

  
Institut Européen  
d'Administration Publique

European Institute  
of Public Administration

# Consistency as an Issue in EU External Activities

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**Working  
Paper  
99/W/06**

## CONSISTENCY AS AN ISSUE IN EU EXTERNAL ACTIVITIES

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### *The significance of consistency*

The European Community (EC) was initially only competent in the area of trade and gradually developed a common commercial policy. The 1970s onwards saw increasing foreign policy co-operation in the framework of European Political Co-operation (EPC). Over the next two decades the increasing number of external activities of the Union highlighted the need for consistency between the EC's external competencies conducted in the context of the first pillar and the intergovernmental ones of the second pillar and, to an growing extent, the third pillar. By the late 1990s the European Union (EU) accounted for a greater percentage of global gross national product than the U.S. and Japan. The EU also contributes more to the UN budget and peacekeeping operations than either the U.S. or Japan. Given the enormous importance of the EU as a global actor and its potential to play an even more influential role, it is not difficult to see why concerns of consistency in the EU's external activities are legitimate.

Consistency has become something of a refrain. Most recently the consolidated Treaty on European Union (CTEU) states that, 'The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.' [CTEU, 1997, Article 3] To this end, it is to the Union generally that the task of ensuring 'consistency in its external activities as a whole in the context of external relations, security, economic and development policies' falls. The Council and Commission are though charged with particular responsibility in this regard. The objective of achieving consistency in the Union's external activities is to ensure that the Union can 'assert *its* identity on the international scheme.' [CTEU, 1997, Article 2] In support of the general theme of consistency the European Council identified the aim of the Common Foreign and Security Policy (CFSP) as being to enable the Union to speak with *one* voice. The same theme is returned to within the CFSP mechanisms, both directly but also indirectly through

reference to ‘common positions,’ ‘joint decisions,’ ‘joint actions,’ and, most recently, ‘common strategies.’

As has been indicated, the question of consistency in the Union’s external activities is not new. It has though assumed special importance in the post-cold war international system for a number of interrelated reasons:

- The emergence of the Union in 1993 with its three pillar structure incorporated, for the first time, foreign and security aspects which had hitherto been part of the parallel European Political Co-operation (EPC) process, thus bringing to the fore the need for consistency in the enhanced external activities of the Union;
- The relatively recent development of the Union calls for the development of institutional mechanisms to ensure consistency of policy and action at both the national and European levels which, generally, are in an early stage of development;
- The end of the cold war has broken down the traditional areas of national ‘high politics’ and those of ‘low politics.’ In the absence of an overarching threat which defined a distinct security agenda for the divided Europe for the duration of the cold war, ‘security’ has increasingly become a term which incorporates many aspects of the Union’s activity;
- The overlap between the pillars of the Union has extended since an increasing number of decisions are adopted that do not fall exclusively within the domains of any one pillar;
- The strong encouragement from the Clinton administration since 1991 for its European allies to develop a European Security and Defence Identity (ESDI) has underlined the importance of consistency by EU members within common organisations such as the UN or NATO;
- The increasing regionalisation of external activities in other areas of the globe (as in, for instance, ASEAN and the ARF) calls for consistency on the part of the EU;
- The number of countries and regions with which the EU Member States maintain close relations has considerably developed, as has the scope of these relationships.

*Consistency v Coherence*

The official English language versions of the Single European Act, the Treaty on European Union (TEU), and the Consolidated Treaty on European Union (CTEU), refer to the need for ‘consistency.’ The French and German texts however refer respectively to *cohérence* and *Kohärenz*, which carry different legal implications. Christian Tietje, for example, pointed out that, ‘Consistency in law is the absence of contradictions; coherence on the other hand refers to positive connections.’ [See Tietje, 1997, pp.212-217; Bacot-Déciaud and Plantin, 1993, pp.54-58.] The two terms also imply different degrees of stricture. It is, for instance, quite conceivable that something is more or less coherent while something cannot be more or less consistent.

Some have preferred to use the expression ‘coherence’ in English language texts, such as Jörg Monar, who writes of the importance of ‘unity and coherence’ as an important criterion for effective foreign policy. [Monar, 1993, p.144] Monar’s preference for ‘coherence’ is common amongst those working from non-English versions of the treaties referred to. It is only the English version that uses the term ‘consistency’ instead of ‘coherence.’

Unfortunately, the use of differing and potentially confusing terminology was not rectified during the 1996 Intergovernmental Conference. For the sake of clarity the term ‘consistency’ is preferred since reference will be made to the English language versions of various official documents. The difference between consistency and coherence has been the subject of legal scrutiny but, when viewed from a *political* perspective, the terms are not significantly at variance since they both point in the direction of co-ordinated activities with the objective of ensuring that the Union speaks with a ‘single voice.’ For a working definition of ‘consistency’ as it applies to the EU’s external activities, that suggested by Horst-Günter Krenzler and Henning C. Schneider could be adopted [Krenzler and Schneider, 1997, p.134]:

*Co-ordinated, coherent behaviour based on agreement among the Union and its member states, where comparable and compatible methods are used in pursuit of a single objective and result in an uncontradictory (foreign) policy.*

*Co-ordination* would imply the presence of structures that facilitate regular meetings either within the national foreign policy making apparatus or between them and the EU-level structures (the idea of institutional bridges). *Coherence* (perhaps not in the strict legal sense) should lead to accessible and policy-relevant outcomes to the co-ordination process.

Furthermore, decisions should be made with reference to others adopted in by the Union in its external activities so that the Union may ‘assert its identity on the international scene;’ note in this regard that both the TEU and CTEU do not refer to the need for the Member States to assert *their* identity. [TEU, 1992, Art.B and CTEU, 1997, Art. 2] The definition also calls for *comparable* and *compatible* methods in pursuit of a *single* objective. Taking the last part first, while the CTEU does define the objectives of the CFSP, it could be questioned whether the objectives are not too broadly framed (for reasons of consensus) to serve as concise objectives towards which to work. The idea of comparable and compatible methods raises problems both at the level of the Union as well as the Member States given the differences between the first pillar and its supranational structures compared to the intergovernmental ones of the second pillar.

The meaning of consistency has usefully been sharpened by reference to *horizontal* and *vertical* consistency. [ Krenzler and Schneider, 1997, p.133 and Tietje, 1997, pp.224-33.] The former refers to the consistency within the EU between the Community’s external activities and the CFSP. Vertical consistency applies to relations between the Member States and the Union. Although the concentration is upon horizontal consistency, reference to the significance of vertical consistency will be made.

While considering terminology, a brief word should be said about *what* is to be consistent. The CTEU refers to the importance of consistency of the EU’s ‘external activities as a whole.’ What though are external activities? The external activities of the European Union (EU) comprise, according to the CTEU, ‘external relations, security, economic and development policies.’ Consistency therefore has to be ensured within and between these components. It is worth noting that the CTEU does not refer specifically to ‘foreign policy’ as might have been expected. Nor does the treaty refer specifically to ‘defence’ but Article 17 of the CTEU states that the CFSP shall include ‘the progressive framing of a common defence policy.’

Reference to external relations and security policy falls largely (but not exclusively) within the second pillar context while economic and development policies fall within the competence of first pillar activities. However, the increasing incidence of cross-pillar activities makes the division between the pillars increasingly artificial. For instance, the CTEU includes as part of the CFSP’s objectives, to ‘develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.’[CTEU, 1997, Article 11(1)] Questions regarding competency in this area of the CFSP’s activities has already led to friction, especially with regard to the Mediterranean, between the first and

second pillars. The potential for future friction has been exacerbated by the Community's willingness to impose sanctions, while the definitions of security have become ever more expansive and emphasise areas that are inherently inter pillar, such as conflict prevention or crisis management. But, at the same time, the different organisational structures and *modus operandi* of the pillars serves to prolong the practical differences between them (and thus foster inconsistency) based on the differing supranational and intergovernmental approaches that characterise the first and second pillars respectively.

### *Consistency as a requirement*

Is consistency a legal requirement? This question is of some importance when attempting to ascertain whether the Member States have a strong legal motive to co-ordinate their external activities (not, of course, that this is the only one). The EPC process consisted largely of 'codification'— that is, putting onto paper what had been agreed to and what had become accepted practice. To an extent the practice of codification carried over into the TEU with a number of seeming innovations which, in fact, had been either agreed to before or were practice (such as the adoption of joint meetings of the EPC Ministerial Meetings and the Council of the Communities [General Affairs]) or the merger of the EPC and Council Secretariat). The same process would also apply to other apparently innovative aspects of the TEU and CTEU, such as the formulation of a common defence policy or joint actions, which both rely upon a number of implementations (successful or otherwise) in order to codify practice and rules. Arguably the codification approach does not make for consistency since it encourages individual Member States, or a group thereof, to push for their own standards or codes to be adopted.

