

## Unlocking the constitutional stalemate: perspectives for CFSP

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### Background and Introduction

Following the rejection of the Constitutional Treaty (CT) in the referenda held in France and the Netherlands, European leaders adopted a Declaration at the Brussels European Council in June 2005 and endorsed the idea that a period of reflection was needed. An inclusive debate was to be promoted on the concerns voiced by European citizens in the course of the campaign. It was envisaged that, during the first half of 2006, leaders would take stock of the outcome of national debates and would decide how to bring the process of ratification forward.

Since this rather vague commitment, little has happened at either the national or the European levels, and the process of ratification is virtually stalled. In this context, some members of the European Parliament have taken a leading role in keeping the debate on the future of the CT alive, and the academic and think tank community has engaged in exploring how to overcome the constitutional gridlock. Over the last few weeks, however, following the agreement on the EU financial perspectives 2007-2013, some EU leaders seemed to be looking at the constitutional dossier with renewed interest, exploring ways to breathe new life into the document.

With a view to the deadline of June 2006 set by national leaders for tackling the issue again, it seems helpful to take a closer look at these developments. I will start by outlining the main options that have been debated over the last few months on the future of the CT, and weighting the pros and cons of these.<sup>1</sup> I will then give a broad assessment of the current state of the debate, and of the prospects for implementing the innovations envisaged in the field of CFSP. I will conclude by outlining some potential options that might be considered to implement the spirit, if not the letter, of the CT in the domain of CFSP and ESDP.

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<sup>1</sup> A good illustration of the main options on the table was provided in the course of the Symposium on the future of the constitutional process held on 13 October 2005 by the Committee on Constitutional Affairs of the European Parliament. The contributions of the experts who took the floor are available at [http://www.europarl.eu.int/meetdocs/2004\\_2009/organes/afco/afco\\_20051013\\_1500\\_symposium.htm](http://www.europarl.eu.int/meetdocs/2004_2009/organes/afco/afco_20051013_1500_symposium.htm)

## Debating options

The options included in the table can be ordered along a continuum between two ‘extreme’ positions: continue with ratification or drop the CT altogether.

Options	Pros	Cons
Continue with ratification	<ul style="list-style-type: none"> <li>- Preservation of the considerable <i>acquis</i> of the CT: the output of two years of intensive debate and a one-year long IGC.</li> <li>- Respect the countries and citizens who voted yes to the CT (14 countries representing over 50% of the EU population).</li> <li>- Avoid reopening very difficult negotiations which, in the light of previous attempts at Treaty reform, may well not lead to anything better than the CT.</li> </ul>	<ul style="list-style-type: none"> <li>- As a matter of democratic legitimacy, the decision of those who voted No should not be overrun.</li> <li>- France and the Netherlands have ruled out the possibility of holding a second vote in the foreseeable future.</li> <li>- No new major mobilising political project is associated with the CT and citizens do not identify the text with their own concerns and priorities.</li> <li>- The very definition of ‘Constitution’ is problematic and led to a backlash. The EU remains a hybrid polity and a Constitution is not suited to reflect the current political reality.</li> </ul>
Set up parliamentary fora, keep the ball rolling, and adopt CT in 2008/2009	<ul style="list-style-type: none"> <li>- Keeping momentum for reform by involving representative bodies at national and European levels.</li> <li>- Opportunity to bring public opinion on board by further engaging political parties, civil society, and the media.</li> <li>- Save the best and improve the rest: possible amendments with a view to a new text in 2008.</li> </ul>	<ul style="list-style-type: none"> <li>- Widespread constitutional fatigue across the Union, little mood for engaging in permanent debate.</li> <li>- Most governments have disconnected from the process, there is little that parliaments and civil society can do, assuming the will to move things forward exists.</li> <li>- National parliaments are not particularly popular institutions either.</li> </ul>
New IGC to transplant all important CT innovations in the existing treaties	<ul style="list-style-type: none"> <li>- Saving a lot of what has been achieved, giving up on details.</li> <li>- Avoid controversial constitutional symbolism.</li> </ul>	<ul style="list-style-type: none"> <li>- Widespread constitutional fatigue across the Union, no mood for reopening major negotiations.</li> <li>- The problem is political, not about the institutional intricacies needed to transplant most of the CT <i>acquis</i> in the existing Treaties.</li> <li>- The political consensus behind the CT compromise has already unravelled: a new IGC would hardly be confined to rescuing the CT provisions as they stand.</li> </ul>

