European foreign policy
Increased output legitimacy after the Lisbon Treaty?

Lisette van Emmerik
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European Foreign Policy. Increased output legitimacy after the Lisbon Treaty?

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## Table of Contents

**Introduction** ..................................................................................................................................... 5

**Chapter 1: Legitimacy issues and European foreign policy** .............................................................. 12
  1.1 A brief history ........................................................................................................................... 12
  1.2 The creation of European Foreign Policy ............................................................................. 13
  1.3 Permissive consensus .......................................................................................................... 14
  1.4 Constraining dissensus ........................................................................................................ 16
  1.5 The evolution of European Foreign Policy ......................................................................... 18
  1.6 Conclusion .......................................................................................................................... 19

**Chapter 2: To what extent are European policies deemed legitimate?** .......................................... 20
  2.1 Views on the democratic deficit ......................................................................................... 20
  2.2 The standard version of the democratic deficit ................................................................. 21
  2.3 Opposing views of the democratic deficit .......................................................................... 23
  2.4 Scharpf: European legitimacy is an issue ........................................................................... 27
  2.5 Input and output legitimacy ................................................................................................ 28
  2.6 Input legitimacy .................................................................................................................. 29
  2.7 Output legitimacy ................................................................................................................ 31
  2.8 Reforms for improved effectiveness ................................................................................... 33
  2.9 Conclusion .......................................................................................................................... 34

**Chapter 3: To what extent has CFSP decision-making changed after the Lisbon Treaty?** .......... 36
  3.1 Different procedures can affect decision-making effectiveness ......................................... 36
  3.2 Changes in the European foreign policy structure after the Lisbon Treaty ......................... 39
  3.3 Options for escaping unanimity-voting .............................................................................. 41
  3.4 Flexible integration ............................................................................................................. 43
  3.5 To what extent can the changes improve effectiveness? .................................................... 46
  3.6 Conclusion .......................................................................................................................... 47

**Chapter 4: To what extent has CFSP-coherence been improved after the Lisbon Treaty?** ........... 48
  4.1 What is CFSP coherence? ................................................................................................... 48
  4.2 Foreign policy coherence pre-Lisbon: compartmentalization and diffuse representation.. 49
  4.3 The role of the new High Representative in the post-Lisbon Foreign policy structure ..... 51
  4.4 A shaky start for the post-Lisbon foreign policy system .................................................... 53
  4.5 The establishment of the European External Action Service ............................................. 55
  4.6 The External Action Service: a work in progress ............................................................... 57
4.7 Conclusion ..................................................................................................................................... 60

Chapter 5: Policies for the Southern neighborhood: a case-study .................................................. 62
  5.1 Different EU frameworks for its Southern neighborhood ..................................................... 62
  5.2 Results in the Southern neighborhood .................................................................................. 65
  5.3 Coherence of neighborhood policy ...................................................................................... 66
  5.4 Response to the Arab Spring ............................................................................................... 68
  5.5 Conclusions from the EU’s response to the Arab Spring .................................................... 69

Conclusion .................................................................................................................................... 72

List of References ......................................................................................................................... 75
Introduction

‘Nee! Non! No!’ These were the answers of the Dutch, French and Irish voters to new European Treaties that had to be approved via referenda. The Dutch and the French first rejected the ‘European Constitution’ in 2005. The revised version of the Constitution, the Lisbon Treaty, initially gained the same response from Irish voters in 2008. This prompted more negotiations and revisions and on 1 December 2009, after the Irish voters approved the treaty in a second referendum, the Lisbon Treaty finally went into effect. The new treaty was necessary to accommodate the much larger EU which had increased the number of Member States from fifteen to twenty-seven after almost a decade of enlargement.

With the new Lisbon Treaty the EU has taken its next step in the ongoing political integration of the last few decades. The long and difficult process of negotiations and the rejections by voters has increased the debate on what the EU is and what the EU ought to be. The concept of legitimacy is important in this debate. Lack of legitimacy in the EU is cited by political experts as one of the main reasons for the rejection of the Treaties.¹ The standard explanation for this is that certain decisions that used to be made at the national level through the national parliaments are now being made at the European level. However, the influence of both the European Parliament and national parliaments on these decisions is not equal to the influence that existed when the same decisions were being made at the national level. In other words, the power of the representative body has declined in relation to the power of the executive body with the transfer of decision-making power to the EU-level.

This so-called ‘democratic deficit’ is generally accepted to exist by International Relations/Political Science scholars, although they do not agree on the nature of this deficit and whether the deficit is important or not.² The EU itself has taken note of this problem, and has been seeking democratic improvements to the European decision-making process. This is also apparent in the Lisbon Treaty. One of the main goals of the Treaty is ‘a more democratic and transparent Europe.’³ At time of writing the Lisbon Treaty has only been in effect of a year and a half. This means that the conclusions drawn in this thesis are valid for the time period in which

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this research was concluded (June 2011). It is too early to tell what the full effects of the Lisbon Treaty will be. Nevertheless, during the time that has passed since the implementation of the Treaty numerous events have provided plenty of research material that makes this research worthwhile at this point in time.

The strategy chosen by the EU for dealing with the democratic deficit has for the most part been increasing the powers of the European Parliament (EP) in the decision-making process. In spite of that, Eurobarometer results show that in 2010 just half of all European citizens were satisfied with the functioning of democracy at the European level, while thirty-five percent were not. Moreover, the percentages show little fluctuation over the past few years. There was a decline of four percent points in satisfaction between August 2009 and May 2010, and an increase of three percent points in dissatisfaction. To the extent that these polls are a suitable indicator for the state of affairs, the increased the power of the EP has not resulted in a more positive appraisal of the functioning of democracy at the European level by European citizens.

This conclusion leads to the question whether democratic improvements are sufficient for increasing EU legitimacy. In order to answer this question it is important to first take a look at the concept of legitimacy itself. German Political Science scholar Fritz Scharpf* has defined two types of legitimacy that together make up the concept of legitimacy. Input legitimacy is based on the idea that a policy is legitimate because it reflects the will of the people. On the other hand, output legitimacy relies on the effectiveness of policies to deal with problems to attain legitimacy. The focus of the EU has been on making improvements on the input-side by increasing the powers of the EP. Since introducing more democracy in the process of European decision-making has not yet had the desired effect, it might be worth looking at increasing legitimacy from the output-side.

In the light of this, foreign policy is a suitable policy area for researching output legitimacy; foreign policy cooperation at the European level is desired by most citizens; increases in input legitimacy can be seen as less vital because the Member States have the decision-making mandate; more effective foreign policy is needed to respond to rapidly

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4 Eurobarometer standard 73, Spring 2010, 156-157
* Fritz Scharpf is Emeritus Director of the Max Planck Institute for the Studies of Societies in Cologne, Germany.
changing circumstances in the world such as the increasing importance of China; the Lisbon Treaty has made significant changes to the area of foreign policy. This has resulted in the following research question:

**To what extent has the output legitimacy in the sense of Fritz Scharpf, of the European Union’s Foreign Policy, specifically Common Foreign and Security Policy, improved after the implementation of the Lisbon Treaty in December 2009?**

In order to find an answer to this question, it is imperative to clarify the meaning of the terms European foreign policy and effectiveness in the context of this thesis. In general, foreign policy at the European level can be divided between policies covered by Common Foreign and Security Policy (CFSP) and policies that fall under External Action. In the area of CFSP the Member States are the main decision-makers whereas the policies of External Action are decided on through the traditional decision-making structure of the EU (Community Method). However, in reality, the separation between CFSP and External Action is far from clear-cut. That is why the central aim in this thesis is to examine the Member State dominated area of CFSP, with references to the broader area of European foreign policy when appropriate. An analysis of the entire spectrum of European foreign policy is an endeavor deemed too great for the scope of this work.

The definition of effectiveness, or output legitimacy as it is called by Scharpf, is more complicated since measuring improved effectiveness is subject to normative interpretations. Capturing the meaning of a concept such as effectiveness is hard, but placing it in the context of foreign policy makes it easier to define. First, understanding the (perceived) need for more effectiveness is important. Before the Lisbon Treaty was implemented several indicators suggested changes in the area of CFSP and EU foreign policy were necessary. A first indicator was the difficulty to speak and act as one on the world stage. There are multiple examples of this problem, the most memorable of which is the disagreement over the Iraq war in 2003. The second indicator was the lack of coordination and coherence between the actors and instruments

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involved in CFSP. An appraisal of the state of affairs of these two indicators in the post-Lisbon foreign policy field will determine to what extent effectiveness has improved so far. This thesis will be made up out of five main chapters that will help answer the research question.

Chapter 1 will give a short history of the institutional development of the EU, in particular of the development of European foreign policy and CFSP. The concepts of permissive consensus and democratic legitimacy in this process will be the central focus. This chapter will help put recent changes that were made in the Lisbon Treaty in a proper perspective. The discussion concerning the democratic legitimacy of the EU gained momentum when the 1992 Maastricht Treaty went into effect. Up until then European integration had been pursued on the basis of a “permissive consensus” of the European public. The Member States’ elites believed their actions at the European level were in line with public opinion and therefore legitimized. As a consequence, issues concerning democracy and legitimacy were not considered vital during negotiations on further integration. However, the reception by the public of the Maastricht treaty led them to conclude that this assumption was no longer valid. Referendums in different Member States caused widespread debate on the ongoing integration of the EU and voters in Denmark rejected the Treaty in a referendum. From this point onwards further European integration very much became a political process, and the EU has placed the goal of a more democratic Europe at the top of its agenda ever since.

Chapter 2 will take a look at the vast amount of literature that is available on the topic of legitimacy and the EU. This chapter will be the theoretical framework of this thesis and will give an account of various different opinions concerning the legitimacy of EU policies that are held by experts and the public alike. Although it can be said that a general consensus exists on the existence of a so-called democratic deficit, several political scholars hold a very different opinion on this matter. The goal of this chapter is to distill a comprehensive framework that can be used in the remaining chapters to research the legitimacy of the CFSP after the treaty of Lisbon. German scholar Fritz Scharpf has been influential in the debate about European legitimacy, and he added a distinction between so-called ‘input’ legitimacy and ‘output’ legitimacy, which can be helpful in determining what options are available to improve legitimacy at the European level.

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9 Duke, Providing for European-Level Diplomacy after Lisbon, 214.
10 Føllesdal, Legitimacy theories, 2.
11 Scharpf, Governing in Europe, 6.
Input legitimacy is ‘Government by the people’. Political decisions can be seen as legitimate when they reflect will of the people. On the other hand, ‘Government for the people’, the concept that is promoted in output-legitimacy, relies on promoting the general welfare of the people. Scharpf claims that these two types of legitimacy are essentially complementary, but need to be viewed separately when researching the legitimacy of EU policies. The reason for this is that the input side of legitimacy rests on a pre-existing ‘thick’ collective identity. The EU does not have such a thick collective identity, and therefore input legitimacy is unattainable at the moment.\(^\text{12}\) On the other hand, output legitimacy depends on the problem-solving capability of a political institution, and only a ‘thin’ collective identity is needed to ensure the existence of (perceived) common interests and problems. This means that an institution must offer collective solutions to problems that cannot be solved otherwise.\(^\text{13}\)

Scharpf’s theory of input- and output legitimacy is useful when researching the legitimacy of European policies because it allows for a nuanced view of the issues surrounding European legitimacy. This view can be used to look for improvements in the performance (output) of European policies that do not necessarily have to be followed by democratic decision-making (input) reforms. It is often harder to achieve reforms in this area because it involves shifting power between institutions, and as long as a thick collective European identity is lacking, major improvements from the input side could even be counterproductive. Another reason for focusing on Scharpf’s concept of output legitimacy is that the topic of foreign policy for the most part relies on producing output. The input side of CFSP derives legitimacy from the decision-making procedures that are used. Foreign policy is one of the areas in which decision-making almost always requires unanimity by the Member States. Formally speaking input legitimacy is mostly guaranteed. On foreign policy output however, real progress can be made.

**Chapter 3** will focus on changes and/or shifts to other decision-making procedures within the Lisbon Treaty, which can increase the effectiveness of policy if these changes allow decision-making to be less complicated. This would mean that it could make it easier to take more controversial decisions, which in turn can increase effectiveness and thus reduce the problem-solving gap at the European level. There is, however, a limit to changes that can be made at the input side, since the thick collective identity necessary for justifying major steps on

\(^{12}\) Scharpf, Governing in Europe, 10.  
\(^{13}\) Ibidem, 11.
input are lacking for now.\textsuperscript{14} Allowing Member States to opt-out of a policy that may have negative consequences for their country and having more flexible rules for stimulating further integration between (a group of) Member States can lead to increased effectiveness. Throughout its history, the EU has tried to hold on to inclusiveness when it came to integration. Although there are a few policy areas in which certain Member States have opted-out of further integration (most notably the euro), the general notion of uniformity has never disappeared.\textsuperscript{15} Particularly in the area of foreign policy, a traditionally salient policy area within which national interests between Member States commonly diverge, more flexibility in integration can help increase effectiveness. This chapter will look at the decision-making procedures that are used in the area of CFSP post-Lisbon to see if any of the changes have taken place will allow easier decision-making.

Chapter 4 will examine the coherence of foreign policy, which is also important when trying to improve effectiveness. Improving coherence was one of the main reasons for the changes made in the Lisbon Treaty. For European foreign policy it is paramount that the structure that is in place is optimal for achieving effective output. Since a number of institutions are involved in the process of foreign policy formulation, internal coordination is important. Other factors that can contribute to better output are the financial capabilities and amount of staff available for European foreign policy. This also includes clear leadership in foreign policy issues.\textsuperscript{16} The two major innovations of High Representative and the supporting European External Action Service will be the main focus.

Chapter 5 will include a case-study in which the development of the EU’s Southern neighborhood policies, the role of the HR in neighborhood policy in the post-Lisbon structure and the response to recent unrest in the Southern neighborhood will be analyzed. This case-study is useful for several reasons. First of all, since the Council, HR + EEAS and the Commission all have a role in regional policy, the case-study can give an indication of the coherence of neighborhood policy post-Lisbon. Secondly, recent events in the Southern neighborhood and the subsequent internal and external response of the EU can give an indication of the EU’s ability to speak with one voice post-Lisbon. This case-study is meant to be an illustration of the

\textsuperscript{15} Scharpf, Problem-solving Effectiveness, 18.
\textsuperscript{16} Anand Menon, ‘Enhancing the effectiveness of the EU’s foreign defence policies’, Centre for European Policy Studies Policy Brief 29 (December 2002) 7-8.
functioning of European foreign policy after the implementation of the Lisbon Treaty. A deeper look into the issues surrounding Neighborhood policy could provide clues about the general state of affairs of European foreign policy when it comes to the dual goals of coherence and speaking with one voice.

The theoretical framework will provide this thesis with the necessary tools to evaluate the changes that have been made to European foreign policy with the 2009 Lisbon Treaty. The case-study about the European neighborhood policies in the Mediterranean can give a glimpse into the effect of the changes. This thesis will distill to what extent the changes that have been made have improved coherence of European foreign policy and its ability to speak with one voice. These dual goals have been set out by the Member States as reasons for reforming the European foreign policy structure. The assumption is that attaining these two goals will improve the effectiveness of European foreign policy, which according to Scharpf, means improved output legitimacy.
Chapter 1: Legitimacy issues and European foreign policy

This first chapter gives a short description of the history of the European Union, in particular concerning the development of democratic legitimacy as an important theme for the EU and the integration of the area of foreign policy into the Union. The first part discusses the early days of European integration up until 1992 when the European Union was created. Second, the role foreign policy has played throughout the development of the EU will be highlighted, as well as the creation of the Common Foreign and Security Policy. After this the changing public opinion and consequently the supposed breakdown of permissive consensus will be researched. The final paragraph will briefly discuss the evolution of European foreign policy after the end of the Cold War. This chapter will help put the changes that have been made in the Lisbon Treaty in the proper perspective.

1.1 A brief history

The European Union as it exists today can be traced back to the 1950s when the six original members declared their intent to ‘lay foundations for an ever closer union among the peoples of Europe’. Throughout the history of the EU this commitment was reaffirmed on several occasions, both with words and through actions. The EU as we know it today has been created through incremental steps towards further integration, first mostly in the economic sphere and later also in the political domain. At the same time a process of widening has taken place with the acceptance of more countries into the Union.

