, such as its integration into one single institutional framework, the introduction of joint action as a new instrument of compulsory character, the formal right of initiative for the European Commission (hereafter the Commission), and the incorporation of security and military aspects. Military defence had thus far been excluded from EPC. This second camp points not only to the widened scope and impact of the CFSP, but also places emphasis on the fact that the CFSP covers the EPC *acquis* on which it will be able to build.

It is astonishing that the sceptical viewpoint is most often heard from within the European Union, whereas voices from outside, in particular from the other side of the Atlantic and from the new democracies in Central and Eastern Europe, attach great hope and high expectations to the European Union, its new legal capacity and

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presumed political willingness to establish a common policy in foreign and security matters. Neither camp lacks convincing arguments. It is striking that they share the same starting point, which is not concerned with general foreign policy issues but rather emphasizes global security policy. Nonetheless, they arrive at almost diametrically opposed conclusions. The first view deliberately neglects new elements explicitly enshrined in the Maastricht Treaty; a *common* foreign and security *policy* is a concept of different legal and political value than mere *cooperation* in the sphere of foreign policy. The second view, on the other hand, can be reproached for engaging in speculation as the CFSP still has to prove itself in practice.¹

The contention of the first camp that TEU does not introduce any substantive changes necessarily turns a blind eye to the changed socio-political and military realities of the post-cold war area, which called for the establishment of the CFSP. In fact, faced with an increased risk of international instability and, in particular, a revival of nationalistic trends within Europe, the Community and its Member States realized that common security and defence are corollary elements to safeguarding economic stability in Europe as a whole. Therefore, Title V of the TEU reflects an existing common political will to set up a new identity to respond to these realities, in order to no longer *react* but to *act*.² Nevertheless, it is too early to assess either of the views outlined above. Practice will show whether the European Union is indeed capable and willing to engage in an active foreign and security policy.

The necessary legal and formal framework for such action is laid down in Article J of the TEU, whereby special attention must be given to the new instrument of joint action. The present paper is intended to provide some introductory guidance to the CFSP in outlining its main mechanisms, scope and limits, and the practical means required for its implementation.

I. Legal Framework

The procedural rules for establishing the CFSP are set forth in Title V, or Article J of the TEU, which is composed of eleven sub-articles. While the Community and its Member States *acted in common* in the framework of EPC, the objectives of the CFSP shall be achieved by *joint action*. Notwithstanding the prerequisite of a common political will, this inevitably also requires a legal framework which should not be underestimated, as it reflects and reinforces the high political authority implied in the establishment of the CFSP. In the context of the legal framework of

- 1 Success or failure by the European Union in the establishment of peace and stability in former Yugoslavia will undoubtedly affect the impression that the general public has of the CFSP. Yet, as will be demonstrated, the CFSP provides no magic remedy in this respect. A durable solution is rather dependent on firm and unambiguous action by the international community as a whole, based on one common policy.
- 2 The will to engage in a proactive versus reactive foreign policy was reconfirmed by the European Council held in Brussels on 29 October 1993.

The Common Foreign and Security Policy of the European Union

the CFSP, attention has to be drawn to the special structure of the TEU, which is divided into three so-called pillars. The first pillar encompasses the existing European Communities, whereas the second and third pillars concern special forms of policies and cooperation, namely the CFSP and Cooperation in the Fields of Justice and Home Affairs. Being an integral part of the TEU, Title V of the TEU cannot be analysed in isolation, as there is a great deal of interaction between the three pillars, such as in the fields of asylum and visa policy. Besides, complementary provisions are laid down in Titles I (Common Provisions)³ and VII (Final Provisions),⁴ and also in various declarations⁵ attached to the Maastricht Treaty which will be dealt with hereunder.

An important bridge between pillar I (Community competence) and pillar II (intergovernmentalism) is Article 228a⁶ of the EC Treaty, which enables the Community to interrupt or to reduce economic relations with a third State. It foresees the possibility of adopting, for example, economic sanctions or other commercial counter-measures such as the suspension of a preferential treatment. The applicability of Article 228a necessitates the existence of a prior corresponding common position or joint action under the CFSP.⁷ Article 228a hence safeguards the necessary cohesion between political decisions taken under the CFSP and the commercial policy of the Community without, however, encroaching on general Community competence. For example, commercial counter-measures under the GATT are left untouched by this provision. Until now, in principle, the Community has, on the basis of proposals by the Commission under Article 113 of the EC Treaty only imposed economic sanctions where UN resolutions so directed, and where a corresponding agreement had been reached in EPC.⁸ Under the Maastricht Treaty there will be more room for such economic counter-measures, for example, with regard to third countries which support terrorist activities. In fact, under the CFSP such decisions would be justified if the objective were to preserve peace, strengthen security or counter flagrant violations of human rights.⁹ In this context it is noteworthy that such CFSP decisions can be initiated by a Member State or the

3 See in particular Articles A, B and C of the TEU.

4 See in this context in particular Articles L, N and Q of the TEU.

5 The following declarations are of importance in the context of the CFSP: Declaration on voting, Declaration on practical arrangements, Declaration on the use of languages, and the Declaration on Western European Union made by those Member States of the European Union which are also members of the WEU.

6 This new Article was introduced into the TEU in order to avoid recourse to Article 113 of the EC Treaty and the difficulties of interpretation regarding the extension of its applicability to trade in services or the additional applicability of national measures.

7 This provision was first used against Libya, premised on a common position agreed upon within the CFSP. The decision taken by the Council will be published in the Official Journal of the European Communities at a later stage.

8 This has been the case, for example, with regard to Serbia and Montenegro and South Africa.

9 The protection of these values forms an explicit objective of the European Union, see Article J.1(2) of the TEU.

Commission itself,¹⁰ the latter playing an initiating role under Article 228a.¹¹ The sanctions mechanism of Article 228a thus supplements and enforces at the Community level an important political tool of the European Union in international relations. Finally, Article 228a enables the European Union to respond and react immediately to changing political situations. In fact, its applicability even implies the necessity of urgent action. Furthermore, it is complemented by Article 73g of the EC Treaty, which enlarges the scope of possible counter-measures to encompass '... necessary urgent measures on the movement of *capital* and *payments* as regards the third country concerned'.¹²

II. Scope and Limits of the CFSP

A. Subjects Covered by the CFSP

Legally, there is no limit to the scope of the CFSP, as it covers virtually all areas of foreign and security policy, including all questions relating to the security of the European Union, and the eventual framing of a common defence policy. In time, the CFSP may even lead to a common defence.¹³ Nevertheless, according to Article J.1(2) TEU, when defining and implementing the CFSP, one or more of the following objectives must be pursued:

- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.

This list is exhaustive, yet it leaves room for broad interpretation. It illustrates the ambition of the European Union to play a more visible role¹⁴ on the international scene as it is clearly not restricted to safeguarding merely primary or fundamental interests of the European Union. It further reflects the understanding that economic and social stability and cooperation are linked to international peace and security and the promotion of democracy.¹⁵ In this context it should be noted that a general review of the provisions relating to the CFSP is scheduled for 1996, which will

10 See Article J.8(3) of the TEU.

11 Article 228a of the EC Treaty requires a decision of the Council by qualified majority on the basis of a proposal put forward by the Commission.