Options	Pros	Cons
Cherry picking specific reforms and adding these to existing Treaties	<ul style="list-style-type: none"> <li>- Saving what really matters for the functioning of the Union.</li> <li>- Avoid controversial symbolism and proceed pragmatically on specific points.</li> </ul>	<ul style="list-style-type: none"> <li>- The CT is a package, a delicate compromise that would unravel if only a few bits were rescued.</li> <li>- Difficult to reach agreement on what parts should be rescued, and on the basis of what criteria: efficiency, democracy?</li> <li>- This course of action would still run against people's determination to reject the CT.</li> <li>- The eventual compromise would be confused and opaque, the opposite of what the Convention intended to achieve.</li> <li>- The range of the provisions that could be consensually rescued would be very limited: questionable whether worth the effort.</li> </ul>
Stop with institutional reform, get down to business	<ul style="list-style-type: none"> <li>- Avoid further conflict in a Union already strained by the budgetary debate and slow economic growth.</li> <li>- Internalise all the lessons of the current crisis and wait for the right moment before kicking off new reform process.</li> <li>- Focus on policy priorities and build upon what is working: economic model, ESDP, neighbourhood policy etc.</li> <li>- Turn the diversity of the Union into an asset and not an obstacle to further integration: pilot countries in different domains.</li> </ul>	<ul style="list-style-type: none"> <li>- Lose what has been so hard to achieve.</li> <li>- Undermine the credibility of an unprecedented, deliberative and transparent process such as the Convention.</li> <li>- Undermine the very claim that the whole exercise was badly needed: problem to publicly sustain future claims that reform is necessary for the EU to work better.</li> <li>- The EU enlargement process would slow down and might even come to a halt in the absence of a deepening of the Union.</li> </ul>

## The debate: state of play and prospects for CFSP

### Charting the process ahead

It follows from this quick overview of the debate on the future of the CT that no option is cost-free or risk-free: there is no easy way out of the constitutional impasse. All Member States broadly agree that the innovations included in the CT would improve the functioning of the Union, and its legitimacy. At the same time, there is no convergence of views on whether the process of institutional reform should, at this stage, be pursued at all, and in what form. That will require a decision at the highest political level. By June 2006, EU leaders should at least be in the position to provide a sense of direction.

What seems highly unlikely, however, is that the text of the CT will be ratified and adopted as it stands. That is recognised even by the most ardent supporters of the CT in the European Parliament. The basic question, therefore, is whether the goal remains the adoption of a revised version of the CT as a whole, or whether the CT framework should be abandoned in favour of more circumscribed, sensible, and less politically controversial reforms. The three following points could inform political decisions in this regard:

- Amendments will need to be introduced for the CT to be ratified and enter into force. Such amendments might notably include a simplification of the overall structure of the CT, with a separation between parts I, II and IV on the one hand, and part III on the other. While legally complex – including the shift of some provisions from one part to the other – a step in this direction might prove invaluable in making the text more accessible to EU citizens.
- The piecemeal adoption of bits and pieces of the CT, through Inter-Institutional Agreements or minor Treaty revisions (requiring a small IGC), might appear a more practical solution. It should be clear, however, that a step in this direction would probably kill off any residual chances of ratifying the whole package. It is a choice by default.
- Room for the progressive implementation of some of the innovations included in the CT could be explored. The further involvement of national parliaments in the review of EU legislation (subsidiarity- and proportionality-wise), or the opening of the legislative meetings of the Council to the public, do not require Treaty revision. The same is the case for the creation of new Council configurations and for arrangements on their chairmanship, as well as for setting up high-level Council Committees and working parties.