The formation of an ever closer union took a step forward with the Single European Act (SEA) of 1986. Amongst other things, it expanded the competencies of the Community, increased the influence of the European Parliament and established a deadline for the completion of the internal market. In retrospect the SEA marked the beginning of a dynamic period for the Community. Important European leaders such as French president Mitterrand, German Chancellor Kohl and European Commission president Delores were proponents for further steps

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* The in 1957 established European Economic Community consisted of Belgium, Luxembourg, Netherlands, France, Italy and West-Germany.

toward European union. The collapse of communist regimes in Central and Eastern Europe, the subsequent end of the Cold war and German unification further increased calls for wider and deeper integration on the European level. This resulted in two different intergovernmental conferences (IGCs) in the early 1990s. One dealt with the creation of Economic and Monetary Union (EMU), known for the introduction of the Euro, and the other resulted in the Treaty on European Union which created the European Union.\(^{18}\)

The new Treaty on European Union, also known as the Maastricht Treaty, brought together the European Community (EC), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom) to form the European Union. It also added Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) as policy areas in which Member States cooperated. The EU was a mix of supranational and intergovernmental elements, which was referred to in the so-called pillar structure. Pillar one was the supranational European Communities-pillar, where decision-making took place according to the community method, with a strong influence from the Commission, Parliament and Court of Justice.\(^*\) Pillars two and three, consisting out of CFSP and JHA respectively, were characterized by intergovernmental cooperation in which the Commission, Parliament and Court of Justice played a much less significant role compared to the Member States.\(^{19}\)

1.2 The creation of European Foreign Policy

It was not until the Maastricht Treaty of the 1990s that foreign policy received a place in the framework of the European Union. However, the Common Foreign and Security Policy was not the first attempt at creating a European-wide foreign policy. France especially had been trying to achieve this for decades. French leaders such as De Gaulle wanted a European based foreign policy independent of the United States in which France would be the leading country. An example of this French aim for European foreign policy is the Fouchet-plan of the early sixties, which envisaged closer political and military cooperation between European countries.\(^{20}\) This

\(^{18}\) Phinnemore, Towards European Union, 33.

\(^*\) Within the community method the Commission has the exclusive right of initiative, the Council uses qualified majority voting, the European Parliament has an active role as co-legislator and the Court of Justice ensures uniformity in the interpretation of Community law.

\(^{19}\) Phinnemore, Towards European Union, 34-35.

attempt by the French was dismissed by other countries, which for the most part wanted to remain close allies with the United States and were members of the North Atlantic Treaty Organization (NATO) to secure their safety against the Soviet Union.

Another attempt at bringing foreign policy on the European agenda happened in 1969 at the summit in The Hague. This led to the establishment of European Political Cooperation (EPC) in 1970. The EPC was meant to be a process in which foreign ministers of the Member States would meet to discuss and possibly coordinate foreign policy. The EPC was not part of the founding treaties and remained to exist as a voluntary arrangement outside the Community. Until 1987, when it was incorporated by the SEA, the EPC did not have its own institutions.²¹ It was for these reasons EPC could never become a strong body for coordinating foreign policy between Member States and projecting a European vision on foreign policy.²²

The necessity to further develop a European foreign policy became more pressing after the collapse of the Soviet Union. The newly freed Eastern European countries were seeking membership of the EU and the United States limited its involvement in Europe because the Cold War threat to the east had disappeared. These significant changes of the political landscape opened the door to develop a new European foreign policy.²³ Foreign policy was on the agenda of the 1991 IGC that led to the creation of the European Union. The final result was the creation of the Common Foreign and Security Policy, which formed the second pillar of the EU. Intergovernmental decision-making made sure the Commission and European Parliament had little input in policies, and unanimity was required to make decisions. However, despite the limited role of the EU in the process the first step was taken to incorporate foreign policy into the European framework.

1.3 Permissive consensus
The process of ongoing European integration and the development of policy areas began primarily as an elite-driven project. The nature of negotiations and treaties were seen by the

²² Dover, EU’s Foreign, Security and Defence Policies, 239.
²³ Ibidem, 240.
ruling elite as too difficult to understand for the general public.\textsuperscript{24} Therefore there was no perceived need to involve citizens’ opinions in negotiations, and decisions were taken away from the public limelight. The political leaders had a lot of leeway to move forward with the European project because the public was thought to have generally neutral opinions, or even indifference towards decisions their governments made in Brussels.\textsuperscript{25} This so-called \textit{permissive consensus} allowed the insulated political elite to cut deals amongst themselves.

More involvement of the European people can be said to have started in the 1970s, when more \textit{Eurosceptic} countries such as the United Kingdom and Denmark joined. The citizens in these countries were asked their opinion on European matters on several occasions with referenda. Still, opposition to the European project did not seem to be widespread throughout Europe. This can be seen in Eurobarometer results from 1973 onward, the year in which this tool was created. In fact, the Mannheim Eurobarometer Trend File 1970-2002, shows support for EU membership fluctuating around fifty percent. At times this number has risen towards seventy percent, at other times it has dropped slightly below fifty percent.\textsuperscript{26} Issues such as democratic legitimacy were not seen as significant by most European leaders and scholars alike.\textsuperscript{27}

It was not until the Maastricht Treaty of 1992 that it became apparent that the notion of a permissive consensus from the European people was no longer entirely valid. The reception the Treaty received from the public and legal challenges that were made to the Treaty in Germany and Denmark showed that the days of integration by stealth were officially over. Referenda on the Treaty were held in Denmark, France, and Ireland. Denmark rejected the Treaty in 1992, while France managed to pass it only just. The UK had a difficult time passing the Treaty through Parliament and it only succeeded to do so after they managed to avail an opt-out from the EMU in 1993. Denmark also opted out from the single currency and the defense component of the Treaty (ESDP) and was able to get the Treaty accepted in the same year after a second referendum.\textsuperscript{28}

\begin{flushleft}
\textsuperscript{27} Simon Nuttall, \textit{European Foreign Policy}, (1\textsuperscript{st} edition; Oxford 2000), 194.
\end{flushleft}
On top of the challenges to the ratification of the Treaty by European citizens, legal challenges were also brought to the table. Both the German and Danish Supreme Courts scrutinized the provisions of the Treaty to determine whether it was compatible with their constitutions. Both courts eventually decided the Treaty was compatible with their constitution, but not without declaring some definitive boundaries for the competencies of the EU in their own country. Danish courts insisted, for instance, that they retained the final authority to determine the compatibility of European laws with the Danish constitution, regardless of findings of the European Court of Justice. The opt-outs Denmark and the UK achieved for EMU created a European Union in which Member States were at different stages of integration; some shared a currency, some wanted to join the common currency but did not meet the criteria and others had no intention of adopting the currency at all. The same is true for the area CFSP. All in all, the difficult process of ratifying the Maastricht Treaty was an indicator that permissive consensus from the European public could not be relied on by the elite anymore.

1.4 Constraining dissensus

There seems to be a general consensus amongst political scholars that the 1990s were the breaking point between the previous era of permissive consensus and current euroscepticism, termed by Liesbet Hooghe* and Gary Marks* as constraining dissensus. A reason for this is that the Maastricht Treaty increased the competences of the EU while at the same time policy areas that were (partially) assigned to the EU had higher political salience. Hooghe and Marks describe changed circumstances that were factors in the shift between the pre- and post-Maastricht era.

The Maastricht Treaty, with its move into political integration, sparked debate about European integration within the general public. Analysis of media in several European Member States such as France, Germany, Britain and Austria revealed that the proportion of statements devoted to European issues in national electoral campaigns increased from two-and-a-half

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29 Føllesdal, Legitimacy Theories of the European Union, 4.
* Liesbet Hooghe is Professor of Political Science at the University of North Carolina at Chapel Hill, United States and Chair in Multilevel Governance at Vrije Universiteit Amsterdam, Netherlands.
* Gary Marks Hooghe is Professor of Political Science at the University of North Carolina at Chapel Hill, United States and Chair in Multilevel Governance at Vrije Universiteit Amsterdam, Netherlands.
30 Hooghe and Marks, Postfunctionalist Theory of European Integration, 5.
percent in the 1970s to seven percent in the 1990s.\textsuperscript{32} The notion that most European citizens have a superficial or indifferent opinion on European integration, and that therefore national parties do not have incentive to determine their parties’ position on EU integration did not hold (anymore).

This combination of political integration, debate amongst the general public and the consequential contestation between national political parties on EU integration has helped the more eurosceptic voices to be heard and represented. This explains why the support for EU membership has remained generally stable. The change between permissive consensus vis-à-vis constraining dissensus is not quantitative. It means that before the Maastricht Treaty the national elite did not heed the general public’s opinion to the extent that it did or had to do after the failed referenda and the eventual ratification of the Treaty. Therefore the breaking point in the 1990s was not necessarily about a massive decline in support for integration, but more about the politicization of EU integration that has ensured that public opinion can no longer be ignored.\textsuperscript{33}

The difficulty of ratifying the Maastricht Treaty combined with lower European Parliament election turn-outs and a stronger voice for eurosceptic parties were seen by the ruling elite as indications of problems for the EU. For the European Union and national governments the negative reaction by the European citizens to the Treaty came as a surprise.\textsuperscript{34} The apparent gap between the elites’ vision on integration and the differing public view was now clearly visible.\textsuperscript{35} A lot of governments, EU officials and political science scholars have interpreted these signs as indicators of a lack of democratic legitimacy.\textsuperscript{36}

Democratic legitimacy is seen as important because it is the basis on which decisions are justified toward the people it affects. As Andreas Wimmel\textsuperscript{*} puts it, the concept of democratic legitimacy seeks to explain what the reasons are for justifying political rules in terms of generally binding decisions.\textsuperscript{37} Lack of legitimacy for the EU as a whole and the decisions it makes can hamper the ability to govern and may cause Europeans to refuse steps toward further

\textsuperscript{32} Hooghe and Marks, Postfunctionalist Theory of European Integration, 8.
\textsuperscript{33} Ibidem, 9.
\textsuperscript{34} McCormick, Understanding the European Union, 132.
\textsuperscript{35} Hooghe and Marks, Postfunctionalist Theory of European Integration, 11.
\textsuperscript{36} Andreas Wimmel, ‘Theorizing the Democratic Legitimacy of European Governance: a Labyrinth with No Exit?’, European integration 31:2 (2009), 181.
\textsuperscript{*} Andreas Wimmel is Assistant Professor for European Studies at the Institute for Advanced Studies (IHS) in Vienna, Austria.
\textsuperscript{37} Wimmel, Theorizing the Democratic Legitimacy of European Governance. 181.
integration. The legitimacy theme is therefore important for the EU, and ever since the early 1990s attempts have been made to improve legitimacy.

1.5 The evolution of European Foreign Policy

The turbulent times for European integration were the backdrop for the first years of the Common Foreign and Security Policy. In 1998 the military component was included in the EU framework, with the creation of the European Security and Defense Policy (ESDP). During the same period the circumstances outside of the EU were also affected by enormous change. The EU was faced with newly freed countries that wanted to join the EU, and after the enlargement in 2004 there were a number of new neighbors on its borders. The developments within and outside the EU brought to light several shortcomings of the CFSP and ESDP. With the Convention on the Future of Europe, the EU tried to address weaknesses. The Constitutional Treaty was the result of this Convention, but it was not adopted after Dutch and French voters voted ‘no’ in nation-wide referenda in 2005. Eventually, after many more years of negotiations a revised version of the Constitution named the Lisbon Treaty was adopted at the end of 2009.

Before the Lisbon Treaty was implemented several indicators suggested changes in the area of CFSP and EU foreign policy were necessary. A first indicator was the difficulty to speak and act as one on the world stage.\(^{38}\) There are multiple examples of this problem, the most memorable of which is probably the disagreement over the Iraq war in 2003. The second indicator was the lack of coordination and coherence between the actors and instruments involved in CFSP and European foreign policy.\(^{39}\) An example of this can be found in the policies of the EU toward its neighborhood. On the one hand the EU wants to foster internal changes in neighboring countries, while on the other hand security concerns often give rise to the desire to maintain the status-quo. Several changes have been made in the Lisbon Treaty to deal with these problems, the most prominent of which is the new, strengthened post of High Representative for foreign policy and the new European diplomatic corps in the form of an External Action Service. These changes have filled some analysts with hope that European foreign policy has finally come to age.

\(^{38}\) Duke, Providing for European-Level Diplomacy after Lisbon, 213-214.  
\(^{39}\) Ibidem, 214.
1.6 Conclusion

During the period between the Treaty of Rome of 1957, the Treaty of Maastricht which established the European Union in 1992 and the Treaty of Lisbon in 2009, much has changed in Europe. As the Community got larger it became more diverse. The addition of Eurosceptic countries slightly increased the involvement of public opinion in decisions that were made. The diversity also played a role in the failed attempts by the French to create a true European foreign policy. The Maastricht Treaty of 1992 was to be a big step forward in the integration of the EU. Foreign policy became part of the EU Treaty as the second pillar, after the end of the Cold war posed new challenges for the EU in the area of foreign policy. The wake-up call politicians received after the great difficulty to get the Treaty ratified put the problem of democratic deficit high on the European agenda. In addition, the new Union now consisted of Member States at different stages of the integration process. The rapidly changing circumstances of the first decade after the Cold War prompted the EU to reconsider its foreign policy structure, especially after the enlargements in 2004 and 2007 to twenty-seven Member States. With the new Lisbon Treaty it is hoped that deficiencies have been overcome.
Chapter 2: To what extent are European policies deemed legitimate?

The previous chapter has shown that democratic legitimacy, or rather the supposed lack thereof in the EU, has become an important issue for EU-leaders and scholars alike. With the expansion of European competencies into more policy areas and the end of permissive consensus by the public, the democratic deficit has become a prominent issue on the European agenda. This chapter will first explain what is commonly thought to represent the democratic deficit of the EU. After that a few opposing views on this standard version of the deficit will be outlined. The final part will explain the position of Fritz Scharpf on the democratic legitimacy of the EU, which will in turn serve as the theoretical framework for this thesis.

2.1 Views on the democratic deficit

As Giandomenico Majone* rightly notes in one of his articles on the democratic legitimacy of the EU, arguments about Europe’s democratic deficit are essentially arguments about the ultimate goals and nature of the integration process.40 Discussion about the finalité, the final goal of the Union, has been ongoing in the last few decades. This debate about the nature of the EU, about what it actually is as well as what it could or should be in the future has created a vast amount of different opinions on the extent to which the democratic deficit exists and how problematic this is for the EU. Processes to improve the democracy of EU institutions touch the core of the Union as they could change the influence of both national and European officials within the EU context and also the course of the EU in general. The way the EU is characterized is therefore bound together with the meaning that is attached to the problem of democratic deficit and the solutions that are offered to resolve it.

This essentially means that resolving the democratic deficit requires consensus on the future course of the EU. This is directly opposite to the way European integration has taken place so far, namely through incremental steps and pragmatic decision-making. Furthermore, Member States have very differing views when it comes to the future of the EU. At one end of the

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* Giandomenico Majone is External Professor at the European University Institute in Florence, Italy and Visiting Distinguished Professor at the EU Center and Graduate School of Public and International Affairs at the University of Pittsburgh, United States.

spectrum there are countries such as Belgium and Luxembourg, proponents of a full-fledged federal European state, while at the other end there are countries such as the United Kingdom and Denmark that believe the EU should be as ‘intergovernmental’ as possible in order to make sure Member States remain powerful. Subsequently, this conflict makes it difficult to find solutions for the democratic deficit and give direction to European integration.\textsuperscript{41}

The myriad of opinions on the nature and goals of the EU have resulted in a wide variety of explanations of the democratic deficit. This has led to the development of an intricate debate on the legitimacy of the EU.\textsuperscript{42} Indeed, there is no one single definition of what the democratic deficit entails and how this phenomenon influences the legitimacy of the Union. Simon Hix\textsuperscript{*} and Andreas Føllesdal\textsuperscript{*} have identified four notions of the democratic deficit that are widely used by academics, politicians, the media and the public. These four main claims sum up what the democratic deficit entails and this so-called ‘standard version’ of the democratic deficit will be explained in the next paragraph.