12 It should be noted that Article 73g of the EC Treaty does not apply until January 1994.

13 See Articles J.1(1) and J.4(1) of the TEU.

14 This ambition is explicitly stated in Article B of the TEU according to which the Union shall 'assert its identity on the international scene, in particular through the implementation of CFSP...'

15 This understanding is upheld in political documents of other international fora, such as in the Agenda for Peace of the UN Secretary General.

allow any necessary amendments to be made with regard to the objectives of the CFSP and, in particular, security objectives.¹⁶

The European Union is consequently enjoying an unlimited capacity to act in the field of the CFSP. Attention should be given here to the explicit wording of Article J.1 of the TEU, as it speaks of the Union and its Member States. This notion is legally ambiguous and politically contested. It was introduced at the request of the United Kingdom in order to stress the intergovernmental character of the CFSP. It is counterbalanced by the loyalty clause enshrined in paragraph 4 of the same Article J.1, which requires Member States to refrain from any action which could jeopardize the Union's external and security policy.¹⁷ As far as formal declarations or *démarches* adopted under the CFSP are concerned, there is no legal requirement to use the formula the 'Union and its Member States' analogously with the formula 'the Community and its Member States', traditionally used in the EPC. According to Article A of the TEU, the European Union is founded on the European Communities, and supplemented by the policies and forms of cooperation set out under pillars II and III of the TEU. In addition, Article B of the TEU clarifies that one of the objectives of the European Union is to assert its identity on the international scene, in particular through implementing the CFSP. Accordingly, the General Affairs Council of 8 and 9 November 1993 decided, notwithstanding the lack of legal personality of the European Union, that all political declarations under the CFSP will be made on behalf of the European Union. The designation European Union, therefore, appears here to be correct. Yet, a generic use of this notion might add to the existing confusion in the outside world on the correct identification of the European Union, i.e. if it is also used in cases involving Community competence of an exclusive or mixed nature. In the latter case the use of this notion might be counterproductive as it may dilute Community competence.

B. Legal Enforcement

The ECJ has no jurisdiction over decisions taken under the second (intergovernmental) pillar of the TEU, or corresponding implementing actions undertaken by the European Union.¹⁸

Hence, neither the Member States nor Community institutions can challenge or enforce a course of action decided upon by the European Union by means of an appeal to the ECJ. However, the ECJ could eventually be requested to decide whether a matter falls under Community competence as part of pillar I, instead of under the CFSP. It follows from this that the European Union cannot be challenged either for having failed to act in accordance with the objectives stipulated in Article

16 See Articles J.4(6), J.10 and Article N of the TEU.

17 This clause mirrors and at the same time supplements Article 5 of the EC Treaty.

18 See Article L of the TEU.

J.1(2) when faced with a crisis in a neighbouring region, and no joint action is agreed.¹⁹

Nevertheless, the CFSP foresees certain mechanisms of legal and political scrutiny which were unknown to EPC. In particular, it follows from the provisions regarding joint action that such action is compulsory for Member States which are accountable for such national implementing measures.²⁰ Moreover, the Council of Ministers of the European Union (hereafter the Council) must ensure that Member States comply with the aforementioned loyalty clause.²¹ Attention must also be drawn to the involvement of the European Council, i.e. the Heads of State or Government of the Member States, which sets out the general guidelines for joint action. As the highest political authority of the European Union, its formal involvement not only adds political weight to the adoption of joint action, but also commits those authorities to the pursuit of the Union's objectives in the policy area in question. However, no (formal) form of scrutiny exists with regard to the Community institutions involved in the CFSP, be it the Council itself or the Commission. On the other hand, Member States will not be able to question the necessity of a common action when a topic covered by the objectives mentioned in Article J.1(2) is at stake, because it would be considered to be of fundamental (common) interest to the European Union.

C. Subsidiarity and the *Acquis Communautaire*

The aforementioned considerations lead inevitably to a brief consideration of the subsidiarity principle. In fact, even though not being limited in scope or term of existence,²² the CFSP is, like all policies of the European Union, subject to the subsidiarity principle.²³ In the intergovernmental context of the CFSP, respect for this principle implies that any measure decided by the European Union under the CFSP has to pass a threefold test. First, it must be determined whether the European Union is acting within the limits of the powers conferred upon it by Title V of the TEU, and the objectives assigned to it therein. Second, action on the part of the European Union, as opposed to national action, must be justified. Finally, the measure taken must in its intensity be proportionate to the goal pursued.²⁴ It should not be overlooked that Member States, if empowered and called upon to act by unilateral national action outside the CFSP framework, are in turn bound to respect

19 In other words, the lack of a common will cannot be remedied by action before the ECJ. Yet, Member States fall under the scrutiny of national parliaments and may be subject to national law actions such as constitutional challenges.

20 See Articles J.3(4) to (7) of the TEU.

21 Article J.1(4) of the TEU.

22 According to Article Q of the TEU, which also covers Title V, the Maastricht Treaty is concluded for an unlimited time.

23 See Articles B of the TEU and 3b of the EC Treaty.

24 With regard to the subsidiarity principle see the Communication of the Commission to the Council and the European Parliament of 27 October 1992 (SEC(92)1990 final).

The Common Foreign and Security Policy of the European Union

the aforementioned loyalty clause of the CFSP. Another more formal consequence of the application of the subsidiarity principle will be that any decision under the CFSP, such as joint action, will have to include (for example in the preamble) a motivation or justification clause respecting the subsidiarity principle.

Apart from the subsidiarity principle, the European Union will further have to respect the *acquis communautaire*²⁵ which means, in particular, ensuring consistency between *all* external activities falling under pillars I, II, or III of the TEU. Both the Council and the Commission are responsible for ensuring such consistency.²⁶ The EPC *acquis* will also have to be taken into account when deciding a *démarche*, common position, or formulating a declaration or joint action under the CFSP. Respect for the latter does not, however, imply that the European Union could not diverge, e.g. in its political dialogue with a third State, from earlier EPC commitments, if changed circumstances were to occur, such as flagrant violations of human rights or involvement in terrorist activities by the third States.

III. Instruments of the CFSP

Article J.1(3) of Title V of the TEU mentions two means of achieving the objectives of the European Union in the CFSP:

- the establishment of systematic cooperation between Member States in the conduct of policy, and
- the gradual implementation of joint action in the areas in which Member States have important interests in common.

A. Systematic Cooperation

Systematic cooperation, being the traditional instrument of the EPC, is ensured in the CFSP through a mechanism of classical diplomacy.²⁷ It is based on a regular exchange of information and consultation of the Member States within the Council with regard to *all* matters of *general* interest to the CFSP. This basic form of cooperation can then lead to the definition of a common position by the Council, if it considers this necessary; in other words, if there is a common will to do so. It is expected that all 'day-to-day' decisions of the European Union will be based on common positions.