This aside, the provisions on the CFSP (as laid out in Title V of the CTEU), may generally be regarded as guidelines or rules but they do not fall into the domain of the European Communities. Thus, the 'common' adage used in reference to, for example, the *Common* Agricultural Policy differs from the CFSP in the sense that the former has a supranational character and is incorporated into municipal law while the latter is not binding except under public international law and, in some respects, Community law. The idea of 'common' in the context of the CFSP differs for two further reasons. First, the means by which regulations and directives are issued in the Community do not apply to the CFSP since the regulatory mechanisms differ substantially. For instance, the central role accorded to the European Parliament and Council in this regard in the first pillar does not apply in the CFSP

context where the Parliament only enjoys the right to be ‘consulted’ by the Presidency and to be kept ‘regularly informed.’ [CTEU, Art. 21 and CTEC, Art. 249] Second, the means to enforce consistency (or admonish inconsistency) are also absent in the second pillar since the competence of the Court of Justice of the European Communities does not extend to the CFSP. [CTEU, Art. 46]

Although the legal basis for enforcing consistency in the second pillar may be largely absent there is nevertheless the stipulation in the Consolidated Treaty Establishing the European Community that:

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community’s tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty. [CTEC, Art. 10]

The wording of the above article suggests that when the *Union* (such as a CFSP joint action in conjunction with Community measures) undertakes an external activity the obligations above then extend to CFSP. This would lend support to the position that consistency is a legal obligation under Community law. A second possible manner in which Community legal competence and that of the Court could extend to the second pillar is through Article 47 of the CTEU which states that, ‘nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.’ [CTEU, Art. 47] In spite of these two possible windows for the legal application of Community consistency to the second pillar, the justiciability would seem to be weak and indirect. Generally, there are no effective legal means of enforcing consistency in the second pillar which means that the stipulations contained in Title V of the CTEU must therefore be considered as legally binding, but unenforceable. Indeed, it seems ‘inconsistent to identify in very clear terms the responsible parties and the legal obligation, while neglecting the requisite control by a suitable neutral body.’ [Krenzler and Schneider, 1997, p.147]

### *The background to consistency*

The treaty establishing the European Economic Community, although lacking an explicit foreign and security policy aspect, nevertheless made the Community an external

actor of some consequence. Although consistency was not mentioned *per se* the foundations for consistency were nevertheless present. Under the Treaty of Rome all Member States were obliged in Article 5 to ‘abstain from any measure which could jeopardise the attainment of the objectives of this treaty.’ With the development of European political co-operation (EPC) in the 1970s the need for consistency in external relations became more apparent.

The Paris Summit of 1972 called for co-operation to ‘deal with problems of current interest and, where possible, to formulate common medium-and long-term positions, keeping in mind, *inter alia*, the international political implications for and effects of Community policies under construction.’ [Nuttall, 1992, p.74] The early years of EPC were though typified by deliberate efforts to keep the Community and EPC processes parallel, but distinct. The fear was that somehow the EPC could not be permitted to carry out parallel functions and assume commensurate responsibilities as the Community and, with special regard to the Commission, the same applied to Community-EPC relations. EPC therefore remained something of a diplomatic preserve for the period 1970-1986. The somewhat artificial divisions between the Community and EPC eroded during the 1980s culminating in The Single European Act (SEA) that not only linked the processes but also laid particular emphasis on enhancing consistency.

Prior to the SEA consistency had meant not only the obvious -- ensuring that the EPC and the Community did not cancel or contradict each other’s actions -- but it also implied that there should be a distinction between EPC and the activities of the Community so that they did not contaminate one another. Given the rather limited purview of the EPC process it is perhaps unsurprising that there are few, if any, examples of blatant inconsistency. Under the SEA the increasing interaction between EPC and the Community that had been evident from the early 1980s was recognised. For instance, Article 30.5 of the SEA states that the ‘external policies of the European Community and the policies agreed in European Political Co-operation must be consistent.’<sup>1</sup> The preamble to the same treaty stresses the need for Europe to speak ‘ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests.’ In the SEA horizontal consistency was addressed by the Commission being granted the right to give its opinion to the Presidency and, in turn, the Presidency was obliged to communicate to the Council any EPC conclusions of interest to the Community. It is worth brief note that Britain and West Germany were in favour of placing responsibility for consistency on the shoulders of the Member States

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<sup>1</sup> The co-operation was limited to political and economic aspects of security policy.



themselves. This was though thought to be inadequate and the tasks were duly charged to the Presidency and Commission, assisted by the new EPC Secretariat, consisting of five officials, acting under the authority of the Presidency. The Secretariat was charged with the task of assisting the Presidency in ‘ensuring the continuity of European political cooperation and its consistency with Community positions.’ [Ministerial Decision, (1986), Section III]

The ‘consistency’ refrain has continued from 1987, when the SEA came into force. Successive Presidency’s were well aware that henceforth consistency was one of the criteria on which they would be judged. For instance, Sir Geoffrey Howe as the outgoing President-in-Office of the Council and the Foreign Ministers observed that, ‘our Presidency has had considerable success in ensuring consistency between EPC and Community activity in the spirit of the Single European Act.’ [Howe, 1986, Doc. 86/402] The Rhodes summit of the European Council stressed common positions and joint actions were a key means of reaching consistency between the external policies of the EC and the policies agreed to within the EPC framework. [European Council, Rhodes, 1988] The Heads of State and Government declared at their Dublin meeting of April 1990 that, in view of political union, they should reinforce their capacity to respond ‘efficiently and effectively’ to external challenges; to display ‘unity and consistency’ in international actions; and to strengthen democratic legitimacy.

The nature of consistency shifted subtly at the beginning of the 1990s with less emphasis upon consistency amongst the Member States and greater emphasis being paid to consistency in the external policies of the *Community*. This was due, as Fraser Cameron has noted, to the emphasis turning ‘more to financial and economic diplomacy.’ He also noted that technical and humanitarian assistance also grew in importance. [Cameron, 1997b, p.99] The growing role of the Commission in co-ordinating assistance programmes to Poland and Hungary (PHARE, which was later extended to all of central eastern Europe), the Commonwealth of Independent States (TACIS) and its empowerment to negotiate Europe Agreements with these same countries, all pointed to a far more active European role in external relations aided and abetted by the immediate post-cold war changes. As a mark of the growing European role in external relations a new Directorate-General with responsibility for external affairs was created in 1993.

The transition from EPC to CFSP saw the Belgian Presidency stress a number of factors deemed essential for the successful implementation of CFSP, one of which was the need for ‘unity and consistency in [the Union’s] external action.’ [European Council, Luxembourg, 1993] Attempts to bring unity and coherence to the Union’s external activities has traditionally been viewed as a task falling to the Union with less regard being paid to the

Foreign, or other, Ministries of the various Member States. In a sense this is understandable since the Treaty on European Union (TEU) required the Union ‘to organize, in a manner demonstrating consistency and solidarity, relations between the member states and between their peoples.’ Article C of the same treaty requires that, ‘The Union shall *in particular* ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies’ (emphasis added). The Member States are however also obliged to ‘support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity,’ and to ‘work together to enhance and develop their mutual political solidarity.’ In order to do this Member States shall ‘refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations’ – thus applying Article 5 of the Treaty Establishing the European Union specifically to the Common Foreign and Security Policy (CFSP). Ensuring consistency in the EU’s external activities is therefore a shared responsibility between the Union and the Member States themselves. The notion that the burden of consistency falls partly upon the shoulders of the Member States is further reinforced by the assumption of the leading role by the Council which marks a change in emphasis from the SEA. [See Article J.8(1), TEU]

In spite though of the binding nature of the obligations assumed under the CFSP upon the Member States, the national identities and the ‘specific character of the security and defence policy of certain Member States’ are safeguarded in several ways by the TEU. [As in Arts. J.3 (6) and J.4 (4)] Although provision is made for the use of qualified majority voting in the second pillar, the practice remained unanimity that safeguards the essential interests of the member states. The European Council also protects national interests in the case of joint actions (since a joint action can only be based on general guidelines supplied by the European Council). Inevitably the balance between the protection of national interests and need to ensure consistency in the external activities of the Union will, on occasion, be delicate.

In a Liaison Committee position statement prior to the 1996 IGC, the need for consistency was underlined when they stated that ‘There is a need to ensure that other Union policies and practices do not contradict or undermine but support the objectives of Development Cooperation.’ [Liaison Committee, (1995), Introduction] Trade, Agriculture (CAP) and CFSP were noted as areas with particular problems in this regard. The statement made the observation that, ‘despite the commitments at the level of principle’ there remains a conspicuous absence of a clear policy on coherence and as a result there are no mechanisms that exist to increase the chances of coherence in policy development, implementation,

monitoring and evaluation. This is a key weakness.’ [Liaison Committee, (1995), Section 2.1.2]