\textbf{2.2 The standard version of the democratic deficit}

First of all, the deficit is said to be caused by an increase in executive power and the simultaneous decrease of national parliamentary control of the executive.\textsuperscript{43} In national liberal democracies, the parliament can hold the executive accountable because it has the power to hire and fire the executive branch of government and is expected to scrutinize laws and decisions made by the government. National parliaments can hold their executives responsible for decisions they make in Europe, but are often given a ‘take it or leave it’ proposition that is the result of secret negotiations in the Council. The influence of national parliaments is therefore less than what they are accustomed to at the national level. Moreover, decisions made by the Council are often taken by Qualified Majority Voting (QMV), which means a Member State can

\textsuperscript{42} Wimmel, Theorizing the Democratic Legitimacy of European Governance, 185-194.
\textsuperscript{*} Simon Hix is Professor of European and Comparative Politics at the London School of Economics and Political Science, United Kingdom.
\textsuperscript{*} Andreas Føllesdal is Professor and Director of Research at the Norwegian Centre for Human Rights, University of Oslo, Norway.
potentially be overruled to accept a decision, even if their own national parliament is opposed.\textsuperscript{44} Transfer of decision-making power to the European level has made the executive body less accountable to the national representative body which has resulted in democratic deficit.

The second point is related to the first point about the relative increase of executive power in the EU. The loss of influence of national parliaments vis-à-vis the executive would be less problematic if the European Parliament was able to make up for the loss. Yet the European Parliament does not have enough capabilities to fully make up for the loss of power experienced at the national level by national parliaments. The power of the EP has been steadily increasing over the last decades, most notably by giving it a prominent place within the decision-making process of the EU after the introduction of the co-decision procedure. Yet despite its increasing importance it is still not the primary legislative body of the EU. Instead, the Commission and Council have this role and the EP is unable to hold these institutions accountable at the European level the same way national parliaments can with their ministers,\textsuperscript{45} despite its final say in the acceptance of the budget and the composition of the Commission.

The third point also concerns the EP and states that there are no true ‘European’ elections. They are not about the direction of European policy and are treated by the media and public as mid-term national elections.\textsuperscript{46} What is more, citizens of Member States are only allowed to vote for representatives from their own country, which adds to the idea that the ‘European’ factor is of secondary importance. In addition, the voter turn-out for European elections has been steadily decreasing from 62 percent during the first EP election in 1979 to 43 percent in the most recent EP elections of 2009.\textsuperscript{47} These statistics make the description of EP elections as\textit{second-order elections}\textsuperscript{48} seem appropriate to this day. The lack of interest in EP elections is not compensated at the national level since the issue of European integration is kept off the domestic agenda in most Member States.\textsuperscript{49}

\textsuperscript{44} Andreas Føllesdal and Simon Hix, ‘Why there is a Democratic Deficit in the EU: A Response to Majone and Moravcsik’,\textit{Journal of Common Market Studies} 44:3 (2006) 535.
\textsuperscript{45} Ibidem.
\textsuperscript{46} Ibidem, 536.
\textsuperscript{47} European Parliament, ‘Turnout at the European elections (1979-2009)’, \url{www.europarl.europa.eu}
A fourth claim that is made concerning the democratic deficit of the EU is that it is too distant from voters, both in the psychological and institutional way. The psychological reason is that the EU is too different from domestic democratic institutions citizens are used to. The institutional version of this argument claims that electoral control over the institutions is too removed from its citizens. These two reasons lead to a lack of understanding of the EU and the resulting apathy hinders the ability of people to identify with it and in turn view it as a democratically legitimate institute.50 This view builds on the assumption that the legitimacy of a political community is derived from a ‘demos’ that shares certain identifiable values and feelings of belonging to an inclusive polity. Since the EU is still lacking this strong common identity among its citizens, the democratic deficit persists.51

The first three definitions of the democratic deficit are viewed from an institutional perspective, which is the most common. The fourth view deals with common identity and values and can be classified as a socio-psychological perspective. Both perspectives provide arguments that are helpful in determining the nature of the deficit and they both identify the problem as a result of a lack of input from citizens within the process of EU decision-making. However, these standard definitions of the democratic deficit are not accepted by all political science scholars. The next sub-chapter will explain the opposing views that are held by other experts that claim that the democratic deficit is not a problem for the EU at the moment.

2.3 Opposing views of the democratic deficit
The views on the causes for the democratic deficit as expressed in the previous paragraphs are held by a large number of political scholars and the public alike. One could even say there is a general consensus regarding the existence of the deficit.52 However, in recent years there have been a few important political science scholars that have attempted to redefine the meaning and importance of the democratic deficit by giving arguments that counter the general consensus. The most prominent of these experts are Andrew Moravcsik* and before-mentioned Majone.

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50 Hix and Follesdal, 536-537.
* Andrew Moravcsik is Professor of Politics and International Affairs at Princeton University, United States.
This paragraph will try to give a short summary of the arguments made by them to get a better perspective on the issue as a whole.

Moravcsik was one of the first experts to raise questions about what he calls ‘the myth of the democratic deficit’. He claims that the most fundamental source of EU legitimacy can be found in the democratic accountability of national governments. The reason for this is that the EU is still largely an intergovernmental institution which relies on elected officials to make decisions. The people who believe the EU does have a democratic deficit hold the EU to an idealized conception of democracy that does not exist in modern-day Western society. Instead, Moravcsik claims that the EU is at minimum just as democratic as the Member States of which it is composed. These bold statements are in direct opposition to the general consensus that exists in the field of political science. There are a number of arguments to support his claims, the most important of which will be discussed below.

One of the most compelling arguments made by supporters of the democratic deficit claim, as was seen in the previous paragraph, is the absence of political accountability at the European level. The actors making decisions at the European level do not answer directly to the electorate. Moravcsik does not agree with this allegation because the most important decisions made at the European level involve the Council of Ministers which is comprised of nationally elected officials. On the other hand the Commission, admittedly a more undemocratic institution, is seen by Moravcsik as losing relative influence in the past decades. This means that nearly every European decision-maker is subject to political accountability.

Another one of his arguments is that the EU only has competencies in a few core areas such as trade. The scope of exclusive EU policies is not large and therefore much is excluded from the policy agenda. The future of an EU that keeps expanding its prerogatives is unfeasible since the EU does not ‘tax and spend’ the way national states are accustomed to doing. This means the EU is most likely to increase its competencies through Treaty reform which in turn requires unanimity-voting in an intergovernmental structure. Also, the implementation of EU policies is left to the individual Member States. At the end of the day the EU does not have the

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54 Moravcsik, Myth of Democratic Deficit, 332.
55 Moravcsik, Myth of Democratic Deficit, 335-336.
56 Moravcsik, Reassessing Legitimacy in the EU, 607.
investigatory and administrative capabilities needed to become a state similar to its Member States, and effectively is democratically legitimate.\textsuperscript{57}

The view that the EU is not democratically legitimate because it is too distant from voters is also discounted by Moravcsik. Again he turns to the argument that EU competencies are found only in very distinct policy areas which furthermore hold little or no political salience. This is the reason there are no Europe-wide debates over desired outcomes, no significant opinion formation by citizens and low turn-outs for European elections. Salient topics such as social welfare, healthcare, pensions and education are mostly untouched by the EU.\textsuperscript{58} Non-participation and apathy are the result of this attitude and do not stem from the lack of input Europeans have in the EU. The search for effective policy outcomes can therefore be left to technocrats that will find the best policies available.\textsuperscript{59}

Majone’s arguments against the need for more democracy at the European level come from his view that the EU is a ‘regulatory state’. The EU was created by Member States as a regulatory agency, the fourth branch of government. As such, it is required to produce policy outcomes that are Pareto-efficient\textsuperscript{*} and European governments have transferred powers to the EU specifically for this reason. From this point of view making European institutions more democratic would be counterproductive since majoritarian decision-making at the European level will most likely not produce Pareto-efficient decisions. Instead, politicizing European decisions will lead to less legitimacy because implemented policies will be chosen with the short-term interest of the political majority in mind and not the long-term effects. Less effective decision-making will eventually lead to less output legitimacy.\textsuperscript{60} This argument is similar to Moravcsik’s claim that the search for effective policy outcomes needs to be in the hands of technocrats since the EU does not deal with salient topics.

The arguments presented by Moravcsik and Majone shed a different light on the EU’s lack of democratic legitimacy and show that the allegations of democratic deficit proponents should not be taken at face value. Their arguments also show that the way the EU is viewed and characterized is an important factor. This is true of all of the views that have been described so

\textsuperscript{57} Moravcsik, Reassessing Legitimacy in the EU, 607-609.
\textsuperscript{58} Moravcsik, Myth of Democratic Deficit, 333
\textsuperscript{59} Ibidem, 339.
\textsuperscript{*} Pareto-efficient means that a change from one allocation to another makes at least one individual better off without making any other individual worse off.
\textsuperscript{60} Majone, question of standards, 27-28.
far. All of the justifications given by various political scholars that claim their view is correct can be criticized. For example Majone’s ‘regulatory agency’ with Pareto-efficient decisions is far from current European reality where finding a Pareto-efficient decision that has no detrimental effects on anyone is nothing short of impossible and at the very least implausible.\footnote{Hix and Føllesdal, Response to Majone and Moravcsik, 542-543.}

Moravcsik’s compelling arguments against the existence of the democratic deficit also have weaknesses in them, as Hix and Føllesdal attempt to show. This is particularly true of Moravcsik’s argument on low political salience of European policies as the reason for unenthusiastic European citizens, which in turn makes reform from the input side unnecessary and even undesirable. One of the key features of a democratic state is that its citizens form policy preferences based on deliberation and party contestation. It can be said that voters’ preferences are shaped by the democratic process, which could very well produce different outcomes from the outcomes that are produced by technocrats in Brussels. In short, the preferred policy outcomes are not necessarily corresponding with citizens’ preferences after debating an issue. The salience of the intended policy is therefore not a pre-determined, unchangeable given but is to a certain extent shaped by and within the political process itself. If this process is lacking the (democratic) requirements for creating debate amongst citizens to shape and express their preferences, steps must be taken to improve the process.\footnote{Hix and Føllesdal, Response to Majone and Moravcsik, 545-546.}

At the same time Christopher Lord\footnote{Christopher Lord is Professor at ARENA, the Centre for European Studies at the University of Oslo, Norway.} and David Beetham\footnote{David Beetham is Professor Emeritus at the University of Leeds, United Kingdom.} claim that the EU needs to meet the same standards of legitimatization as states since there are too many similarities between the Union and states. This follows from the expectations of the Union that are held by the public, the kind of choices the EU makes on behalf of its citizens and from the extent to which the EU has final rule-making authority. Lord and Beetham show that the public expects to hold the EU accountable to the same standards as states by looking at Eurobarometer results. They also claim that just because a decision is Pareto-efficient it does not take away the need for democratic legitimization since that decision is made on behalf of the citizens. Finally, the importance of the EU as a final rule-making authority has been on the rise with the transfer of policy areas to the European level. According to Lord and Beetham, the arguments of Majone and Moravcsik are
inadequate.\textsuperscript{63} It seems that Majone’s and Moravcsik’s arguments opposing the general agreement that exists in the democratic deficit discourse are not sufficient to settle the debate on the democratic deficit for good.

So far a number of different opinions on the democratic deficit have been outlined and pitted against each other. The next paragraph will look at a legitimacy theory put forward by Fritz Scharpf, who has created a unique view on legitimacy in the EU by differentiating between so-called input- and output legitimacy. What Scharpf has essentially done is take a step back and look at the essence of the different arguments. By doing this, he has discovered how input and output arguments are used in the debate on the democratic deficit and in what way the difference between the two is vital when looking at the legitimacy of the EU. Separating these two perspectives gives the advantage of being able to view the legitimacy of the EU through a different prism. The next paragraph will show that Scharpf’s view can be used as a tool to assess the legitimacy of European foreign policy after the Lisbon Treaty.

\textbf{2.4 Scharpf: European legitimacy is an issue}

Fritz Scharpf focuses on the political salience of European policies when discussing the democratic legitimacy of the EU. Majone’s argument which claims that the EU is a regulatory agency dedicated to regulating economic efficiency that needs to be protected against political intervention is deemed unfit by Scharpf. He points to the negative effects that can be expected even in the uncontroversial area of trade liberalization to show that Majone’s argument is not sufficient. It can be empirically proven that trade liberalization has been beneficial for consumers but has at the same time led to loss of jobs. Any regulation of competitive practices will have winners and losers which makes Pareto-efficiency almost always unattainable.\textsuperscript{64} Nevertheless, Scharpf must concur that trade liberalization has been generally uncontroversial in the eyes of Member States and the public.\textsuperscript{65} In this sense he is willing to follow Moravcsik’s argument that

\textsuperscript{65} Scharpf, Problem-solving Effectiveness, 6.
most of what the EU has done was less in need of explicit political legitimization since it had low political salience.

But times have changed and the competencies of the EU have been increasing. This has resulted in more politically salient policies at the EU level. External factors such as changing security concerns and internal factors of economic and monetary integration have pushed new problems on the European agenda. These problems have high political salience on the national agenda but at the same time national interests for dealing with these problems diverge. Broad consensus on these topics is therefore hard to reach. The result of this is that Member States are faced with problems they cannot deal with by themselves, but are unable to deal with at the European level which leaves certain problems unresolved. One of the consequences is that the legitimacy of EU policies is being questioned, not in the least by EU institutions itself.

In order to improve the legitimacy of EU policies, Scharpf has proposed certain reforms that might alleviate the problem. The next paragraph will outline his view on democratic legitimacy at the European level.

2.5 Input and output legitimacy

Scharpf has constructed a comprehensive framework that deals with democratic legitimacy. His starting point is a functional definition of legitimacy, describing it as “a socially sanctioned obligation to comply with government policies even if these violate the actor's own interests or normative preferences, and even if official sanctions could be avoided at low cost.” In other words, compliance with government policies is based on the belief that the government is justified in creating policies even if those policies may have an adverse affect on the specific actor. This acceptance is derived from the ‘generalized trust’ that the government will act according to the preferences of the people and that the people can hold the government accountable for the decisions it takes. This trust has been built upon institutional arrangements that are in place to ensure that the government will indeed be responsive to the people’s preferences and be able to provide effective solutions.

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66 Scharpf, Problem-solving Effectiveness, 6.
67 European Commission, White paper on European Governance, 2001
68 Scharpf, Problem-solving Effectiveness, 2
69 Scharpf, Problem-solving Effectiveness, 2.
The responsiveness to the people’s preferences is called *input legitimacy*, also defined as ‘government by the people’. The effectiveness of the created policies in dealing with common problems is known as *output legitimacy*, or ‘government for the people’. These two notions together represent the core of democratic legitimacy. Both input and output legitimacy are needed in a liberal state to attain democratic legitimacy, but there can be variations in the emphasis that is placed upon one or the other. The next two sections will explain the differences between input and output legitimacy and show how the EU can be characterized according to this scale.

### 2.6 Input legitimacy

Input legitimacy arguments rely on participation and consensus. Ideally, all persons affected by a decision, or representatives closely associated with them, need to be brought together to enter a discourse in which they will find the most acceptable solution to which all that are affected can agree. The decision that is then taken is legitimized because it represents the *volonté générale,* the general will of the people. This idea can be traced back to political philosopher Jean-Jacques Rousseau, whose works are seen as representative of the 18th century Age of Enlightenment.

This ideal-type situation of decision-making by consensus of all participants becomes more and more problematic as the distance between the affected persons and their representatives increases, and as the decisions that need to be taken cannot result in win-win solutions. In modern-day Western democracies this problem has been overcome by instituting majority decision-making. From the perspective of input legitimacy however, majority decisions are difficult to justify because of the potential of a hostile majority enforcing their will on a dissenting minority. For Scharpf this implies that plausible concepts of input legitimacy must include the willingness of dissenting minorities to trust that the majority will take their welfare into account. This trust is most likely to come about if there is a belief in an essential sameness, a so-called ‘thick’ collective identity.