As was the practice under EPC, it will be for the Presidency to elaborate a position (paper) which meets the common political will of all partners involved. It should be borne in mind that such a common position, once established, does not necessarily have to be made public. If a decision is taken to publish, there are

25 See Article B of the TEU.

26 See Article C of the TEU.

27 See Articles J.2 and J.5 of the TEU.

various possibilities ranging from a press statement delivered by the spokesman of the Presidency to a press statement issued by the Secretariat of the Council. Only in cases of special political importance will it take the more politically important form of a declaration. All declarations will continue to be communicated to the Secretary General of the United Nations. Furthermore, as in the past, common positions will in practice be prepared and agreed upon in most cases via the exchange of coded telexes through the Coreu network.

A logical consequence of any common position agreed upon unanimously by the Council²⁸ is that Member States must ensure that national policies conform with it.²⁹ This consequence becomes more important with regard to Member States' participation in international organizations and international conferences, especially when not all of the Member States participate. In general, prior coordination of action will be needed to uphold the common positions in international fora. This commitment mirrors again the general obligation of Member States to support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. From this it follows that Member States have to abstain from any counterproductive activities.

Concerted and convergent action and, in particular, a common position are considered the basic instruments to ensure the European Union's continued influence on the international scene for which international organizations and conferences are the most suitable fora. Regarding former Yugoslavia, the lack of such unity, due primarily to differences in the assessment of the most appropriate means to deal with the conflict, prevented a decision from being reached which might have prevented an escalation of violence. Keeping this failure in mind, the question arises whether there is room under the CFSP for divergent national bilateral actions once the European Union fails to reach a common position. From a strictly legal point of view, the restrictive loyalty clause can only apply and have effect once a European Union interest or policy has been defined. In addition, the declaration attached to the TEU, which requires the Member States to avoid preventing unanimous decisions, does not have a compulsory character. Therefore, it will probably be more a matter of political strength than of judicial restriction whether national interests can prevail, or whether a common position can be established.

B. Joint Action

The new instrument of joint action constitutes one of the most important assets of the CFSP. It can be understood as a joint policy or as a specific action, restricted to

- 28 It follows from Articles J.3(2) and the second paragraph of Article J.8(2) of the TEU that majority voting is only foreseen for either procedural questions or with regard to joint action in case of a special decision of the Council.
- 29 This is more clearly stated in the TEU through Articles J.2(2) and (3) than in the SEA, which in Article 30(2)(c) speaks of common positions only as a point of reference to the policies of Member States.

The Common Foreign and Security Policy of the European Union

solving, for example, a given conflict. Therefore, it is a means which is suited to a long-term policy approach, as well as to responding quickly to a sudden political crisis. Yet, it is not surprising that in the initial phase the European Union appears to be concentrating on more restricted actions, such as support for the elections in Russia and South Africa, and providing humanitarian aid to Bosnia and Herzegovina, which build upon earlier initiatives and do not entail the risk of failure or a loss of face.

1. EPC/SEA – CFSP/TEU

The idea behind joint action is not new. In fact, Article 30 of the SEA already foresaw that the Community and its Member States should ‘undertake to inform and consult each other on any foreign policy matters of *general interest* so as to ensure that their combined influence is exercised as effectively as possible through coordination, the convergence of their positions and the implementation of *joint action*’. Although the concept of joint action is already mentioned in the SEA as a possible means of formulating and implementing a European foreign policy, it was not developed into an operational and well-defined instrument of the EPC. Up until 1 November 1993, political or commercial measures agreed within the EPC, for example declarations, *démarches*, missions, political dialogue with third countries or the adoption of common positions in international institutions – were not binding and had, in principle, to be implemented on the respective national levels without the possibility of control or enforcement by any judicial or political entity. This has changed with the TEU. Whereas in matters of *general interest* Member States shall endeavour to define *common positions* through systematic cooperation,³⁰ they shall implement the CFSP by *joint action* where they have important *interests in common*.³¹

The Council is to decide on the basis of general guidelines from the European Council, whether a matter should be the subject of joint action.³² The TEU only sets forth the procedure to be followed for adopting joint action. It does not enumerate nor even indicate which areas are open to joint action; its scope under the CFSP is therefore in principle, unlimited. This means, on the other hand, that there will only be joint action where there is a common political will to do so.

2. Procedure

It is the Council which assumes the principal role in the procedure for adopting joint action. Even though the Commission is fully associated with the work carried out in the CFSP and it has a right of initiative,³³ it will not participate in the final decision-

30 See Articles J.1(3) and J.2 of the TEU.

31 See Articles J.1(3) and J.3 of the TEU.

32 See Article J.3(1) of the TEU.

33 See Article J.9 of the TEU.

making process. Nor will the European Parliament, which only has to be consulted and kept informed about the main aspects and basic choices of the CFSP. The adoption of joint action is thus the sole responsibility of the Council. The Council not only decides (on the basis of general guidelines from the European Council) that a matter should be the subject of joint action, but also determines the scope, objectives and duration of a joint action, as well as the means, procedures and conditions for its implementation. In other words it develops a complete strategy. Yet, it can review its decision if there is a change of circumstances.³⁴ Decisions are taken by unanimity, except for those (mainly procedural) questions on which the Council has already unanimously agreed that they should be taken by qualified majority.³⁵

It should be pointed out that the TEU explicitly states that actions of the European Union which have defence implications are not subject to the above described procedure; all defence-related decisions must be taken by unanimity.³⁶ Furthermore, unilateral national action remains possible in urgent cases of imperative need, due to – cumulative – changes in the situation, and when a Council decision is lacking. However, such actions are subject to the attainment of the general objectives which might not be impaired.³⁷

3. Agreed guidelines and areas open to joint action

A first set of general guidelines was established in a report on joint action approved by the European Council held in Lisbon on 26 to 27 June 1992, whereby the aforementioned conditions – respect of subsidiarity, *acquis communautaire*, consistency – and objectives, which are stipulated in the TEU, were reiterated. Yet, this report lists further specific objectives which have to be taken into account when adopting joint action:

- strengthening democratic principles and democratic institutions, and respect for human and minority rights,
- promoting regional political stability and contributing to the creation of political and/or economic frameworks that encourage regional cooperation or moves towards regional or sub-regional integration,
- contributing to the prevention and settlement of conflicts,
- contributing to more effective international coordination in dealing with emergency situations,
- strengthening existing cooperation in issues of international interest such as the fight against arms proliferation, terrorism and traffic in illicit drugs,
- promoting and supporting good government.

34 See Article J.3(3) of the TEU.

35 See Articles J.3(2) and J.8(2) of the TEU.

36 See Article J.4(3) of the TEU.

37 See Articles J.3(6) and J.1(4) of the TEU.

The Common Foreign and Security Policy of the European Union

The Lisbon Council also identified areas in which joint action regarding selected individual countries or groups of countries would appear to be particularly beneficial, in a first phase, for the attainment of the objectives of the European Union. They were:

- Central and Eastern Europe, especially the ex-USSR and former Yugoslavia. The action proposed involved *inter alia* promotion of political stability, regional integration, implementation of CSCE commitments relating to the respect of human rights, democracy and the prevention and settlement of conflicts.
- Maghreb and the Middle East. Reinforced cooperation in *all* fields was proposed including, the Middle East Peace Process, the fight against terrorism and the illicit traffic in drugs, promotion of security and social stability.

