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# The EU Polity and Foreign Policy Coherence

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## Abstract

The present article examines the character of the European Union (EU) as a polity by looking at the mechanisms it employs to ensure the coherence of its foreign policies. It first contrasts three ideal polity types. The methods selected to ensure coherence in foreign policy actions differ according to each of the three polity types. The article then explores how the EU ensures coherence through institutional reform, and subsequently looks in detail at two illustrative policy fields: aid sanctions and civilian crisis-management. The investigation concludes that the organisation of EU foreign policies combines elements from different polity types.

## Keywords

European Union; Coherence; Sanctions; Civilian crisis management; Polity types

INTERNATIONAL ORGANISATIONS, STATES AND OTHER GOVERNANCE SYSTEMS HAVE PUT in place various mechanisms to ensure that their policies are coherent out of a conviction that this enhances the effectiveness of their output (Nathan and Oliver 1987, OECD 2003, Gebhard 2010). The foreign policy of the European Union (EU) constitutes a prime example: its structures and formulation of EU are exceptionally complex in comparison with those of states and purely intergovernmental organisations. Until the introduction of the Lisbon Treaty, EU foreign policy has been articulated at the three different levels: in the Community framework of the first pillar (EC), in the intergovernmental framework of the second pillar, and at the national level by the member states. With the Lisbon Treaty the pillar structure is formally eliminated, but competences of different actors and decision-making still vary from one policy field to another. Hence, the occurrence of incoherence is more likely than in other international entities. Incoherence can arise from different sources: conflicts may erupt horizontally among EU institutions or pillars and vertically among member states (Nuttall 2005).

The EU treaties provide an obligation for all actors at play to formulate a coherent foreign policy (Tietje 1997; Wessel 2000; Hillion 2008). Such obligation, included for the first time in

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the Treaty establishing the European Economic Community during its first revision in 1986, the Single European Act (SEA), predates the creation of the EU in 1993. How does the EU implement this principle of coherence in its foreign policy? And what does this reveal about the nature of the organisation? The present article outlines how the methods utilised for ensuring coherence in foreign policy vary in different types of polities and subsequently establishes which of these methods are selected by the EU. We consider different 'ideal types' of international polities: The main type of actor in international relations is the state, of which the EU already presents some features. In a state, coherence rests on hierarchical decision-making structures in foreign policy. A second ideal type, the intergovernmental organisation, achieves coherence through coordination among member states while each member retains veto power. Finally, if considered as a cosmopolitan polity, the EU would add a new layer of government functions to the member states without superseding them. Coherence would thus be achieved by deeply institutionalised mechanisms of coordination.

The methods used by the EU to implement the principle of coherence are analysed at two different levels. On the one hand, the article analyses treaty reforms and on the other hand, it examines the organisation of specific policy fields altered as a result of the emergence of new external actions by the EU. Because scholarship has overwhelmingly focussed on institutional innovations introduced by the treaties, this article attempts to widen the scope of the investigation by looking at the "micro-level". Namely, it explores tailor-made arrangements devised to address incoherence in policy fields where inter-pillar collaboration is necessary. Arrangements governing these policy fields were not conceived in the treaty reform process, but resulted from agreements hammered out at a later stage, after the treaty had entered into force. While the exploration of the mechanisms devised in the aftermath of treaty reform remains neglected in the literature, it can increase our knowledge about how the EU ensures foreign policy coherence. To this end, the organisation of sanctions and civilian crisis-management operations are looked into as cases exemplifying inter-pillar collaboration and the difficulties it entails.

The present article proceeds as follows: A first section presents three ideal type polities developed in the framework of the RECON (Reconstituting Democracy in Europe) project by Eriksen and Fossum (2007). A second section examines the methods used by the EU to implement its aspiration to enhance the coherence of its foreign policy. A final section concludes by ascertaining what these three case studies – treaty reform and the policy fields of sanctions and civilian crisis management - reveal about the nature of the EU as a polity.

### **The requirement of coherence**

Defined as the absence of contradiction between policies, coherence in external policy output is a concern to many actors in international relations, in particular to federal states (Nathan and Oliver 1987, Di Francesco 2001, Stengel and Weller 2010). The idea that states need to follow a unitary foreign policy, free of contradictions, is the objective pursued by the principle of coherence. In a state, the actor bearing responsibility for co-ordination remains the state executive. According to Böckenförde, the executive government branch is responsible for the organisation and co-ordination of a common outcome (1964:39; 129). In the case of the EU, incoherent outcomes are particularly likely to arise due to its fragmented legal-institutional structures (Smith K 2003). In contrast to states, which rely on one single bureaucracy for foreign policy and mostly a unitary source of foreign policy authority – the executive –, EU foreign policy has struggled with differences between the EU level and the member states as well as between the Community and the intergovernmental level. In the absence of a single executive, the EU received

coordinating powers in the course of the integration process in order to allow it to shape a common foreign policy.

The EU must ensure coherence at different levels. In order to ensure vertical coherence, the foreign policies of the member states and the EU should be complementary (Hillion and Wessell 2008). The problem of vertical coherence is aptly described in the Commission's Communication on "Europe in the world":

first and foremost, political agreement among Member States on the goals [is] to be achieved through the EU. This requires a strong partnership between the EU institutions and a clear focus on a limited number of strategic priorities where Europe can make the difference, rather than dispersing efforts across the board. This is the condition *sine qua non* [...] For the EU, there is the additional challenge in ensuring coherence between EU and national actions (European Commission 2006: 5-6).

