

# **Are the problems arising from enlargement and the Draft Treaty leading to paralysis instead of synergy?**

Some introductory remarks for the Fonet Group B Institutional Reform and  
Enlargement

23 April 2004, Brussels

Elfriede Regelsberger,  
Institut für Europäische Politik, Berlin

Whether the international profile of the EU will be strengthened or weakened after the accession of ten new countries on 1 May 2004 and in view of the proposed CFSP reform is guesswork in some way for two reasons at least:

**First, accession has still not taken place, and thus we can only speculate about the real performance of the ‘newcomers’ and the impact on the CFSP.**

**Second, the CFSP itself is a moving target with both success and failure in the recent past and the final outcome of the revitalised IGC negotiations on the CFSP provisions of the draft treaty is still open.**

**As to the impact of enlargement...**

On an **optimistic note** – and this seems to be a minority position in academic circles, however, shared by the author - the benefits of participation by the new members will outweigh negative repercussions on the CFSP: The chance to belong to the European ‘club’ will probably produce an open-minded attitude about ‘speaking with one voice’, and more

streamlined positions by the new members than claims of vested national interests and clashes with the Fifteen.

In an **opposing view** enlargement is seen as a heavy burden and challenge for both the substance and the functioning of the CFSP. It is assumed that the new members will pursue distinct interests against other EU partners as several of them have already demonstrated during the Iraq crisis thus worsening the chances for compromise and consensus.

### **Some facts and figures on CFSP and alignment of the new members to the CFSP acquis**

To bridge the gap on policy substance between the old and new members in advance of accession, it has always been in the member states' interest to associate future members with the proceedings and substance of their joint endeavours in CFSP. From 1994, a dialogue was established at all CFSP levels to familiarise the newcomers with the system, which meant informing them of the results of discussions and inviting them to join the CFSP *acquis politique*.

The period 1995-2003 shows that aligning with the EU was generally seen as a useful way to demonstrate both domestically and internationally how close the candidates already are to EU entry. This is not to say that alignment with the CFSP was perfect right from the beginning. During the 1990s, alignment has differed according to CFSP instruments and policy areas - though with a clearly narrowing tendency between the old and new members, which has become more obvious since the Accession Treaty was signed on 16 April 2003.

**Table 1: Alignments of the CEECs with EU Statements or Presidency Statements on Behalf of the EU, 1995-2002**

<b>Year</b>	<b>Total Number</b>	<b>Alignment CEEC</b>	<b>Percentage</b>
1995	106	27	25,5
1996	110	30	27,3
1997	122	35	28,7
1998	149	58	38,7
1999	115	59	51,3
2000	175	122	69,7
2001	175	124	70,9
2002	181	130	71,8

Source: based on documents of the General Secretariat of the Council; Bulletin EU 2000-2002.

As regards issue areas, alignment was selective particularly up to 1999. Since then, the positions of the EU member states and the applicant countries have grown closer. Homogeneity was more likely and easier to be achieved on positions regarding distant countries and regions; the closer the addressees of CFSP policies were, the deeper the dividing lines between the Fifteen and the future members. This was particularly true for statements on Russia, Bosnia, Georgia, Belarus, Albania, the EU's policy in the Middle East conflict and on human rights questions.

### **The Fifteen and the 'observers' since 2003: towards greater convergence**

The process to associate the future members with the CFSP entered a new stage on 17 April 2003. Since the signature of the Accession Treaty, the ten acceding countries enjoy the status of 'active observers'. For them this means the end of ex-post information about the results of CFSP discussions among the Fifteen and implies immediate participation at all CFSP levels. For the first time the accession countries have the chance to shape the contents of the CFSP on an almost equal footing with their EU partners although they cannot yet take part in the final CFSP decisions.