Further matters that were identified as areas of common interest requiring specific joint action in the future included all aspects of North-South relations (for example foreign security, economic and development policies), the continuation of relations with the US, Japan and Canada, and the coordination of action in international organizations or conferences.

With regard to joint action in the security field, the European Council held in Edinburgh on 11 to 12 December 1992 adopted a further report which provides a (non-exhaustive) list of potential areas or issues in the security field suitable for early joint action by the European Union. The security aspect of the CFSP will be here dealt with separately.

It goes without saying that areas or issues which have already been the subject of a common approach within the EPC present a natural starting point for future joint action. On the eve of the ratification of the TEU, the Extraordinary European Council of 29 October 1993 in Brussels requested the Council to engage in preparatory work for the implementation of joint action on the promotion of stability and peace in Europe, i.e. the so-called Balladur initiative on a 'Pact of Stability', on the Middle East, on South Africa, on former Yugoslavia and on Russia. On the basis of these guidelines the Council subsequently agreed the first joint action under the TEU on support for the democratic process in Russia which took the form of sending observers for the legislative elections scheduled for December 1993. This action is to be coordinated with the European Parliament and international organizations undertaking similar actions.

4. Political framework

As mentioned above, every joint action requires a prior common political will to act. Nevertheless, given its binding nature, a joint action in the field of the CFSP represents a value added element in comparison to actions previously taken in the framework of the EPC.

Politically, the existence of important common interests constitutes the basic criterion for adopting joint actions. Yet, it cannot be ruled out that certain issues are of more interest to some Member States than to others. The European Council in

Lisbon acknowledged this problem and agreed that the following factors should be used to determine important common interest, and which shall be taken into account when defining issues and areas for joint action:

- the geographical proximity of a given region or country,
- the existence of an important interest in the political and economic stability of a region or country,
- the existence of threats to the security interests of the Union.

It is obvious that much will depend on the ability of the Presidency, the Member States and the Commission, to choose suitable subjects when proposing joint action. Success or failure will undoubtedly also depend on the working procedures chosen, such as presenting a precise proposal.

IV. Financing of the CFSP

Closely linked to the decision-making process and the different ways of implementing agreed measures, in whatever legal form, is the question of the financing of such action. Title V of the TEU draws a clear distinction with regard to administrative costs and operational expenditure of the CFSP.³⁸ Administrative costs, such as expenses related to the daily management of the CFSP by the Council Secretariat, are automatically charged to the budget of the European Communities, which entails the establishment of a specific and permanent line for this purpose in the Community budget.

Regarding the financing of joint action or other implementing measures, a unanimous decision by the Council will be necessary each time operational costs occur. In other words, each time a joint action is decided and defined, it will similarly include a decision on financing. The TEU foresees two possibilities, either financing at the expense of the Member States in accordance with a key of payment to be decided upon in the said decision, or financing at the charge of the Community budget. It is conceivable that the aforementioned key of payment could be devised in advance, at least for certain actions of a more permanent character, where scope and duration are not subject to frequent alteration.

If the Council opts for financing via the Community budget, the ordinary budget procedure of Article 203 of the EC Treaty will apply, according to which the Commission has to address the appropriate propositions to the budgetary authorities. Pursuant to Article 205 of the EC Treaty, the Commission is responsible for the implementation of the budget. Any political decision on recourse to the Community budget will necessarily have to take into consideration the inconveniences of the normal budgetary procedure of the Community. Sometimes it may prove to be too slow and time-consuming to ensure certainty of financing projects requiring quick political reaction on the international scene.

38 See Article J.11(2) of the TEU.

The Common Foreign and Security Policy of the European Union

In the case of open-ended engagements, for example peace-keeping or peace-enforcing operations of undefined duration, the question further arises as to which budget lines will be suitable to cover CFSP expenditure. Here, the budgetary role of the EP may play a deciding role. In fact, if these budget lines are classified as covering non-compulsory expenditure, the Parliament will enjoy the power to amend or even to reject these expenses. After all, it is the Parliament which ultimately adopts the budget. On the other hand, one could argue that the Parliament, if duly kept informed and consulted in advance by the Presidency and, within its limits, the Commission, about the main aspects and basic choices of the CFSP, including its financial aspects, then implicitly it agrees to the amount of the expense. In any case, it would not be in the spirit of the TEU, which (unfortunately) foresees a rather limited role for the Parliament in the intergovernmental pillar of CFSP, if the Parliament could assume a decisive role in the adoption of joint action through means of budgetary powers attributed to it in a purely Community context.

In order to implement the aforementioned financing provisions of the TEU on the CFSP, several practical arrangements will need to be made. With regard to financing by Member States, acceptable means have to be found on, *inter alia*, a scale of assessment for Member States' contributions, the timing of payments, for example in quarterly instalments or in one lump sum or the possible necessity to create a reserve fund. Concerning financing as a charge to the Community budget, it has to be considered whether a specific budget line for the CFSP needs to be created, or whether, depending on the nature of the joint action involved, existing lines can be used. However, these would have to be identified at an early stage. If, for example, the European Union decides on providing assistance to a region or State to eradicate land mines as a post conflictual and peace-keeping operation by form of a joint action, the Community budget line for humanitarian emergency aid could possibly be charged. The latter approach seems to be more practical, because it may prove difficult for the Commission to estimate in its draft budget the financial requirements for such a specific CFSP budget line, and to put them in balance with anticipated revenue and multiannual financial perspectives. However, in all cases, a clear distinction must be drawn between, on the one hand, the financing of *CFSP action* under the Community budget and, on the other hand, the financing of *Community action*.

V. Functional Changes under the CFSP of EPC Institutions

The establishment and implementation of the CFSP is linked to an important process of restructuring institutions which were traditionally responsible for the handling of external political affairs in the EPC framework. These arrangements go beyond the purely formal, as they substantially change competences and scope of action. Some functional changes stem directly from the wording of the TEU, others are indirect consequences of the division of labour in the TEU which has been worked out in

additional dispositions. The need for such supplementary practical arrangements in the field of the CFSP is reflected in the corresponding declaration attached to the TEU, according to which not only the division of work between the Political Committee and the Committee of Permanent Representatives of Member States (COREPER) were to be examined, but also practical arrangements concerning the merger of the EPC Secretariat and the General Secretariat of the Council and the cooperation of the latter with the Commission.³⁹ Under the Belgian Presidency necessary preparatory steps were undertaken to this end, and a technical paper sketching out several arrangements was adopted by the Council and endorsed by the European Council when meeting in Brussels.⁴⁰