Under horizontal coherence, also called "cross- or inter-pillar" coherence, policies between different pillars have to be coordinated. Beyond inter-pillar co-ordination, intra-institutional coordination concerns the coordination of policies within a specific institution, e.g. Commission policies across different Directorates General (Christiansen 2001).

The Treaty on European Union (TEU) sets out the legal basis for coherence in EU foreign policy. According to its old Article 3 TEU (pre-Lisbon), the Union shall ensure consistency of its external activity and especially the Commission and the Council "shall cooperate" to this end. The old Article 13 TEU (now Article 26 TEU post-Lisbon) states that the Council "ensure[s] the unity, consistency and effectiveness of action by the Union". Coherence emerges thus as an obligation for all actors in European foreign policy to coordinate their policies to produce coherent outputs. A formal requirement is needed to hold together different policies whose formulation corresponds to different actors and institutions within the EU.

### **The ideal-type polities and their methods to ensure coherence**

Which methods can we expect a hybrid, unique entity like the EU to use in order to ensure coherence in its foreign policy? To answer this question, three ideal types of polities are presented, along with their corresponding methods of accomplishing coherence in their foreign policy actions. The following section conceptualises what coherence-building mechanisms are expected to look like according to these three ideal types of polities. Each of these ideal types uses different methods to ensure coherence in its international relations.

#### ***Ideal-type polities and coherence***

The three polities introduced below are "intergovernmental organisation", "federal state", and "regional cosmopolitan polity". They are ideal-types in the sense that their ideal conceptions do not necessarily match the empirical reality (Eriksen and Fossum 2007; Sjursen 2007). Parts of their conceptions may differ from empirical reality.

The nature of the EU's overall institutional setting and the nature of the EU's institutional setting in foreign policy in particular have been researched for some time. Focussing on grand-conceptions such as "federations" or "intergovernmental organisations", studies have analysed the nature of the overall institutional setting and have identified the EU as "less than a federation, more than an intergovernmental organization" (Wallace 1983), "a supranational organization" (Bogdandy 1999), "a quasi-federation" (Weiler 2003) or

“condominio” (Schmitter 2005). Studies that have paid particular attention to the institutional foreign policy structures of the EU have mainly analysed executive politics across pillars, calling them “transgovernmental” politics (Majone 2005; Smith 2003; Vanhoonacker 2011), “administrative governance” (Duke and Vanhoonacker 2006) and “cross-pillar-politics” (Stetter 2004). Often these findings have not been linked back to the question of which grand-conception the EU resembles (but see Allen 1998; Burgess 2000). The present article links three grand conceptions to the field of EU foreign policy. Grand-conceptions can guide us to understand the nature of the EU in the context of ensuring coherence in foreign policy.

### *Intergovernmental organisation*

In the first ideal-type, the EU is viewed as an intergovernmental organisation (Eriksen and Fossum 2007). Its purpose is to address problems that its member states cannot resolve acting independently. Institutions are established in which member states retain veto power, preserving the intergovernmental character of the EU (Hyde-Price 2005). With only limited tasks being delegated to the European level, the member states steer the Union through modes of hierarchy (as principals) and intergovernmentalism (by upholding power to veto or consent). This ideally constitutes a European order with foreign, security and defence policies, based on the voluntary coordination of member states under the roof of intergovernmental – thus consensual or unanimous – decision-making. The competence to act in foreign policy lies with the member states, but the coordination thereof can mutually be agreed upon. Under this scenario, member states prevent incoherence by means of coordination. Coherence is only achieved at a vertical level through coordination of member states in the intergovernmental institutions of the EU. Member states do not lose their right to conduct foreign policies. Horizontal coherence is provided by holding EU institutions accountable, subduing them to the intergovernmental framework.

### *Federal state*

In the second conception, the EU is regarded as a multinational federal state. There is a single foreign, security and defence policy at the federal level. In the “federal state” model, the integration of foreign, security and defence policy is based on the pooling and centralising of foreign policy powers that previously have rested on the state level. In this federal model, the policy is made by a federal administration taking over central functions of the national executives and administrations. The pooling of authority is linked to a strong belief in institutions on the level of the integrating entity. Like in most federal states, the competence of foreign policy making rests with the EU on a federal level, without ruling out sublevel foreign policy making. In order to achieve vertical coherence, the sub-federal level has to comply with decisions made by the federal level in foreign policy. Horizontally, the European foreign policy administration has to ensure inter- and intra-institutional coherence amongst the different branches of government dealing with foreign relations. This is done by the federal government through its power of organisation (Böckenförde 1964): the head of the executive uses organisational planning and hierarchical directives to make his or her administration work coherently (Nathan and Oliver 1987; Stengel and Weller 2010).

### *Regional cosmopolitan polity*

The third conception considers the EU as a regional cosmopolitan polity, in which government functions become separated from the state and embedded in global

governance. Here, the EU is a democratic non-state polity, with explicit government functions. In such an EU polity, the concept of government would rest on a cosmopolitan authority of procedures established for decision making and law making (Eriksen and Fossum 2007:29). The EU's authority to act is based on the idea that the regional order looks after the implementation and protection of cosmopolitan norms and principles (such as universal human rights) which form the constitution of a transnational (global) society. While concurrent powers of foreign policy action could rest on the EU level (Sjursen 2007), coherence in the vertical dimension would be ensured by member state compliance. As a regional polity, the EU is embedded in global governance structures. In that sense, the EU policies would not only have to be coherent between the member states and the EU, but also between the EU and centres of global governance, such as the United Nations. On the regional level, independent institutions on the European level direct the co-ordination of EU foreign policy. EU institutions have to provide close institutionalised co-ordination in order to fulfil their governmental tasks.