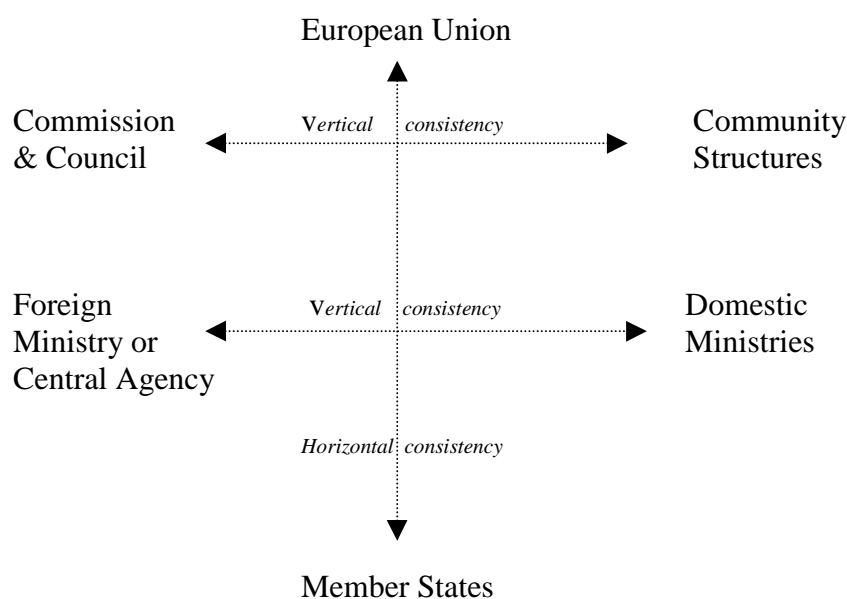
As a result of the concern regarding consistency expressed before and during the 1996 IGC, no less than three explicit references to consistency appeared in the CTEU.<sup>2</sup> The CTEU, which incorporates the Treaty of Amsterdam, accords to the European Council the task of defining the principles and general guidelines for the CFSP and to decide on common strategies ‘*where the Member States have important interests in common.*’ [Article 13(1&2) (CTEU)] The implicit recognition is therefore that there are some areas that are likely to be of greater interest than others to individual Member States and that the aim of the CFSP is not a unitary ‘European’ foreign policy (at least for the foreseeable future) but the close co-ordination of national action by the fifteen Member States. This does not however preclude there being ‘European’ positions on a variety of foreign policy issues such as elections in Russia, South Africa, the Middle East Peace process, or Bosnia. It would though be grossly premature to write of a truly *common* foreign and security policy, especially as the security and defence aspects remain largely undefined and subject to the political will of the Member States.

From the perspective of the national Foreign Ministries the task of defining ‘foreign policy’ vis-à-vis the Union has been made slightly simpler by the TEU which placed Justice and Home Affairs (JHA) under a separate ‘pillar.’ Prior to this justice and home affairs appeared under the EPC structures and thus somewhat surprisingly fell under the responsibilities of the Foreign Ministries, in spite of the fact that relations with third parties featured infrequently. Although the division of the CFSP and JHA in the TEU (Titles V and VI respectively) clarified matters somewhat there are still significant grey areas such as asylum policy, human rights, and terrorism that could legitimately involve both pillars.

The evolution of the principle of consistency and the shared responsibility for it between the Union and the Member States suggests, as was noted above, two forms of consistency. First, *consistency within the Union and within the external affairs apparatus of the individual Member States (horizontal)* and, second, *between the Member States and the Union and vice versa (vertical)* (see. Figure --).

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<sup>2</sup> Article 1 talks of the need to demonstrate ‘consistency and solidarity’ in the relations between the Member States; Article 3 mentions ‘consistency and continuity;’ while Article 13 charges the Council with the task of ensuring the ‘unity, consistency, and effectiveness of action’ by the Union.

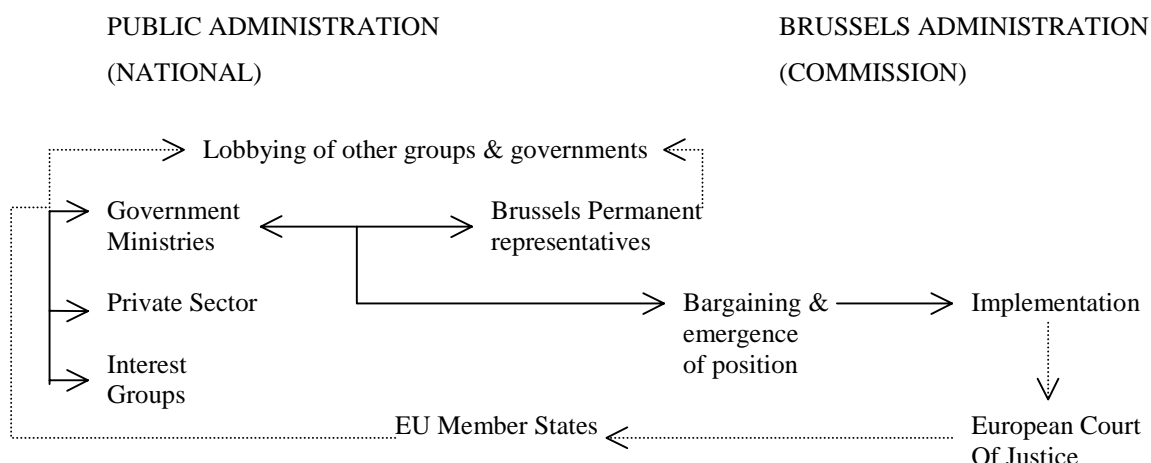


Broadly speaking the challenges arising from horizontal and vertical consistency differ. At the Community level horizontal consistency involves primarily the *implementation* of external policies by the supranational organisation; in this case the European Commission. Implementation is backed up in most cases, with the important exception of the CFSP, by resort to the European Court of Justice. Horizontal consistency also involves the process by which the individual government department defends its interests within the national bureaucracies. In some highly centralised systems, such as those in France or the United Kingdom, there are mechanisms to ensure that a consistent national position is represented in Brussels. However, some highly decentralised systems, such as those in Germany and Greece, are less effective at the implementation of a national ‘line’ in Brussels.

Vertical consistency involves the processes of *coordination and bargaining* between the member states and the EU and vice versa. Vertical consistency, in particular, involves the co-ordination and satisfaction of a large number of interested parties ranging from private interest groups, lobbyists (home and Brussels based), the government ministries themselves and, for support in the Council, other member governments.

The emergence of a consistent position on any given foreign policy topic is therefore a long-drawn out and complicated process (See Fig. --)

Figure ----



Examples of both types of consistency are to be found in the various EC treaties. For instance, the Maastricht Treaty refers in Article C to the Union’s duty to ‘ensure the consistency of *its* external activities as a whole in the context of its external relations, security, economic and development policies.’ This is a clear reference to horizontal coherence within the Union. Vertical consistency is also referred to. For instance, in Article 130u of the same treaty (with specific reference to development cooperation) refers to the need for Community policy ‘which shall be complementary to the policies pursued by the Member States.’

The emphasis accorded to consistency has also gradually increased as the EC assumed responsibility for an increased variety of external responsibilities. In the post-cold war context the increasingly expansive definitions of post-cold war security,<sup>3</sup> combined with the Union’s vague use of the term ‘external activities,’ means that the range of activities being subject to consistency has expanded enormously and underlined the importance of the concept.

The division of consistency into its horizontal and vertical variants is a helpful distinction from the conceptual point of view but, at the policy level, the problems encountered in both types of consistency are related. Simon J. Nuttall as Director, DG I “External relations” Commission of the EC, observed on this theme:

<sup>3</sup> For an example of how expansive post-cold war definitions of security have become see William Burros (ed.), Conference Report -- *Global Security Beyond 2000: Global Population Growth, Environmental Degradation,*

The problem [of consistency] cannot be solved only, or even principally, within the Union itself. It stems from the separate responsibilities of the different national Ministries, each of which will use the framework of the Union as a means of escaping from the supervision of its fellow Ministries at home. Rivalries between the political and economic sections of the Foreign Ministries and between the Foreign Ministries and other Ministries will come to the fore. The way in which the Member States organize themselves at home is a problem which must be tackled in parallel with the organization of the Union. [Nuttall (1993), p.138]

Nuttall's observation raises the problem of what is 'foreign policy' to the Member States and what might it constitute in the context of 'European foreign policy?' Obviously the scope of national foreign policy is not the same as that covered by the second pillar of the EU. Many aspects of national foreign policy have been deemed to fall outside the competence of the Union, such as security in Northern Ireland, or the refugee status in the Community for Cypriots who fled from Northern Cyprus. [Neuwahl, (1994), pp.230-1] The overlap between the two has been subject to compromise and remains somewhat elastic. The intergovernmental nature of the second pillar which, to a large extent, still relies upon unanimity will help to ensure that individual Member States not only retain tight control over what may be subject to the EU's external activities but also uphold their sovereignty. Consistency is thus likely to be found in those activities that are well-supported amongst all Member States (human rights), where the object of the decision or action is relatively distant (the Great Lakes region of Africa), or where consensus has emerged between the EU Member States in another venue (the UN or OSCE). The obvious suggestion therefore is that those issues that are closer to home (Bosnia or Kosovo), or those that are likely to have a direct impact upon Member States (again Bosnia), or where asymmetrical economic relations are involved (the Persian Gulf), are less likely to prove conducive to consistent behaviour. The nearer the threat to home, the more likely consistency is to be sacrificed to national considerations as was seen to tragic effect in Bosnia and, to a lesser extent, in Albania.

In order to understand the problems of attaining consistency, a closer examination of the different types of consistency will be undertaken, commencing with horizontal consistency.

### *Horizontal Consistency*

Horizontal consistency consists of two sets of issues that are, in turn, linked vertically by communication, structures and procedures. The first set of issues pertains to how the EU member states themselves co-ordinate external relations with the EU. The second set, examined afterwards, considers how external relations are co-ordinated within the Brussels bureaucracies so that the Union may speak with a single voice.