A. Enhanced Role of the Presidency and Questions Related to the External Representation of the European Union

Under the Maastricht Treaty, major attention is given to higher visibility of the European Union on the international scene.⁴¹ Yet, it is questionable whether the TEU will meet this aim or whether it will merely add to the confusion. The pursuit of this objective calls for unity in the presentation of the European Union to the outside world. In fact, for outsiders and even for the citizens of the European Union, it is difficult to correctly identify the European Union – encompassing the European Community – if different representatives such as the Presidency, the troika or one or several Member States, act on its behalf. The TEU seeks to ensure urgently needed transparency and clarity by strengthening the role of the Presidency, which shall represent the European Union in all matters coming within the CFSP.⁴² The Presidency is assisted in this task by the troika, i.e. the previous and forthcoming Presidencies, as well as the Commission.⁴³ The fact that the troika always includes the Commission and thus encompasses four members, is often overlooked. In the day-to-day practice of the CFSP this means, for example, that visitors of third States or meetings with applicant countries or States with which the European Union maintains a political dialogue, will often be received in troika format. Depending on the attitude of the acting Presidency to the division of labour, which is often influenced by logistical factors, troika partners can thereby provide valuable practical support, for example in preparing briefings, explaining the European Union's point of view to partners, or ensuring the necessary follow-up. As in EPC, the troika format will continue to be used for external representation on all political levels, be it at Council, Political Committee, Heads of mission or Working Group level.

39 This declaration leaves Article 162 of the EC Treaty untouched.

40 See conclusions of the General Affairs Council of 26 October 1993, endorsed by the Extraordinary European Council of 29 October 1993.

41 This aim is explicitly laid down in Article B of the TEU.

42 See Article J.5(1) of the TEU.

43 Article J.5(3) of the TEU.

The Common Foreign and Security Policy of the European Union

Practice will show whether the outside world and the citizens of the European Union correctly understand this strengthened role of the Presidency, given that the Presidency rotates every six months. Much will depend on the attitude of the Member States themselves, especially when they are playing a prominent role of their own in international fora, such as in the UNSC. Here, consistency and coherence in the formal presentation of the European Union's positions and policies will be crucial. In the framework of the UN, for example, the Presidency has traditionally spoken on behalf of the 'Community and its Member States' on items on which a common position has been reached under EPC, but also when mixed competences were at stake. Yet, in the UNGA or the different UN Committees, common proposals were normally presented by all Member States in their capacity as members of the UN, possibly supplemented by a formal reference to their EC membership. Only in the framework of ECOSOC was the so-called asterix method used, which means that the Presidency officially introduced the proposal on behalf of the Community and its Member States, and the Member States individually were listed under an asterix. The question therefore arises as to the future representation of the European Union in the UN, for example when a common proposal agreed upon under the CFSP is introduced. A formula has to be found which indicates whether the European Union is acting within the CFSP, or under pillar III on Justice and Home Affairs, or with mixed competences under pillar I. For the moment, only the first situation is clear as, according to the Council decision of 8/9 November 1993, political statements under the CFSP will have to be made on behalf of the European Union.⁴⁴

In accordance with its special role in the CFSP, the Presidency will express the position of the European Union in international organizations and international conferences. Yet, if it is not represented in the international body in question, those Member States or the Commission which are represented therein shall uphold the common position. The latter situation is again of particular importance to the participation of the European Union within the system of the United Nations. Once more the troika plays an important role as it is, in the first place, the members of the troika who are called upon to assist the Presidency, not only in representing the European Union in general but also with regard to the implementation of common measures through the expression of the European Union's position under the CFSP in international fora. If, for example, decisions taken within the CFSP framework relate to an international body such as the FAO, where the Community is now represented by the Commission, the latter must express the European Union's position in this forum to ensure consistency with regard to the mandate given to it under the first pillar, and the policy agreed within the CFSP.

In this context it has to be pointed out that the TEU has not altered the existing balance of powers regarding the external representation of the *European Community*. Legally speaking, under pillar I, the Commission remains entitled to

⁴⁴ Council decision of 8 November 1993, OJ L 281 of 16 November 1993, page 18.

speak on behalf of the European Community on matters of exclusive or mixed competences and which have a predominantly Community character. The Member States – i.e. in practice the Presidency – on the other hand, are represented and speak on behalf of the European Community in matters of mixed competences which have a predominantly national character. In principle, the Presidency hence represents and speaks on behalf of the European Union in intergovernmental matters under pillars II and III. However, in political reality, the Member States or the Presidency will probably also speak with regard to matters of a mixed but predominantly national character under pillar I on behalf of the European Union. Consequently, only the Commission will be faced with the dilemma of selecting under which name – either the European Community or the European Union – it will act, so as to indicate to the outside world by the title chosen whether it acts on matters of an exclusive Community character or not. Apart from a possible marginalization of the Commission, the parallel use of two different names (which is, however, inherent to the structure of the TEU) will not assist the assertion of a common identity on the international scene.

A further question relates to the representation of the European Union in the UNSC. This question must be seen independently from the discussion of the necessity or possibility of a European Union seat in the UNSC, which shall not be dealt with in the present paper. As stated above, Member States are under the obligation to uphold agreed decisions of the CFSP in international organizations and at international conferences.⁴⁵ This commitment is reiterated in the provision of the TEU on the European Union's external representation,⁴⁶ and is supplemented by an obligation to keep informed those Member States (and the Commission) who do not participate in the fora in question, in order to allow for an early warning system when common interests are at stake. With regard to the UNSC, a corresponding obligation is explicitly stated when a European Union Member State becomes one of the ten non-permanent members of the UNSC. The United Kingdom and France, being permanent members of the UNSC, are moreover requested to ensure the defence of the position and the interests of the European Union, in the execution of their special functions, without, however, having to prejudice their proper responsibilities under the provisions of the UN Charter.⁴⁷ The meaning of the latter reservation remains somewhat vague. Does it purport to be a derogation, meaning that the interests of France and the United Kingdom in the UNSC have supremacy over the interest of the European Union? Or shall this provision serve to safeguard their permanent seats in the UNSC? The crucial test will be the voting attitude of these two countries in questions where divergent national and European Union interests are at stake. In any case, France and the United Kingdom will have to coordinate their own national policies in the UNSC and ensure a follow-up of common positions on the CFSP at UNSC level.

45 See Articles J.2(3) and J.3(4) of the TEU.

46 See Article J.5(4) of the TEU.

47 See Article 24 *et seq.* of the UN Charter.

B. Role of the Political Committee – Committee of Permanent Representatives of the Member States – Working Groups

The Political Committee will keep its special role and responsibilities in shaping foreign policy. However, it will have to share this responsibility with COREPER in so far as the preparation of subjects to be dealt with by the Council is concerned. This sharing of responsibilities is the logical consequence of the single institutional framework foreseen in Article C of the TEU. The new united structure implies that COREPER has a right to review the recommendations or conclusions reached by the Political Committee before communicating them to the Council. In other words, within the CFSP, COREPER assumes fully its responsibilities provided for under Article 151 of the EC Treaty regarding the preparation of Council meetings.⁴⁸ COREPER's role is far from that of a letterbox for Political Committee decisions. COREPER is entitled to add its own observations or recommendations.