From a CFSP perspective, a basic premise should guide future reflection: the principles and goals that underpinned reform in this policy domain – coherence, leadership, and effectiveness – remain worth pursuing. This assumption entails three implications:

- The CT provided for far-reaching reforms of CFSP in the right direction, and should therefore remain the focal point for the review of policy-making procedures and bodies in this field.
- An incremental process should be conducted below the Treaty level with a view not only to matching the reforms envisaged by the CT and paving the way to their entry into force, but also to filling some of the blanks that the CT did not fully address (see below). Arguably, that is better done from the bottom up than from the top down although a strong mobilising impulse from the top is essential.
- The building blocks for CFSP reform, as envisaged by the CT, should be in place, and if possible tested by working practice, by the time the next major opportunity for Treaty level reform opens up.

## A window of opportunity

Although hardly ever mentioned in the public debate, a window of opportunity is likely to open earlier than commonly expected. According to the legally binding Protocol on the Enlargement of the European Union adopted at Nice in 2000, *‘when the Union consists of 27 Member States’* a major reform of the size and composition of the Commission will need to be introduced: *‘the number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously. The number of the Members of the Commission shall be set by the Council, acting unanimously.’*

This is a major piece of institutional innovation, with huge political implications across the system of governance of the Union, which will possibly need to be addressed as early as January 2007 if Romania and Bulgaria join the Union on schedule. In any case, according to the Protocol, *‘this amendment shall apply as from the date on which the first Commission following the date of accession of the 27<sup>th</sup> Member State of the Union takes up its duties.’* The possible delay of one year imposed on the accession of Romania and/or Bulgaria would therefore not substantially change the picture.<sup>2</sup> Tellingly, the CT had opted for postponing the sensitive decision of how to achieve a reduction of the size of the College to the Commission due to take office in 2014 (Art. I-26).

It is almost inconceivable that a substantial review of the size and composition of the Commission could be undertaken on its own, with no spillover on other dimensions of the inter-institutional balance. Would, for example, such a major piece of reform include a place for the ‘double-hatted’ Foreign Minister in the future shape of the College? If so, according to the scenario envisaged by the CT, the Foreign Minister would also chair the Foreign Affairs Council, which would require Treaty amendments on the Council side too, and so on. While the Protocol does not, therefore, require an IGC to introduce the new rotation mechanism in the Commission, it is very unlikely that this momentous piece of reform could be adopted, on its own, by a decision of the Council.

There are only two ways to prevent the implementation of the Protocol. First, ratifying the CT before 2009, in which case the Protocol would be repealed. Second, holding a micro-IGC repealing the Protocol and postponing the decision on the Commission to the next stage of institutional reform. The latter option seems hardly conceivable. The former is practicable, but widely considered unlikely in the light of the obstacles outlined above.<sup>3</sup>

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<sup>2</sup> Strictly speaking, the Council is already under the obligation to proceed with the reform of the size and composition of the Commission. The Protocol envisages that the Council shall unanimously adopt the number of Members of the Commission and the implementing arrangements for the rotation system *‘after signing the treaty of accession of the 27<sup>th</sup> Member State of the Union.’* That happened on 25 April 2005, with the signature of the Accession Treaties with Romania and Bulgaria.

<sup>3</sup> Another peg along the constitutional process might be the Accession Treaty which, according to some, might be signed around 2008/2009 between the EU and Croatia. Accession treaties, requiring ratification by each Member State, can include considerable institutional innovations. On the other hand, it would appear politically inappropriate to try and fit into an accession Treaty a wide range of reforms of ‘constitutional’ level. Moreover, it is actually unlikely that the Accession Treaty will be signed *and* ratified on time for the new provisions to apply to the new Commission and Parliament in 2009. It seems therefore that the idea of linking the two processes is not consistent with a reasonable timeframe.

The Protocol seems, therefore, to be here to stay. The only sensible choice is to turn an obligation into an opportunity. Bearing in mind the pros and cons of the options sketched out in the table above, a possible solution would be to hold an IGC in late 2007/early 2008, to reappraise the current text of the CT and introduce the amendments that might be required. The resulting Treaty could be ratified in the course of 2008. It would seem advisable to prepare the IGC with a broad process of consultation, led by the European Parliament (EP) in partnership with national parliaments, resulting in a joint report. In parallel to the IGC, a consultative Convention should be held to make the proceedings more transparent and provide input to the process. Among others, CFSP provisions should certainly be included in the new text.

