

Lisbon Treaty and CFSP

Will there be increased Integration?

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For the master thesis I have decided to analyze the Common Foreign and Security Policy (CFSP) of the EU. The Lisbon Treaty provided for changes in this policy field, with the aim to have made it more effective. My assumption is that more effectiveness can be achieved though more integration, whereas integration means more competences for supranational institutions, such as the Commission and the European Parliament, and more communitarized decision-making in the Council. Although the reforms are quite impressive, with regard to the establishment of two new institutions, the conclusion is that the amended treaties do not provide a basis for more CFSP-integration.

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Abbreviations

AT / ToM	-	Amsterdam Treaty / Treaty of Amsterdam
CFSP	-	Common Foreign and Security Policy
CoM	-	Council of Ministers
CSDP	-	Common Foreign and Security Policy
ECJ	-	European Court of Justice
EP	-	European Parliament
ESDP	-	European Security and Defense Policy
EU	-	European Union
HR CFSP	-	High Representative for the Common Foreign and Security Policy
HR UFASP	-	High Representative of the Union in Foreign Affairs and Security Policies
LI	-	Liberal-Intergovernmentalism
LT / ToL	-	Lisbon Treaty / Treaty of Lisbon
MLG	-	Multi-Level Governance
MS	-	Member States (of the European Union)
MT / ToM	-	Maastricht Treaty / Treaty of Maastricht
NF	-	Neo-Functionalism
NT / ToN	-	Nice Treaty / Treaty of Nice
PJHA	-	Police, Justice and Home Affairs
TEU	-	Treaty on the European Union
TEC	-	Treaty on the European Communities
TFEU	-	Treaty on the Functioning of the European Union

1. Introduction

On December, 1st 2009 the “Treaty of Lisbon amending the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC)” entered into force.¹ This treaty amended the existing Treaties. Since December 2009 new, consolidated versions of the Treaty on the European Union and the Treaty establishing the European Community are valid, whereas the TEC was renamed² to the “Treaty on the Functioning of the European Union (TFEU)”.³ The new amendments should “provide the Union with the legal framework and tools necessary to meet future challenges” by making the Union “more democratic and effective” and “bringing together Europe’s external policy tools”.⁴ This aim is also valid for the Common Foreign and Security Policy (CFSP), including the former European Security and Defense Policy (ESDP), which is called Common Security and Defense Policy (CSDP), since December 2009.

The unit of analysis of this thesis is the Common Foreign and Security Policy (CFSP), which has been changed by the Treaty of Lisbon in the sense of changing competences and procedures, and the abolishment of the pillar structure in general. The pillar structure kept the CFSP apart from other Union policies, because the CFSP was subject to specific rules and procedures. Eventually, integration in the CFSP was not as advanced as it was in the first pillar. There were three reasons for this state of affairs. First, supranational institutions, in particular the Commission and the European Parliament, did not pose far reaching competences.⁵ Second, legal instruments were weak, because the European Court of Justice did not directly have jurisdiction over them and non-compliance could not be effectively sanctioned.⁶ Third, the very limited possibilities to use Qualified Majority Voting (QMV) and the instrument of a constructive abstention (Art. 23.1, TEU old) limited the use of legal instruments, such as common positions and joint actions.⁷

Ultimately it was widely argued that the CFSP was ineffective and failed to meet the expectations of third countries, because there was a gap between what can be expected from the CFSP and what can be achieved in the pre-amendment framework.⁸ The pillar structure contributed to the picture that the EU is an ineffective international actor, because the Union’s external relations are separated over two legal regimes.⁹ This situation can be illustrated by a citation of Henry Kissinger, who once asked: “Who do I call, if I want to call Europe?”¹⁰ This question implies that the European Union did, among other aspects, not manage to speak with a single voice to the outside world. In addition, the *gap*-conclusion was drawn by Hill in 1993; thus, when the CFSP was just about to start functioning. Therefore the CFSP could have been deemed to be ineffective from the beginning. Another very well

¹ To the pre-amendment version of the TEU reference will be made as “TEU old”, consolidated version of the Treaty on the European Union, as published in *OJ* 2006 C 321 E/1. References to the TEU, amended through the Lisbon Treaty, will be made as “TEU”, because this treaty is currently valid and therefore it is not abbreviated by “TEU new”. Reference will be made to the consolidated version of the Treaty on the European Union (TEU), as published in *OJ* 2010 C 83, Vol. 53.