### Co-ordination within the Member States

Who should co-ordinate external relations in the member states? The question is not as simple (or banal) as it may seem. Obviously the foreign ministries, may be the response. But, there are numerous ministries who may additionally have legitimate external relations interests such as ministries of economics or trade, development, agriculture, defence, justice and so forth. In fact, given the sweeping nature of the Community's *acquis*, it is difficult to think of a ministry who would not have a compelling interest. Generally, the co-ordination process amongst the ministries, as well as other interested parties such as interest groups, is designed to defend the national interest and to ensure that what is implemented in Brussels is as close to this as possible.

The broad scope of the EC's external competencies is fast being matched by that of the EU and member states may be legitimately challenged in the European Court of Justice for failure to implement policy. This means that most member states have a vested interest in promoting the role of foreign ministries as the traditional defender of their external relations. The knock-on effect of this is that foreign ministries now have to deal with not only traditional diplomacy, or high politics, but a broad range of external policies related to the domestic ministries. If this is put in rather combative terms, co-operation amongst the domestic ministries and the role of the foreign ministries as protectors of the national interest, has been promoted by the growing supranationalisation of the EU member states' external policies.

David Spence observed, there are three integral parts of the machinery of national policymaking in EU common to all EU governments: the 'lead' ministries, foreign ministries with a monitoring and co-ordination role and the Permanent Representatives.[Spence, 1999, p.249-50] Generally, as Spence observes, foreign ministries no longer enjoy the sole right to act as 'gatekeeper.' This role is either assumed by formal structures, such as the European

Secretariat of the British Cabinet Office or the French Secrétariat Général pour la Coordination Interministerielle des Affaires Economiques Européennes (SGCI). Alternatively, as is the case in Germany, the role may be assumed by the office of the head of government.

Beneath the formal structures, if they exist, there will be a 'lead ministry.' Exactly which ministry this may be is issue dependent but, whichever it is, there will be routine contact between the lead ministry and other domestic ministries as well as the foreign affairs ministry. Within each ministry there will be close links between the Commission's directorate-generals and the European co-ordinating divisions within a given ministry. The prime role of the co-ordinating divisions is not so much to manage detail but to ensure that European policy conforms with the broad thrust of national policy. The domestic ministries and their co-ordination divisions will work in close contact with the foreign ministries to ensure that national positions into various European bodies, such as the Council of Ministers, is coherent and that it represents an accurate portrayal of the interests of all ministries involved.

The question of whether the lead ministry or the foreign ministry prevails in case of dispute normally results in the latter asserting its skill and influence. As Spence observes, foreign ministries have the required special knowledge of the EU system and the skills to put a national point forth within that system. It is the foreign ministry's role as *primus inter pares* that means that the 'proprietary feelings of a particular ministry may have to be bruised.' Spence adds, 'That foreign ministries possess such capabilities and that they are clearly the most appropriate coordinators of daily business is generally accepted.' [Spence, 1999, p.251]

The national 'mouthpiece' to Brussels is therefore the foreign ministry and they normally monitor developments in Brussels and communicate with it through one of two divisions within the foreign ministry. Normally, one will address domestic aspects of the EU's activities (the internal market, environment, energy and agriculture) while the other will address the external aspects (trade, assistance, development and the CFSP). The dual structure within the foreign ministries reflects that of the EU itself with COREPER I, addressing domestic affairs, and COREPER II addressing external issues.

The role of the foreign ministry as the central co-ordinator is not merely a matter of interministry pecking-order but an essential part of consistency itself. The foreign ministry is the key facilitator of co-ordination mechanisms between the ministries and they carry the main responsibility for preparing and presenting national positions not only on a day-to-day basis but also Council meetings and intergovernmental conferences. Lead ministries play an



active role in interpreting, understanding and making technical suggestions in their respective fields of competence, but they must also be prepared to incorporate the foreign ministry as an equal negotiating partner in their ministerial deliberations.

The effectiveness of the co-ordinating mechanisms within a given EU member state will depend very much upon how well established lines of communication and information are as well as upon the presence, or not, of centralised dispute solving mechanisms. Crucially, it also depends upon the willingness of the domestic ministries to trust the foreign ministries to assert the national interest and not that of the foreign ministry itself. Trust of this nature may be less prevalent in, for instance, a coalition government with party political inter-ministerial rivalries. The presence of clear lines of communication will also vary from one to another EU member state and this will influence the ability of the member state to define and defend its national position. As a general issue, consistency will also depend upon the continued ability of the foreign ministries to cope with the considerable demands that are being made upon them. Although speculative, the dramatic changes in foreign ministries from dealing with glamorous high politics to a more mundane, but nonetheless important, co-ordination role may have negative effects upon recruitment.

The foreign ministry's role is traditionally seen as being strengthened through the Permanent Representations in Brussels. This image is reinforced by the fact that the Permanent Representative was normally a senior diplomat with diplomatic status. However, with increasing frequency the Permanent Representations are staffed by secondees from the domestic ministries. The often highly technical nature of the job makes such staffing a necessity and this has resulted in a gradual shift of the balance from foreign ministry staffing to lead ministry staffing which is 'arguably a trend underlining the foreign ministry's failure in the historic endeavour to retain a gatekeeper role.' [Spence, 1999, p.253] The Permanent Representatives have themselves developed a gatekeeper role through their close connections with their counterparts in the Commission. In national interest terms, the Permanent Representatives are the initial line of defence since they will conduct much of the initial pre-negotiation, outlining and defence of national positions and thus shaping of the Commission's proposals. Since, as observed, they have diplomatic status but are not necessarily career diplomats, they once again serve to redefine the notion of 'diplomat' in the EU context.

The issue of who co-ordinates external policy and, just as important, who is responsible for dispute settlement, are aspects upon which there is little harmony within the EU. On the one hand the highly centralised role of the British and French systems demote the

role of the foreign ministries by placing the prime minister's offices with this important function. Many other countries, such as Belgium and Germany, will leave the arbitration process up to the foreign and 'lead' ministry (often the economics ministry). This can, as is frequently the case in Greece, lead to inter-ministerial disputes in which the national interest risks being sacrificed to that of the individual ministers concerned.

The effectiveness of foreign ministries and their gate-keeping role may also be compromised by those aspects of external relations that are not covered within the structures outlined. For instance, as Spence observes, foreign ministries 'do not manage the bi-lateral relations with European countries whether EU members or non-members.' [Spence, 1999, p.252] It is quite possible therefore for ministries to establish their own connections with their counterparts in other countries with little regard being paid to the foreign ministry's gatekeeping role.

The transferral of competency from member states to the EU raises issues about democratic accountability which again burdens the foreign ministries with the task of scrutinising the consistency of EU policy with national positions. It has also changed the focus of lobby or pressure groups from the domestic to the supranational level. The role of lobby groups poses a problem for the member states since a lobby group may deliberately bypass the domestic political apparatus in favour of direct lobbying at the European level when they believe their government does not hold their position or will not defend their interests and that the Commission will. The role of the Foreign Ministry is therefore doubly complicated since not only must they defend national positions, as agreed upon by the domestic ministries, but they must court domestic pressure groups and lobbyists.

The complex relations between a given domestic ministry and the foreign ministry are simplified by the fact that the former has an interest in defending their national position and promoting the role of the foreign ministry as the defender of the collective interest. They are complicated by the increasingly complex web of lobbying groups who may choose to lobby directly at the European level when they feel that their platform is not represented at the national level. The role of the foreign ministry, in defending national interests, may also be complicated by differences between the home ministries and the Committee of Permanent Representatives. The demands made upon Foreign Ministries throughout the EU are considerable. No longer is the focus exclusively upon traditional diplomacy but upon an increasingly complicated co-ordination and gate-keeping function.

### Consistency at the EU level

Formally Article 30 (5) of the Single European Act (SEA) made the Presidency of the EPC and the Commission responsible for consistency. With the advent of Union including the CFSP as an integral component, the onus of responsibility shifted to the Council and the Commission. In the context of the SEA though consistency was confined to ‘policies agreed’ within the co-operation framework whereas in the TEU, and thereafter, reference is made to the ‘policy of the Union.’<sup>4</sup>

The TEU accords to the Union the general responsibility for ensuring consistency of its external activities as a whole but, in the same paragraph, charges the Council and the Commission with ensuring the implementation of these policies, ‘each in accordance with its respective powers.’ [TEU, Article C] A Declaration attached to the TEU gave some substance to the apparatus for ensuring consistency when it identified three areas in which *ad hoc* co-operation could lead to enhanced consistency: first, co-operation between the Political Committee and the Committee of Permanent Representatives (COREPER); second, the merging of the Political Co-operation Secretariat with the General Secretariat and; lastly, co-operation between the latter and the Commission.<sup>5</sup>

The CTEU also charges the Council and the Commission with responsibility for ensuring consistency for the Union’s external activities as a whole and for them to ‘cooperate to this end.’ [CTEU, 1997, Article 3] Their responsibilities in this regard are underlined by the general stipulation that the Union is to be served by a ‘single institutional framework.’ The role of the Commission changed considerably between the TEU and the CTEU, with associated implications for consistency. Under the CTEU’s stipulations of the CFSP, the Commission is accorded the significant right of initiative to the Commission as well as the Member States. [CTEU, 1997, Article 22] The Commission has become an external relations player in its own right not only through the right of initiative but through its executive powers pertaining to the EC’s external policies. The Member States therefore not only have to co-ordinate their initiatives and responses within their own bureaucracies, as well as between themselves, but they also have to deal with the Commission as in many respects a co-equal.