### **Gearing CFSP up for reform**

It is widely acknowledged that what really matters is that CFSP and ESDP are effectively conducted, and that requires political will on the part of Member States. Recent progress, notably in deploying ESDP operations, bodes well for the future, but there is a need to improve the functioning of the Brussels-based framework for CFSP. A functional institutional framework provides an enabling environment for channelling and also mobilising the political will of Member States. Besides, the EU can bring maximum added value by enhancing the synergy of all instruments at its disposal. This requires ‘ever closer cooperation’ between the EU and Member States, and between EU institutions.

The reform of CFSP must, therefore, remain a centrepiece of any future Treaty reform. It needs to be very well prepared in advance with a view to introducing institutional innovations without disruptions, and minimising tensions. The unfortunate delay of the reform process might, once again, be turned into an opportunity, on the condition that the debate is approached with an open mind from all sides. A reformed, cost-effective and efficient system of CFSP policy-making can, moreover, be presented to public opinion as a case of European best practice, with the Union bringing security to its own citizens as well as well beyond its borders. That would appeal to both centre-left and centre-right segments of public opinion in all Member States.

Assuming that some sort of IGC will have to be held in 2007/8, there are two ways of gearing CFSP up for reform in advance. First, negotiating an Inter-Institutional Agreement (IIA), to be subsequently endorsed by the IGC. Second, identifying and pursuing best working practices on selected issues or policy aspects, and making a consistent effort at mainstreaming them across all relevant services and also at the political level.

#### An Inter-Institutional Agreement?

The idea of concluding an IIA on the CFSP profiles of the CT has been floated in many corners, and is attractive. On balance, however, it seems to bring more problems than solutions. One should first of all recall that, according to the Declaration Number 3 adopted by the European Council in Nice, IIAs ‘*may not amend or supplement the provisions of the Treaty and may be concluded only with the agreement of these three institutions.*’ This means that the IIA could not introduce some of the most important Treaty level reforms that the CT envisages for CFSP.

These notably include the status of the new Foreign Minister. Double-hatting is impossible under the current treaty framework. Art. 203 TEC states that *'The office of the President shall be held in turn by each member State in the Council for a term of six months in the order decided by the Council acting unanimously.'* Art. 213.2 TEC provides that *'In the performance of their duties, they [the members of the Commission] shall neither seek nor take instructions from any government or from any other body'* and that *'The Member of the Commission may not, during their term of office, engage in any other occupation.'* These are only two macroscopic examples of existing Treaty provisions that could not be bypassed by an IIA.

In cost-benefit terms, it seems questionable that the Council, the Commission *and* (see Declaration above) the European Parliament should enter difficult negotiations in the foreseeable future. It is unclear what the comparative advantage of a hard-to-reach IIA would be, compared to sensible, incremental progress in cooperation between the institutions involved. The IIA could conceivably go as far as setting up a quasi-External Action Service as envisaged by the CT. The question is, however, whether it would make sense to set up the Service as such in the absence of its head, the 'double-hatted' Foreign Minister. Should a strong political will exist behind concluding an IIA, however, then the option should not be discarded: it would bring clarity and coherence to aspects of the work of CFSP, and provide a stepping-stone towards Treaty-level reform.

#### Incremental progress

A piecemeal approach to CFSP reform – the alternative option – need not be devoid of vision. It should be clearly set between the two 'constituent' moments of 2003/04 and 2007/8. It should draw from the former and aim towards the latter. Before examining in some detail some of the possible initiatives that might be taken in this context, one key point should be stressed. Incremental reform builds from the bottom up, but requires a decisive, sustained input from the top down. The sense of drive and direction matters a great deal. This can be achieved in different ways, which are not mutually exclusive. In what follows I sketch out what would appear to be a possible, if perhaps ambitious, sequence:

- The Austrian Presidency leads consultations with a view to including in the conclusions of the June European Council a paragraph instructing the President of the Commission and the HR/SG of the Council to present a concrete Action Plan for enhancing the cooperation between the Commission and the Council in the field of external relations, CFSP and ESDP, while preserving respective competences. (Alternatively, with the agreement of the Member States, the President of the Commission and the HR/SG could take this initiative on their own behalf.)
- President Barroso and SG/HR Solana appoint two very senior officials to conduct this exercise. Under their leadership, the services are invited to cooperate more closely together. The EP is kept informed of all initiatives.
- Drawing from the report of the two officials, and from initial operational experience, an Action Plan is presented to the European Council in December 2006, and adopted by Member States. The EP is consulted on the Action Plan.

- The (flexible) implementation of the Action Plan is carried out in the course of 2007 and 2008, anticipating, preparing and flanking the next round of institutional reform. The EP is regularly informed on the implementation.
- A new Treaty is adopted and ratified between 2008 and 2009, in time for the new Commission and for European elections, including the reforms of CFSP envisaged by the CT and also the innovations stemming from the practical experience gained through the Action Plan.

Regardless of the precise procedure and instruments chosen to build momentum, the input from the top is an essential condition for improving the systemic performance of CFSP. That said, it seems helpful to look in further detail at what is the state of play (a sort of informal *acquis*), and what could be done to improve policy making, building on existing best practice, where possible.

### Options for the reform of CFSP

The table below aims to provide some food for thought: it is not a consolidated blueprint but simply a set of tentative, and non-comprehensive, suggestions concerning the reform of both CFSP and ESDP, building on the best practice of the last few years.<sup>4</sup>

CT Provisions	State of play	Options for reform
<b>Art.I-24</b> The FAC, separated from the GAC, elaborates EU external action.	The FAC has not been separated from the GAC.	A unanimous decision of the Council meeting in its General Affairs configuration would be sufficient to <u>create a new Council configuration: the FAC</u> .  The same decision could include the formal establishment of the <u>Council of Defence Ministers</u> , to meet three or four times a year before the FAC configuration. This would seem an appropriate step considering growing crisis management commitments, the political profile of the capabilities generation process and the establishment of the EDA.
<b>Art.I-28</b> The FM presides over the FAC <b>Declaration 4</b> The Chair	The country holding the rotating Presidency chairs the meetings of	It seems legally very dubious that a country holding the presidency could simply invite the HR to chair

<sup>4</sup> The following are the abbreviations included in the table: **EAS** – European External Action Service; **EDA** – European Defence Agency; **FM** – The Union Minister for Foreign Affairs; **FAC** – the Foreign Affairs Council, separated from the **GAC** – General Affairs Council; **COM** – the European Commission; **VP** – Vice-President; **HR** – High Representative; **MS** – Member States of the EU; **QMV** – qualified majority voting. While not reporting all CFSP-relevant provisions, the table is a checklist of the main points to watch.

CT Provisions	State of play	Options for reform
<p>of the Political and Security Committee is held by a representative of the FM. The chair of the preparatory bodies of Council configurations, with the exception of the FAC, shall fall to the country holding the presidency.</p>	<p>the GAERC. The same goes for COPS and other working groups.</p> <p>The Council Decision setting up the COPS (2001/78/CFSP) envisages that, after consulting the Presidency, the HR may chair COPS, especially in the event of a crisis.</p>	<p>the Council meeting in its External Relations configuration.</p> <p>The Council could, however, decide to amend its own Rules of Procedure and envisage that <u>COPS is chaired by a very senior representative of the HR</u>. Likewise, the Council could decide that senior officials from the Council SecGen chair <u>CFSP preparatory bodies</u>, a precise list of which should be unanimously agreed.</p>
<p><b>Art. I-28</b> The FM is a VP of the COM; ensures the consistency of EU external action; is responsible for the responsibilities incumbent on the COM in external relations and for coordinating other aspects of EU external action</p>	<p>The HR cannot become a member of the COM.</p>	<p>The European Council could agree that an <u>informal EU steering group for external relations</u> is set up and meets regularly, every two months or so. That would include the President of the COM, the HR and all the Commissioners part of the External Relations Commissioners' Group.</p> <p>The new body could be chaired by the Presidency of the Union, with the country holding the following Presidency also attending the meeting.</p> <p>This informal gathering would allow for regular exchanges and foster joint, coordinated policy-making across the board. This would be even more helpful to oversee and enhance selected initiatives conducted jointly by the COM and the HR/Council SecGen, as suggested below.</p>
<p><b>Art.III-296</b> The FM shall contribute through his/her proposals towards the preparation of CFSP.  <b>Art.III-293</b> The FM, for CFSP, and the COM, for other areas of external action, may submit joint proposals to the Council.  <b>Art.I-40</b> The Council acts on a proposal from a MS, the FM, or the FM</p>	<p>The HR does not have a formal right of initiative. Occasionally, the HR and the COM are requested to submit to the European Council joint proposals, or they submit papers at their own initiative. Examples include the 'Strategy on the external aspects of the</p>	<p>The European Council could ask President Barroso and HR Solana to <u>select pilot projects</u> to be developed jointly by the COM and the Council SecGen, leading to joint proposals. This approach could lead to different formats of joint policy making.</p> <p><u>Joint working parties</u> at senior level could be set up as instructed by the COM President and the HR to</p>