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70 Scharpf, Governing in Europe, 6.
71 Ibidem, 7
* Jean-Jacques Rousseau, ‘... that the general will alone can direct the State according to the object for which it was instituted, i.e., the common good...’ in: The Social Contract, anno 1762.
73 Scharpf, Governing in Europe, 7
74 Scharpf, Governing in Europe, 8.
According to Scharpf, this thick collective identity is lacking in the European Union.\textsuperscript{75} The cultural divisions that exist between Member States stand in the way of forming a collective European identity that is comparable to the national identities that exist within the national boundaries of the Member States. This is the most important reason why the Union cannot claim legitimacy for its decisions based on the input oriented side. Evidence of this can be found in the continuing concern about the democratic deficit even after the competencies of the EP have been steadily increasing during the last decades.\textsuperscript{76} This could mean that citizens of the EU do not feel sufficiently represented by the EP, since the power increase at that level so far has not alleviated the concern about the democratic deficit. This suggests that institutional reforms will not greatly enhance legitimacy from the input-perspective, because the lack of a thick collective identity stands in the way of attaining the ‘generalized trust’ in the good of the (European) government.\textsuperscript{77}

Scharpf has been criticized for this view, mainly because he equates the notion of a ‘people’ (*demos*) with ‘community’ and ‘nations’. Throughout history the foundation of the state has preceded the development of the nation in many countries.\textsuperscript{78} A shared common identity based on a single ethno-cultural demos is therefore not necessarily a pre-requisite for the formation of a community in the legal sense and does not have to stand in the way of legitimized democratic (majority) rule. Moreover, a lot of existing states can be said to have multiple groups with different common identities within its borders. Belgium and Switzerland are notable examples of this.

Yet at the level of the Union it can hardly be argued that such an identity exists, or is at least strong (thick) enough to justify majority decision-making at the moment. There are no European-wide political discussions or opinion formation by the general public and the continuing enlargement of the EU has increased the heterogeneity of the Union even further.\textsuperscript{79} Examples that strengthen the position that a strong collective identity is necessary for legitimate majority rule can be found in recent history; in the absence of dictatorial oppression, multi-ethnic states such as Yugoslavia and Czechoslovakia disintegrated as a result of conflicts that could not be legitimately settled with majority decision making.\textsuperscript{80} At the same time, existing states with

\textsuperscript{75} Scharpf, Governing in Europe, 8.
\textsuperscript{76} Ibidem, 9.
\textsuperscript{77} Ibidem.
\textsuperscript{78} Tomassen and Schmitt, Democratic Legitimacy in the European Union, 10.
\textsuperscript{79} Scharpf, Governing in Europe, 10.
\textsuperscript{80} Scharpf, Problem-solving Effectiveness, 17.
multiple collective identities, such as Belgium, have established so many veto-positions that it is almost impossible for a majority to override the salient interests of a minority.\textsuperscript{81} It seems that, at least for the time being, legitimate majority rule comparable to its Member States is not a viable option for the EU.

2.7 Output legitimacy

On the other side of the spectrum output can be helpful in providing legitimacy. In the case of output legitimacy policies are justified because they provide collective solutions to common problems that could not be solved otherwise. These types of common problems arise because external factors affect a large group of people in a similar fashion or because of the interdependence of individual actions. From the output perspective the identity of the people involved is less problematic because the only thing that is necessary to justify collective action is the perception of common interests between the individual actors.\textsuperscript{82} Output legitimacy is thus based on common interest rather than a thick common identity. Common interest and identity are intertwined concepts, but as Scharpf puts it, a ‘thin’\textsuperscript{83} collective identity is sufficient from the output perspective, because the basis for a thin collective identity is less demanding. This thin common identity does exist at the European level, because it is derived from the perceived common interests. If there were no perceived common interests between Member States, European integration would not have happened in the first place.\textsuperscript{84}

This conclusion does bring about one of the difficulties of legitimacy based on output. Since there is only a thin collective identity there is no reason to believe in solidarity among members. This makes it hard to believe that the public interest will be an overriding factor in the decisions that are made by the actors in charge. In other words, there is a conflict between making the problem-solving capacity as large as possible and preventing the abuse of power by the actors in charge.\textsuperscript{85} In modern-day democracies there are several institutional mechanisms in

\textsuperscript{81} Scharpf, Problem-solving Effectiveness, 17.
\textsuperscript{82} Scharpf, Governing in Europe, 11.
\textsuperscript{83} Ibidem, 11.
\textsuperscript{84} Ibidem.
\textsuperscript{85} Ibidem, 13.
place to secure a balance between power-constraining and action-enabling features. The most important of these mechanisms are electoral accountability and judicial independence.\textsuperscript{86}

Electoral accountability is important not only to express ‘the will of the people’ in the sense of input legitimacy, but also as a way to hold the actors in charge accountable for their actions. The most common way of providing this accountability is through free and general elections.\textsuperscript{87} Simplistically put, a politician will have more incentives to make effective decisions and stay away from the abuse of power when that politician is accountable to the general public that can vote him/her out of power in the next election. In this way, electoral accountability serves as reinforcement for office holders towards the public interest.

Another way to prevent the abuse of power is by instituting an independent judicial system. It is unreasonable to believe that a countries’ electorate can sufficiently deal with all wrongdoings that happen in society that are often complex and affect few individuals at the time. Independent judges are held accountable through elaborate rules of ‘due process’ and the critical role of the legal profession. In worst case scenarios, intervention by an electorally accountable legislature can intervene.\textsuperscript{88} An independent system of expertise is therefore another tool to make the abuse of power as difficult as possible.

These mechanisms combined work to ensure output legitimacy at the national level. At the European level, however, majoritarian intervention by an electorally accountable legislature does not exist and Treaty changes to correct policies are arduous and practically unavailable. As a consequence, the legitimacy of European policies depends mostly on the effectiveness in achieving consensual goals. Legitimizing policies that have high political salience is therefore impossible.\textsuperscript{89} This is in of itself not a problem. It just means that the EU should only deal with problems on which interests converge and consensus can be reached. The problem, as explained earlier, lies in the idea that in certain policy areas the capability of acting at the national level to solve problems is constrained, while the differences in national interests prevents effective action from taking place at the European level. According to Scharpf, this is the cause of the deficit at the European level. To overcome this \textit{problem-solving gap} effective action, and thus output legitimacy, must be increased.

\textsuperscript{86} Scharpf, Governing in Europe, 14-15
\textsuperscript{87} Ibidem, 14.
\textsuperscript{88} Ibidem, 15-16.
\textsuperscript{89} Ibidem, 22-23.
2.8 Reforms for improved effectiveness

Solutions for the problem-solving gap that has been identified by Scharpf are not easily found. Even Scharpf himself admits that a full-blown solution to this problem is not readily available.\textsuperscript{90} Yet there are several options that could enhance and increase the effectiveness of European policy, which in turn would lead to increased output legitimacy.

The first proposed structural change looks at possibilities for increasing effectiveness through democratic accountability. Proposals for more democratic accountability usually envisage full legislative and budgetary powers for the EP, giving it equal powers to national parliaments’ capabilities.\textsuperscript{91} Scharpf’s argument against this reform on the input side is that the necessary thick collective identity for legitimate majority rule is currently not available in the Union. However, this does not mean that all reform at the input side is out of the question. Output can be increased by changing decision-making procedures. This could mean moving more policy areas from unanimity voting to Qualified Majority Voting (QMV) in the Council.

The second proposition explores the option of flexible integration. This means that the Union should let go of the notion of uniformity, and should instead have liberal rules for allowing ‘Enhanced Cooperation’. This means that when consensus cannot be reached by all Member States, those that do agree should be able to proceed. Conversely, Member States must be allowed to opt-out if their interests or preferences are violated by a policy favored by the majority.\textsuperscript{92} This pragmatic approach to European integration can have a positive effect on the output legitimacy of the European Union.

Scharpf’s measures for increasing effectiveness are quite conservative, which is understandable since he believes the conditions are not in place for a major step forward in making the EU more democratic. Other political science experts have also offered useful ideas for increasing effectiveness, more specifically in the area of foreign policy. Amongst others, Anand Menon\textsuperscript{*} has identified several options.

Reforms suggested by Menon are aimed at improving the coherence of foreign policy. Part of this consists of the implementation of clear institutional leadership in foreign policy matters. The EU must make a decision on where the primary locus of foreign policy lies. This

\textsuperscript{90} Scharpf, Governing in Europe, 21.
\textsuperscript{91} Ibidem, 16.
\textsuperscript{92} Scharpf, Problem-solving Effectiveness, 18-19.
\textsuperscript{*} Anand Menon is Director of the European Research Institute and Professor of European Politics at the University of Birmingham, United Kingdom.
institute, in turn, must have the appropriate amount of financing and staff at its disposal.\textsuperscript{93} This coherence also needs to be achieved between the different institutions that are involved in the foreign policy process. Improving the coherence of foreign policy can simultaneously increase its effectiveness.

The Lisbon Treaty has attempted to deal with the unsustainable situation concerning CFSP and the broader EU foreign policy area by introducing institutional changes. These changes are supposed to confront the dual problems of the EU acting as one and the lack of internal coherence. These institutional changes and their consequences are explained in the next two separate chapters. The progress that has been made will be discussed in the last chapter, based on a case study about European regional policy in the Southern neighborhood.

Institutional changes:

\begin{itemize}
  \item decision-making procedures\textsuperscript{94}
  \item coherence between instruments and actors\textsuperscript{95}
\end{itemize}

\subsection*{2.9 Conclusion}

The idea of an existing democratic deficit in the EU is much debated and contested. Influential authors such as Hix and Føllesdal, Lord and Beetham, Majone and Moravcsik have all contributed to a rich body of literature about the legitimacy of the EU. In essence, the debate about the supposed democratic deficit is about the nature of the EU itself, about what the EU actually is as well as what it could or should be in the future. The standpoints taken by political science scholars can be viewed from this light. Scharpf has made the distinction between input and output legitimacy that is used in this thesis.

It seems like the conditions for legitimacy from the input-side are not in place and it is hard to imagine that the major step that needs to be taken to create a Union similar to a Western democratic nation-state would be accepted either by European citizens or their leaders. It is therefore safe to say that, for the time being, majority rule at the European level cannot be relied

\textsuperscript{93} Scharpf, Problem-solving Effectiveness, 7-8.
\textsuperscript{94} Scharpf, Governing in Europe, 16-19
\textsuperscript{95} Menon, Enhancing the effectiveness of foreign policy, 2-3.
upon to legitimize policy decisions. When viewed from the perspective of input legitimacy the Union is indeed lacking the necessary conditions to reduce the democratic deficit.

By placing the focus on output, Scharpf makes a distinction between interest and identity for achieving legitimacy. For the EU this is a useful way of looking at legitimacy issues, since for the time being the idea of a strong common identity to support majority decision-making to increase input legitimacy is not available, while the range of perceived common interests does suggest the existence of a thin collective identity that is needed to justify action taking place at the EU level. The problem-solving gap that has resulted from European integration on issues that are politically salient and unsolvable at the national level is cause for the existence of the deficit. By looking at European foreign policy through the perspective of output, reforms to improve efficiency may be found that are acceptable to the Member States since these reforms do not necessarily have to rely on a loss of power on their part. Scharpf and authors such as Menon have identified changes that could increase the output legitimacy of European policy and thus reduce the problem-solving gap. Changes in decision-making procedures and changes that could improve coherence will be further explored in the next chapters.
Chapter 3: To what extent has CFSP decision-making changed after the Lisbon Treaty?

Decision-making procedures can impact the effectiveness of a policy in different ways. First, it influences the extent to which (a group of) actors is able to reach a decision. Second, the quality of the policy that is decided on can be influenced by the type of procedure that is used. This chapter will first examine how decision-making procedures influence policy effectiveness in the EU. After that, decision-making procedures in the area of CFSP after the implementation of the Lisbon Treaty will be explained. Then, the options for improved decision-making through possibilities for flexible integration will be discussed. The final paragraph will research to what extent these changes have been able to improve the effectiveness of CFSP decision-making.

3.1 Different procedures can affect decision-making effectiveness

The rules of the game are an important aspect in deciding on European policies. In the case of the Council, the main decision-making institution of CFSP, it is about the rules that are used to determine what percentage of the vote is needed to pass or block a decision. This is called a weighed vote. Simply put, the lesser (percentage of) votes that are needed to reach a Council-decision, the easier it can be to adopt a policy. The rules are the framework within which the actors (decision-makers) operate. The framework of rules has influence on the distribution of power between the Member States, because each Member State’s vote has a certain weight. It is therefore no surprise that these rules have been the topic of tough negotiations between Member States, most recently during the negotiations on the Lisbon Treaty.96

The procedures that are used for decision-making influence the overall effectiveness of decision-making. A reason for this is the difference in interests that can and often does exist between actors which leads to different preferences regarding the outcome of a decision.97 The final decision then has to be a compromise between the actors involved or it will result in a failure to reach a decision altogether. The opaque processes of bargaining and package deals

97 Scharpf, Problem-Solving Effectiveness, 12.
between Member States make it hard to predict whether it will be possible to reach a satisfying or efficient result.⁹⁸

Depending on what framework of rules is used, the salience of the topic on which a decision is needed and the number of actors involved in the decision-making process can affect the possibility of reaching a decision. As noted before, actors usually have strong interests and preferences concerning politically salient topics which could make it harder to reach consensus. The number of actors involved in the process can also make compromises more difficult to reach since the compromise will have to accommodate more interests and preferences. Eventually, the end-result of bargaining between actors to reach a viable decision can culminate in either political action or political in-action.

When looking at the European level the resulting decision for action or in-action in itself does not raise significant issues.⁹⁹ Essentially, political inaction, or failure to reach consensus, is a decision not to act at the European level. However, as noted by Scharpf, inaction can become a problem if the Member States are incapable or under constraint to make a correct policy decision at the national level to deal with a common challenge.¹⁰⁰ Figure 1 represents a simplified flowchart of the decision-making process in CFSP. Political action will result in a policy decision whereas political action will cause the CFSP issue to remain unresolved at the European level, thus resulting in a perceived problem-solving gap.

Figure 1: Perceived problem-solving gap

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⁹⁹ Scharpf, Problem-Solving Effectiveness, 13.
¹⁰⁰ Ibidem.
This perceived problem-solving gap can be found in certain policy areas, foreign policy being one of them. A lot of foreign policy measures have high political salience which makes the quest for European consensus hard. At the same time international developments both within and outside the EU increase the pressure on Member States to search for common foreign policy measures instead of operating solo.\textsuperscript{101} This is not in the least the result of heightened foreign policy expectations of the Union after the end of the Cold War. The removal of threat in the East created a new dimension for the EU which generated the promise of Europe as an influential regional actor.\textsuperscript{102} The pressure for achieving this was generated both within and outside the EU. International (political) circumstances and expectations have made common foreign policy desirable.

Another way in which decision-making procedures are important is by influencing the quality of the policy that is decided upon. In other words, the structure within which decisions are made can have an impact on the effectiveness of the policy itself. This is particularly true of consensus decision-making, which is frequently used in the area of CFSP.\textsuperscript{103} Consensus is necessary for decisions to be made, because policy in the CFSP-area is most commonly decided on through unanimity.\textsuperscript{104} This means that every member state can veto a decision with which it does not agree. A strive for consensus is necessary to ensure this does not happen. The process of consensus decision-making is aimed at reaching a decision that all participants are satisfied with.

Unfortunately, consensus decision-making has downsides that can have an impact on the efficiency of the policy that is decided on. Consensus decision-making emphasizes the \textit{process} of reaching a decision; the \textit{substance} of the final outcome is of less importance.\textsuperscript{105} The most radical example of this is the so-called \textit{Abilene paradox} in which actors collectively decide on a policy that counters the preferences of all.\textsuperscript{106} This form of groupthink can happen as a result of miscommunication and the desire of participants to not ‘rock the boat’, or be the actor that blocks a decision the rest of the actors are perceived to desire.

\textsuperscript{101} Simon Nuttall, \textit{European Foreign Policy}, (1\textsuperscript{st} edition; Oxford 2000) 2.
\textsuperscript{102} Walter Carlsnaes, Helene Sjursen and Brain White (eds), \textit{Contemporary European Foreign Policy}, (1\textsuperscript{st} edition; London 2004) 13-14.
\textsuperscript{104} R.H. van Ooik en R.A. Wessel, \textit{De Europese Unie na het Verdrag van Lissabon}, (1\textsuperscript{e} editie; Deventer 2009) 182-183.
\textsuperscript{105} Toje, The Consensus–Expectations Gap, 128.
\textsuperscript{106} Ibidem.
Consensus as the preferred method of CFSP decision making has both advantages and disadvantages. Creating policy that all Member States agree with facilitates harmony and continuity. This is one of the reasons CFSP decisions rarely actually come to a vote in the Council. On the other hand, deciding on politically salient issues with a resulting failure to reach consensus can leave important issues unresolved leading to a problem-solving gap, whereas the actual policy-outcome of consensus decision has a chance of not being as effective as possible. Making changes to the decision-making structure may have some positive effects for the area of CFSP. The next paragraph will look at changes introduced by the Lisbon Treaty.