The Commission itself had earlier difficulties in co-ordinating its increasingly demanding external relations portfolio. As was noted earlier, the decision in 1993 to create a

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<sup>4</sup> See for instance Article J.1(4) which refers to members supporting the ‘Union’s external and security policy,’ and Article J.4 (4) which refers to the ‘Policy of the Union.’

new Directorate-General (DG 1A) with responsibility for political affairs, presented a number of problems. Eventually the conduct of the Commission's external delegations was placed under a joint committee representing DG 1A, DG 1 and DG VIII, with DG 1A in the chair and also responsibility for making proposals. A *modus vivendi* emerged soon thereafter with a series of regular meetings between the cabinets and senior staff from DG1 and DG 1A. In effect the former, under Sir Leon Brittan addressed trade issues while the latter, under Hans van den Broek, addressed external political affairs. There were, according to Fraser Cameron, 'few problems with coordination of policies' by the summer of 1994. (Cameron, 1997b, p.101)

The Delors Commission's initiatives served to not only put the Commission on the map as a potent political force in external relations but also created a perhaps unfortunate division between external economic and political affairs. This was generally an unhelpful division in terms of consistency since many problems contained elements that could legitimately be deemed economic and political. The Santer Commission therefore strove to reunify the economic and political elements by dividing responsibility in external relations into geographical areas. Under Santer's new design responsibility for external relations would now be divided between five semi-autonomous Director-Generals. These included D-Gs 1, 1A but also included 1B, VIII and the EC Humanitarian Aid Office. DG 1 now covered commercial policy and relations with North America, the Far East, Australia and New Zealand, under Sir Leon Brittan. DG 1A covered relations with Europe and the Newly Independent States, CFSP and External Missions under Hans van den Broek while DG 1B, under, Manuel Marin, assumed responsibility for Southern Mediterranean, Middle and Near East, Latin American, South and South-East Asia and North-South Cooperation. DG VIII, under João de Deus Pinheiro assumed responsibility for development which includes relations with the 69 ACP countries including Lomé. Lastly, Emma Bonino was appointed as head of the European Community Humanitarian Office. During Santer's term in office the number of Commission delegations grew to 127 which served as additional reminder of not only the Commission's growing influence but the extent to which the EU has become a *bona fide* global actor in its own right. [Figure in Spence, 1999, p.247]

The addition to the Council Secretariat of Directorate-General E, headed by Sir Brian Crowe, also represented an additional requirement for co-ordination. Within DG E Leonidas Evangelidis assumed responsibility for CFSP while Cornelis Stekelenburg became Director-

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<sup>5</sup> Declaration No.28 'Practical Arrangements in the field of Common Foreign and Security Policy,' attached to

General for External Relations. The DG is responsible for the preparation of Council meetings, support for the Presidency, and briefing of dialogue partners. The CFSP unit within the Council Secretariat therefore has a rather technical role and is also very small with only twenty or so staff. The chances of serious duplication occurring between the Commission and the Council are therefore rather limited. In order to monitor each other's work representatives from the relevant external relations DG's within the Commission and Council meet on a regular basis and the former has even seconded a staff member to the secretariat. In addition, the Commission has taken its responsibility to keep the European Parliament informed very seriously and van den Broek has been a 'regular attendee at sessions of the Committee dealing with external political relations.' [Cameron, 1997b, p.102]

In both the TEU and CTEU contexts the consistency stipulations have proven enormously difficult to implement since open differences still exist between first and second pillar competencies in the field of external activities. An exchange of notes between the Commission and the Council regarding common positions on Rwanda and the Ukraine in 1994 resulted in a turf battle and charges of mutual encroachment. Recognising the need for some mechanism to address these tensions the CTEU provided for a safeguard whereby the 'Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.' [CTEU, Art. 14 (4)] Ultimately, the degree to which consistency is ensured will depend upon the willingness of the Commission and Council to reach arrangements and solutions between themselves since the stipulations of TEU and CTEU pertaining to the second pillar are legally non-binding.

The successive treaties have established a dual structure for decision-making in the EU's external affairs. Difficulties have arisen due to the differing competencies between the EU and its responsibility for external affairs and the CFSP, especially when many undertakings (such as election monitoring) increasingly fall into a grey area between the two. The dual structure of the EU's external policy is summarised in Appendix I.

Progress has been made on horizontal consistency with the undoing of the remaining vestiges of the parallel EPC and Community structure. For instance, Working Parties would report to the Political Committee if working in the EPC structure or to the Permanent Representatives in the Community structure. With the advent of the TEU all Working Parties became Council Working Parties. Similarly, the merging of the EPC Secretariat with the Council's General-Secretariat has enhanced consistency. However, in spite of these advances and the move towards a 'single institutional framework' the decision-making procedures and

structures still mark the CFSP as an intergovernmental process and the Community's external activities as *communautaire*.

Although 'joint actions' are referred to below as part of vertical consistency, they also have horizontal aspects. Joint actions can be considered as applying between the Union and the Member States (hence *vertical*) but the relationship between a joint action (CFSP) and Community measures (EC) poses questions pertaining to horizontal consistency. Since, as has been observed, the first and second pillars differ substantially in the way they operate and in character, the task of ensuring consistency in external activities of the Union becomes a delicate matter. Theoretically the CFSP and EC external activities should be complementary and not hierarchical. However, in the event of expansive definitions of 'joint actions' being used, the issue then becomes one of the CFSP extending its remit in external activities to the Community and thus diluting the *communautaire* nature of the first pillar's external activities.

A further contentious area of concern for horizontal consistency is finance. The net effect of the budgetary arrangements, as established in the TEU, was to give the Member States an incentive to charge as much as possible to the Community budget under the ill-defined 'administrative expenditure' category. [TEU, Art. J11 (2)] The incentive sprang not only from the obvious incentive to avoid placing further strain on national budgets, but also to avoid EP purview as it applies in the EC budget. The strains between the Council and the EP were partially resolved in Article 28 of the CTEU by which the Member States are able to charge most administrative and operational expenditure to the Community budget.<sup>6</sup> The CTEU provided an answer to EP charges of padding by Member States of the 'administrative expenditure' category, by providing for some operational expenditure to be charged to the Community budget, while the EP was accorded greater oversight over the CFSP by means of budgetary procedures. The EP's competence is though circumscribed to laying down the annual CFSP budget in certain pre-defined areas and does not extend to a veto right over the budget of every joint action. The inter-institutional agreement may not necessarily enhance consistency since in those cases where the administrative expenditure is not charged to the EC's budget, it shall be charged to the member states according to a GNP scale unless the Council, acting unanimously, decides otherwise. Given the pressure for a reallocation of overall budgetary contributions, spearheaded by Germany, it is difficult to imagine a sliding GNP scale as a satisfactory arrangement (this is compounded in Germany's case with a continuing reticence towards involvement in combat operations).

The ability to conduct long-term planning is a critical aspect of consistency. A number of supporting declarations were adopted by the IGC in June 1997 designed to enhance the efficiency of the CFSP. The WEU, which bears responsibility for the defence implications of the CFSP, presented a declaration on its role and relations with the EU and NATO. The declaration included the establishment of a Policy Planning and early Warning Unit (PPEWU) in the General-Secretariat of the Council under the responsibility of the Secretary-General.[WEU Declaration, 1997, Section 6] The unit is to be composed of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU. The responsibilities of the new unit shall include:

- Monitoring and analysing developments in areas relevant to the CFSP;
- Providing assessment of the Union's foreign and security policy interests and identifying areas where the CFSP should focus in future;
- Providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's CFSP, including potential political crises;
- Producing, at the request of either the Council or the Presidency or on its own initiative, argued policy papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP.

The precise composition of the unit remains unclear following the rejection of proposals forwarded by Jürgen Trumpf. According to one report, 'Paris wanted the unit to go considerably further than Trumpf's paper indicated, while other countries claimed it went too far.' [Turner, (1998), p.6] Amongst the issues to be decided is its composition, its rules of operation, its relations with the Council Secretariat and to whom it reports. The procedure for the adoption of answers to these issues is also unclear – should majority or consensus take them? Aside from the fact that the unit is of uncertain composition, it will be of little utility for the future unless indigenous capabilities for early warning are developed in the EU/WEU context. Most EU members consider that the PPEWU should be a separate unit within the Directorate-General of the Council Secretariat responsible for external relations. On the other hand a minority, as well as the Commission, argues that the PPEWU should be autonomous

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<sup>6</sup> With the exception of expenditure arising from operations having military or defence implications or where the

within the General Secretariat, under the direct line management of the High Representative. [*Europe*, 6/7 July 1998, p.4.]

The provision of ‘timely assessments’ and ‘early warning’ is clearly beyond the Union’s or the WEU’s ability at this moment. The difficulties encountered in the Franco-German Helios 2 satellite project and the small size of the Torrejon satellite centre suggest that the Union will not enjoy such a capability for some time to come. The option of relying upon shared national intelligence assets is one that would most likely prove untenable.