In the remainder of this article, the attempts by the EU to give effect to the obligation of coherence are examined against the background of these ideal-types of foreign policy actors.

### **The quest for coherence through treaty reform**

This section examines how institutional reform has addressed the question of coherence in EU foreign policy. Which methods were selected for achieving coherence, and to which ideal polity-types do these different methods correspond?

Already the Single European Act (SEA) which formalised the European Political Co-operation (EPC) contained an exhortation to ensure coherence between its outputs and the external relations of the Community: "external policies of the European Community and the policies agreed in the European Political Co-operation must be consistent" (SEA 30(5)). This explicit linkage subjected both areas to the need for consistency, and entrusted both the Commission and the Presidency with the task of ensuring consistency (Krenzler and Schneider 1997:134). However, the inclusion of a general exhortation in the treaty was largely unaccompanied by supporting institutional arrangements. The defining moments for the configuration of coherence in EU foreign policy came with the treaty revisions of the nineties at Maastricht and Amsterdam. Improving the effectiveness of the EU's external capabilities was a key motivation behind the signing of the TEU in 1991 (Smith ME 2004:209). The central innovation introduced by the Treaty of Maastricht was the establishment of a single institutional framework through the creation of the European Union. In terms of foreign policy, this comprised the external relations of the first pillar, agreed under the Community method, and the intergovernmental pillars of the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). Until then, the ECP and the TREVI groups, the predecessors of the CFSP and JHA respectively, had remained fully separate from the Community framework, as they were not covered by the original treaty. The rationale for the creation of the single institutional framework was that coherence would be improved because all policy fields, while governed under different rules, would now share the same institutions. As part of the creation of the single institutional framework, the small secretariat that had supported the EPC was integrated into the Council Secretariat. However, the establishment of the single institutional framework did not in itself lead to improved coherence of EU external action: "by attempting to create a closer link between the EC and the EU's other external capabilities, the drafters of the TEU unwittingly created tensions, inconsistencies, and gaps between the rules governing these domains at the organisational and even individual levels" (Smith ME 2004:209). This situation was exacerbated by two further provisions: Firstly, the exhortation to ensure coherence was now addressed to both the Council and the

Commission. Secondly, the European Court of Justice (ECJ) was precluded from exercising jurisdiction over the policies produced in the second and third pillars. The combination of entrusting both Council and Commission with the task of ensuring coherence and the lack of ECJ jurisdiction was unable to eliminate the “grey areas” where the competences of Council and Commission overlapped. In fact, many of the arrangements contributing to EU foreign policy coherence result from sharpening the delimitation of competences between the Community and the intergovernmental framework. Thus, the unfinished businesses of Maastricht had to be solved through arrangements which were put in place following a series of major inter-institutional conflicts which erupted following the entry into force of the TEU. While the most publicised example was the dispute over the financing of the CFSP due to the European Parliament’s activism on the matter, similar struggles characterised the few years following the entry into force of the TEU (Schmalz 1997:22). The outcome of those disputes created many of the mechanisms which ensure coherence in EU foreign policy until today.

Similarly, activism among EU actors advocating arrangements for improved coherence emerged with the creation of the European Security and Defence Policy (ESDP) in the run up to the Treaty of Nice. While a renewed attempt was made to strengthen provisions on coherence in the treaty, the need for consensus once again brought about mechanisms which were harshly criticised by EU actors and commentators alike. Resenting that the Nice Treaty provisions on enhanced co-operation set ESDP apart from the rest of the CFSP, Missiroli lamented that “unless a legally more constraining framework is established...the potential for occasional turf battles and ‘malign’ initiatives and interpretations is there to stay” (Missiroli 2001:10). Paradoxically, the adoption by the EU of a military operational role through the establishment of the ESDP exacerbated the need for improving coherence, while the sensitive nature of defence issues rendered consensus among member states more difficult. Another example is the creation of a High Representative (HR) for the CFSP, a role introduced by the Treaty of Amsterdam. While this post potentially constituted a key instrument for the improvement of vertical coherence, the HR was meant to represent the Union externally in subordination to the Presidency, which already had to share its external representation functions with the Commission in accordance with Article 18(3) of the Amsterdam Treaty. Such an arrangement complicated the question of external representation of the Union as it added to the multiplicity of actors involved rather than reducing it. Only with the progressive enhancement of the powers of the HR in subsequent treaty revisions is developed into a role contributing to the enhancement of coherence in the CFSP.

