

## Looking afresh at the external representation of the EU in the international arena, post-Lisbon\*

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In the wake of the Lisbon Treaty, it is important to review the present arrangements for the institutional representation of the European Union in international organisations, and more broadly, in the processes of international negotiations and the way the EU acts as contracting party to conventions of international law.

The subject is ripe for attention for two reasons. First, while the innovations of the Lisbon Treaty enhance the institutional role of the EU in foreign and security policy, these issues of external representation still need to be followed through (beyond the setting up of the European External Action Service (EEAS)).<sup>1</sup> With the EU having gained an international legal personality, the nameplate “European Union” has replaced that of “European Commission” in various forums. This marks the point at which the EU takes on more of a ‘state-like’ political character. But beyond the symbolism of the nameplate there are many complex and substantive matters to be tackled.

The complexity is due to the growth of EU competences in the several treaty revisions since the 1980s, and their multiple legal and institutional

types (exclusive and shared competences, the three-pillar structure revised to two by Lisbon, the ‘mixed agreements’ etc.). The EU’s enlargement has also meant that various aspects of the status quo have become increasingly cumbersome and obsolete (e.g. constituencies on the IMF board that mix EU and non-EU states; or the numerical dominance of the EU member states in the Council of Europe and OSCE alongside the weak observer status of the EU itself).

Second, and following on from the issues of obsolescence, there is the question of how the EU can advance its declared foreign policy priority objective of ‘effective multilateralism’. It is increasingly apparent that the EU now has to shape up its external representation in order not to prejudice this objective. President Obama’s attitude comes to mind. He has a strong political preference for multilateralism, in contrast to his predecessor, yet he is also constantly looking for mechanisms that work, and will side-step institutions that are cumbersome and inefficient (as illustrated by the ad hoc formats that emerged at the Copenhagen climate change summit in December 2009). This links to issues that come with the rise of new global powers that seek stronger voting weights in multilateral organisations. The most recent Brazil-Russia-India-China (‘BRIC’) summit in April 2010 was a clear manifestation of this. Here, the over-representation of EU member states is the other side of this same coin, and has to be faced up to in some way.

\* The present note represents the beginnings of a new project being undertaken by a working group consisting of CEPS, EPC, the Egmont Centre and the Leuven University Centre for Global Governance Studies.

<sup>1</sup> The setting up of the EEAS, currently underway, is a largely complementary topic to the present one.

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The EU's concerns are thus part of the broader international concern for more effective global governance. The UN system now has nearly 200 member states, with the EU programmed to enlarge further, at least in the Balkans, from 27 to over 30. These large numbers make decision-making unwieldy unless there are two- or multi-tier structures, analogous to the governance of big companies which have many sovereign shareholders, a more limited board of directors, and often an even more limited executive board or committee. The G7/8/20 and UN Security Council are the most important examples of restricted groups, but the former are only semi-institutionalised and ad hoc and the latter limited in its field of competence. In any case, the EU and its member states will have a huge responsibility for helping (or blocking) developments towards a more effective multilateral order. Some US analysts who take a pessimistic view of the capacity of multilateral organisations to adapt argue for a 'mini-lateral' rather than 'multilateral' system, i.e. for shifting the main action in international affairs to coalitions of small numbers of relevant and like-minded states.<sup>2</sup> If this were to become a real trend, how would the EU and its member states work with it?

The EU institutions and member states are at work on the first and most obvious steps to implement the Lisbon Treaty, with the formation of the European External Action Service, and various pressing issues that demand solutions now. But this complex and onerous process will take some time, and the institutions may not address the issues of external representation in any comprehensive or profound way in the near future. On the other hand, there is an evident awareness that these issues will have to be confronted as time goes on.

## Lisbon implications

The key issue is how the external representation of the EU can be strengthened in line with the institutional advances of the Lisbon Treaty, with the striking of new balances between the EU institutions and its member states, taking account of the pressures created by the combination of EU enlargement and the rise of new global powers.

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<sup>2</sup> Moises Naim, "Minilateralism - The Magic Number to Get Real International Action", *Foreign Policy*, July/August 2009. See also Richard Haas, "A waning Europe means less to America", *Financial Times*, 13 May 2010.

What is lacking so far is a systematic or strategic review of the status quo; a coherent rationale for the progressive strengthening of the EU's presence, in line with its competences. The starting point is the Lisbon Treaty and the articles that concern foreign and security policy, and those that catalogue the competences of the European Union (TFEU Articles 3, 4, 5, 6) with the graduation of competences (exclusive or shared competences, areas for coordination or supporting actions, etc). We reproduce the listing of the EU's competences of these several types (exclusive, shared, etc.) in the Annex, and then locate selected international organisations and conventions within these categories. In principle this should provide an overview of the questions of EU representation and that of the member states in the various configurations, which we list below.