CT Provisions	State of play	Options for reform
with the COM support.	<p>policy on freedom, security and justice’ and key policy papers on a comprehensive approach to Kosovo. On a broader level, however, cooperation is not mainstreamed.</p> <p>The practice of delivering to the Council/European Council parallel contributions on the same subject should be progressively abandoned.</p>	<p>address both horizontal issues and strategic relationships with third parties. These joint groups could meet regularly or be activated as <u>special task forces</u> when need be.</p> <p>Relevant projects might include: the interface between internal and external security; the fight against organized crime; energy security; civil protection and the EU policy towards the Balkans. In addition, there seems to be a lot to gain from having permanent joint working parties on strategic relationships with major partners such as the US, Russia, China, and India.</p>
<p><b>Art.III-293</b> The decisions of the European Council on the strategic interests and objectives of the Union shall relate to the CFSP and to other areas of the external action of the Union.</p>	<p>The ‘common strategies’ adopted by the European Council have not been regarded as particularly effective because all-inclusive and with little political drive.</p> <p>Recent examples, such as the Strategy against WMD Proliferation, have showed that real momentum can be achieved when the objectives are clear, and a concrete action plan accompanies the strategy.</p>	<p>The input of the European Council is going to be decisive to trigger joint policy making and joint papers/proposals/initiatives, in agreement with the COM President and the HR. National leaders should progressively make a habit of entrusting the Council and the COM with joint projects concerning external relations, although that should not necessarily become a fixed rule.</p> <p><u>Better standards</u> should be set for future strategic documents, including the following. A clear prioritising of a limited set of policy goals. A workable Action Plan associated to strategic documents with a realistic timetable. Political conditions attached to EU partnership with third countries/regions. A possibly joint COM/Council team to follow up the strategy and oversee its implementation by EU institutions, each within its competences. An annual monitoring of progress: a sort of audit of EU strategic plans.</p> <p>Steps in this direction might be taken incrementally, including ongoing initiatives such as the Four Common Spaces to be set up with Russia or Action Plans under the</p>