Yet, beyond the defining years of the post-Maastricht, and to some extent the post-Amsterdam and post-Nice periods, improved coherence in EU foreign policy resulted from the increasing delimitation of competences between the institutions and pillars. The EU has been ameliorating its coherence mechanisms gradually: “despite a number of internal and external obstacles, the EU continues to make gradual institutional breakthroughs in this area” (Smith ME 2004:209). The step-by-step, often conflict-ridden elimination of “grey areas” was made possible chiefly by two developments. Firstly, the ECJ became increasingly involved in adjudicating in inter-institutional disputes over competences with major implications for coherence. The role played by EC law in promoting coherence through the ever-sharper delimitation of competences has been central (Cremona 2008; 2011). Secondly, the delineation of competences also resulted from the Commission’s tacit acceptance of the loss of a portion of its autonomy in matters where Community and CFSP competences overlapped: “when a policy action generates a conflict between CFSP and EC decision-making rules [...], the procedures of the CFSP tend to dominate [...] Some CFSP decisions even undermined EC’s own competencies, thus contaminating the EC with intergovernmentalism” (Smith ME 2004:215). This development was facilitated by the circumstance that the Council that is responsible for the CFSP, although both Council and

Commission are entrusted with ensuring coherence. In this sense, the arrangements were aided by the Commission's selective activism: "Given its institutionalised preoccupation with economic integration, the Commission still chooses its battles carefully and has not emerged as a major enforcer of compliance in external political affairs" (Smith ME 2004: 219).

Up until the Lisbon Treaty, endeavours to ensure coherence conducted by treaty reform have been regarded as largely insufficient (Smith ME 2001). The Lisbon Treaty displayed a clear focus on the organisation of foreign policy. Three main institutional innovations have been discussed so far in the context of coherence: the creation of the posts of High Representative of the Foreign Affairs and Security Policy and of President of the European Council and the establishment of the European External Action Service (Gaspers 2010). The newly-created post of HR of Foreign Affairs and Security Policy constitutes a genuinely "cross-pillar" double-hat: the new HR is simultaneously Vice-President of the Commission. It enjoys, in both capacities, a right of initiative in the CFSP. In its capacity as HR, it assumes the external representation functions that previously corresponded to the EU Presidency, in addition to chairing the Foreign Affairs Council. In its capacity as Commissioner, it takes on a coordinating function of Commissioners from the RELEX family, with the notable exception of the Trade Commissioner. The addition of the role of head of the EEAS and of chair of the Foreign Affairs Council has led some observers to describe this post as a "four-hatted" rather than double-hatted. By contrast, the position of President of the European Council has been created from scratch and has taken over some of the roles that once belonged to the rotating presidency. The creation of this post accompanies the *de jure* elevation of the European Council's status to a fully-fledged institution, which is now officially entitled to identify the strategic interests and objectives of the Union across all intergovernmental and former Community aspects of foreign policy. Accordingly, the President of the European Council also represents the Union on issues concerning its Common Foreign and Security Policy.

The setting up of the European External Action Service (EEAS) was foreseen as part of the implementation of the Lisbon Treaty. The Treaty itself failed to specify its modalities, leaving decisions on the configuration of the EEAS to a post-treaty agreement, clearly due to the delicate choices that it involved. The decision outlining the organisation of the EEAS was only taken in June 2010, after extensive consultation with the actors involved, especially the European Parliament. According to its foundational document, the EEAS is a "functionally autonomous body" separate from the Council Secretariat and the Commission, operating under the authority of the HR. It has a mandate to support the HR as well as the President of the European Council and an explicit duty to "ensure consistency between the different areas of the Union's external action and between those areas and its other policies" (Council 2010: art.3). Its establishment underscores the importance of the follow-up phase of the Lisbon Treaty to ascertain its consequences: "the actual enforcement of the Lisbon provisions on 'foreign policy' [...] may prove as crucial as the original drafting of the treaty text" (Missiroli 2010: 429). Cremona resents that according to the treaty arrangement, "not only will there be a number of different actors to co-ordinate, a number of different actors will have responsibility for that co-ordination" (Cremona 2008: 34). To an extent, double hatting is being (ab)used by the EU in the expectation that it will ensure co-ordination in the absence – or in lieu – of legal-institutional reform. As has often been the case in the past, the overly ambitious "synergy" arrangements might eventually lead to an uncomfortable grey area.

The first treaty changes at Maastricht and Amsterdam correspond to the intergovernmental polity type, while the more recent arrangements tend to incorporate some elements that transcend the traditional intergovernmental level and tend to approximate the state polity type. This is particularly visible in the figure of the HR, which



takes on a co-ordination role within the RELEX family (except for the trade Commissioner). Similarly, the EEAS has mitigated the multiplicity of actors representing the EU in third countries, integrating members of the Council Secretariat, Commission and the diplomatic services of the member states. On the other hand, distinctively intergovernmental elements are maintained, such as the figure of a President of the European Council.

### The quest for coherence in policy fields

While scholarly attention has overwhelmingly focused on how institutional reform can enhance coherence, developments outside the treaty framework remain central. Indeed, post-treaty arrangements often served to resolve conflicts created by the often cumbersome provisions of the treaties.

#### *Sanctions*

The imposition of sanctions by the EU constitutes a classic case of inter-pillar collaboration – indeed, one that precedes the creation of the pillar structure (Nuttall 1996; Koutrakos 2001). When EC member states were first confronted with the requirement to implement UNSC sanctions in the sixties, they did so through national legislation, relying on a Treaty provision expressly allowing member states to deviate from the Common Commercial Policy “in order to carry out obligations [...] accepted for the purpose of maintaining peace and international security” (Article 297 TEC). Yet, the Commission argued in favour of uniform implementation though the Community claiming that different national measures threatened to undermine the operation of the common market (Nuttall 1996:138). This prompted a shift towards the involvement of the Community, giving rise to the so-called “two-steps” procedure (Lukaschek 2002): It consisted in the adoption of a decision to impose sanctions in the extra-communitarian forum of the European Political Cooperation (EPC), followed by the adoption of a Community Regulation under Article 113 TEC.