Information available so far suggests that differences on policy substance between old and new members have narrowed considerably. The gaps identified earlier no longer express themselves in non-alignment by the acceding countries. On the contrary, they have explicitly shared the contents of all CFSP declarations approved between 17 April 2003 and 9 April 2004.<sup>1</sup> The same can be said for the conclusions of the Council (External Relations)<sup>2</sup> and those of the European Council. The particular legal character of joint actions and common positions continues to pose (mainly technical/ national legal) problems for alignment though in 2004 the new members have already joined the EU's sanction policy (common positions) vis-à-vis Zimbabwe, Burma, Macedonia, Sudan and Liberia and participation has been secured in the EU crisis management operations (joint actions) in Bosnia, Macedonia and the

---

<sup>1</sup> According to the Council website, as of 10 April 2004, **151 declarations** were passed since 17 April 2003 and all the ten accession states joined the texts (except for **five ones**, i.e. on Columbia, Samoa, Afghanistan, Iraq which seem to be technical failures particularly in the first days of the incoming Irish presidency in 2004. The other item was Turkey which is a specific case since Turkey belongs to the circle of possible future members and where alignment of the candidate/ accession countries is normally excluded).

<sup>2</sup> References in the Council Conclusions normally name the items on which the acceding countries agree with the Fifteen. Besides reference is made to those items where the future members do not align. This, however, does not suggest differences on substance but has to do with the nature of the issues, i.e. they may cover either issues of EU procedures or EU treaties to which the acceding countries do not yet belong or may be texts where agreement is not formally requested.

Democratic Republic of Congo in 2003 through individual treaties concluded between the EU and each future members interested in participation.

To conclude, the overall picture of the CFSP at 25 is likely to be a positive one as long as the applicants continue to rate belonging to the club higher than going it alone and those already inside treat the newcomers on an equal footing.

### **The newcomers and CFSP reform**

Coalition building will depend on the issues at stake. In general, however, the new members seem to be close to the Atlanticists and those favouring incremental reforms in CFSP rather than 'revolutionary', i.e. community-type approaches. This cautious attitude has become obvious during the debates in the European Convention and the IGC. On the one hand the applicants broadly share the CFSP provisions of the draft constitutional treaty. This applies in particular to the proposal for a Union Minister for Foreign Affairs. Although some of the newcomers, and some of the Fifteen, have asked for further clarifications of his/her functions and in particular his/her relation to an elected President of the European Council, none of the applicants questions the post as such and all favour its introduction instead of continuing with the rotating presidency. On the other hand, the question of extending majority votes in CFSP is regarded with great scepticism and perceived as being incompatible with their newly gained sovereignty. In addition, and like other small member states, the acceding countries have expressed concern about proposals for enhanced cooperation in CFSP and ESDP matters. Since they fear exclusion from inner circles or directoire their government representatives in the IGC have explicitly favoured higher thresholds for the flexibility procedures than those foreseen in the draft constitutional treaty.

### **As to the potential of the Draft Treaty for an improved CFSP ...**

Old CFSP deficiencies and new external challenges like the terrorist attacks of 11 September 2001 and the war against Iraq in 2003 have forced the Fifteen to redefine their 'place' as that of a European 'power' capable of assuming an active role in a global world as the Laeken European Council stated in late 2001. The result of this recent reform debate, i.e. the Draft Treaty Establishing a Constitution for Europe (CONV 850/03), has both confirmed existing CFSP principles and introduced new elements. Not surprisingly some proposals have remained vague and await further clarifications due to ongoing divergent perceptions among the member states. As has been demonstrated during the Intergovernmental Conference in late

2003 the Convention's proposals on CFSP and particularly on ESDP are far from being adopted automatically in the IGC. On the contrary the governments claim to keep the final say in these sensitive policy areas and will determine the wording of the future treaty provisions. It seems as if the amendments and clarifications made under the Italian presidency in 2003 - with respect to the new modes of 'structured'/ 'closer' cooperation in ESDP, concerning the 'double-hatted' Union foreign minister and the proposals for an extension of majority voting - will become the points of reference also for the start-up of the IGC negotiations under the Irish presidency which would constitute already considerable progress.