² This can be seen as a replacement

³ Blockmans and Wessel, 2009, p. 3

⁴ European Commission, 2009

⁵ Börzel, 2005, p. 218+219

⁶ Wagner, 2003, p. 577

⁷ Börzel, 2005, pp. 227+228

⁸ Hill, 1993, pp. 325+326

⁹ Blockmans and Wessel, 2009, p. 45

¹⁰ Euractive, 2004

known and often cited case on this account is the Union's failure to prevent the escalation of the conflict in Yugoslavia.¹¹

Till December 2009 the member states of the European Union were not able to agree on major improvements of the CFSP. The establishment of the High Representative of the CFSP (HR CFSP) through the Treaty of Amsterdam and the establishment of Common Security and Defense Policy (CSDP) through the Treaty of Nice marked the biggest changes. The institutional setup remained unchanged.¹² The main remaining problem was the reluctance of the member states to allow delegation of sovereignty to supranational institutions, because the reluctance and its intergovernmental character make the CFSP ineffective.¹³ The reason for this unwillingness was that shifting sovereignty to supranational institutions results in the abolishment of a national veto in CFSP-policies. Because foreign policies are pivotal to national sovereignty, member states want to keep it.¹⁴

With this master thesis my aim is to analyze specific changes brought about by the Lisbon Treaty, in the general terms of more or less integration. The analysis is primarily based on the amended treaty provisions and their potential for more or less integration. But informal processes ("Brusselization")¹⁵ will also be considered. Eventually, integration is understood as the process whereby political actors shift their loyalties, sovereignty, powers and competences to a new centre, whose institutions possess or are attributed with jurisdiction over the pre-existing states.¹⁶ Therefore more integration is indicated (1) by powers and competences, increasingly attributed to supranational institutions, and (2) by more communitarized decision-making in intergovernmental institutions; for example by the use of QMV.

The Lisbon Treaty was signed in order to make the CFSP more democratic and effective, and to increase the role of Europe as a visible actor on the global stage. This was to be achieved by bringing together Europe's external policy tools when deciding about, and developing new policies. The Treaty of Lisbon gave Europe a voice in relations with foreign nations and organizations. "It harnesses Europe's economic, humanitarian, political and diplomatic strengths to promote European interests and values worldwide, while respecting the particular interests of the Member States in Foreign Affairs".¹⁷ Major insertions, which are commonly known, were the new High Representative of the Union for Foreign Affairs and Security Policy (HR UFASP), which should increase the coherence and the visibility of the EU's external action, a new European External Action Service (EEAS), the single legal personality for the Union and further progress in the European Security and Defense Policy/Common Security and Defense Policy.¹⁸ With regard to the CFSP, and also to all European external actions, the contracting parties intended to make these policy-fields more coherent, consistent and enable the Union to articulate its positions with one single voice.

Therefore the status quo before December 2009 was an ineffective CFSP, which was ought to be changed through the Lisbon Treaty. A strategy to solve this problem is more integration in the CFSP.

¹¹ Blockmans and Wessel, 2009, p. 2; Wagner, 2003, p. 577

¹² Börzel, 2005, pp. 227+228

¹³ Wagner, 2003, p. 577

¹⁴ Koenig – Archibugi, 2004, pp. 139+143

¹⁵ Wessel, 2009

¹⁶ Haas, 1950-1957, p. 5

¹⁷ European Commission, 2009

¹⁸ European Commission, 2009

The pooling of more competences at the supranational level decreases the number of decisive actors, and more communitarized decision-making enhances the implementation-speed of CFSP-acts. Thus, increased integration is required to achieve the goal of the Lisbon Treaty. On this account, the pillar structure was officially abolished, in order to involve the Commission and the European Parliament to the same degree in CFSP processes, as in economical integration processes. But on the same token it is stated in the amended TEU, that the CFSP is subject to special rules and procedures (Art. 24.1, TEU).¹⁹ Therefore it is questionable whether the new provisions formed the basis for more integration in the CFSP. During this project it is analyzed whether the CFSP-changes provided the framework for increased integration, in order to solve the problem of an ineffective CFSP. The main research question is:

Changed the Treaty of Lisbon the status quo of CFSP and lead to increased integration, or did the former “second pillar” remain *de facto* in place?

The basic assumption for this project is that there was room within the CFSP for more integration before the amendment, because it was not a fully integrated policy field. More integrative improvements of the CFSP include, among additional aspects that supranational institutions could have received more competences, CFSP-instruments could have been strengthened and the use of QMV could have been extended. The fact that the amended TEU already states that the CFSP is subject to special rules and procedures, has lead to the research question. In order to develop an answer, the following guiding sub-questions will be answered.

The first question is, whether the room for more CFSP-integration has been used. Related to this question a tool is required to measure integration. The concepts of *scope* and *locus* are applied to measure integration. These concepts make a comparison of the state of CFSP-integration before and after December 2009 possible.