The shift from implementing sanctions through national measures to Community legislation can be explained by pragmatic considerations: Member states aimed to enhance the effectiveness of sanctions by implementing them uniformly throughout the Community (Koutrakos 2001; Lukaschek 2002). The two-steps procedure provided a mechanism which could be employed for member states to agree and implement sanctions in the absence of a UNSC mandate. Indeed, this method was employed in the early 1980s when the EC member states imposed autonomous sanctions against the USSR during the Polish crisis and against Argentina during the Falklands war. The two steps procedure was eventually formalised by the Treaty of Maastricht (Koutrakos 2001). The codification of the inter-pillar procedure for the application of sanctions solved the legal problem created by the Community implementing decisions adopted in an extra-communitarian framework, a situation previously judged incompatible with EC law. This procedure, a sui generis provision in Community Law, served as a model for subsequent “hybrid” legal bases such as the “dual-use regulations” (Gebhard 2010: 115).

#### *Sources of incoherence*

Despite the formalisation of the time-honoured two-steps procedure under the Maastricht Treaty, a number of inconsistencies in the implementation of sanctions can be identified.

*Horizontal incoherence: hurdle surmounted*

In the post-Maastricht phase, inconsistencies were motivated by a situation of uncertainty regarding which pillar was appropriate for the suspension of development aid to third countries. Sanctions of different nature, such as arms embargoes, financial measures and interruption of aid were agreed simultaneously and reflected in a single document. Hence, following the entry into force of the TEU, sanctions belonging to different pillars were decided concurrently. Development aid to target countries was sometimes suspended according to first pillar procedures, and sometimes agreed in the framework of the second pillar despite being identical in character and scope: The Commission cut off aid to Rwanda following the Kibeho massacre in 1995, while the Council suspended aid to Niger in response to its 1996 coup d'état (Schmalz 1997:31). This led to considerable tensions as both Council and Commission claimed to have exclusive responsibility for the suspension of development aid.

Competences were subsequently clarified. The accommodation reached consists in submitting measures within different fields of competence to separate procedures. Under the current arrangement, the Community has responsibility for development aid suspensions. This takes place in the framework of consultations which are led by the Commission, a responsibility allocated in recognition of its particular expertise in the field of development co-operation (Schmalz 1997:33). Yet, the Commission abandoned the practice of suspending aid without the approval of the Council, which became necessary for suspensions and resumptions of aid. In contrast, all other sanctions are agreed in the framework of the CFSP and applied through the two-steps procedure. For instance, development aid to Zimbabwe was interrupted in 2002 through a first-pillar decision, while on the same day a CFSP Common Position imposing a visa ban on the ruling elite was adopted.

*Vertical incoherence: persistent non-compliance*

A traditional problem of sanctions lies with the challenges posed by member states which do not comply with them. In comparison with other international sanctions, notably those imposed by the UN, non-compliance with EU measures is infrequent. Still, the rare deviations from CFSP sanctions have routinely been tolerated and ultimately legalised through the inclusion of clauses in the imposing documents allowing states to deviate from them under specific circumstances. This practice was initiated in order to accommodate Greece's refusal to implement the grain embargo imposed against the Soviet Union in 1980 (de Wilde 1998), and has survived to our days. France's decision to invite Zimbabwean President Mugabe to the French African summit in 2002 in defiance of the visa ban compelled the EU to insert a clause in ensuing regimes allowing states to grant exemptions. While not technically disallowed, these deviations contravene the spirit of the measures and undermine their credibility. Thus, the EU obviated the problem of vertical inconsistency by accommodating occasional non-compliance.

*Assessment: which polity?*

The operation of sanctions displays a relatively harmonious and well-developed method of ensuring coherence. The accommodation found successfully prevented the recurrence of horizontal inconsistencies, even though it does so, to some extent, to the detriment of Commission prerogatives. Nevertheless, the fact that CFSP sanctions mostly consist of targeted measures deprived of economic implications renders the possibility of market distortion more unlikely and consequently makes the participation of the Community less relevant. Yet, the elimination of inter-pillar tension in the field of sanctions has been

accompanied by the persistence of vertical inconsistencies. The fact that the individual behaviour of the member states is responsible for inconsistencies suggests that institutional provisions are more useful in disciplining the inter-pillar relationship than individual member states which deviate from agreed decisions.

What do the methods employed by the EU to solve the problems of inconsistencies reveal with regard to our ideal polity types? To which ideal polity type do these methods correspond?

The arrangements put in place in order to solve inconsistency problems display some features corresponding to each of the ideal types. The centre of gravity in the decision-making process is still located in the second pillar, which points to the international organisation type, according to which coherence is ensured by following an intergovernmental decision-making model where each member state has a veto. Furthermore, many coherence problems faced by the EU typically correspond to those suffered by international organisations, such as member state defection. On the other hand, the EU comes close to the ideal regional cosmopolitan type embedded in global governance. In the field of sanctions, the EU closely approximates the cosmopolitan entity in which co-ordination with other international actors is ensured. Collaboration with the UN, but also with major international partners such as the US is central. Moreover, the EU and UN practice have remained intertwined over the years, with EU sanctions often overlapping with UN practice (Portela 2005; 2010). Also, the Commission collaborates closely with the Council, drafts sanctions legislation and monitors the implementation of financial and economic sanctions, while member states are in charge of implementing bans and embargoes of non-economic nature. Thus, these entities discharge government functions in different phases of the formulation and implementation of sanctions, forming a new layer of governance.