Among the novelties most likely to improve consistency, visibility and efficiency in CFSP are:

- as regards a greater **commitment towards the treaty objectives and obligations:**
  - an **enhanced role for the European Council** which has to be consulted before member states take an international action which might affect the common EU interests (Art.I-39) in addition to the responsibility of the Council and the Union Foreign Minister for consistency;
  - an admittedly **moderate extension of the consultation duties** on the part of France and the UK in the **UN Security Council** (Art.III-206,2) ;
  
- as regards the **institutional architecture:**
  - \* the most far-reaching step is the **abolition of the rotating presidency** and its replacement by the post of a **Union Minister for Foreign Affairs** (Art.I-27 and CIG 60/03 ADD1) elected by the European Council (qualified majority) with the agreement of the Commission President. He/she will be charged with all the functions of the former and simultaneously he/she is to carry also the 'hat' of a Vice-President of the Commission responsible for internal coordination on all matters external relations. Furthermore he/ she will receive new responsibilities e.g. in '(permanent) structured cooperation' (Art.III-213 and CIG 60/03 ADD1) and for coordination at international organisations including his/ her presence in sessions of the UN Security Council provided the

permanent members of the EU so agree (Art.III-197: III-206) – a heavy burden for one single personality to be nominated for five years.

However, these new treaty provisions need further clarifications with regard to who is going to represent the Union Foreign Minister at the lower Council levels (and chair the meetings e.g. of COPS, working parties, meetings at international organisations, in third countries) and represent the Union towards the outside (political dialogues etc.). Will he/she have one or several deputies and what role will be attributed to the envisaged European External Action Service (see Declaration annexed to the Draft Treaty).

- \* The Draft Constitution **reinforces the overarching weight of the European Council** and its **President** (elected again for a longer period, Arts. I-20-21; III-194-196). Heads of State and Government are to identify the strategic interests and objectives of the Union which relate to both the CFSP and to other areas of the external action of the Union and to decide about the general guidelines, including matters with defence implications. They are also entitled to extend the areas of majority voting (Art. III-201) though matters with military and defence implications remain excluded.

The enhanced role of the European Council President expresses itself particularly in his/her right to convene extraordinary meetings in cases of international crises and to represent the EU towards the outside. Though explicitly limited to the European Council level (Art.I-21) this function might create tensions with the duties of the Union Foreign Minister and requires further clarifications e.g. whether or not the President of the European Council will have a working staff of his/ her own and if not to what degree will he take recourse to the that of the Union Foreign Minister.

- concerning the **instruments**

the newly introduced **modes of flexibility in ESDP** , i.e. to entrust crisis management operations to a group of EU countries (Art.I-40), the establishment of (permanent) structured cooperation of those EU member states fulfilling higher criteria for military capabilities (Art.I-40; III-213), closer cooperation to establish mutual military assistance (Art. I-40; II-214) and the creation of an Agency in the field of Defence

Capabilities, Development, Research, Acquisition and Armaments (already in the making since early 2004), offer an ambitious programme which, however, has not received the full support among the participants in the IGC right from the beginning. Dispute was strong among the 'Atlanticists' the non-aligned and those favouring a more independent EU role in ESDP matters. However, due to successful joint British-French-German endeavours/ or some like to call it an informal 'directoire' during the IGC progress was achieved thus replacing the earlier exclusive character of the new modes of enhanced cooperation by a more inclusive approach.

These positive signs are somewhat overshadowed by the failure of the Convention/ IGC to achieve progress with regard to the **decision-making procedures**.

In the European Convention support has been extremely low to extend the principle of majority voting in CFSP. The draft treaty confirms (Art.I-39; III-201) the provisions already in force with the TEU and even seems to remain below them since all crisis management operations including those of a civilian character shall require unanimity (Art.III-210) while so far the possibility exists to decide upon such measures via joint actions based on common strategies of the European Council or follow-up decisions of joint actions by qualified majority (Art.14; 23 TEU). As is well known CFSP reality sharply differs from the treaty letters which have not been applied so far.

Some progress might be possible provided the European Council will use its right to transfer certain CFSP matters, however, not those of ESDP, from unanimity to majority vote (Art.III-201). Another though very modest extension might be seen in the provisions of Art. III-201, 2b which stipulate that majority decisions are possible in the case of joint actions and common positions on the initiative of the Union Foreign Minister provided the European Council has requested him to do so.

It is yet too early to say whether these proposals will materialise in the forthcoming negotiations or whether the bolder approach undertaken by the Italian presidency in late 2003, i.e. to decide with qualified majority in all those cases where the Union Foreign Minister will take the initiative and present a text for a joint action or common position (CIG 60/03 ADD1), will be adopted. Given the well-known opposition towards the latter among the EU-25 the more far-reaching provisions will be nothing but part of a wider package-deal at best and are likely to disappear in the final outcome of the IGC.