The second sub-question is how the room for more integration has been used. More integration can be indicated by a task-expansion of (supranational) European institutions (scope) and/or by increased relative importance of supranational institutions (locus). In order to achieve the aim of the Lisbon Treaty²⁰ my assumption is that especially locus has to be increased. To be able to evaluate integration two integration theories, *neo-functionalism (NF)* and *liberal-intergovernmentalism (LI)*, are used to analyze the working of integration. Based on the mechanisms of integration hypothetical changes will be predicted, which could have resulted out of the Lisbon amendment. LI does not predict more integration, whereas NF does predict increased competences of supranational institutions. The predictions will be compared to the CFSP conditions, before and after December 2009. That theory, that predicts the “real/factual” changes, characterizes how the room for more integration has been used; either “intergovernmentalization” or more “supranationalization”?

Finally the last question remains. What has been changed through the Lisbon Treaty? The old and new CFSP-framework will be compared and analyzed according to the respective level of integration. Ultimately it can be answered, whether the room for more integration has been filled. In addition the frameworks will be compared to hypothetical changes, in order to evaluate how the room for integration has been used. Taking all together, the research question can be ultimately answered.

¹⁹ Kurpas, 2007, p. 2

²⁰ Which is a more effective and coherent CFSP

2. Theorizing Integration

To analyze integration in the CFSP two features are required. First, a tool is needed to measure the level of integration. For this purpose the concepts *locus* and *scope* will be applied. Whereas *scope* refers to the initial expansion of EU authority to new policy areas, *locus* refers to the relative importance of Community decision-making.²¹ Both concepts combined provide a clear picture of CFSP-integration. Second, it is necessary to analyze the functioning of the process of integration. Neo-functionalism and liberal-intergovernmentalism are applied to understand how European integration works. Both theories offer different causal mechanisms. The application delivers hypothetic changes to the CFSP, which could have meant a positive change to the status quo before December 2009 and thus, more integration.

2.1. How to measure Integration – Scope and Locus

Although integration was limited by the pillar-structure, it is wrong to conclude that no integration at all took place. The research question is, whether the amended CFSP-provisions of the Lisbon Treaty have lead to more integration; a change of the status quo. To be able to asses more or less integration, it is necessary to measure the level of integration in the CFSP. The concepts of *scope* and *locus*, as introduced by Lindberg and Scheingold in 1970, will be the basis for this measurement. The level of integration can be measured through combination of scope and locus. The measurement is based on the assumption, that a higher level of integration is characterized by relatively more powers of supranational institutions, compared to national and intergovernmental institutions, and more communitarized decision – making in intergovernmental institutions.

2.1.1. Scope

The aim of scope is to get an overview about how extensive the CFSP-framework is, meaning which conducts can take place within it. Thus, scope refers to the range of activities, which can be conducted in the CFSP.²² Therefore the policy field is divided into nine distinct activities, which are the indicators assessing the level of integration. The activities are:

1. Proposing CFSP – Acts
2. Adopting CFSP – Acts
3. Implementing CFSP – Acts
4. ESDP/CSDP (Acts with military and defense implications)
5. Enhanced Cooperation
6. External Representation
7. Abstention
8. Budget
9. Judicial Review

The scope can be changed in two ways. On the one hand the list as such could be extended. On the other hand a European institution can be originally included into a particular activity, which would change the scope of that particular institution. Therefore in the analysis of the CFSP-frameworks the inclusion or exclusion of European institution will be assessed.

²¹ Lindberg and Scheingold, 1970, pp. 67+68

²² Lindberg and Scheingold, 1970, p. 66

2.1.2. Locus

Locus refers to the relative importance of supranational institutions and their respective decisions in each activity. It will be depicted by a number between 1 and 5.²³ A score of 1 represents the circumstance that in a particular activity only national governments take decisions. Thus, no integration takes place. On the contrary a score of 5 represents the situation in which decisions are taken exclusively by supranational institutions, which indicates the highest possible level of European integration. The five dimensions of locus are:

- 1 = Exclusive national competence; no European, supranational influence
- 2 = Shared competence “light”²⁴; little European, supranational influence
- 3 = Shared competence “medium”; European, supranational influence, but national still level dominates
- 4 = Shared competences “strong”; dominating European, supranational influence
- 5 = No national influence; exclusive European, supranational competence

In combination, scope and locus indicate how the relative influence of supranational institutions for each activity is. The relation is: The higher each scope-activity scores in locus, the higher the level of integration is. Additionally, further integration will also be indicated by an expansion of scope; meaning through additional activities and/or the inclusion of former excluded institutions.