Nevertheless, while the methods used to achieve coherence feature elements of these types, the EU functions mostly as a state in terms of sanctions imposition and implementation. The mechanisms for imposition and implementation of sanctions in the EU resemble the hierarchical allocation of responsibilities that characterise a federal entity (Coppeters 2007). The model of decision-making follows a hierarchical structure characterised by clearly defined competences of the actors involved. The legal acts are binding upon member states, and even impose reporting requirements on public and private financial institutions. The resemblance to the hierarchical division of labour that characterises states is especially evident in the solution selected to address the problem of horizontal coherence: The initial conflict between the Council and Commission was solved by (re)allocating competences among EU institutions, whereby the Council was entrusted with CFSP sanctions while the Commission retained some responsibility for aid suspensions. Beyond the thematic division of labour, roles were also allocated along functional lines: through the two-steps procedure, the Council remained the decision-making centre for the imposition and lifting of sanctions; yet, the specificities of the sanctions regime such as the items covered under the embargo are worked out in the form of a Regulation with considerable Commission's input. Thus, the use of hierarchisation and functional division of labour suggests that the EU neutralised a potential source of incoherence by using methods characteristic of a state.

### **Civilian crisis-management**

A new dimension of EU external relations, crisis-management has both a civilian and a military realm. Civilian crisis-management embraces crisis-management tools "in the absence of military means", such as the deployment of police, administrative and judicial staff (Howorth 2007:124). Military crisis-management has been conducted in the

framework of the European Security and Defence Policy (ESDP) and after Lisbon in the Common Security and Defence Policy (CSDP), whereas up to the Lisbon Treaty competences for civilian crisis-management have been found in the first and second pillar of the EU. In the first pillar, civilian crisis management instruments have comprised a wide range of tools, including those from humanitarian aid, development and human rights policies: the Humanitarian Aid Instrument, the Instrument for Stability, the Democratic and Human Rights Instrument, the Instrument for Pre-Accession Assistance and the Neighbourhood and Partnership Agreement (European Commission 2006:4). In the second pillar of the EU, the most important instruments of civilian crisis-management have been laid down in the Petersberg tasks in the framework of the European Security and Defence Policy (ESDP) – now Common Security and Defence Policy (CSDP). According to the Feira Council in 2000, civilian missions encompass policing missions, rule of law missions, civilian administration missions and civil protection. At the time of writing, ten civilian crisis-management missions are run by the EU, seven have been completed.<sup>1</sup> After Lisbon, the policies originally assigned to different pillars continue to vary according to different decision-making processes and the competence of different actors in the field.

### *Sources of incoherence*

With the introduction of ESDP, the TEU created a potential for duplication: civilian crisis-management could now be decided upon in two ways: through the Community and intergovernmentally (Nowak 2006: 141). Hoffmeister, who was at the time lawyer at the Commission legal service, has argued that civilian crisis-management is often, when it comes to short-term civilian crisis-responses, in a “grey zone” (2008:163). At the same time, the treaties require a solidly justified power for action, as they do not allow encroachments upon the two mechanisms. The old Art. 47 TEU (pre-Lisbon) prohibited encroachments upon Community law by EU acts: If external action rested on a Community competence, it could not be enacted through intergovernmental means (Hoffmeister 2008:159). The new Art. 40 TEU (post-Lisbon) foresees that encroachments are also not possible on powers of the Union in CFSP/CSDP. The two areas of competences are thus demarcated by the Treaty of Lisbon, while factually civilian crisis-management remains a domain of “cross-pillar-politics” (Stetter 2004). But in the end how does the EU ensure coherent civilian crisis-management?

### *Horizontal coherence*

In the old pillar-structure, the Community has had the competence to act in a number of fields concerned with development and conflict prevention (Hoffmeister 2008:163). The Community received the competence of election monitoring missions in 1999 through two new Regulations (975/99 and 976/99) which provided a specific legal basis for Community operations that “contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms” in third countries (European Commission 2000:11). However, for some missions in the field of rule of law, civilian administration, civil protection and monitoring, the intergovernmental CFSP/CSDP framework was chosen even though, as critics argued, these fields belonged to Community competences (Hoffmeister 2008:164-170). The dominance of CFSP/CSDP in civilian crisis-management provoked concerns in the Commission that external relations were being transferred to the intergovernmental CFSP/CSDP framework. The Commission filed a case against the Council in front of the ECJ arguing that the Council had impinged upon Community competence by adopting a CFSP Joint Action to combat small arms proliferation in West Africa. The ECJ ruled that the

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<sup>1</sup> See <http://www.consilium.europa.eu/showpage.aspx?id=268&lang=EN> (accessed 10 May 2011).

measures of the CFSP Joint Action should have been adopted in two acts – one of them intergovernmental, containing the security aspects, and a second one, a Community act, encompassing the development aspects of the action (Wessel 2009:136; De Baere 2009:288). The Court departed from the reasoning of its Advocate General in the first ruling, who argued that the CFSP Joint Action was justifiable as an intergovernmental measure on account of its clear “security nature” (Wessel 2009:136). The Court annulled the original Council decision, which “means that no second or third pillar act may be adopted on any matter falling within the scope of the EC Treaty, regardless of the non-exclusive character of the Community competence concerned” (De Baere 2009:289). The jurisdiction of the ECJ in ECOWAS has put a break on a more integrated civilian crisis-management approach: neither the Community, nor CFSP/CSDP can take over full responsibility.