If we set the practical shortcomings of the PPEWU aside, it may yet prove be a two-edged sword. In order to neutralise as far as possible the influence of the Commission in the unit, the Member States may decide to send lower level representatives. However, the Commission’s enhanced role in CFSP through the unit may encourage higher level representation with the objective of imposing more intergovernmental supervision on the Commission. There is the very apparent danger that rather than instilling coherence, the unit may serve to sharpen the supranational and intergovernmental distinctions within the Union’s external activities

The PPEWU is but one reform in the CTEU which may one day be of benefit to consistency. A further and more controversial means of enhancing consistency would have been to align CFSP decision-making procedures with those of the Community. The 1996 Intergovernmental Conference was divided upon the wisdom of extending qualified majority voting (QMV). Moves toward QMV would have avoided the likelihood of a major initiative being hijacked by one Member State or, as tended to happen, in order to ensure unanimity the resultant agreements measured the lowest common denominator and were often sufficiently vague as to be virtually meaningless. Article 23 of the CTEU appeared to extend QMV while also making possible constructive abstention. Closer examination reveals though that QMV applies to a limited number of circumstances (joint actions, common positions or any other decision on the basis of a common strategy) and the stipulations include the essence of the 1966 Luxembourg compromise. Under the QMV stipulations, which do not apply to decisions having defence or military implications, a member of the Council may declare that, ‘for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken.’ [CTEU, Art. 23 (2)] In this case the Council may, ‘acting by qualified majority, request that the matter be referred to the European Council for decision by unanimity.’ The overall effect may not enhance

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Council unanimously decides otherwise.



consistency since incentives for those opposed to QMV will be to push for as many decisions as possible to be made on the basis of unanimity. Overall the implementation of the double QMV and the exclusion of significant areas from qualified voting would appear to have done little to align Community and CFSP practices.

Consistency is also a matter of appearance or, more specifically, how the EU represents itself to third parties. Arguably, in the context of consistency, the EU had given a poor picture of itself. The CTEU introduced the position of High Representative, who is the Secretary-General of the Council and who shall assist the Presidency. [CTEU, Art. 18 (3)] Although the new post is a significant dilution of the French designs for a *Monsieur PESC*, who would have been directly under the control of the European Council, the potential (and perhaps unintended) benefits for consistency may arise from the High Representative's role as part of a troika consisting of the President of the Council, the Secretary-General of the Council, and the Vice-President of the Commission responsible for external relations. The Commission (under Article 18 (4) of the CTEU) is already 'fully associated' with the CFSP and in the Troika context may be able to operate in a largely independent manner. It is difficult to imagine the High Representative, who is junior to the President of the Council, assuming an assertive role in the Troika while the Commission representative, allied with the Commission officials in the PPEWU, may exert a strong influence. The potential therefore may be for consistency with the Commission playing a more active role in the troika but it may also provoke profound tensions within the troika between the supranational and intergovernmental aspects of the Union's external activities. Furthermore, the High Representative's role which, at first glance, would appear to promote consistency may make little difference given the relatively subservient position accorded to the office. There are still a number of question marks regarding the High Representative's role, amongst them being the political level of the person to be appointed to the post as well as the nature and operation of the services directly linked to the post (especially the PPEWU).

Lastly, consistency should apply to all areas of the EU's external activities. Although defence was not specifically mentioned in the CTEU's definition of external activities (Article 3), but security is, some brief comments may be ventured. The caution evident in the IGC prior to the TEU was reflected in the lead up the Amsterdam Summit and the treaty itself. The CTEU makes reference to the 'progressive framing of a common defence policy,' which 'might in time lead to a common defence, should the European Council so decide.' [CTEU, Art. 17 (1)] It is however evident from the general developments since the end of the Cold War, especially the outlining of the Combined Joint Task Force Concept (CJTF) at the

North Atlantic Council's Brussels summit in 1994, that security and defence actions have to be coordinated not only within the second pillar but also between the EU, WEU and NATO.

There are though a number of structural impediments to consistency in the security and defence realm. Article 23 of the CTEU provides for any Member State to make a qualified abstention and in this case the Member 'shall not be obliged to apply the decision, but shall accept that the decision commits the Union.' Those Member States who have made a declaration to this effect 'shall not be obliged to contribute to the financing [of operations with military or defence implications].' [CTEU, Art. 28 (3)] For participants costs will be borne on a GNP scale, 'unless the Council acting unanimously decides otherwise.' [Ibid.] The problems with this arrangement are all too apparent -- the financial arrangements provide an incentive for non-participation and, since a GNP scale will be used, it provides an incentive for the larger Member States not to participate. It is difficult to see how an operation minus, for example, Britain or Germany, could be portrayed as a credible EU effort.

Consistency should be applied to defence for a number of reasons. First, the dividing line between security and defence is very difficult to draw and it therefore appears somewhat arbitrary to include security and exclude defence from external affairs. Second, as Leo Tindemans recently argued, 'pressure in favour of a genuine EU common defence policy will grow as the European Union expands.' [*Europe*, 1 May 1998, p.4] The EP's Committee on Foreign Affairs not only endorsed Tindeman's argument but supported his call for a Council of Defence Ministers, a White Paper on issues relating to European defence policy, and the establishment of a permanent police force capable of rapid intervention. Third, an emphasis upon consistency in the defence realm would encourage the formation of autonomous capabilities so that the EU and WEU member states are not as dependent upon the U.S. in circumstances where, as Armand de Decker, Chairman of the WEU Assembly Committee on Defence argued, 'the evolution of the world, and of Europe in particular, will increasingly make the EU and the United States competitors.' [*Europe*, 9 May 1998, p.3]

One of the major problems bedeviling the implementation of consistency in the security area, which would also apply to defence, is the fact that the WEU was not fully integrated into the EU as a result of the 1997 Amsterdam summit. In fact, relations between the WEU and NATO are in general stronger than those between the EU and WEU. Following from this, the issue of security and consistency is complicated by the lack of any dedicated 'European' military assets. All though there are a number of potential assets that the Union could call upon if need be, such as the Eurocorps or the Combined Joint Task Forces, the backbone of the operational effectiveness amongst most of the EU militaries

continues to be provided by the United States. In spite of progress that has been made since 1994 in designing and operationalising ‘separable but not separate’ forces, there is still a profound reluctance to either provide Europe with the resources required for autonomy and a marked preference to work outside existent and new structures and to rely on *ad hoc* solutions. In a meeting of the General Affairs Council the Benelux countries objected to the increasing use of *ad hoc* coalitions and pointed out that ‘the existence of ad hoc arrangements between some Member States in areas of vital importance for the Union – whether third parties are part of it or not could in time weaken confidence in a strong CFSP.’ [*Europe*, 29 April 1998, p.3] Obviously, *ad hoc*ery does not lend itself to consistency either. No amount of plans for new machinery and mechanisms to promote consistency can overcome the fundamental problem of the apparent lack of political will to provide a coherent and autonomous European response when it comes to the security aspects of the Union’s external activities.

### *Vertical Consistency*

Vertical consistency involves both the process of co-ordination between the member states and the EU as well as the reverse. As has been observed in the case of horizontal consistency, there has been a gradual slide from the national ministries to Brussels in terms of visibility in external relations. In part this has been aided and abetted by changes that have little to do with the EU per se. For instance, the end of the cold war has witnessed a decline in concern about traditional security and defence matters and an increase in concern about global trade. It is then something of an irony that those areas of significance to the EU’s external relations are those that are most tightly regulated, within the scope of the EC and the *acquis communautaire*, while those that of lesser importance are the most jealously guarded by the member states.

This irony may easily be explained by the changing contexts. External trade policy was overshadowed by the bipolar international system and security concerns and this explains in part the fierce defence of the CFSP’s intergovernmental nature. The picture though may well change again due to a number of factors. First, the general downgrading of security and defence concerns in the immediate aftermath of the cold war has proven to be a mistake, as

Bosnia and Kosovo have illustrated. Second, the resistance to the ‘communautairisation’ of the EU’s CFSP has changed, most notably with the Anglo-French St. Malo initiative of December 1998 which called for an autonomous military capacity for the EU. Third, the general transferral of influence from the member states to Brussels in the EC context may well have knock-on effects for other aspects of external relations, including CFSP. These factors and others suggest that the issue of vertical consistency is more important than ever.

#### External relations co-ordination between the EU and the Member States

There are a number of tools for ensuring consistency between the EU and the member states. The Council not only shares responsibility with the Commission for ensuring consistency in the external relations of the EU but it has the additional burden of ensuring greater responsibility between the Union and its Member States (*vertical consistency*). Article 11 of the CTEU states that it is to the Council that responsibility falls for ensuring that Member States support the Union’s external and security policy actively and unreservedly and to prevent them from taking action contrary to the interests of the Union. In the EC context consistency can be enforced through the European Court of Justice while in the CFSP, which falls outside the jurisdiction of the Court, a number of alternative methods have been devised, such as *common positions* and *joint action* which both commit the Member States to binding obligations.<sup>7</sup>

According to Article 15 of the CTEU, common positions shall ‘define the approach of the Union to a particular matter of geographical or thematic nature,’ and ‘Member States shall ensure that their national policies conform to the common positions.’ Joint actions shall address ‘specific situations where operational action by the Union is deemed to be required’ and that joint action ‘shall commit Member States in the positions they adopt and in the conduct of their activity.’ [CTEU, (1997) Article 14.1&3] The Foreign Ministers Report to the European Council in Lisbon concentrated on identifying those areas open to joint action. [Lisbon Report, 1992, Section 1] According to the report joint action ‘must be seen as a means for the definition and the implementation by the Union of a policy in the framework of the CFSP in a specific issue.’ Joint actions must furthermore take into account the Union’s *acquis* and ‘remain consistent with the other actions and positions’ adopted by the Union. It was recognised that the ‘existence of important interests in common constitute the basic

criterion for adopting joint action.’ The report also recognised that certain factors will determine important common interests and three in particular were mentioned:

- a) geographical proximity of a given region or country;
- b) important interests in the political and economic stability of a region or country;
- c) existence of threats to the security interests of the Union.