CT Provisions	State of play	Options for reform
		European Neighborhood Policy.
<p><b>Art.III-296</b> In fulfilling his/her mandate, the FM is assisted by the EAS, including officials from Council SecGen and COM as well as staff seconded from national diplomatic services. EAS established by decision of the Council on a proposal of the FM after consulting EP and with COM consent.</p> <p><b>Declaration 24</b> As soon as the CT is signed, the HR, the COM and MS should begin preparatory work on the EAS.</p>	<p>Preparatory work towards the setting up of the EAS started but is stalled since May 2005. Some (broad) consensus was reached on basic points, which should be retained as a basis for further work. For example, the EAS will be set neither in the Council nor in the COM, and will not be a new institution.</p> <p>Timid steps have been taken in the direction outlined by the CT, including the appointment of a double-hatted EUSR and Head of COM Delegation in FYROM.</p>	<p>The EAS cannot be set up without a FM heading it, but a number of steps could be envisaged to enhance cooperation between EU institutions as well as with national diplomatic services. Some suggestions have been sketched out above.</p> <p>In addition, national diplomats as well as Council officials could join COM delegations in greater numbers. Conversely, more COM officials from RELEX could be seconded to national missions abroad and to the Council SecGen. Reporting from COM Delegations should be fully available both to the Council SecGen and to national foreign ministries, with notes/memos reserved to Commissioners being the exception.</p> <p><u>Double-hatting</u> one person to be EUSR and Head of COM Delegation could be envisaged elsewhere, depending on the way in which things work out in FYROM. The double-hat need not necessarily be a COM official. What matters is that precise guarantees of accountability to the HR for CFSP aspects are foreseen. Moreover, COM Delegations could be headed by prominent figures from outside the services, such as is already the case in Washington DC, so as to boost the political profile of the Union.</p>
<p><b>Art.III-299</b> In cases requiring a rapid decision the FM shall convene an extraordinary meeting of the FAC within 48h</p>	<p>On a general level, it proves difficult to convene emergency meetings of the Council.</p>	<p>A clause on emergency meetings could easily be included in a Plan for CFSP or in the conclusions of the European Council. It would be politically important for the HR to be formally entitled to call national ministers around the table when issues require urgent discussion at EU level.</p>

CT Provisions	State of play	Options for reform
<p><b>Art.I-40</b> CFSP is based on the achievement of an ever increasing degree of convergence of MS actions.</p>		<p>This is a key principle, at the basis of the distinctive working style of CFSP and ESDP. It should be restated in any new document or Plan concerning CFSP reform.</p>
<p><b>Art.III-300</b> The Council acts by QMV on a proposal presented by the FM following a request from the European Council made on its own initiative or that of the FM.</p>	<p>No further exceptions to the rule of unanimity can be introduced without Treaty change.</p>	
<p><b>Art.I-41</b> CSDP shall provide the Union with an operational capacity drawing on civil and military assets.  <b>Art.III-309</b> New list of tasks under CSDP, in the fulfillment of which the Union shall use civilian and military means. The FM shall ensure coordination of civilian and military aspects of such tasks.</p>	<p>ESDP has made some strides towards enabling the EU to plan and carry out integrated civilian/military operations. In general, the principle of integrating all available expertise and means to better prepare and conduct the missions is acquired. Concept on comprehensive planning; CivMil Cell; joint fact finding missions and Civilian Response Teams.</p> <p>Examples of regular and constructive cooperation on crisis areas between the Council and the COM include Kosovo and Israel-Palestine. Cooperation, however, is often limited to individual senior officials and not yet mainstreamed through the services.</p>	<p>Steps undertaken so far go in the right direction, but fall short of integrating all EU instruments in support of EU foreign and security policy, before or after crisis erupts. Community programmes are not yet integrated in a common approach with CFSP/ESDP instruments and initiatives. This is a difficult and sensitive process, and progress can only be incremental. It seems worthwhile building on what has been achieved so far.</p> <p>Once the CivMil Cell has acquired more experience and consolidated its operational practice, the connection of the Cell with the COM services might be upgraded. A wider network could be flexibly involved. Ad hoc groupings could be envisaged to draw together personnel from the CivMil Cell and other relevant bodies from the Council SecGen and the COM, if necessary with variable geometries.</p> <p>In the presence of a crisis in a given country or region, the conduct of ESDP crisis management should remain a distinctive activity, with its own command structure and decision-making procedure. That said, it could gain from being embedded in a wider political context, taking a broader look at the politics of the crisis. Inter-</p>