Coordination of civilian crisis-management rests on a complex network of bodies. The Political and Security Committee (PSC), in which member states, Commission and the Council Secretariat have framed civilian crisis-management, constitutes the central forum for coordination in the second pillar. With regard to cross-pillar issues, Coreper is also well positioned, “as [it] has the overview of what happens in the Community pillar, [...] to keep an eye on whether decisions in the First Pillar are in line with those developed in CFSP and ESDP” (Vanhoonacker 2008:149). Council Committees dealing with crisis-management and reporting to the PSC include representatives of the member states, the Commission and the Council Secretariat. Potentially, they can serve as arenas of inter-pillar coordination. The EU Military Committee (EUMC) constitutes an exception, as it comprises Chiefs of Defence Staff of the member states or their deputies and advises the PSC on military crisis management (Duke 2008:89). The composition of the Committee on Civilian Aspects of Crisis Management (CivCom) is mixed – including representatives of member states and Commission. It reports to Coreper and advises the PSC on police and civilian options. A Civilian Planning Conduct Capabilities (CPCC) unit in the Council advises the PSC on operational planning of police and civilian missions (Duke 2008:91). The overall divide between military instruments of crisis-management (second pillar) and civilian crisis-management (first and second pillar) has been addressed in the Civilian-Military Cell, established beneath the level of EUMC and CivCom. Again, its composition reflects the multiple institutions and policy issues involved, comprising “military” and “civilian planners” as well as “Council fonctionnaires” (Duke 2008:89). Amongst other functions, the Civilian-Military Cell has to oversee “the development of civilian-military relations within the institutions” (Duke 2008:89). Overall, the highly complex institutional structure clearly mirrors the attempt to achieve coherent inter-institutional decision-making.

After the formal end to the inter-pillar structure, coordination is expected to improve with the establishment of the High Representative and the EEAS after the introduction of the Lisbon Treaty (Duke 2008: 99). The “new” High Representative and her administrative substructure, the EEAS, are meant to introduce further mechanisms of coordination with a potential for greater coherence (Raube 2007:289). It is yet to be seen if coherence will be achieved more easily thanks to the emerging hierarchical executive and administrative structures. The High Representative, as pointed out above, is Vice-President of the Commission and Chairman of the Council on Foreign Affairs and head of the EEAS, which, amongst others, consists of the CFSP/ESDP branches of the current Council Secretariat and the DG RELEX of the Commission.

The emerging structure of the High Representative and the EEAS can already point to some potentials for further institutionalised coordination in the field. The only DG within the EEAS directly supervised by the High Representative is the “ESDP and crisis-management structures” unit (Council 2010). This entity within the EEAS includes the Military Staff (EUMS), the newly created Crisis Management and Planning Department (CMPD) and the CPCC. The strategic nucleus of the DG will be the CMPD, headed by Belgian diplomat Walter Stevens, and there will be a direct link to the Council’s CivCom,

which will be chaired by an EEAS member, M. Leinonen. Thus, crisis management structures have the potential to streamline strategic incentives and identify capabilities across the different areas of competence between CFSP and the Community. Potentially coherent action can be taken in the Council through the chairman role of the EEAS in CivCom. However, the coherence of crisis-management with other policies remains to be seen, as the High Representative will not take over all responsibilities in the areas of development and neighbourhood policy (Council 2010).

Problems of horizontal coherence have also been identified in EU civilian crisis-management missions on the ground (Gross 2011: 129; Keukeleire, Kalaja and Collaku 2011: 202). The multiple competences in EU crisis-management are mirrored in the EU's external representation and multiple EU actors (Commission delegations, EU Mission offices, Special Representatives, etc.) need to increase their coordination on the ground if they are to speak with one voice. As it has been pointed in the case of the EUPOL/Afghanistan, often it seems that multiple policy efforts exist in parallel instead of one coordinated action (Gross 2011). The changes in the Lisbon Treaty may again carry some potential to coordinate civilian-crisis-missions under the roof of the Union delegations. In the case of the EUPOL mission in Congo the Union delegation carry the overall coordinating function on the ground (Justaert 2011: 6). However, the sufficient coordination needs to be established from case to case between the national delegations, the Special Representatives and Heads of Delegations.

The new system after Lisbon may be beneficial to horizontal coherence. The High Representative, the EEAS and its EU delegations, rather than overcoming conflicts of competence in civilian crisis-management, will further institutionalise the coordination of formerly separated institutions.

### *Vertical coherence*

The European Commission communication "Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility" underlines that the EU has to ensure vertical coherence (2006). According to the logic of the Commission, the functional unity of the EU is only given if cross-pillar policies are coherently coordinated on the EU level, if the EU member states back these policies on the EU level, and if the European and the national level are bound together by sufficient coordination mechanisms. At the same time, member states have an obligation to cooperate and formulate their foreign policies in the context of the CFSP, including civilian crisis-management. Indeed, once member states stay away from coordination on the EU level, they do follow the obligation to actively formulate and support a common EU foreign policy, which is neither to be contradicted, nor to be weakened by the national level (Hillion and Wessel 2008: 91-92).