Joint actions, unlike common positions, are more exact in the sense that they address ‘specific situations where operational action by the Union is deemed to be required’ as well as the ‘objectives, scope, and means to be made available to the Union.’ [CTEU, 1997, Art. 14] Any joint action ‘shall commit the Member States in the positions they adopt and in the conduct of their activity.’ [Ibid.] A joint action is therefore primarily an agreement between the Union and the member states, thus reinforcing the idea of vertical consistency. Provision is also made for those cases of ‘imperative need’ arising from changes in a given situation and permits Member States to take emergency action in conformity with the general aims of the joint action.

Joint actions should therefore have been a valuable addition to vertical consistency. In practice though there has been a general reluctance to use joint actions and a strong preference for other forms of CFSP action such as declarations. In its commentary upon progress in implementing the CFSP (in this case from January-December 1996) the EP observed:

[The EP] deplores the fact that, barring rare exceptions, the use of joint actions and common positions was confined to isolated matters and the Union did not venture to employ them to chart long-term comprehensive strategies in relation to key world issues; further deplores the fact that, three years after the entry into force of the Treaty on European Union, there are so few joint actions and common positions in comparison with the number of declarations, although the former are the real instruments of the CFSP. [OJCD, 1997, A4-0193]

Any cursory examination of the CFSP’s record supports the above claim with approximately 430 declarations, 90 joint declarations and 50 common positions and joint actions, being adopted since 1993. Furthermore, it is often difficult to distinguish joint actions

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<sup>7</sup> It could though be argued that this is a moot point since the consistency is required to obtain such an agreement in the first place, be it by qualified majority vote or unanimity.

from common positions.<sup>8</sup> The different status accorded to the types of decision that can emanate from the CFSP process, by the European Council in Lisbon, or by the TEU or the later consolidated version, would appear not to be observed in practice.

The CTEU introduced a new type of decision to the second pillar. ‘Common Strategies’ are to be decided upon by the European Council ‘in areas where the Member States have important interests in common.’ The establishment of such common interests implies that there is a good deal of prior consultation between the foreign and other national ministries as well as in the EU itself. Once this is established, common strategies shall set out ‘their objectives, duration and means to be made available by the Union and the Member States.’ [CTEU, 1997, Art. 13]. However, under the TEU it was the Council who should decide on the ‘principle of joint action’ and ‘lay down the specific scope, the Union’s general and specific objectives in carrying out such actions, if necessary its duration, and the means, procedures and conditions for its implementation.’ [TEU, 1991, Art.J.3] It would seem therefore that common strategies have assumed most aspects of ‘joint actions’ under the TEU with a corresponding emphasis on the role of the European Council rather than the Council. Common strategies may well prove to enhance coherence amongst the EU Member States by putting the emphasis on co-ordination as the highest level but, given the relatively infrequent meetings of the European Council, this may be at the cost of overall consistency of EU external actions. The tendency to make decisions in a reactive mode will also continue to raise problems of consistency.

The main underlying problem with enhanced vertical consistency lays in the ongoing debates about the extent to which the EU’s external activities, and CFSP in particular, should be primarily intergovernmental or communautaire. Unsurprisingly, those who are more inclined towards maintaining an intergovernmental approach are more likely to maintain looser vertical structures while those who may be more communautaire by inclination are more likely to approve of mechanisms to tighten vertical consistency. However, in the absence of any common approach, efforts to enhance vertical consistency will most likely be frustrated. In a study conducted by the European Commission’s DG-1A on ‘Reforming the CFSP’ prior to the Amsterdam Summit, the following national positions on were evident on consistency of foreign policy and visibility:

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<sup>8</sup> Joint actions ( Article J.3 of the TEU) commit Member States to act in a certain way. They address the specific situation where operational action by the EU is required and specifies objectives, scope, and the means available to the Union and, of necessary, their duration. Common positions (Article J.2. of the same treaty) defines the approach of the Union to a particular matter of ‘geographical or thematic nature.’ Member states must ensure that their national positions conform to the common positions.

**Country: Consistency of Foreign Policy and Visibility**

- Austria -- Examination of instruments of CFSP to increase consistency  
-- In favour of legal personality of Union  
-- CFSP objectives to be formulated in more concrete manner  
-- Gradual communautairisation of foreign policy
- Benelux -- Unity of action  
-- Reinforce the role of the Commission  
-- Redefine relations between Commission/Council
- Denmark -- Cooperation between EU Member States on foreign policy to remain intergovernmental
- Finland -- Intensification of co-operation between sub-areas of foreign relations which transcends pillar borders within framework of existing institutional structure  
-- Relations between COREPER and the Political Committee to be explicated  
-- Prepared to study giving the Union a legal personality
- France -- Preserve the intergovernmental nature of CFSP  
-- Clarify the division of tasks between CFSP and the external activities of the Community  
-- External action should be more rapid and identifiable on the international scene, as well as more coherent  
-- The High Representative should assure the continuity of the external activities of the Union
- Germany --
- Greece -- Partial communautairisation of first pillar which would imply more consistency and wider participation of the institutions (Commission should play a more active role)  
-- Objectives should be clearly defined and broadened in three areas: human rights, a guarantee of the EU's external borders, and prevention of conflicts
- Ireland -- Close cooperation between a Secretariat policy and analysis unit and the Commission to ensure coherence
- Italy -- Establishment of a coordinated structure of analysis, planning and execution in which the Presidency, the Commission and the Secretary General collaborate, guaranteeing consistency, efficiency, and visibility
- Portugal -- Preservation of the pillar structure: 'communautairisation' of CFSP is unrealistic  
-- respect for institutional equilibrium (in particular the Commission) and the 'acquis communautaire'  
-- in favour of legal personality for the Union as a whole
- Spain -- suppression of the pillar structure for specific procedures, decisions and execution thereof (such as EMU)  
-- more concrete identification of fundamental interests, in particular diplomatic solidarity on issues such as guaranteeing the common borders and human rights  
-- clarification of common positions and actions of the Union  
-- extension of the legal personality of the Union  
-- better preparation of the Council's work: reinforce COREPER's role
- Sweden --
- United Kingdom -- will press for more active and effective CFSP while maintaining its intergovernmental character  
-- CFSP can never become an exclusive policy which would replace national foreign policy  
wishes to see a Europe which encourages and allows flexibility, recognising the diversity of Member States rather than the imposition of uniformity

Source: *CFSP Forum*, 3+4/96, pp.7-16.

External relations co-ordination between the Member States and the EU

Questions of vertical consistency also apply in reverse. How is consistency ensured between the member state and the Union? There is however an important distinction since what is consistent between the Union and the member state is supposed to be the policy of the Union. However, from the perspective of the member state, it is the Union that is supposed to accord to its national interest as closely as possible. Thus, the litmus test for consistency from the member states' perspective will be the extent to which the Union is consistent with its national priorities. This version of vertical consistency will not apply to all member states with equal force. For instance, it may not apply in the case of the smaller states who may not necessarily have the resources or weight to push their national agenda in Brussels.

Theoretically, as long as it is not too brazen, all member states are afforded the chance to promote consistency between their perceived national interests and those of the Union with the rotating EU Presidency. Again, depending on the size of the state holding the presidency, the position may be used to blatantly advance national positions (such as the German presidency in the first half of 1999 who used the Presidency as a chance to reallocate EU finances) or preferred agendas. In practice the ability to push a national agenda is limited by the short term-in-office of the Presidency (six months) and the Commission's obligation to collaborate with the Presidency in ensuring the consistency of the EU's external relations. Since Commission delegations represent the EU in all areas of first pillar competence the possibility for national agenda building is limited. It should also be observed that while the larger member states obviously do possess the necessary leverage to promote national positions, the obvious cost of so doing may be the consistency of the EU's external relations.