## Models of EU and member state participation in multilateral organisations

There are several models of representation of the EU and its member states in international organisations; as contracting parties to conventions of international law, and in semi-institutionalised summit processes:

- **All member states as full members, the EU/EC as observer.** This is the most prevalent model with global multilateral organisations. However, this does not prevent the leadership of the EU institutions from concerting in semi-institutionalised modes with their opposite numbers of international organisations, without the presence of member states (e.g. in the cases of the Council of Europe and the IFIs – international financial institutions).
- **All member states plus the EU/EC as full members.** Where EU competences are particularly important, such as for trade (WTO) and agriculture (FAO), the Commission has full status alongside member states.
- **Some member states plus the EU/EC as full participants.** This is prevalent in less formalised semi-institutions, such as G7/8/20 where the larger member states are present, together with the EU as more or less full participants with both the Council Presidency and the Commission.
- **EU/EC as full member/contracting party, with no member states.** This is mostly seen in the case of highly specialised international agreements, such as for individual agricultural commodities or metals.

- **Some member states as full members; the EU/EC with no status.** The UN Security Council is a special case with two member states (F, the UK) as permanent members, and others taking only occasional places in rotation, and the EU not even present as an observer. However, the Lisbon Treaty has an arrangement whereby the EU can be invited to express common positions.
- **Constituency arrangements and voting weights.** In some organisations there are constituency arrangements (IMF, IBRD (International Bank for Reconstruction and Development), EBRD (European Bank for Reconstruction and Development)) for grouping the smaller member states, and in these cases the additional issue of voting weights arises. The constituencies of the IMF and World Bank are now mostly anomalous in ignoring the enlargement of the EU.

### Negotiating formats for shared competences

The question of who negotiates for the EU is related to, but not entirely the same matter as that of membership (or not) of multilateral organisations. Articles 216-219 of the TFEU set out details of the procedures for the Council to give negotiating mandates to the negotiator, entrusts the Commission or the High Representative to make recommendations as to who should be the negotiator, but gives no further clarification on the profile or identity of the negotiator. The most complex situations arise where the EU and MS have shared competences, or mixes of exclusive and shared competences. There are cases where such arrangements have been worked out in an apparently satisfactory manner. For example in the UN FAO (Food and Agriculture Organisation), at meetings with multiple agenda points, the EC/EU and member states make declarations at the beginning on who is competent for what among the Commission and Council rotating Presidency and member states. However there are other instances of organisations and conventions in which the EU has shared competences, and the status quo is either messy or uncertain, and in some cases currently being tested 'post-Lisbon' for possible changes in the distribution of roles between the institutions, for example in the environment field for climate change (post-Copenhagen) and the current UN Environment Programme-Mercury negotiations.

### In lieu of a conclusion

It would be premature to draw precise conclusions on a project that will be ongoing until the end of 2010, when it should see a substantial publication with recommendations. The first task is to complete a reasonably thorough stock-take of the status quo of the EU's external representation. This will analyse the various forms of representation of the EU alongside the several categories of EU competence, building on the framework set out in the Annex. A second task will be to consider how the status quo is being changed, or needs to be changed, in order to reflect the provisions and intentions of the Lisbon Treaty. A third task will be to clarify the principles to give coherence to the EU's forms of representation according to the extent of the EU's competences. A fourth task will be to identify cases where the status quo arrangements are obsolete, anomalous or inefficient, and deserve reconsideration and change. Finally, the intention is to present a strategic view of the subject matter, i.e. to set out what the EU would need to do to its external representation to be effectively equipped as a global international actor in the emerging multi-polar world.

In general, this will require an extensive 'upgrade' of the EU's external representation, which often languishes in the rank of observer even where its competences may be substantial. This is a highly complex field, however – politically, legally and institutionally – and any attempt to formulate operational recommendations will have to be finely tuned to many different specific situations. Any ideas and suggestions from those with relevant experience will be most welcome.