In urgent cases, the Political Committee can still, after its conclusions have been transmitted via COREPER to the Council, convene a meeting before or at the same time as a Council meeting, and can address new recommendations to the Council, if this is deemed necessary due to new developments. In day to day business, as well as in matters of urgency, the Political Committee continues to play its primary role through the drawing up of CFSP positions or decisions in its own meetings, or via the Coreu network, especially in the period between Council meetings.

A second logical consequence of the single institutional framework is the merger of EPC and Council Working Groups. For the time being the merger of the corresponding Groups will be ensured by means of joint meetings during which the respective Groups will convene according to an agenda divided into CFSP matters, and matters of Community or mixed competence.⁴⁹ Yet, in the long run, most EPC Working Groups such as those on Asia, the CSCE, the UN or Yugoslavia will be merged completely with their respective counterparts in the Council under one common name. However, the various Working Groups on judicial cooperation on civil and penal matters now form part of the institutions provided for under Title VI of the TEU on Cooperation in the Fields of Justice and Home Affairs. The EPC Working Groups on drugs and terrorism, on the other hand, remain under the CFSP pillar but will simultaneously have to report to the Political Committee, COREPER and the special coordinating committee set up under the third pillar by Article K4 of the TEU.

A further consequence of the single institutional framework is the integration which is currently taking place of the EPC Secretariat into the Council Secretariat. The enlarged role of the Council Secretariat also calls for new methods and ways of

48 See Article J.8(5) of the TEU.

49 It follows from Article J.8(5) of the TEU that the groups will have to report to the Political Committee as well as COREPER.

cooperating between the Commission's services and the Council Secretariat.⁵⁰ Enhanced cooperation might for example require the establishment of a special task force or *cellule* at senior level, so as to facilitate common efforts in the preparation and follow-up of joint action.

C. The Role of the Commission

The TEU also redefined the Commission's role by explicitly stating that it is fully associated with the work carried out in the CFSP, including security matters.⁵¹ Furthermore, the Commission now enjoys a right of initiative equal to that of Member States in the CFSP.⁵² The TEU also strengthened the Commission's role with regard to assisting the Presidency, a role which is distinct in its political nature from the administrative role of the Council Secretariat.

As the only permanent member of the rotating troika and being fully associated with the work carried out in the CFSP field, the Commission is well positioned to fulfil its most prominent general task under the TEU, i.e. to ensure consistency between the three pillars in all external activities⁵³ of the European Union. The Commission shares this responsibility with the Council. However, the latter might be more preoccupied with the defence of national interests within the European Union, encompassing the European Community, the CFSP and Justice and Home Affairs. This is a factor often overlooked by the public which considers the TEU as a decisive step towards a federal Union of European States. In fact, the single institutional framework is an ideal means of reaching the opposite result. The Commission, as the guardian of the EC Treaty, must, therefore, pay utmost attention that the two intergovernmental pillars do not encroach on the first one, so as to dilute exclusive Community competences into mixed competences. Ensuring unity and consistency is a major obligation for the Commission, and one which it can only achieve by playing the active role of a fully associated partner within the CFSP. Moreover, the Commission will assume more and more a central coordinating role given that the military dimension in political relations has become secondary to financial, economic and technical diplomacy. The Commission is particularly well suited to assume such a role. Proof of this capability is found in the technical assistance the Commission⁵⁴ provides to former communist countries in Eastern Europe. A second current example is the coordination by the Commission of technical, financial and humanitarian aid of the European Union to former Yugoslavia, and to the Palestinian people in the context of the Middle East Peace

50 See Article 162 of the EC Treaty as well as the Declaration on Practical Arrangements in the Field of the CFSP, attached to the TEU.

51 See Article J.9 of the TEU.

52 Article J.8(3) of the TEU.

53 See Article C, para. 2 of the TEU.

54 In particular through PHARE (Action Plan for Coordinated Aid to Poland and Hungary), TACIS (Technical Assistance to the Commonwealth of Independent States) and ECHO (European Community Humanitarian Office).

The Common Foreign and Security Policy of the European Union

Process. To meet these challenges the Commission undertook an internal structural reorganization resulting in the establishment of a new Directorate-General for External Political Relations, under the authority of a Commissioner with special responsibility for these matters (DG IA).⁵⁵

Internal restructuring also became necessary with regard to the Commission's delegations in third countries. The political character of these delegations is confirmed⁵⁶ and even stepped up under the TEU, as they are required – along with the foreign missions of the Member States – to ensure the implementation of CFSP decisions on the spot.⁵⁷ A redefinition of the relationship and working structure between the Commission's delegations abroad and the Commission's services in Brussels as the *siège*, in the sense of complementary services, was but a natural consequence of the CFSP chapter of the TEU.

Therefore delegations will exchange information with the headquarters based on assessments carried out on the spot together with the Member States missions, and ensure that common positions and joint action adopted by the Council are accordingly implemented and complied with. Apart from their traditional representative role regarding Community policy in general, the Commission's delegations will draw up assessments and analyses or strategies with regard to political developments. They will also assume the role of implementing authorities, in particular with regard to *troika démarches* or *démarches* undertaken by the Presidency and the Commission.

In the past, such systematic cooperation with the Member States' missions has already taken place regularly, e.g. by way of carrying out joint *démarches* to combat drug trafficking or to address problems of human rights in the host countries. A current example of the enhanced role of the Commission delegations and Member States missions is their direct involvement in the practical implementation of technical assistance to the Russian elections as the first joint action of the European Union.

A further reflection of the enlarged responsibilities of the Commission's delegations is their systematic cooperation with Member States' missions with regard to the consular protection of unrepresented Union citizens.⁵⁸ Yet, not being entitled to exercise consular or diplomatic functions *strictu sensu* themselves, the Commission's delegations will be restricted to guiding unrepresented European Union citizens in distress, and reminding EC missions of the assistance to be

55 DG IA is also responsible for the Commission's Delegations and is headed by a Director-General who also acts as Political Director. It comprises, *inter alia* the service of the European correspondent, a policy planning unit, special units for security and human rights matters, units for multilateral affairs such as those arising in the context of the UN, CSCE and Council of Europe, as well as three geographical directorates. DG IA thereby follows the structure of the former directorate responsible for EPC matters in the Secretariat-General of the Commission.

56 The political character was already recognized in Article 30(9) of the SEA.

57 See Article J.6(2) of the TEU.

58 See Article J.6(2) of the TEU and Article 8(c) of the EC Treaty.

provided in accordance with relevant guidelines adopted by Member States.⁵⁹ Exceptionally, however, delegations may be called upon to exercise protective functions with regard to EC staff on mission or service abroad, subject to agreements with the host countries restricting the rights of the delegations to those which are necessary for the proper exercise of their functions. Furthermore, the delegations might undertake informal *démarches* to the host country authorities (early warning, clearing house functions) provided they do not encroach on rules of cooperation applicable among Member States' missions. The delegations, as executing organs of the Commission, will in any case be fully associated with all CFSP *démarches* carried out in a third State concerning the protection of citizens of the European Union, for example regarding human rights or questions of asylum or refugees. The delegations will thereby render more visible and transparent the political dimension of the Commission's role in the interlocking fields of economic and cooperation policy.