The mechanisms for ensuring vertical consistency between the Union and the member states were further enhanced in the CTEU where the Commission was involved in the *Troika* Presidency system at ambassadorial level. In fact the Commission is the only permanent element within the changing constellations of the EU Presidency of the Council. Any given member state may be involved for a maximum of eighteen months (that is, for the six months prior to, during and after their Presidency) in a cycle of seven and a half years. In some areas the CTEU also afforded the Commission equal status to the diplomatic and consular missions of the EU member states, especially with reference to representation to third parties. For instance:



The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that common positions and joint actions adopted by the Council are complied with and implemented. [CTEU, 1997, Article 20]

With increasing frequency the Member States are less able to advance purely national agendas at the expense of the EU or consistency in its external relations. The Commission's influential role in Pillar I and, to an increasing extent Pillar III, mean that the onus is increasingly on the Member States to co-ordinate their policies and positions with those of the Community. The superficially clear dividing lines between those aspects of Community external relations where the responsibility clearly lies with the Commission, primarily on external economic issues, and those areas where the responsibility lies with the Member States, especially Pillar II, is in practice blurred. In principle the second pillar, CFSP, remains intergovernmental but the day-to-day issues often transcend the neat division between economic and political aspects of the Union's external relations. To an increasing extent Foreign Ministries have to accommodate and work with the Commission delegations, largely due to the logic of monetary union and single trade and agricultural policies, all of which carry implications for external relations.

It has become increasingly difficult to justify the expense of maintaining embassies and consulates overseas for many EU Member States when their main role appears to be export promotion. The logic of fifteen highly integrated economies representing their collective interests through Commission delegations or even common EU overseas representations would appear to challenge the need for national representation in many cases. This does not however obviate the necessity for national representation in areas of special interest, such as Britain and the Commonwealth or Spain and Latin America. Finally, the CTEU made it abundantly clear that it is the Union that 'shall define and implement a common foreign and security policy covering all areas of foreign and security policy,' which stands in contrast to the TEU which made the definition and implementation a shared responsibility between the 'Union and its Member States.' This significant change would certainly seem to imply that the onus is upon the Member States to ensure the consistency of their external policies with those of the Union and not vice versa.

*Barriers to consistency in the Union's External Activities*

There would seem to be seven identifiable barriers to consistency in general. Generally the need for enhanced consistency is well recognised within the Union and its structures. First, it is apparent that consistency depends largely upon the efforts of the member states to take the initiative to enhance consistency, starting at the national level. Member States would appear to accept that generally more can be gained from acting in harmony than alone. The Union's responsibility to 'define and implement' a CFSP covering 'all areas of foreign and security policy' points to an obvious loophole – defence policy. Although this undoubtedly remains the most intransigently intergovernmental aspect of CFSP, there is room for optimism that the post-St. Malo and Kosovo developments may actually lead to a common defence policy and common defence. There are though significant areas of difficulty that need to be acknowledged such as the position of the neutral and non-aligned Member States, the role of a merged EU-WEU with NATO and the provision of adequate resources to build the autonomous military capability mentioned in the St. Malo Declaration.

Second, successive treaties and documents make reference to the 'common interests' of the Union but these are inadequately defined and, as a consequence, so too is the *persona* of the Union on foreign policy and security terms. The expectation that the common interest of the member states can be found in the sum total of the diplomatic interests of the member states is clearly an inadequate basis on which to promote the EU as a foreign policy actor. A starting point in the identification of common interests is the identification of risks and threats by a Study and Analysis Unit; an idea first suggested first by the EP. The unit's task would be to 'assess risk and threats from a European perspective and bring national diplomatic corps and intelligence services into line with the new aspirations of the CFSP.' [OJ C200, 1997, Para.9] A further measure to enhance common thinking (by addressing common disagreements) would be to provide an avenue for policy input aside from the Presidency and the Council. To achieve this end a mirror to the WEU Institute for Security Studies, or maybe an extension of it, should be created with a broad CFSP focus. Such an institute could also play an active role in promoting the 'European' content in the training of diplomats and defence officials in order to foster consistent approaches.

Third, the introduction of qualified majority voting (QMV) procedures into the second pillar has in fact not helped to foster consistency for two reasons: first, the requirement in practice remains that of unanimity thus making agreement dependent on compromise and

accommodation at a given moment rather than upon the development of a consistent theme or stance and; second, QMV procedures might in fact undermine consensus by encouraging exceptionalism which may be the price of reaching a 'common position.' The reforms in the budgetary procedures, which preserve the division between administrative and operational expenditure of the TEU, may actually complicate the consistency requirements and create tensions between Community activities and those taking place under the aegis of the CFSP.

Fourth, the introduction of the PPEWU in the Amsterdam Treaty may prove a useful means of ensuring consistency. Unfortunately, as of the time of writing, the precise role of the unit is not subject to agreement amongst the EU members. Nevertheless, the need for a joint policy analysis mechanism would seem to be a vital part of the identification of common European interests. Although there are already mechanisms for the exchange of policy-related information (such as COREU or its successor CORTESY, or joint planning staff meetings between the Member States and the Union) there is clearly a need to develop this facet of the Union's activities. This however will soon bring up the sensitive issue of intelligence support for Union activities so that it may fulfil its early warning role.

Fifth, alongside the lack of an indigenous intelligence capability, the absence of prepared priorities in the context of the Union's external activities necessarily puts the emphasis on reaction rather than pro-active stances (such as preventive diplomacy or crisis management). DG-1A mention that one of the aims of the CFSP 'is to create consistent policies which are preventive rather than reactive and which assert the EU's political identity.' [DG-1A] The report to the European Council in Lisbon on the likely development of the CFSP in 1992 also stressed the need for the CFSP to be 'less reactive to events in the outside world, and more active in the pursuit of the interests of the Union and in the creation of a more favourable international environment.' [Lisbon, 1992, Para.3] A pattern though has already evolved with regard to Albania and Bosnia, and seems to be appearing again with regard to Kosovo, where the EU adopts a wait and see strategy and then relies upon *ad hoc* solutions. The situation may be partially remedied by, as Fraser Cameron has suggested, the enunciation of clear priority areas to 'ensure the necessary commitment from all member states to common action.' [Cameron, (1997)]

Sixth, the effect of enlargement upon the consistency of the second pillar needs to be considered. More specifically, will the accession of mainly small countries encourage or discourage the larger members from co-ordinating their positions through the CFSP. This may be of special importance regarding QMV practices following accession. It seems only logical to suggest that the willingness of the larger member states in particular to work

through the CFSP will have to be reflected in voting weight within the Council. This is not an observation intended to belittle the role or importance of the smaller Member States but rather a reflection of *real politik* in the sense that it is ultimately the larger states who will have to be enticed to use their manpower and resources to underpin most conceivable joint actions.

Lastly, a major source of inconsistency in the security-related aspects of the Union's external activities is to be found in Washington D.C. as well as the European capitals. In an almost reflex action stemming from the cold war the European allies have come to expect leadership, especially from the United States. The absence of a common threat in post cold war Europe has undone much of the willingness on the part of its European allies to find a common cause, while the U.S. has not been immune from difficulties in putting realistic goals and priorities behind its self-declared leadership role. Although the embracing of democratic enlargement lacks the urgency or compelling nature of cold war containment, the changes in the international system since the beginning of the decade demand that the European powers themselves enunciate clear goals and priorities. Only by so doing can the Union develop consistent and attainable strategies and goals and only then will it be seen as a significant actor beyond the confines of the member states themselves.

## APPENDIX I

<b>Institutional/procedural Characteristics</b>	<b>EC external affairs</b>	<b>Maastricht provisions on CFSP</b>	<b>Amsterdam provisions on CFSP</b>
<i>Competencies</i>	-- commercial policy -- development co-op -- association	-- foreign policy -- security policy -- prospective common defence	-- foreign policy -- security policy -- prospective common defence
<i>Decision making</i>	-- (partial) supranat. majority voting	-- intergovernmental, unanimity rule, possible exceptions: a) QMV for implementation of joint actions (to be decided on unanimously) b) abstention in case of a qualified majority exists for the respective decision	-- intergovernmental, unanimity rule, possible exceptions: a) decisions on the basis of a common strategy b) implementation of joint actions or common positions reservations -- right for veto in case of vital national interests -- not applying to decisions having military/defence implications
<i>Role of the European Commission</i>	-- monopoly for initiatives -- independent mediator, guardian, representative and promoter of Community interests	-- fully associated with CFSP -- right of initiative	-- fully associated with CFSP -- right of initiative -- member of Troika -- member of PPEWU
<i>Role of the European Parliament</i>	-- limited but substantial rights for co-decision and assent (i.e. Association Agreements, budget, Enlargement)	-- consultation and information through Council Presidency and Commission -- right for questions and recommendations -- annual debate on progress in implementing CFSP -- de facto last say in financing joint actions	-- consultation and information through Council and Presidency and Commission -- right for questions and recommendations -- annual debate in progress in implementing CFSP -- last say in laying down the annual CFSP budget -- increased information and consultation on all aspects of CFSP-financing through Council -- information about every CFSP decision liable to costs through the Council -- annual written reports of the Council on main developments and options of CFSP
<i>Preparation on Council's working level</i>	-- EC Working Groups ( <i>de facto</i> largely separated) -- COREPER	-- CFSP Working groups ( <i>de facto</i> largely separated) -- CFSP Counsellors -- Political Committee -- COREPER	-- CFSP Working groups ( <i>de facto</i> largely separated) -- CFSP Counsellors -- Political Committee -- COREPER
<i>Legal supervision</i>	-- European Court of Justice	-- none	-- none

Source: Uwe Schmalz, 'The Concept of Coherence in the Amsterdam Treaty- Bridging the Union's Dual External Foreign Policy Structure?', *CFSP Forum*, 1/98, p.5.

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