Still, non-bridgeable differences between member states and the EU can run into a situation of vertical incoherence in civilian crisis-management as well. This is illustrated in the case of the civilian crisis-management mission in Kosovo (EULEX). Whereas the EU was not able to overcome member state differences on the recognition of Kosovo's independence in 2008, the EU still decided to run EULEX. While the CSDP-based civilian crisis-management mission was an attempt to oversee the post-conflict crisis-management in Kosovo, the EU was not able to fully back its EULEX mission with a clear view on the EU's position towards the status of Kosovo (see also Keukeleire, Kalaja and Cullaku 2011). Similarly, the EU was able to run a monitoring mission in Georgia as a consequence of the Georgian-Russian conflict, but the member states remain divided over their grand policy towards Russia in the long-run (Bosse 2011: 143). One can argue that the overall incentive to provide coherent conflict-management tools to Kosovo and Georgia is undermined by the member states' difference on the future status of Kosovo and the EU's

relationship with Russia. At the same time, the member states' resource commitments and bilateral actions need to be in line with EU action, if they are not to cause incoherent action. One fundamental problem of the Afghanistan mission EUPOL is said to be the lacking personnel that member states are able to provide to run the mission more effectively (Gross 2011: 128). In addition, bilateral action of member states on the ground often irritates coordinated action.

Rifts across member states' perceptions, actions and commitments mirror the diversity of member states in the EU. But the EU can try to increase coordinating efforts. While the HR and the President of the European Council are in a good position to coordinate actions between the member states after Lisbon (for example by chairing the Foreign Affairs Council), a vertically coherent civilian crisis-management will only get up and running if the member states are convinced by the potential of EU action. The new horizontal coordination setting in crisis-management involves member states at an early planning stage and it might persuade them to refrain from counter-productive action. As such, coordination towards horizontal and vertical coherence becomes intertwined. At the same time, it is interrelated with centres of global security governance. Following its Security Strategy, the EU supports and closely cooperates with the United Nations (UN), including in emerging conflicts and crisis-management (European Council 2003). The wording of several decisions on CSDP missions underline that EU crisis-management policies are "in close cooperation", in "full complementarity" or "a follow-up" to the UN actions. Scholars highlight the coordination efforts between the EU and the UN (Wolter 2007), not without also emphasizing competitiveness on the ground (Gourlay 2010).

#### *Assessment: which polity type?*

The findings point to mechanisms and institutions that are in place in order to compensate for, or palliate, the absence of a clear hierarchical structure in civil crisis-management. Current arrangements to ensure coherence do not correspond to the ideal state-like polity characterised by hierarchical organisation. Neither does the EU's attempt to achieve coherence resemble an international organisation which mainly uses instruments of coordination to ensure member state solidarity and compliance. In the old and the new setting after Lisbon, procedures to ensure coherence go beyond classical intergovernmental coordination, while in civilian crisis-management intergovernmental and non-intergovernmental policies co-exist. In order to palliate the absence of a clear hierarchical structure in civilian crisis management, a close web of institutions has been put in place to ensure political coordination across pillars, with the Council's CivCom playing a central role. The Lisbon Treaty can be seen as another step towards more institutionalised coordination in civilian crisis-management. While the HR receives hierarchical powers within the EEAS that enable her to foster coordination, overall coordination is still necessary in the Council. While the system lacks overall hierarchy, we do identify institutionalized coordination, which – with a view on security governance – can carry cosmopolitan imprints.

#### **Conclusion**

The present article identified the mechanisms devised by the EU to prevent incoherence both through institutional grand-reform and in inter-pillar policy fields. It has done so with the objective of ascertaining to which polity types the methods selected by the EU to enhance coherence correspond: either to a federated state, an intergovernmental organization or a cosmopolitan entity. The picture that emerges is heterogeneous. The macro-level of grand-institutional reform, typically agreed in the framework of Intergovernmental Conferences (ICGs), presents an evolution. While in the initial treaty reforms

– Maastricht and Amsterdam – the methods used for co-ordination can be clearly associated with those of an intergovernmental organisation, the latest reforms display an increasingly institutionalized trend, even state-like features. The creation of a HR and the EEAS, whose functions clearly approximate those of a foreign minister and a ministry of foreign affairs illustrate this trend.

In specific policies which necessitate inter-pillar collaboration, such as sanctions and civilian crisis-management, current mechanisms through which the EU ensures coherence go beyond intergovernmental coordination. Thus, here the EU cannot be equated to an international organisation. Sanctions decision-making features mechanisms that have become detached from the international organisation and now follow the hierarchical structure characteristic of a state: clear delimitation of competences and allocation of tasks along a hierarchical structure that allows for exceptionally smooth inter-pillar co-ordination. In the case of civilian crisis-management coherence was increasingly pursued through the establishment of new council bodies and institutionalised co-ordination which transcends intergovernmental coordination but does not borrow tools characteristic of a state. Because EU civilian crisis-management is often conducted in global security governance framework combining various international bodies, which endows it with a marked cosmopolitan imprint, methods to ensure coherence in the EU resemble predominantly those of a cosmopolitan regional organisation.

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