CT Provisions	State of play	Options for reform
		institutional <u>Country or Region Strategy Teams</u> could be set up for short-term crisis prevention or crisis or post-crisis management, involving officials from all relevant services including not only RELEX but also DEV and ECHO in the COM. These teams could take a comprehensive, medium-term look at the crisis situation and submit proposals to COPS drawing from all the instruments available to the Union, while preserving respective competences.
<b>Art.I-41</b> CSDP is an integral part of CFSP. CFSP includes the progressive framing of a Union defence policy, which will lead to a common defence when the European Council so decides by unanimity.		The new wording of the CT, including ‘Common Security and Defence Policy’ (as opposed to ESDP) should be preserved in future documents.
<b>Art I-41</b> The Council may entrust the execution of a task within the EU framework to a group of MS.  <b>Art.III-310</b> Modalities	This is already the case: ESDP operations do not involve all MS. The CT envisaged that the FM would be associated with decision-making on the management of the task, which is the case for the HR.	
<b>Art.I-41</b> Those MS whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation.  <b>Art.III-312 and Protocol Modalities</b>	Permanent structured cooperation as such is not in force. Progress is, however, achieved on parts of the Protocol, such as for example the supply of Battlegroups.  Under the supervision of the EDA, working groups focus on matching the HG 2010.	In the presence of the political will to do so, nothing would prevent a group of MS from adopting the Protocol among them and entrusting the EDA with an assessment of their performance. This form of extra-EU closer cooperation would not be unique (see for example, in the field of ESDP, the setting up of the European Gendarmerie Force) but, if launched, it should be undertaken with the declared intent to contribute to strengthening ESDP as a whole.  As in the case of the Eurogroup, Defence Ministers representing the

CT Provisions	State of play	Options for reform
		countries participating in structured cooperation could meet separately to discuss their cooperation and could also appoint a permanent chair of this informal grouping.
<b>Art.I-41</b> If a MS is the victim of an armed aggression, the other MS have an obligation of aid and assistance in accordance with Art.51 UN Charter		A declaration in this direction could be adopted by all MS in the context of a broader Action Plan. While, in practice, it does little to alter mutual commitments on the security of MS, it would seem politically and symbolically important not to backtrack from it.
<b>Art.I-43</b> The EU and its MS shall act jointly if a MS is the object of a terrorist attack or victim of natural or man-made disaster. The Union shall mobilise all the instruments, including military resources.  <b>Art.III-329</b> Modalities	The clause has entered the political <i>acquis</i> of the EU with the March 2004 Declaration of the European Council on solidarity against terrorism.  In the absence of the CT, the implementing arrangements of the solidarity clause have not been undertaken.	This could become another area of constructive cooperation between relevant Council and COM services, along the lines suggested above. A special working party could be envisaged bringing together expertise from both institutions, spanning across different policies including CFSP/ESDP and Justice, Freedom and Security.

## Conclusion

The process of EU institutional reform will need to be relaunched and pursued over the next couple of years by choice or by obligation, according to the provision of the Protocol on Enlargement adopted at Nice in 2000. It is almost inconceivable that the reduction of the size of the Commission, required by the Protocol, could be decided without affecting the overall inter-institutional balance. Whatever the course of events, it seems certain that the text of the CT will undergo some amendment. Some EU leaders have expressed renewed interest in the constitutional debate in early 2006.

From a CFSP perspective, an obligation can be turned into an opportunity by preparing the next round of reform well in advance. This process should be guided by the goals expressed by the CT for CFSP: coherence, leadership and effectiveness. There are different ways to go about non-Treaty level reform, including striking an Inter-Institutional Agreement. It seems more practical, however, to envisage that the European Council requests in June 2006 that the President of the Commission and the High Representative draft, by December 2006, a Joint Action Plan.

The latter would include a set of sensible, practical proposals for enhancing the cooperation between the Commission and the Council in the field of external relations, including CFSP and ESDP. The two institutions would best fulfil their respective mandates by developing ways to work together in *both* initiating and executing decisions, without breaching the legal competences of either institution. Some potential options for reform in this broad direction are sketched out in this note.

Basically, it is in the collective interest of Member States and of EU institutions to draw the maximum output from shaping a common foreign and security policy. At the European level, Member States invest scarce resources, and need to be confident that they will get a 'profitable' return on the investment. For that to happen, what is most needed is a platform to promote the convergence of different positions and add to them the specific legitimacy, authority and 'impact' that the EU confers. For the EU and its Member States, this would be a win-win situation.