3.2 Changes in the European foreign policy structure after the Lisbon Treaty

One of the most eye-catching innovations of the Lisbon Treaty is the creation of the ‘new’ post of High Representative of the Union for Foreign Affairs and Security Policy (HR), who will simultaneously hold the position of Vice-President of the Commission. The HR will also chair the Foreign Affairs Council. According to the new Article 9E, the HR shall ‘conduct the common foreign and security policy’. Moreover, the HR is formally responsible for the consistency and coherence of all aspects of external action. The double-function of the new HR/VP brings more importance to the job and is in that sense a step forward from the old post of High Representative.

Another novelty of the Lisbon Treaty is the function of ‘President of the European Council’. Previously, the European Council was chaired by a member state on the basis of a two-yearly rotating system. With the Lisbon Treaty, a President will be appointed by the European Council on the basis of a qualified majority for two-and-a-half years, renewable once. The permanent President cannot simultaneously hold office in one of the Member States. An important task of the President is the external representation of the EU in CFSP, a responsibility shared with the High Representative.

108 Article 9E(4) TEU
109 Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 34.
These innovations stipulate that with the introduction of the Lisbon Treaty the so-called foreign relations *Troika* has come to an end. The troika represented the external representation of the Union before Lisbon, consisting of three actors: the ‘old-style’ High Representative, the Commissioner for external relations and the member state chairing the European Council.\(^{111}\) It can safely be said that the new HR will be at the center of CFSP and all other matters in the context of EU external relations.

Despite the loss of the presidency of the Council of Foreign Affairs, it can be said that the Member States maintain their pivotal role in the area of CFSP. The Council of Ministers remains the most important institution in taking CFSP-decisions.\(^ {112}\) Unanimity is still used as decision-making method, albeit with a few exceptions discussed later in this chapter. This means that a strive for consensus remains vital to the functioning of the CFSP, in which the Member States act as the main decision-making body of CFSP, guided by the direction of the intergovernmental European Council.

The role of the Commission in the CFSP, which used to be formally non-existent, is now somewhat extended. Article 30 (1) of the Treaty of European Union (TEU) states that ‘the Member States, the High Representative, or the High Representative with the Commission's support, may submit initiatives or proposals relating to the common foreign and security policy to the Council.’\(^ {113}\) The Commission now has a formal means of initiating policy in the area of CFSP, together with the High Representative. Furthermore, the HR will be the Vice-President of the Commission while simultaneously president of the Foreign Affairs Council. This could allow the Commission to partake in the CFSP process in a more direct fashion. This obviously also works the other way around; Member States can influence the HR who also sits at the table of the Commission.

As for the competencies of the European Parliament, it will be consulted by the HR concerning CFSP.\(^ {114}\) However, Article 24(1) excludes any ‘legislative acts to be adopted.’ This essentially means that the formal role of the EP in the area of CFSP decision-making will remain small. Only in specific cases where decisions cover both CFSP and other External action areas, the role of the EP could potentially increase, since these situations will be subject to ‘specific

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\(^{111}\) Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 35.
\(^{113}\) Art. 30 (1) TEU
\(^{114}\) Art. 36 TEU
rules and procedures.\textsuperscript{115} However, through its role in budgetary matters the EP could potentially exert and extend its influence in European foreign policy and CFSP. Within the decision on the budget for the new External Action Service, for example, the EP has co-legislator power\textsuperscript{116}, since the Treaty states that the EP (together with the Council) shall establish the annual budget.\textsuperscript{117}

Finally, the role of the European Court of Justice remains limited.\textsuperscript{118} Although the Lisbon Treaty abolished the pillar-structure of the Union, the area of CFSP falls under a separate title of the Treaty. This has been done to emphasize the difference between the legal order of the CFSP on one side and the rest of the Treaty on the other.\textsuperscript{119} Article 40 TEU confirms the separation of the two legal orders and stipulates that CFSP and other Union external action competencies may not hinder each other. The Court of Justice can protect the Unions’ external action against the CFSP and vice versa.

It seems like decision-making procedures of the CFSP have not been fundamentally altered since the Member States maintain their central position in CFSP. Unanimity and consensus are still the key-words. The new structure with the permanent presidency of the European Council and especially the new High Representative is significantly different from before; the foreign policy Troika is now a construct of the past. The next paragraph will examine opportunities for breaking away from the unanimity-voting available in the Treaty that could potentially influence efficiency.

3.3 Options for escaping unanimity-voting

Although the institutional structure of CFSP decision-making procedures has been changed the European Council and Council of Ministers, and thus the Member States, maintain their pivotal role in the area of CFSP. Attesting to this is the widely-used unanimity voting rule. However, the Lisbon Treaty does include a few options that can be used to escape the unanimity rule to allow for more flexible decision-making.

\textsuperscript{115} Art. 24(1) TEU
\textsuperscript{116} Council Decision 2010/427/EU Article 7(2).
\textsuperscript{117} Art. 310 (1) TFEU
\textsuperscript{118} Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 184.
\textsuperscript{119} Ibidem.
As mentioned before, there are a few situations in which qualified majority voting on CFSP issues is possible. The Passerelle clause in Article 31(3) TEU allows the European Council to decide to replace unanimous voting in the Council with qualified majority voting.\footnote{Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 46-47.} The Passerelle clause ensures a certain amount of flexibility since this kind of change could normally only happen with the adaptation of a new Treaty. For CFSP qualified majority voting can be used when the Council is voting on a proposal of the HR.\footnote{Whitman, Foreign Security and Defence Policy, 4} This proposal must be based on a request of the European Council, where the unanimity rule ensures that Member States have the option of a veto.\footnote{Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 182.} On top of that, the so-called emergency brake\footnote{Ibidem, 44-45.} mentioned in Article 31(2) ensures that Member States can block a CFSP qualified majority vote in the Council ‘for vital and stated reasons of national policy’. The issue will then be referred back to the European Council for a unanimity vote. Article 31(2) also lists other specific CFSP-decisions to be taken by qualified majority.

Another way in which decision-making can be made easier is by changing the weighed voting rules of qualified majority voting. Before the new Treaty, at least 72 percent of the weighed vote was needed to pass a proposal, with the addition that the states in favor of the policy together combine at least 62 percent of the EU population. A third condition required that two-thirds of the Member States had to support the proposal.\footnote{Ibid, 44-45.} With the implementation of the Lisbon Treaty, this three-tiered model has been replaced by a system of double majority. The percentages needed to pass a vote under QMV have also been altered. A majority now consists of 55 percent of the number of members of the Council (with a minimum of fifteen members) that represent at least 65 percent of the population of the EU.\footnote{John McCormick, Understanding the European Union, (3rd edition; Hampshire 2005) 93.} The new QMV rules do have an exception in the area of CFSP; when the Council votes on a proposal of the HR or HR/Commission, a majority of 72 percent of the members of the Council is necessary to make a decision.\footnote{Art 16(4) TEU}

Another change made within the QMV-rules deals with blocking proposals from being accepted. A blocking minority must consist of at least four Member States that must represent at minimum a third of the population. This means that the three largest Member States that together

\begin{footnotesize} 
\begin{enumerate} 
\item Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 46-47. 
\item Whitman, Foreign Security and Defence Policy, 4 
\item Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 182. 
\item Ibidem, 44-45. 
\item Art 16(4) TEU 
\item Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 40. 
\end{enumerate} 
\end{footnotesize}
represent more than 35 percent of the Union’s population cannot block legislation without a fourth ally.\textsuperscript{127} This rule was installed to safeguard smaller Member States from the three largest Member States’ new potential to block decisions together.

The new voting rules reflect the differences in population-size between countries. In reality, these new rules ensure more voting-power to Member States with a larger population. For example, Germany now has more voting power in the Council compared to France and the UK, whereas under the old rules they had the same voting power.\textsuperscript{128} The smaller Member States, on the other hand, lose some of their clout. Before the Lisbon Treaty they were overrepresented compared to countries with a larger population, and the new rules have effectively ended that.\textsuperscript{129}

The new QMV rules will go into effect in November 2014. Before then, the old rules will continue to apply. In the period between November 2014 and April 2017 the new rules will be used but for every proposal a member state may request that the old rules are used instead. The new system of QMV-rules will fully go into effect on March 31, 2017.\textsuperscript{130} This means that for years to come the new rules will not be applicable yet, or subject to the specific requests of Member States. The actual effects of the changes in QMV will not be known for quite some time, although on paper the lower threshold suggests that when QMV is used it will be easier to come to a decision. Besides changes in QMV the Treaty has another option to escape the problems associated with unanimity-voting. This option will be discussed in the next paragraph.

3.4 Flexible integration

As was shown in previous paragraphs, unanimity is still the norm for CFSP, while the changes made to the rules of qualified majority voting are fairly limited. Even though these changes cannot be realistically judged since they have not taken effect yet, the general assessment amongst many EU scholars is that a significant improvement in efficient decision-making as a result of these changes will not occur.\textsuperscript{131} However, decision-making modes are not the only options available for creating opportunities for more efficiency. As Scharpf has pointed out in his

\textsuperscript{127} Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 40.
\textsuperscript{128} McCormick, Understanding the EU, 93.
\textsuperscript{129} Van Ooik en Wessel, De Europese Unie na het Verdrag van Lissabon, 40.
\textsuperscript{130} Ibidem, 42.
work on European-level output legitimacy, possibilities for flexible integration in the EU could contribute to more effective policy-making.\textsuperscript{132}

A simple explanation of flexible integration is that a (pre-defined) majority of Member States is willing and able to pursue further integration in a specific policy field, and the Member States who do not wish to partake will be exempt from following.\textsuperscript{133} This could provide possibilities to improve effectiveness, since this flexibility allows dissenting members to avoid (the consequences of) a decision while at the same time letting others progress. Flexibility can thus be used to escape deadlock. It this sense, the notion of flexible integration is useful in policy areas that primarily use unanimity-voting, such as CFSP.

Despite the advantages of flexibility, the debate on the desirability of \textit{differentiated integration} has been continuing for decades.\textsuperscript{134} A reason for this is that the idea of \textit{uniformity} has been a hallmark of European integration.\textsuperscript{135} The assumption behind the importance of uniformity is that (too much) differentiated integration will result in competing European blocs and the eventual disintegration of the Union as we know it.\textsuperscript{136} The conflicting consequences of flexibility have resulted in attempts to integrate options for flexible integration in the Union’s framework that at the same time safeguard against the threat of dissolution. For the EU, three forms of flexible integration can be distinguished:

- Predefined flexibility. This allows a specific set of Member States to further integrate in a specific policy area. The Economic and Monetary Union (EMU) is an example of this.\textsuperscript{137}
- Case-by-case flexibility. This allows Member States to abstain from a decision without vetoing it.\textsuperscript{138} In Article 31(1) of the Lisbon Treaty this is known as \textit{constructive abstention}.
- Enabling clauses. These allow a subset of Member States to further integrate within a clearly defined structure outlined in the Treaty.\textsuperscript{139} A Treaty-framework for flexible integration was

\begin{itemize}
  \item \textsuperscript{132} Scharpf, Problem-Solving Effectiveness, 18.
  \item \textsuperscript{133} Ibidem, 19.
  \item \textsuperscript{134} Funda Tekin and Wolfgang Wessels, ‘Flexibility within the Lisbon Treaty: Trademark or Empty Promise?’, \textit{EIPASCOPE} 1 (2008) 25.
  \item \textsuperscript{135} Scharpf, Problem-Solving Effectiveness, 18.
  \item \textsuperscript{136} Tekin and Wessels, Flexibility within the Lisbon Treaty, 26.
  \item \textsuperscript{137} Ibidem.
  \item \textsuperscript{138} Ibidem.
  \item \textsuperscript{139} Tekin and Wessels, Flexibility within the Lisbon Treaty, 26.
\end{itemize}
introduced in the Amsterdam Treaty and is currently named *enhanced cooperation*, found in Article 20 TEU.\(^{140}\)

Constructive abstention is mentioned in the Treaty and can contribute to effective decision-making by allowing a member state to opt-out. This option has been available for CFSP decision-making before and is therefore not an innovation. The rules for enhanced cooperation, however, have been altered in the new Treaty. Consequently, these changes could have an impact on the effectiveness of decision-making.

The first thing that can be noticed when examining Article 20 is that the aim of enhanced cooperation is ‘to further the objectives of the Union, protect its interests and reinforce its integration process.’ Thus, the enhanced cooperation participants (ins) must always ensure that Member States that do not participate (outs) will not be negatively affected. This makes it clear that the enhanced cooperation structure in the sense of the Lisbon Treaty is designed to prevent the kind of far-reaching partial integration that could potentially cause disintegration of the Union as a whole. If it is accepted that less uniformity within the EU is mostly undesirable, the emphasis on flexible integration as a means to further objectives of the entire Union becomes more understandable.

This European aversion against flexible integration could also be one of the reasons why the enhanced cooperation clause in the Treaty has never been put into use by Member States.\(^{141}\) Authors such as Majone, however, claim the option remains unused because the requirements that have to be met are too rigid.\(^{142}\) If this is indeed the case, making the conditions for enhanced cooperation more relaxed could help improve the possibility of the clause being used.

As mentioned before, the Lisbon Treaty has changed the requirements for the use of enhanced cooperation. Under the old Nice Treaty eight Member States were needed to participate to make enhanced cooperation possible. This effectively meant that more than half of the then fifteen Member States had to be involved. Under the new Treaty, nine Member States need to participate for enhanced cooperation, corresponding with a third of the number of

\(^{141}\) Scharpf, Problem-Solving Effectiveness, 18.
\(^{142}\) Majone, Europe as the Would-be World Power, 212.
Member States.\textsuperscript{143} Since the Lisbon Treaty has gone into effect, there has been no attempt to use the enhanced cooperation clause. Only time will tell if the treaties’ enabling clauses will be used, but a look at the past creates doubtfulness.

### 3.5 To what extent can the changes improve effectiveness?

The previous paragraphs have shown that the formal decision-making procedures of the CFSP have not been changed in a revolutionary way. As Whitman puts it in his article, the Lisbon Treaty ‘revamps, rather than revolutionizes the existing arrangements for the CFSP.’\textsuperscript{144} This does not mean that the changes cannot help with the problems that are associated with the current decision-making structure in which the CFSP operates.

One of the problems that has been described in the first paragraph of this chapter was the deadlock that could arise when the Member States fail to reach a decision on a topic that cannot be dealt with at the national level. Although the formal structure will probably still be unable to prevent this deadlock, except perhaps in the few new areas that use QMV, the new High Representative might be able to mediate between the Member States to find a solution.

The consensus decision-making procedure can also be improved by the stronger role of the HR. As the Chair of the Foreign Affairs Council the HR has a unique opportunity to coordinate and direct the meetings to ensure an effective outcome. Given that the HR does not represent the interest of one particular member state and is responsible for consistent and coherent EU foreign policy, the HR could play an important role in achieving suitable consensus.

Options for flexible integration can also be useful for enhancing effectiveness, but the Treaties’ enhanced cooperation clause has remained unused so far. Despite some reduction in the requirements for enhanced cooperation, it remains doubtful whether the clause will be used in the immediate future. The concept of constructive abstention has been in use in the area of CFSP before, and provides some flexibility in the decision-making process.

\textsuperscript{143} Wessels and Bopp, The Institutional Architecture of CFSP after the Lisbon Treaty, 26.

\textsuperscript{144} Whitman, Foreign Security and Defence Policy, 8.
3.6 Conclusion

A real substantial change in the way CFSP is conducted would be to take all decisions with qualified majority voting, or moving the policy area into the supranational mode. Yet in the area of foreign policy Member States in general are unwilling to give up much, if any, of their sovereignty. Although the individual member state would not mind carrying out its own foreign policy preferences with the backing of the 26 other Member States, the idea of having the possibility that a group of Member States could override their preferences in this area is less appealing. Apparently high politics are still sufficiently salient for Member States to want to as much control as possible.