D. Cooperation with the European Parliament

The TEU regrettably only foresees a modest increase in responsibilities of the EP, *inter alia* by the introduction of a new co-decision procedure regarding the enactment of Community legislation in certain areas such as the completion of the internal market, or the establishment of trans-European transport, energy and telecommunications networks.⁶⁰ However, in the area of the CFSP the democratic deficit remains, due to the lack of sufficient parliamentary control at the European level. Yet, in comparison with arrangements existing under the SEA in the framework of the EPC, the relations between the EP, the Council or the Commission are intensified under the second pillar. It is the primary task of the Presidency to inform and consult the EP on the main aspects and basic choices of the CFSP.⁶¹ The consultation required in the context of the CFSP does not, however, purport to be a legal procedure. In other words, the EP is still not involved in the decision-making. The Presidency merely has the obligation to ensure that the views made public by the EP in the consultation process are duly taken into consideration.⁶² These rights are supplemented by a general right to be kept regularly informed by the Presidency and the Commission. Furthermore, the EP has been accorded the right to ask

59 A set of guidelines was adopted in March 1993 in the framework of the EPC according to which unrepresented EC nationals can apply to any EC mission for assistance and possible repatriation by means of a common format Emergency Travel Document in cases of distress such as death, accident, violent attack, severe illness or arrest. These guidelines were not published but were made public by press statements of the respective Ministries of Foreign Affairs.

60 On the procedure see Article 189(b) of the EC Treaty. Other noteworthy attempts to reduce the democratic deficit are the setting up of committees of inquiry, the right to hear petitions from individuals, and the appointment of an ombudsman.

61 See Article J.7 para. 1 of the TEU and Article 30(4) of the SEA.

62 See also in this context Article E of the TEU, confining the exercise of rights of the EP to those required under the conditions and for the purposes for which they are provided.

The Common Foreign and Security Policy of the European Union

questions of the Council and to make recommendations to it, and to hold an annual debate on the progress of implementation in the field of CFSP.

Again, practical arrangements, including an inter-institutional agreement between the EP, the Council and the Commission are needed to put these rather limited and traditional rights into effect. The main problem encountered in drawing up such arrangements is the sensitive, confidential character of the information involved. The EP should have the opportunity to consider relevant information prior to any decision-making by the Council, so that the EP is in a position to effectively express its own views and recommendations, thereby enabling it to influence CFSP policies. Given the confidential nature of such information, and bearing in mind that CFSP matters often have to be dealt with in extreme urgency, a prior consultation procedure can on the other hand present a problem to the Council, the Presidency and the Commission. However, such problems are surmountable, and in fact under the Belgian Presidency, arrangements were drawn up,⁶³ according to which the EP is to be regularly briefed and consulted by the Presidency, either in plenary or through its Commission on External Relations, or by written procedure. As already mentioned above, the EP will have to be informed about the financial implications of envisaged or agreed joint actions. Similar arrangements are under discussion with regard to an inter-institutional agreement between the EP and the Council and the Commission. In this context the enhanced role of the Commission's delegations will also have to be taken into account as the EP should not be deprived of this source of information, provided however that it is well coordinated by the Commission's services in Brussels and that appropriate procedures are developed to ensure confidentiality. Above all, it is in the proper interest of the Commission to engage in an intensified and fruitful cooperation with the EP, as only the latter can provide a certain, if restricted, democratic legitimacy for its proposals or initiatives made under the CFSP.

VI. The Security Aspects of the CFSP

In the post-cold war international order, the concept of security has become more complex and multi-faceted. This has put into question the traditional roles and approaches of existing institutions in the field of security. Within the institutional vacuum that ensued, the European Community and relevant international organizations, such as the CSCE, the NATO, and the WEU, had to undergo structural reforms to adapt to the new stabilizing role to which they saw themselves assigned. The ambitious mandate in the fields of foreign policy and security which the European Community and its Member States received at Maastricht was designed to permit a nascent European Union to respond more adequately to the

63 See Annex V of the Presidency's Report, which is attached to the Report of the General Affairs Council of 26 October 1993 to the European Council of 29 October 1993, on the implementation of the Treaty on European Union.

challenges of the new international strategic environment. The inclusion of security matters is probably the major innovation of the CFSP. It permits the European Union to act effectively to security challenges, in whatever form, and to anticipate crisis situations. *In extremis*, the overriding ambition underlying the enhanced cooperation in security matters is to prevent the recurrence of a tragedy on the scale of former Yugoslavia. The European Union, speaking with one voice in foreign affairs and security matters, has hence been attributed a special responsibility for the creation and maintenance of a stable international security environment.

As has already been noted, among the objectives of the CFSP cited in Article J.1 of the TEU are the need to strengthen the security of the European Union, as well as the need to preserve peace and to strengthen international security. Title V of the TEU consequently states that the CFSP includes *all* questions related to the security of the European Union, including the eventual framing of a common defence policy which might in time lead to a common defence.⁶⁴

Such ambitious objectives call for adequate means and stringent long-term strategies. Notwithstanding the cautious character of the approach chosen, the TEU enables the European Union to gradually assert a proper identity in the security field. Given the sensitivity of the subject matter, it is understandable that the elaboration of the CFSP will, however, proceed with caution. Consequently, it is not surprising that the possibility of qualified majority voting, which exists for the foreign affairs dimension of the CFSP, has not been extended to issues having defence implications.⁶⁵ Finally, it has also to be pointed out that the Commission is fully associated with the work carried out in the security dimension of the CFSP,⁶⁶ and can submit proposals on the subject.

A. Current Scope of Action

The European Council held in Maastricht on 12 December 1991 identified in its 'Declaration on Areas which could be the Subject of a Joint Action' (known as the Asolo Declaration) four areas in the field of security in which Member States have important interests in common and which, therefore, could lend themselves to the implementation of joint actions; namely, the CSCE process, the policy of disarmament and arms control in Europe, nuclear non-proliferation issues and the economic aspects of security. The importance accorded to these security issues and their potential for joint action were reiterated by the European Council held in Lisbon on 26 to 27 June 1992. A more comprehensive Report on Joint Action and the Development of the CFSP in the field of security was adopted by the European Council held in Edinburgh on 12 December 1992, which describes in more detail the specific joint action envisaged within each of the four above-mentioned areas. For

64 See Article J.4(1) of the TEU.

65 See Article J.4(3) of the TEU.

66 This is explicitly stated in Articles J.9 and J.5(3) of the TEU.

example, within the CSCE framework, joint action could be developed in response to particular crises where common interests and attitudes of the Member States coincide (for example, in Nagorno-Karabakh, Moldova or Georgia). These joint actions would be determined on a case by case basis, and would entail the application of CSCE procedures to conflict prevention and crisis management. Other possibilities are joint action in support of the development of CSCE institutions, or within the CSCE forum for security cooperation. Within this forum, issues such as security dialogue and the negotiation of a code of conduct on politico-military aspects of security could lend themselves to elaboration by joint actions. Suggested issues for joint action are being explored in the area of non-proliferation and disarmament. The relevant issues include the indefinite extension of the Non-proliferation Treaty, the strengthening of the IAEA safeguards regime, and joint representation on the implementation of the Chemical Weapons Convention. With regard to the economic aspects of security, the Union could work towards common licence revocation policies of conventional arms exports. Another possibility envisaged is joint action on transparency 'in conventional arms transfer', an item arising within the framework of the Conference on Disarmament in Geneva.