## Annex: Competences of the European Union according to the Lisbon Treaty, and participation of EU institutions in related international organizations and conventions

Competences	Organisations, Conventions	Status of EC & Member States
<b>Foreign, security and defence policies (including general political affairs)</b>	UN General Assembly	EC observer; MS as members
	UN Security Council	2 permanent MS+ rotating
	OSCE	EC observer, MS as members
	NATO	24 MS as members
	Non-Proliferation Treaty	EAEC signatory & MS
	Council of Europe	EC observer, MS as members
	G7/8/20	EC participant, some MS
<b>1. Exclusive (Article 3)</b>		
a. Customs union	World Customs Org. (WCO)	Member
b. Competition policy	World Intellect. Property Org.(WIPO)	Observer
c. Monetary policy (for eurozone)	IMF	ECB observer, MS as members
	Bank for International Settlements (BIS)	ECB on Board, some MS
	OECD	EC observer, 21 MS as members
d. Fisheries & marine biological policies	Convention on Fishing and Conservation of the Living Resources of the High Seas	EC & MS as members
	UN Conference on Highly Migratory Fish	EC & MS as members
	Multiple regional fisheries organizations: Mediterranean, NE Atlantic, NW Atlantic, SE Atlantic, Antarctic, Western and Central Pacific	EC Member & some MS
	Organizations for species: tuna, salmon	EC signatory & some MS
e. Trade policy	WTO	EC & MS as members
	UN Comm.on Internat.Trade Law (UNCITRAL)	EC observer, some MS as members
<b>2. Shared (Article 4)</b>		
a. Internal market	International Standards Organization (ISO)	EC cooperation, MS as members
	Codex Alimentarius Commission	EU & MS as members
b. Social policy	International Labour Organization (ILO)	EC observer, MS as members
c. Cohesion (regional)		
d. Agriculture and forestry	FAO	EC & MS as members
	International Fund for Agricultural Develop.	EC observer, MS as members
	Multiple product organizations: Olive oil, Sugar, Cocoa, Coffee, Jute, Tropical Timber, Rubber, Grains, New varieties of plants	EC & some MS as members
e. Environment	UN Environmental Program	EC observer, some MS as members
	UN FCCC (climate change)	EC & MS as members
	Kyoto Protocol	EC & MS as members
	UN Conference on Environmt. and Develop.	EC & MS as full participants
	Convention on Law of the Sea (UNCLOS)	EC & MS as members
	International Tribunal of the Law of the Sea	EC & MS as members
	International Seabed Authority	EC & MS as members
	Protection Marine Environmt. of N. Atlantic	EC & 12 MS as members
	Protection of the Danube River	EC & 6 MS as members
f. Consumer protect.	-	-
g. Transport	International Civil Aviation Organiz. (ICAO)	EC observer, MS as members
	International Maritime Organization (IMO)	EC observer, MS as members
	Eurocontrol	EC & 21 MS as members
h. Trans-Eur. Networks	-	-

i. Energy	International Atomic Energy Agency (IAEA)	EC observer, MS as members
	International Energy Agency (IEA)	EC participates; 17 MS as members
	Energy Charter Treaty	EC and MS as members
j. Freedom, security and justice	International Court of Justice (ICJ)	-
	International Criminal Court (ICC)	EU cooperation agreement
	European Convention of Human Rights	EU & all MS as acceding parties
	UN High Commission for Refugees	EC observer, MS as members
	World Conf. against Racism, Racial Discrim.	EC & MS as full participants
	Fourth World Conf. on Women	EC & MS as full participants
	UN Convention Against Illicit Traffic of Drugs	EC & MS as full members
	UN Convention Against Transnational Crime	EC & MS as full members
k. Public health, safety	-	-
l. Research, Technology, Space	International Telecommunications Union (ITU)	EC sector memb., MS as members
	Outer Space Treaty	EC observer, most MS as members
	World Summit on the Information Society	EC & MS as full participants
	International Fusion Energy Org. (IFETR)	EAEC member, no MS
	Science and Technical Center in Ukraine	EAEC & EC member, no MS
m. Development and humanitarian aid	World Bank	-
	World Food Programme (WFP)	EC & many MS as donors
	UNDP	EC observer, MS as members
	UNCTAD	EC observer & partial member
	World Summit on Sustainable Development	EC & most MS as full participants
	UN Conference on Least Developed Countries	EC & most MS as full participants
	World Food Summit	EC & most MS as members
<b>3. Coordination (Article 5)</b>		
a. Economic policies	EBRD	EEC & MS as shareholders
	OECD	EC observer, 21 MS as members
b. Employment policies	ILO	EC observer, MS as members
c. Social policies	ILO	EC observer, MS as members
<b>4. Supplementary (Article 6)</b>		
a. Human health	World Health Organization (WHO)	EC observer, MS as members
	UN Population Fund (UNFPA)	EC observer, MS as members
b. Industry	UN Industrial Development Org. (UNIDO)	Partnership; most MS as members
	Multiple Organizations for commodities: Nickel, Copper, Lead and Zinc	EC & some MS as members
c. Culture	UNESCO	EC observer, MS as members
d. Tourism	UN World Tourism Organization	Most MS as members
e. Education, training, youth, sport	UNESCO	EC observer, MS as members
	UNICEF	EC observer, MS as members

**Source: Own compilation.**