It is hard to say whether this is a disappointment; international relations experts such as Scharpf have pointed out that while moves to inhibit the power of Member States in CFSP might lead to more efficient decision-making and output legitimacy, it could at the same time damage input legitimacy if the decrease in Member State power is not properly compensated.\(^{145}\) This is based on the idea that the Member States are needed to ensure input legitimacy in CFSP. For some, this compensation could be achieved by shifting the area of CFSP completely into the community method, and thus giving the Commission/EP/Court of Justice a much stronger role in the decision-making process which would lead to more input legitimacy. However, Scharpf’s theoretical framework shows that this kind of improvement to the input side cannot be made as long as the thick European identity is lacking. On top of that, making CFSP decisions through the Community Method in itself does not guarantee more efficient decision making and output legitimacy.

It seems that the most viable option for improving the output of CFSP must not be searched for in major changes in the decision-making structure. The newly created position of High Representative could bring about necessary changes to the process. This lies first and foremost in the promise of a more coherent foreign policy system at the European level. The next chapter will look at the changes that have been made to improve the coherence of CFSP.

\(^{145}\) Scharpf, Problem-solving effectiveness, 16.
Chapter 4: To what extent has CFSP-coherence been improved after the Lisbon Treaty?

This chapter will examine to what extent the coherence of CFSP has been improved after the implementation of the Lisbon Treaty. First, the definition of the term coherence in the context of European foreign policy will be discussed. After that, changes that could hold significant consequences for coherence will be explained. Two major innovations of the Treaty, the new High Representative and the European External Action Service, will receive special attention in separate paragraphs. The conclusion will refer back to the title of this chapter by answering its question.

4.1 What is CFSP coherence?

The previous chapter ended with the conclusion that the CFSP decision-making procedures in itself have not been significantly altered by the new treaty. This lack of procedural adjustments of decision-making and the tentative steps forward for Enhanced Cooperation has ensured that the effectiveness of European foreign policy will most likely not be greatly affected by these specific changes. However, this does not imply that other institutional modifications that have occurred do not impact the structure in which CFSP is conducted; as mentioned before, innovations such as the ‘new’ position of High Representative can generate internal changes which could result in improvement of effectiveness. The reason for this is the expected advancement in foreign policy coherence as a result of institutional changes that have been made in European foreign policy as a whole.

The term coherence is in itself rather vague and needs to be clearly defined in the context of European foreign policy to be able to judge to what extent it has been improved after the Lisbon Treaty. It has been noted that in the context of the EU the concept of coherence has been a fundamentally guiding principle while at the same time the exact meaning of the term is not always clear.146 Language in the new treaty indicates the search for coherence in the area of foreign policy; Article 21 (3) for example states that the ‘Union shall ensure consistency between the different areas of its external action…’ and that the ‘Council and the Commission, assisted by the High Representative… shall ensure that consistency and shall cooperate to that effect.’

Consistency in this context could be a synonym for coherence, but some experts claim that these terms are not quite the same. The language used in the treaty leads to ambiguities on what coherence means in the CFSP and larger European foreign policy context.

An obvious conclusion is that one could write a book about the definition and meaning of a term such as coherence; it is a fundamentally contested concept. For the purpose of this chapter however, a concretization of what the concept entails is necessary. Many authors have tried to define the concept of coherence within different frameworks. In the context of European foreign policy, it can be said that coherence is about the ability to pursue foreign policy goals regardless of which institutions and/or policy tools are chosen, since the Treaty states that different aspects should be logically interconnected. If this is accepted as a viable definition of coherence, certain specific attributes of the Lisbon Treaty that can lead to improved coherence can be examined:

- The role of the new High Representative
- The functioning of the new European External Action Service

These two aspects of the Treaty have been chosen as a focal point because they are two eye-catching innovations of the new structure in which European foreign policy is now conducted. Lack of space and time prevents other coherence-improving attributes such as the distribution of finances from being elaborately examined, although they will be discussed within the context of the role of the new HR and EEAS when appropriate.

### 4.2 Foreign policy coherence pre-Lisbon: compartmentalization and diffuse representation

Before turning to the role of the new HR, it is useful to return to the question of why it was thought necessary to promote coherence and thus effectiveness of European foreign policy. As mentioned in the introduction to this thesis, the changing dynamics of global affairs have highlighted the importance for the EU to be an active player on the world stage. Actors within

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148 Ibidem, 124.
the EU as well as outside parties have expected the EU to take up this role ever since the Cold war came to an end. The popular consensus is that the EU has thus far been unable to fulfill its foreign policy role.\(^{151}\) What is more, the problem-solving gap explained by Scharpf indicated that certain foreign policy issues can only be dealt with at the European level. This means that more effective foreign policy is imperative in the long run. Two of the obstacles to the Union being visible and effective on the international stage before the new Treaty were the compartmentalization and diffuse representation of the EU.\(^{152}\)

The diffusion was noticeable in different ways. First off, the rotating Council presidency meant that every six months a different Member State was responsible for the representation of the EU in CFSP matters. While this situation gave every Member State the opportunity to assert itself within and outside the EU, there were some serious drawbacks. The rotating presidency allowed for the current Member State in charge to set the agenda. The focus and face of the EU therefore changed every six months. There were also ramifications for the on-the-ground execution of foreign policy, since every new presidency had to ensure that its staff at home and at embassies around the world was capable of representing the EU during those six months.\(^{153}\) The rotating presidency was contributing to the diffuse representation of the EU.

A second way in which this diffusion was apparent was in the multitude of actors involved in the field of European foreign policy. As mentioned before, the task of representing the EU was divided between the rotating presidency, the High Representative (old style), and the Commission depending on the issue involved. The Troika made it hard to know who was in charge for third countries and also increased the risk of miscommunication between the actors and inconsistency for European foreign policy as a whole.\(^{154}\) A change in the institutional structure in which European foreign policy is conducted could thus bring about necessary changes which could be a start in reducing the problem-solving gap.

An indication of compartmentalization could be found in the design of the Union itself. The pillar-structure which divided the EU into three distinct pillars complicated the functioning of the EU because the decision-making procedures were different in each of the pillars. However, it became increasingly difficult to place certain policies solely in one of the pillars.

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\(^{152}\) Ibidem, 10.

\(^{153}\) Ibidem, 11.

\(^{154}\) Ibidem.
Reality showed that many policies actually exceeded the boundaries of the pillars, leading to overlap and uncertainty as to under what decision-making procedure a policy fell. Overcoming the pillar structure can be one of the steps needed to improve the coherence of European foreign policy.

4.3 The role of the new High Representative in the post-Lisbon Foreign policy structure

The previous chapter has already alluded to the tasks of the new HR for Foreign Affairs, the British Baroness Catherine Ashton. However, it is important to stress to what extent the position of this post within EU external affairs has been centralized with the new Treaty. With the aim of greater coherence, the HR has been entrusted a number of tasks that were previously exercised through multiple positions. This multitude of tasks ensures that the person who holds the position of HR could potentially have a significant amount of influence on the execution of European foreign affairs. In general, the tasks of the HR can be grouped under five headings:

- **Initiative and agenda-setting.** The HR is the chair of the Foreign Affairs Council which means the HR will prepare the meetings. On top of that, the HR has the right of initiative to further establish the position’s role in steering the direction of CFSP.

- **Coordination and consensus building.** One of the tasks of the HR is building consensus between Member States. Consensus is the main means of decision-making in CFSP, as was shown in the previous chapter. This also includes coordinating CFSP with other European external action policies and with the Commission, European Council and Member States.

- **Representation and negotiation.** One of the key duties of the HR is the representation of the EU in third countries. This includes conducting political dialogue with third countries and negotiating international treaties on behalf of the Union, under a mandate given by the Council.

- **Implementation.** There are several resources available to assist the HR with implementation, such as the EEAS.

- **Crisis management.** This responsibility falls under the Common Security and Defense Policy (CSDP), a field within which the HR has an important role to play.

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155 Wouters, Verhey and Kilver, European Constitutionalism, 283.
156 Paul, EU Foreign Policy After Lisbon, 17.
With regards to the old CFSP situation with the rotating Presidency and the Troika, the new position of High Representative seems to deal with some of the central issues associated with it. The HR is the main face of CFSP and the greater field of European external action. There could finally be a tentative answer to the famous question once asked by Henry Kissinger on whom to call if he wants to speak to “Europe”. Furthermore, chances for consistency and continuity of European foreign policy have been strengthened now that the rotating Presidency no longer plays a major role in the foreign policy field.\footnote{158} In the words of David O’Sullivan, the new Chief Operating Officer of the External Action Service, the six-month sprint that used to be the Presidency has now been replaced by a marathon.\footnote{159} This provides more opportunities for long-term projects and strategies.

At the same time, the pillar structure that has characterized the EU ever since the Maastricht Treaty has been abandoned. This is a step in the direction of overcoming the compartmentalization of the EU. However, the new treaty still makes a distinction between the policy areas of external action and the CFSP/CSDP. External action falls under the ‘Treaty on the Functioning of the European Union (TFEU), whereas CFSP/CSDP falls under the Treaty on the European Union (TEU).\footnote{160} And as was seen in the previous chapter, the abandonment of the pillar structure also does not mean that the decision-making procedures in CFSP/CSDP have radically changed. Although the new structure could mean an improvement for the EU as a whole, it is unclear if the specific area of European foreign policy will greatly benefit from this change.

At least on paper the changes made in the structure of European foreign policy seem to be improvements over the old situation. The HR has better integrated means to ensure the pursuit of foreign policy goals, which could mean better coherence. The simplification of the structure was certainly expected to bring more clarity.\footnote{161} However, the Treaty is rather ambiguous when it comes to the roles to be played by the actors involved in the foreign policy field. Ashton can be said to have the main representation function for the EU, but there are also the President of the

\footnote{159} David O’Sullivan on the European External Action Service’ at the Institute for International and European Affairs, Dublin, January 14, 2011.  
\footnote{160} Whitman, Foreign Security and Defence Policy, 2.  
\footnote{161} Jolyon Howorth, on ‘The Potential role of the High Representative’, at the Institute for International and European Affairs, Dublin, March 1 2010.
European Council, Herman van Rompuy, and the President of the Commission, José Manuel Barroso who all have a responsibility to be involved in the field of European foreign policy. The overlapping tasks could lead to confusion and institutional turf wars, while the age-old question of who is the face of European foreign policy resurfaces.

This can be most clearly seen in the position of the President of the European Council. He has tasks that overlap with the CFSP-responsibilities of the HR; Article 15 TEU states that the ‘President of the European Council shall … ensure the external representation of the Union on issues concerning its common foreign and security policy…’ Article 18 TEU states that the High Representative shall conduct the CFSP, which includes representation. The division of tasks between Van Rompuy and Ashton is not clearly defined in the Treaty and leaves room for various interpretations. Barroso, on the other hand, also holds a crucial role in EU external relation fields which fall under the responsibility of the Commission. Difficulties could arise when foreign policy issues do not clearly fall into either CFSP or other External action, which is increasingly the case. The realities of the twenty-first century dictate that traditional foreign policy of military might and diplomacy, while still important, is being outflanked by issues such as climate change and financial regulation. Changing priorities on the international scene could therefore result in more external action tasks in which the Commission has a role to play. On top of that, the Member States also explicitly have the right to conduct their own foreign policy alongside the EU. Diffuse representation continues to be an issue. As the next paragraph will show, the ambivalence about task division together with transition to the new post-Lisbon foreign policy system has resulted in a rocky first year.

4.4 A shaky start for the post-Lisbon foreign policy system

As can be expected when major institutional changes happen, the transition to the new system has not been the smoothest. After the Treaty was ratified in December 2009 the posts of President and High Representative had to be filled. Since there were ambiguities about the division of tasks between the President and HR, it was expected that the personalities of whoever were appointed could play a large role in determining the way forward for European foreign

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163 Missiroli, The New EU “Foreign Policy” System, 430.
In the end the way both Van Rompuy and Ashton were appointed to their respective posts of President and High Representative can, according to Jolyon Howorth*, only be described as “EU-esque”. Attempting to find appropriate persons for the jobs was subject to criteria such as being a national of a small or large state, a Northern or Southern state, left-leaning or right-leaning politically, and gender. Since the other high-profile job of Commission President went to Barroso (a right-of-centre male from small Southern state Portugal), it was thought necessary to find someone from a larger, Northern state for the position of HR. This eventually resulted in the appointment of the relatively unknown Catherine Ashton.

Ashton is thus seen by some as the sum of a compromise, and not necessarily as the best person for the job. It does seem rather cheap to base criticisms of her on the way she was appointed, and it is doubtful this type of critique results in genuine arguments against Ashton being the appropriate person for the job. What can be observed is that Ashton had little to no foreign and security policy expertise when starting out. On top of that, she chose to keep most of her old cabinet from her previous position as Trade Commissioner in favor of a few specialized foreign and security officials. Criticism was heaped on the new HR when she opted not to visit Haiti or man the office in Brussels in the immediate aftermath of the earthquake of early 2010, and after she decided to attend the inauguration of the new Ukrainian president instead of the first post-Lisbon meeting of the Council of Defense Ministers. Her predecessor, Javier Solana, had never missed a single one of these meetings.

It remains true that the job of the new HR is one of the most complex jobs in the post-Lisbon structure, in which even a politician with a grand stature may struggle. Besides HR and Commission VP, some of Ashton’s positions include Chair of the European Defense Agency and the European Institute for Security Studies, Secretary-General of the Western European Union and head of the EEAS. However, Lady Ashton’s lack of foreign and defense policy experience can be seen as a handicap as she is trying to shape the future of European foreign policy. The

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* Jolyon Howorth is currently Emeritus Professor of European Studies at the University of Bath, as well as Visiting Professor of Political Science and International Affairs at Yale University.
165 Howorth, on ‘The Potential role of the High Representative’ March 2010.
166 Ibidem.
168 Ibidem., 432.
criticism, whether all of it is fair or not, has the potential to undermine the post-holder, which in turn extends to the post itself. Because of this, the new HR could be in danger of losing relevance while the President of the Commission and President of the European Council try to assert themselves. This could be seen when Ashton allowed Barroso to appoint the EU ambassador for the United States without consulting the Member States, which led to concerns over her capability to hold her own vis-à-vis the Commission.170

On the face of it, it seems like the new HR has indeed known a shaky start. Ashton has received a significant amount of criticism from different actors and has made a few unsatisfactory judgment calls. A decisive factor in determining the ultimate chances of successfulness for the new post are the institutional competences and recourses allocated to it. The new External Action Service is supposed to fulfill that role for the HR. The next paragraph will go into further detail about the Union’s new diplomatic corps.

4.5 The establishment of the European External Action Service
The High Representative is responsible for the execution of European foreign policy. It was thought necessary to outfit the post of HR with its own back office and to accommodate the multitude of tasks associated with the job. In this sense, the EEAS can be compared to the Ministries of Foreign Affairs in the Member States, with a difference being that the EEAS works at the EU level. On top of assisting the HR the EEAS will take over the tasks that were previously held by Commission delegations in third countries as the Union’s diplomatic representation. The Foreign Service is an innovation of the Lisbon Treaty and is expected to bring greater coherence to the Union’s foreign policy by assisting not only the HR in her tasks, but also the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations.171 Furthermore, ‘the EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the CSDP. The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area.’172 In this sense, the

171 Council Decision 2010/427/EU Article 2(2)
172 Council Decision 2010/427/EU Article 3(2)
Service can be seen as accommodating the depillarization of the EU and as the glue between the policy areas that fall under different decision-making procedures. A well-functioning EEAS can therefore be essential in improving coherence and the EU’s ability to speak and act as one.

As was discussed in the first paragraph of this chapter, greater coherence is achieved when the instruments in place allow the EU to pursue its foreign policy goals regardless of which instruments are used. Before the Lisbon Treaty exchanges between diplomats and other officials of Member States was commonplace. The same goes for the sharing of information. This has resulted in more mutual understanding between the Member States. The EEAS must therefore bring added value to CFSP and European foreign policy as a whole in order to justify its existence. This happens when the EEAS is able to deliver capabilities that were previously not present.

Preparatory work on the EEAS started after the Constitutional Treaty was signed in October 2004, but was stopped after the French and Dutch rejected the Constitution the following summer. Work commenced again when the Lisbon Treaty was signed, and in the meantime discussions had taken place on the composition and affiliation of the EEAS. The Parliament made it clear it wanted to incorporate the EEAS into the existing structures of the Commission, which was met with resistance by a number of Member States, who worried about too much Commission and EP influence on CFSP. The difficulty in negotiating the organization of the Service continued after the implementation of the Lisbon Treaty, partly due to the unspecific provisions in the Treaty concerning EEAS. Article 27 (3) TEU states that the High Representative is to be assisted by the EEAS, which will be comprised of ‘officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.’ Furthermore, the article states that the organization of the Service will be established by a Council decision, deciding on a proposal of the HR and after Consultation of the EP and consent of the Commission.