At the special summit of the European Council held in Brussels on 29 October 1993, the *general* objectives of European security were defined as the territorial integrity and political independence of the European Union, its democratic character, its economic stability and the stability of neighbouring regions.

B. Role of the Western European Union

The TEU and the Declaration on Western European Union attached to it lay much emphasis on the role of the WEU as an integral part of the development of the European Union. The WEU, the defence body bringing together the European Members of NATO, shall in the long-term be responsible for coordinating a continent-wide defence. The objective is to build up the WEU in stages as the defence component of the European Union, and as a means to strengthen the European pillar of the Atlantic Alliance.

The European Union can request the WEU to elaborate and implement decisions and actions of the Union which have defence implications. To this end, the WEU will formulate a common European defence policy and carry forward its concrete implementation through the further development of its own operational role.⁶⁷ Therefore, close cooperation between the WEU and the European Union is to be established. Adequate institutional arrangements designed to facilitate such cooperation were adopted by the European Council held in Brussels on 29 October 1993. They entail new forms of cooperation between the Presidencies of the respective organizations, cooperation between the Council's General Secretariat and

⁶⁷ See Declaration on the WEU attached to the TEU.

that of the WEU, and the synchronization of the dates and places of meetings.⁶⁸ They also entail new practical means aimed at ensuring that the Commission is regularly informed and when required, consulted on the activities of the WEU. This is important because it will permit the Commission to fulfil its role within the CFSP. Since the CFSP covers all areas of foreign and security policy and the WEU will play a major role in the elaboration and implementation of actions of the European Union which have defence implications, the Commission must be kept abreast of the activities of the WEU in order to be fully associated with the work carried out in the CFSP. Furthermore, it is probable that some of the activities undertaken by the WEU will overlap with Community activities for which the Commission bears responsibility, such as humanitarian aid and economic relations. Finally, as stated above, the Commission is responsible with the Council for ensuring the coherence of the European Union's external action in its entirety. In order to do so, in particular with regard to the policies for which the Commission bears responsibility, cooperation between the Commission and the WEU must be enhanced.

C. Security Aspects and Enlargement

The long-term objective of the CFSP is to develop a common defence policy leading to a common defence. This ambitious objective was one of the topics extensively debated during the Danish referenda and undoubtedly also had a substantial influence on the negative outcome of the first Danish referendum. Obviously, the Danish population had difficulties in reconciling itself with the idea of a European common defence and the possibility of an inherent active engagement in military activities undertaken by the European Union. Indeed, in the long-term perspective, such an engagement via the WEU is not excluded. Confronted with this, the European Council meeting in Edinburgh on 11 to 12 December 1992 had to decide on a special arrangement for Denmark which addressed the particular problems raised by the referendum on the security chapter of the CFSP. According to the declaration issued at the Edinburgh European Council, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark has also renounced its right to exercise the role of the Presidency of the Union in defence-related matters, which will then be taken up by the following Presidency.⁶⁹ This special arrangement should not be misinterpreted as an 'opting-out'. It is rather the formal acknowledgement of the consequences of Denmark's decision not to change its current status of an observer to the WEU to that of a full member. It is the WEU which ultimately elaborates and

⁶⁸ As a result of this, the length of the mandates of the Presidencies will be harmonized.

⁶⁹ It is noteworthy that the said decision taken at Edinburgh relates explicitly to particular problems existing at the *present time* with regard to Denmark. From this it follows that a review of Denmark's special status becomes possible in 1996. It should also be pointed out that this decision has no influence on Denmark's commitments in the field of the CFSP in general, and on corresponding joint actions in particular.

The Common Foreign and Security Policy of the European Union

implements defence actions. Consequently, Member States which are not members of the WEU do not participate in the decision-making and implementing process.

Nevertheless, it was feared that Denmark's special arrangement could set a precedent for the States currently negotiating their accession to the European Union. The initial difficulty of cooperating on security issues is compounded by the established policies of neutrality in Austria, Finland and Sweden. These applicant countries must change their policies of neutrality to be compatible with the legal and political obligations flowing from the Treaty. They might, therefore, be tempted to appeal for a special arrangement similar to the arrangement worked out for Denmark. On the other hand, some of these applicant countries are 'border' States with a vested interest in the development of a European security system.

In addition, the TEU already provides some room for manoeuvre through paragraph 4 of Article J.4, which states that 'the policy of the Union, in accordance with this Article, shall not prejudice the specific character of the security and the defence policy of certain members'. Yet, the European Union cannot further accommodate the wishes of potential applicant States without seriously undermining the whole concept of the CFSP.⁷⁰ In any case, the applicant countries have repeatedly confirmed their acceptance of the TEU in its entirety. The only potential problem is Austria's neutrality, which is in any case more a national constitutional problem.

Finally, the European Council Summit in 1996 will provide an opportunity to revise the provisions of the TEU on security and defence in the light of progress made and experience gained.

VII. Outlook

The European Union is facing a challenging period. Now that it has equipped itself with the necessary means to engage actively in the CFSP, the outside world expects it to prove in practice that it is indeed willing and capable of doing so. Here, lessons should be learned from the EPC. It is not the instruments at one's disposal but the common political will to use them to their full potential that will be the determining factor for success.

Much will depend on effective crisis management in Europe for which the European Union undoubtedly assumes a special responsibility, in particular with regard to former Yugoslavia and the new democracies in Eastern and Central Europe. To this end, the TEU now provides the necessary framework to combine

70 Legally, three techniques are available to ensure the compatibility of the applicant countries' legislation with the CFSP. Either a specific reference to the security aspects of the CFSP could be made in the Accession Treaty, or the European Union could content itself with requesting the acceptance of the TEU, including the CFSP chapter, as such. Another possibility is a declaration of specific and binding assurances through which the applicant countries would affirm that there are no legal or political impediments to their acceptance in full of the CFSP chapter.

Florika Fink-Hooijer

efforts in the economic, political and security field. However, the gravity of the existing conflicts will not allow the European Union a period of gradual adaptation to its new role. In fact, a balance on the functioning of the CFSP will be drawn up as early as the 1996 Intergovernmental Conference. Then it will be shown whether the TEU has prepared the way to finally agree on a more democratic and federalistic European Union with a well-balanced division of power. At the moment, it is too early to make an assessment on the development of the CFSP. Yet, the determination with which the European Union engaged in its first joint actions gives rise to the hope that by 1996 a firm basis for the CFSP and the necessary accompanying *esprit de l'Union* will have been laid.