The vagueness of the task of assisting the HR combined with the different directions preferred by the parties involved ensured an often intense debate leading up to the establishment of the EEAS. Especially the Parliament tried to push for a communitarian design as much as

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possible to try and extend its own influence in European foreign policy and CFSP.\textsuperscript{175} The negotiations resulted in Council Decision 2010/427/EU on the organization and functioning of the EEAS on 26 July 2010. This happened only seven months after the implementation of the Lisbon Treaty, a quick decision indeed. The tasks for the EEAS are outlined in Article 2 of the Decision, and comprise of supporting the HR in its dual mandates as Chair of the Foreign Affairs Council and Commission Vice-President. The President of the Council, the Commission President and the Commission will also be assisted by the Service concerning their external relations functions.

4.6 The External Action Service: a work in progress

The EEAS was officially launched in December 2010, exactly one year after the Lisbon Treaty went into force. However, experts agree that many questions about the functioning of the EEAS are still unanswered. Decisions still have to be made on the division of labor and the exact tasks.\textsuperscript{176} Despite creating the legal structure in which the EEAS operates, the Decision of July 2010 that established the Service has not provided a sufficiently clear view on the functioning of the EEAS. In fact, at the time of writing the EEAS is still a work in progress. As a new autonomous \textit{sui generis} body within the EU the EEAS has the potential of playing an important role in the future of European foreign policy. The operational development of the Service is made more difficult by time-constraints; the Chief Operating Officer of the EEAS, David O’Sullivan, compares it to working on a car’s engine while it is running.\textsuperscript{177} There is simply no pause button to push to temporarily stop international developments so that the EEAS has time to be fully perfected. What is left are several substantial challenges for the (immediate) future.

A first pressing challenge facing the new EEAS is the blending of staff. The Treaty and Council decision state that the staff of the EEAS is to be made up out of personnel from the General Secretariat of the Council, the Commission and Member States. The appointments must be made based on merit, but also with geographical and gender balance taken into


\textsuperscript{176} Drieskens and Van Schaik, The EEAS: Preparing for Success, 3.

\textsuperscript{177} David O’Sullivan on ‘the European External Action Service’ at the Institute for International and European Affairs, Dublin, January 14, 2011.
Furthermore, at least one-third of the staff must be from Member States. The difficulty lies in transforming these officials with different backgrounds into one new organization, with a new hierarchy and identity. O’Sullivan has noted that these various backgrounds create tensions and officials from all three organizations respectively worry about being put on the sideline in the new structure. The HR and COO have the task of managing these tensions and preventing excessive competition and distrust if they want to succeed in creating a well-functioning Service. In doing so, they have to establish a European diplomatic culture, or *esprit-de-corps* that allows the EEAS to fulfill its tasks and contribute to a new identity in European foreign policy.

Another challenge facing the EEAS is closely related to the first but is more concerned with the actual tasks and tools allocated to the Service. One of the major goals of the EEAS is the integration of foreign policy instruments, and to show that the EEAS can do a better job with this integration than was the case before it was created. The operation of bringing all the staff and expertise in from the different locations and appointing the right people to the right positions is as daunting as it is important. Only when the EEAS is able to do this in effectively will it be able to integrate the policy tools in a more efficient way than before, and thus contribute to improved coherence and better external representation of the EU.

At the time of writing (June 2011) a number of important positions in the EEAS have been filled, following a struggle between the HR and the Parliament over the appointees. The EP had complaints about the low number of appointees for newer EU Member States, and was determined to publicly question new EU ambassadors in early October of 2010. This was before the new ambassadors had been able to get fully up-to-date on their new job. It was speculated that Ashton was worried that some of her appointees would come across as weak, and that this prompted her to cancel a scheduled hearing a day before it was supposed to take, which lead to resentment in the EP. No hard conclusions can be drawn based on speculation, but these sentiments do indicate that the internal turf wars have extended to establishment of the EEAS, with the Parliament trying to secure as much influence for itself as possible.

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178 Council Decision 2010/427/EU Article 1 (10)
179 David O’Sullivan on the European External Action Service
180 Drieskens and Van Schaik, The EEAS: Preparing for Success, 15
181 EU observer, ‘Game, set and match to Ashton on diplomatic hearings’, 18 November 2010.
Following the dispute between the EP and Ashton on the EEAS were budget concerns. Of importance to the chances of success for the EEAS is the budget allocated to the Service. The Commission is responsible for the implementation of the operational budget of the EEAS, and in this area as well the Parliament has tried to gain as much influence as possible. After the row concerning the public hearings for EU ambassadors, MEP Gabriele Albertini of the Parliament’s foreign affairs committee warned that he could use his influence to delay a decision of the budgetary committee on a Financial and Staff regulation for the EEAS. After further negotiations tensions were eased between the two parties, and the EP gained the right to exercise its budgetary powers vis-à-vis the EEAS. This was not the end of budgetary concerns for the EEAS as the Parliament and Member States had disagreements over the 2011 budget. In the end, a compromise was found but more struggles are expected when negotiations about the next multi-annual budget start.

The skirmishes surrounding the establishment of the EEAS are a clear example of the EP trying, and to some extent succeeding, in gaining influence within the European foreign policy structure. Even though formally the power of the EP in this policy area remains restricted, the EP seems determined to secure as much influence as it can possibly achieve. From the perspective of output legitimacy, this could prove to be hurting more than helping. A greater involvement of the EP could have a damaging effect on coherence since it will be harder for the EEAS to make progress if Member States, the Commission, HR and EP have to be taken into account. It seems that the strive for greater coherence that the EEAS is supposed to facilitate has opened up new opportunities for an internal struggle over power and influence that could actually hinder the improvement of coherence.

The struggle over influence on the direction of the EEAS is most clearly demonstrated in the contention over development policy. At the core of the debate on the placement of development policies within the new structure was the question whether development policy is crucial for achieving wider security objectives, or if it should be guided by its own goals. What it came down to was the question of whether development policy needed to fall under the scope of the tasks of the EEAS or not. On one side there were arguments for keeping it outside of the

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182 David O’Sullivan on the European External Action Service
EEAS to ensure that it will not be undermined by broader foreign policy issues, a position taken by the Commission. On the other side there was the argument that development policy and foreign policy could not be separated, hence it would make sense to integrate development policy into the tasks of the EEAS. Most Member States were in favor of this since it would give them more influence in a policy area that used to be the domain of the Commission.\footnote{Drieskens and Van Schaik, The EEAS: Preparing for Success, 28-29.}

This debate can be placed into the broader perspective of internal turf wars between the Member States and the Commission over the relative amount of influence of each in the development policy field. Incorporating development policy into the EEAS could potentially give the Member States more influence since they are involved in the EEAS themselves, something that could take away Commission influence. The Commission would rather keep development policy for itself.\footnote{Ibidem, 29.} In the end a compromise was reached, but from the perspective of coherence it is far from ideal. The tasks in the development policy field will be separated, with some tasks falling under the EEAS (e.g. overall strategy) while other tasks remain within the scope of the Commission’s Directorates-General (e.g. policy implementation). Other tasks, such as the preparation of proposals for the European Development Fund, will fall under the joint responsibility of the EEAS and Commission.\footnote{Ibidem.} The separation of these tasks might have provided a politically acceptable compromise for the actors involved, but could very well prove to have an adverse effect on coherence in the field of development policy.

4.7 Conclusion
The new European External Action Service is a work in progress. Many important decisions have already been made, but much more is yet to become clear in the months and even years ahead. A number of questions regarding the functioning of the EEAS have not been answered yet. Especially challenging are the blending of staff to create a new European esprit-de-corps in foreign policy and appointing the right people to the right positions in order to make the EEAS as capable as possible of achieving better integrated, more coherent foreign policy tools for EU foreign policy. So far negotiations on the establishment of the Service and struggles over EP...
influence and the budget have taken up a lot of time, but with the appointment of several key positions and the operational start in January 2011 the first definitive steps have been taken.

On paper, at least, the new structure in which CFSP and the wider European foreign policy operates could lead to more coherence. Especially the continuity that can in the long run be expected from the absence of the rotating presidency in foreign affairs and the abandonment of the pillar structure can greatly enhance coherence. On the other hand, the internal power struggle indicates that it will be difficult for Ashton to navigate all the different demands and create a unique esprit-de-corps which could help overcome the internal turf wars. In addition, the EEAS is depended on the Member States, Commission and EP for its functioning, which the internal power struggles could seriously hamper.

The Lisbon Treaty gives the EU more tools to pursue foreign policy through the potential that the EEAS holds for integrating policy tools. In the end, however, it will depend on the extent to which the Member States, Commission and EP allow the EEAS to meet its challenges whether it will be a help or hinder in the search for more coherence and better external representation in EU foreign policy. For now, that judgment is up in the air as it mostly seems to be tied to the potential of Ashton to fully establish her role as HR as a strong force in EU foreign policy who can build consensus between all parties. The critical attitude about her performance as HR seems to imply a negative outcome. The next chapter will examine to what extent the negativism is justified by making a foreign policy case-study and examining the attitude of the Member States towards the new foreign policy structure, another key component for a more effective CFSP.
Chapter 5: Policies for the Southern neighborhood: a case-study

The previous chapter ended with the conclusion that at least on paper the dual innovations of the HR and EEAS seem to have provided EU foreign policy with possibilities for improved coherence and its ability to speak with one voice. It is therefore necessary to assess to what extent this has so far been translated to reality. At the moment there is an air of negativism surrounding HR Ashton and her EEAS which suggests that reality is taking a less than ideal direction. A case-study will give an indication of the state of affairs concerning coherence and the ability to speak and act as one in European foreign policy matters.

The case-study will examine the EU’s strategy for responding to the uprisings taking place in its Southern neighborhood. One of the most prominent goals of EU foreign policy is its desire to establish itself as a regional actor, which has been developed and promoted through frameworks such as the European Neighborhood Policy (ENP). This chapter will analyze the development of the EU’s regional policies, the role of the HR in regional policy in the post-Lisbon structure and the response to recent unrest in the Southern neighborhood. This case-study is useful for several reasons. First of all, since the Council, HR + EEAS and the Commission all have a role in regional policy, the case-study can give an indication of the coherence of regional policy post-Lisbon. Secondly, recent events in the Southern neighborhood and the subsequent internal and external response of the EU can give an indication of the EU’s ability to speak with one voice post-Lisbon. As was seen in the previous chapters of this thesis, these two factors were important in the decision to reform European foreign policy.

5.1 Different EU frameworks for its Southern neighborhood

After the end of the Cold War and the creation of CFSP the focus of the EU was to a large extent on the enlargement process to the east. In addition, the post-Cold War era prompted the EU to further develop its own regional policy towards countries on its (new) borders. Member States France and Spain in particular were keen to ensure that the countries on the Mediterranean

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189 Biscop and Andersson, The EU and the European Security Strategy, 63.
borders were also included in the European foreign policy agenda.\textsuperscript{190} This resulted in the 1995 Barcelona Conference, which brought together the then fifteen European Member States and twelve Mediterranean partners.\textsuperscript{*} From then on the cooperation framework between the EU and Mediterranean states was known as the Barcelona process or EuroMed, short for Euro-Mediterranean Partnership (EMP). The cooperation process that was started with the Barcelona Declaration of 1995 gradually resulted in the institutionalization of multilateral forums such as annual ministerial conferences and the EuroMed committee, which prepares the ministerial meetings. EuroMed was structured around three different economical, political and cultural ‘baskets’ of cooperation, with the goal of securing peace and stability for the region as well as the promotion of core values such as democracy and human rights.\textsuperscript{191}

Initially one of the goals of EuroMed was the creation of a free trade area between the Mediterranean partners and the EU.\textsuperscript{192} However, as time progressed it became clear that a free trade area was not a realistic short-term or even medium-term goal. Trade would not be completely free because the EU retained a lot of heavy restrictions on the import of for example agricultural products, protecting its own agricultural sector with the Common Agricultural Policy (CAP).\textsuperscript{193} On top of that, the expansion of the number of states participating in EuroMed to twenty-seven EU Member States and sixteen Mediterranean partners\textsuperscript{*} made the realization of a free trade area more unlikely. Changing international circumstances in the late nineties and at the beginning of the new decade also had impact. Influenced by events such as the deteriorating relationship between Israel and other Middle Eastern countries and the September 11 terrorist attacks, the focus of the EuroMed partnership shifted to security matters, migration and terrorism. French President Sarkozy initially tried to revamp the goal of a free trade area with a Union de la Méditerranée in 2008, but in the end the Union for the Mediterranean (UfM) was characterized as a re-launch of the Barcelona process/EuroMed.\textsuperscript{194}

\textsuperscript{*} States included were: Morocco, Tunisia, Egypt, Algeria, Cyprus, Israel, Lebanon, Syria, Turkey, Jordan, Malta and the Palestinian Territories.
\textsuperscript{191} Cardwell, EuroMed, European Neighbourhood Policy and the Union for the Mediterranean, 225.
\textsuperscript{192} Ibidem, 235.
\textsuperscript{193} Ibidem, 236.
\textsuperscript{*} The original twelve Mediterranean states minus now EU-Member States Malta and Cyprus, with the addition of Albania, Bosnia and Herzegovina, Montenegro, Mauritania, Croatia and Monaco.
\textsuperscript{194} www.eeas.europa.eu/euromed
When the multilateral cooperation framework EuroMed/UfM had been around for almost a decade, in 2004 a new initiative for neighborhood policy was launched. The Commission’s Wider Europe scheme was first proposed in March 2003, prompted by the then imminent enlargement of the EU with ten new Member States. After the enlargement the EU had to deal with a new subset of neighbors, most of whom would not be eligible to join the EU in the near future or ever. The European Neighborhood Policy (ENP) that resulted from the Wider Europe initiative was envisaged as a policy that would offer new and old neighboring countries incentives to align themselves with European political, economic and socio-cultural standards. Originally designed for the Eastern neighbors, the ENP was also extended to Middle Eastern and North African states.\(^1\)

From the beginning the Commission made it clear that the ENP was aimed at being complementary to EuroMed, not at replacing it. However, after the creation of ENP it has received the most emphasis by the Commission and Council in dealing with the Southern region.\(^2\) The ENP differs from EuroMed in a few distinct ways. First, ENP is based on bilateral relations between the EU and individual neighboring countries. This differs from the multilateralism and regionalism promoted in EuroMed. A second difference can be found in the conditionality of the frameworks. EuroMed, on paper at least, stated that countries that violated human rights could be suspended from the agreement. The ENP framework on the other hand, is based on benchmarking. This means that the partner country’s engagement with the EU is conditional upon the achievement of agreed targets for reform.\(^3\)

The engagement of the EU with the neighboring region in the south in the last two decades has been characterized by many changing internal and external factors. The EU has attempted to structure relations with the south through EuroMed/UfM and ENP. While EuroMed/UfM is still important, most experts agree that the ENP is now the most relevant framework in place for EU regional policy.\(^4\) The next paragraph will assess what the results have been for the EU’s regional policy in the south, and how the new European foreign policy

\(^2\) Cardwell, EuroMed, European Neighbourhood Policy and the Union for the Mediterranean, 227.
\(^3\) Del Sarto and Schumacher, From EMP to ENP, 21-24.
structure that has been implemented with the Lisbon Treaty has made a difference in the EU’s capability in dealing with its Southern neighbors.

5.2 Results in the Southern neighborhood

At the time of writing the ENP has been in effect for seven years, the last two-and-a-half of which under the new European foreign policy structure. The ENP continues to be a key component of foreign policy. The ENP was thought to be of strategic importance to the EU to promote a ring of well-governed countries to the east and in the wider Mediterranean area. A large portion of this Southern region has been described as an area of ‘violent conflict, weak states and flourishing organized crime.’ It is thus no great surprise that the ENP placed particular emphasis on the goal of stable neighbors, echoing the language of the 2003 European Security Strategy (ESS).

The results of the ENP in the south have been mixed, and are seen as mostly negative. One could argue that the unrest in the region that started in early 2011 and has led to (attempts at) the overthrow of several regimes, currently labeled as the Arab Spring, provides all the proof that is needed to conclude ENP for those countries has failed. After all, those regimes were supported by the EU during all this time in spite of the repression of their own people. Jumping to this conclusion however, would bypass all the complex issues at work in the region and also assume that the EU as an external influence was aimed at and capable of potentially achieving such enormous change in neighboring countries.

Yet the figures show that there are some serious contradictions between what the EU claims are its goals in the region and the actions it has taken in recent years. Besides stability, promoting democracy is one of the pillars on which neighborhood policy rests. Based on reports of the Commission itself and organizations such as Human Rights Watch, democratic reform and improved human rights in countries such as Tunisia and Egypt have been at a standstill or have deteriorated in the past years. In spite of this, funds allocated to these countries

have continued to increase as the years went by.\footnote{Scarpetta and Swidlicki, The EU and the Mediterranean, 7.} On top of that, the focus of the EU has been on contacts with the political elite of the countries in the south. The existence of close ties between European political elites and their Mediterranean counterparts became even clearer during the recent uprisings in the area.\footnote{France’s Foreign Minister Michèle Alliot-Marie was forced to resign due to public outrage over her links to the ousted Ben Ali regime in Tunisia.} The increased funds and the support of autocratic and dictatorial regimes combined with little to no progress on many of the EU’s goals in the region clearly show that in the Mediterranean area the EU’s neighborhood policies have not achieved the desired results.

5.3 Coherence of neighborhood policy

There are several reasons why policy results in the Southern neighborhood have been disappointing. In the light of this thesis, the issue of coherence is important in assessing the results. As can be recalled from a previous chapter, coherence is about the ability to pursue foreign policy goals regardless of which institutions and/or policy tools are chosen. The number of actors, frameworks and goals involved in policy making can have an effect on coherence, and a lack of coherence was one of the important reasons for reforming the European foreign policy structure.\footnote{Duke, Providing for European-Level Diplomacy after Lisbon, 214.}

When looking at European regional policy for the south, it becomes clear that there are several different frameworks and policies in existence. There are the formal frameworks of the European-Mediterranean Partnership/Union for the Mediterranean and the European Neighborhood Policy. On top of that, partly because of the regional component of the European Security Strategy, CFSP/CSDP is involved in neighborhood policy, as well as individual Member State policy aimed at the region. Within all these policies several actors and hence various policy preferences are involved. The Commission/EP and HR have the primary role in EuroMed/UfM and ENP, whereas the Council and to some extent HR are the primary actors through CFSP/CSDP. The goals, tools and decision-making procedures of all policies and frameworks differ as well. The result is an extensive body of policy measures aimed at the Southern neighborhood carried out by a number of different actors, and it seems this has not resulted in coherent strategy and effective policy.
The lack of coherence between the actors and policies is apparent when looking at the numerous contradictions between them. One of the major contradictions that was touched upon in the previous paragraph is that of supporting autocratic and dictatorial regimes, while at same time proclaiming to promote democratic reform. This is a contradiction in the policies by the entire EU, and more specifically the ENP. However, differences between Member States themselves and between Member States and Commission are also prevalent. For example, on the topic of supporting civil society, states such as Germany and Sweden wanted to have relatively free interaction between civil societies to encourage civil liberty across the Mediterranean, whereas France and Spain insisted it was necessary to control the development of civil liberty. They were more worried about Islamic terrorist groups developing as opposition parties in those countries.205 There clearly is a contradiction between the dual goals of stability and the promotion of democratic reform, despite the Commission claiming these two goals go hand in hand.206 Disagreement between Member States has also lead to separate initiatives of (groups of) Member States for the region, such as a new Middle East Peace plan proposed by Italy, Spain and France in 2006, indicating the difficulty of the EU to speak and act as one in its neighborhood.207

The result of these contradictions gives a muddled picture of EU policy towards its Southern region. Coherency between actors and policies is lacking. The post of High Representative and the supporting European External Action Service were designed with the specific goal of overcoming lack of coherence in foreign policy. Together with the (albeit partial) abandonment of the pre-Lisbon pillar structure, the HR and EEAS were to act as glue between the different actors, and to overcome differences and reach consensus. However, even though most of the neighborhood policy was developed pre-Lisbon, it seems not much has changed with regards to regional policy in the south since the HR/EEAS have been put into place; in fact, the policies have continued in the same fashion as before.208 If anything, the new set-up has added an extra actor within the various regional policy frameworks, instead of adding more coherence. Ashton has been confronted with rivalry between different EU institutions, not in the least while trying to establish her own EEAS for which the Council and Commission had to concede tasks.

206 Biscop, The ENP, Security and Democracy, 5.
207 Pace, Paradoxes and contradictions in EU democracy promotion, 44.
208 Scarpetta and Swidlicki, The EU and the Mediterranean, 19.
and personnel. So far the changed European foreign policy structure has not provided more coherence in policy aimed at the Mediterranean.

5.4 Response to the Arab Spring

In addition to the disappointing results of the neighborhood policies, there has been a lot of criticism of the EU’s response to the Arab Spring. Within the Union, Ashton has been at the center of these criticisms, which have been aimed at her by both EU and Member State officials. Amongst the things she has received criticism for are claims that her response as HR for foreign policy has been too slow and too weak, that she has been invisible and has lacked leadership, and that she has failed to achieve consensus between the Member States to speak and act as one.

Again one must wonder to what extent these criticisms are fair and well-balanced. Just like the rest of the world, the unrest in the Maghreb that started early 2011 has caught the EU by surprise. No one really could have foreseen the uprisings and the subsequent spread of protests across a lot of countries in the Middle East and North Africa. The result was chaotic, with different Member States making multifarious statements and Ashton remaining in the background. After France mistakenly supported the Ben Ali regime in Tunisia longer than any of the other Member States, Sarkozy took the lead in the response to the Libya-conflict. Together with British Prime Minister Cameron he took an active approach, while Germany disagreed and remained on the sideline. In another instance the same countries, often seen as the three most influential Member States, issued a separate statement concerning the revolution in Egypt. During this time Ashton and other Member States were kept out of the loop.

It seems like some Member States reacted to the revolutions through their national foreign policy as opposed to coordinating with the other Member States and HR to reach consensus before making any statements. This was especially true in the early stages of the protests. They of course have every right to do this, but one cannot deny that this can hinder the formation of a European standpoint and thus the ability to speak and act as one coherent actor. The events in the EU’s Southern neighborhood have once again shown that when the stakes are

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211 Isensee and Schout, Catherine Ashton, 312.
high, national foreign policy takes precedence over a unified European response. Or as O’Sullivan succinctly put it, ‘the High Representative has difficulty expressing a common European view if one doesn’t exist’. Putting the blame of Europe’s weak response solely on the shoulders of the HR is therefore not justifiable.

In the mean time, Ashton and the Commission have presented a new plan to reform the ENP, titled ‘A new response to a changing Neighborhood.’ This new plan deals with the shortcomings of the old ENP, which are recognized in the first part of the report that concludes that the results of ENP have been limited. It seems that the new policy signifies a degree of continuation of the old ENP, but with more emphasis on conditionality and Action Plans tailored more towards each individual country. Based on a so-called more-for-more scheme, countries that make more democratic reforms will get more money. Furthermore, the EU wants to support deep democracy, which has been described as free elections, respect for the rule of law, freedom of speech and an independent judiciary.

It is difficult to say whether the changes that were made in the ENP are going to have the desired effect. The document does not offer much for a clear objective; its goal is to have a ‘democratic, prosperous and stable region where more than eight-hundred million people can live, work and shape their own country’s future…’ Obviously, the question of the amount of influence the EU has in reforming the region is still present, and it cannot be expected that the EU will all of a sudden be able to shape events to its own liking. The unrest in the Southern neighborhood has presented the Union with an opportunity to boost democratic reform in some of its neighboring countries.

5.5 Conclusions from the EU’s response to the Arab Spring

The unrest in the Arab world has highlighted a number of flaws of European neighborhood policy. What it has also shown is that the new post-Lisbon foreign policy structure has not made much difference when the EU was confronted with an acute foreign policy event; several

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212 Meabh McMahon and Andrew Willis, ‘Member States responsible for EU ‘single voice’, EU Observer 16 May 2011.
215 Ibidem, 4.
216 Ibidem, 21.
Member States reacted unilaterally, it took a long time to come up with common European positions and the HR was unable to take the lead and bring the Member States together to speak and act as one. The way this situation was handled has shed light on a number of issues. First, an image has been created of an often invisible Ashton who is too weak to remain firmly upright in the many inter-institutional squabbles of the Union. Whether or not this image is correct is not the most important point. The concern is that it will be very hard to change this image. This impression is damaging to the post of HR itself and European foreign policy as a whole. Second, the Member States themselves put forward Ashton as the first post-Lisbon HR, even though it was known that she was inexperienced and unknown. With this choice, it seems as though they deliberately tried to avoid strong European foreign policy leadership. This brings us to the position of the Member States. The disagreement between and unilateral actions of Member States during the revolutions in North Africa shows that the political will to act as one at the European level is not strong enough in these type of situations.

The problem with this is, as was shown by the likes of Scharpf and Howorth, that the individual European countries’ capability of acting at the national level to solve problems is constrained, while the differences in national interests prevents effective action from taking place at the European level. Individual Member States do not have the clout to exert a lot of influence when acting alone. This problem-solving gap has once again become apparent during the unrest in North Africa, most prominently in the case of Libya; the internal differences were too great to forge a common European position and action was taken through NATO with the explicit back-up of the United States. However, as Howorth rightly notes, the age of US focus on Europe is over, and the US is expecting the EU to be a serious strategic partner. Moreover, during a recent farewell speech by US Defense Secretary Robert Gates in Brussels the EU was warned that the US could consign their strategic alliance with Europe through NATO to ‘military irrelevance in a ‘dim if not dismal’ future unless European allies stepped up to the plate and shared a larger portion of the security burdens.

The Arab Spring and the subsequent reaction by the EU illustrates that the Union’s new foreign policy framework is no guarantee for more coherence or a better ability to speak and act

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218 Isensee and Schout, Catherine Ashton, 312.
219 Ibidem, 311.
221 Ibidem, 463.
as one on the world stage. If the reaction to the unrest in its neighborhood is seen as the biggest
test EU foreign policy has faced so far post-Lisbon, the implications are that without the political
will to exercise foreign policy at the European level it will be hard to reach consensus on the big
foreign policy issues. Even if it is impossible to draw generalized conclusions from just one case-
study for the wider spectrum of EU foreign policy, the case study certainly hints at underlying
issues that continue to plague European foreign policy after the Lisbon Treaty. In this case at
least, the Lisbon Treaty has not caused the EU to improve its coherence and ability to speak and
act as one. A lack of commitment on the part of the Member States to making the new structure
work will prevent the Lisbon Treaty from fulfilling its foreign policy potential of increased
Conclusion

The EU has been working with the new foreign policy structure since December 2009. At the time of writing the Lisbon Treaty has been in effect for a year and a half. Within that time much has happened that concerned European foreign policy; Catherine Ashton has been appointed as the first High Representative for Foreign Affairs and Security Policy, the European External Action Service has been established and the EU has been faced with important developments in its neighborhood to the South, to name but a few significant events. The focus of this thesis has been on examining the new foreign policy structure to see to what extent innovations and changes can be said to have made European foreign policy more effective. What is the end result? To what extent has the output legitimacy of the European Union’s Foreign Policy, specifically Common Foreign and Security Policy, in the sense of Fritz Scharpf, improved after the implementation of the Lisbon Treaty in December 2009?

The end of the Cold war brought the desirability of a European foreign policy to the forefront. The Maastricht Treaty of 1992 formally included Common Foreign and Security Policy in the EU framework. During the first two decades of CFSP many important events influenced the EU and its Member States. The new EU foreign policy was operating in rapidly changing international circumstances. The internal and external expectations for the EU were raised, and many assumed that the EU had the ability to answer several complex foreign policy challenges. However, for all its successes, European foreign policy had not been able to live up to its expectations.

One of the many issues that the EU started addressing in the 1990s was the democratic deficit, spurred by the notion that public opinion could no longer be mostly ignored. The idea of an existing democratic deficit in the EU is much debated and contested. In essence, the debate about the supposed democratic deficit is about the nature of the EU itself, about what the EU actually is as well as what it could or should be in the future. For the purpose of this thesis, the distinction made by Scharpf between input and output legitimacy is usable, because it separates the performance (output) of European policies from the level of democracy in the decision-making process (input) of European policies. This allows for a comprehensive examination of the effectiveness of European foreign policy.
The issues facing the EU in foreign policy had both an internal and an external component. Externally, the EU had to overcome the inability to speak and act as one on the world stage. Internally, the lack of coordination and coherence between the actors and instruments involved in CFSP was leading to problems. The Lisbon Treaty introduced several institutional changes to deal with these issues.

One way in which output legitimacy can be improved is by changing decision-making procedures. In the area of CFSP, decisions are usually taken by consensus. The Lisbon Treaty has installed a few changes, but decision-making procedures in CFSP have not been fundamentally altered; the Member States maintain their central position in CFSP, and the new Qualified Majority Voting rules have not gone into effect yet. As Scharpf suggested in his work, the chances for improved effectiveness in politically salient areas such as foreign policy could be enhanced with the possibility for flexible integration. However, the possibilities for flexible integration in the Lisbon Treaty through the Enhanced Cooperation clause are still strict and have not been used so far. It is therefore safe to say that the changes made in the decision-making procedures will not be sufficient to genuinely improve output legitimacy.

As far as other institutional changes go, the Treaty has introduced innovations such as the ‘new’ position of High Representative and the European External Action Service. The generated internal changes resulting from these innovations could lead to more output legitimacy. The reason for this is the expected improvement in foreign policy coherence and better external representation. Several changes have been made that can have a positive effect on improving coherence; the HR has been entrusted a number of tasks that were previously exercised through multiple positions and the HR replaces the old foreign policy Troika that used to represent the EU externally. In addition, the rotating presidency has lost its significance in CFSP since the HR now chairs the Foreign Affairs Council and the EEAS is responsible for foreign policy support. Finally, the pillar structure has been abandoned which significantly decreases compartmentalization and simplifies the foreign policy structure. On paper the coherence of European foreign policy has improved.

However, reality is showing a different picture. There is quite a bit of ambiguity in the Treaty which has created opportunities for inter-institutional turf wars. On top of that, with the choice of the inexperienced Ashton for the job of HR, the Member States seem to have chosen for a low-profile European foreign policy as to preserve their power and influence in the policy
field. Ashton has received a lot of criticism from both the side of the Member States and the Commission and EP. Some of this criticism can be characterized as quite unfair, but not everything can be discounted and she has made some mistakes. One can genuinely wonder if she really is the appropriate person for the job. On the other hand, even though Ashton seems to constantly be the focal point of critique from the Council and the Commission, given the history of disagreement between these two bodies it seems questionable that anyone fulfilling the position of HR will ever be able to satisfy both sides equally.

The EEAS, which has only been functioning for the past six months, holds the same promise for improved coherence as the position of HR does. Since it has only been operative for six months it is difficult to judge to what extent it will be able to fulfill its tasks. It goes for the EEAS as well that it is depended on the Member States, Commission and EP for its functioning, which the internal power struggles could seriously hamper. On top of that, its potential is tied to Ashton’s capability to fully establish her role as HR as a strong force in EU foreign policy who can build consensus between all parties.

The response from the EU to the unrest in its Southern neighborhood has exposed that Ashton has so far been unable to be that strong leader who can ensure coherence and consensus between the Member States. The reaction from the EU was uncoordinated and divers. The events in the EU’s Southern neighborhood have once again shown that when the stakes are high, national foreign policy takes precedence over a unified European answer. The disagreement between and unilateral actions of Member States during the revolutions in North Africa demonstrated that the political will to act coherently and as one at the European level is not strong enough in these types of situations.

This means that the answer to the research question of this thesis, “To what extent has the output legitimacy of the European Union’s Foreign Policy, specifically Common Foreign and Security Policy, in the sense of Fritz Scharpf, improved after the implementation of the Lisbon Treaty in December 2009?” is that, at least on paper, the Lisbon Treaty has introduced a new foreign policy structure that can produce more effective policy, thus improving output legitimacy. However, the reaction to the events in the Mediterranean has shown that the EU will not be able to overcome the lack of coherence and difficulty to speak and act as one without mustering the political will to overcome the inter-institutional bickering and the diverse and contradictory foreign policy goals. No amount of institutional tinkering will resolve this.
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