2.2. Mechanisms of Integration – NF and LI

Next to the measurement tool for integration an understanding of the mechanisms of integration is required. This is necessary in order to evaluate how the room for increased integration has been filled. For this purpose two different integration theories will be applied. These include (neo)-functionalism (NF)²⁵, and liberal-intergovernmentalism (LI).²⁶ The reason for this choice is that the theories have been developed at different points in time, but still possess a high degree of applicability. In addition, both theories point at different mechanisms and reasons for integration. States are unitary actors in LI, whereas states are not the only actors, if NF is considered. Thus, both theories offer different causal explanations of integration, which result in different hypothetical changes to the CFSP. That theory, that predicts the Lisbon-amendments (better), also characterizes how the room for more integration has been used. During this section the foundations of both theories are explained in order to understand the functioning of integration from different perspectives.

2.2.1. Neo-Functionalism

In principle, NF is a theory of regional integration, building on the work of Ernst Haas and Leon Lindberg. The Jean Monnet – method, which aimed at integrating different sectors through spill – over effects, was the first neo-functional approach, although the theory has not been developed at that time.²⁷ Haas later declared the theory obsolete, after European integration stopped in the 1960s, when Charles de Gaulle’s *empty chair politics* effectively paralyzed the institutions of the

²³ Lindberg and Scheingold, 1970, p. 68

²⁴ Börzel, 2005, p. 221

²⁵ Developed in 1950s and revised in 1990s

²⁶ Developed in 1990s

²⁷ Nieman and Schmitter, in Wiener and Diez, 2009, p. 45

European Communities. When European integration started again through the Single European Act in 1986 and the Maastricht Treaty in 1992, the theory was modified and revitalized.²⁸

2.2.1.1. Theoretical Foundation

The theoretical starting point of NF is the nation state. This state is led by a political group. Because of insufficiencies within a current political system, societal groups become advocates of a new form of political organization. The new organization can be a supranational organization, to which involved groups shift their loyalties (loyalty-shift). This is the process of integration.²⁹ The purpose of NF is to describe, explain and predict regional integration of political communities, which can result in the evolution and/or strengthening of a (new) supranational political community (e. g. the European Union).

Therefore the process of integration involves three kinds of actors: the participating nation states, interests groups, and, once established, supranational institutions. The aim of participating actors is to create a new form of collective decision-making, in which nation states are not the only crucial and decisive actors.³⁰ On that account is the nation state perceived as the initial political community, which is characterized as a set of values, symbols, procedures and institutions. The members of this political community are citizens. They are (unquestionably) loyal to the political community.³¹

Loyalty means that the citizens are devoted to the values, symbols, procedures and institutions of the political community; but only as long as the community meets their citizens' expectations.³² But the political community is not "monolithic". That means the community entails pluralistic groups, institutions, and values; the nation state is internally not homogenous. Thus, involved groups are always in conflict with each other over the development of the political community. The result is that preferences of nation states are not fixed, but changing. Consensus exists in each nation state only to that extent that war and revolt are to be avoided within the state. It can be expected, that the group-conflict will remain also in a supranational, political community. Therefore group-conflict is, next to loyalty, the second essential feature of integration.³³

In conclusion, citizens work together in societal groups in a pluralistic political community. The groups have different interests, related to the development of the political community. These groups can be political parties or interests groups. For example caused by elections, the group, which is in charge of leading the community, can change. The preferences of the community are not fixed. In addition, other societal actors influence the leading group gradually. Therefore the preferences are constantly changing and different groups constantly fight over the path of an existing political community. If individual groups in different nation states do not get their preferred outcomes on the domestic level, they will advocate for the establishment of a new political system. In such an incidence a new, supranational, political community can be established, or an existing one can be attributed with additional competences.³⁴ The supranational communities will themselves also contribute to the further integration, because they have jurisdiction over several aspects and want to increase their influence.

²⁸ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 45+46

²⁹ Haas, 1950-1957, p. 3

³⁰ Haas, 1950-1957, p. 4

³¹ Haas, 1950-1957, pp. 4+5

³² Haas, 1950-1957, p. 5

³³ Haas, 1950-1957, p. 6

³⁴ Haas, 1950-1957, pp. 4 – 9

To put all in a nutshell, integration is “the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states”.³⁵

2.2.1.2. Assumptions

Based on this theoretical outline of regional integration, it can be deduced that NF is based on certain assumptions. First, because the group-conflict is always present in a political community, European integration, seen as the creation and development of political communities, is a gradual and self-sustaining process.³⁶ The process is additionally reinforced by newly created supranational institutions, which advocate for more integration. On this account, it focuses on the daily decision-making processes, as well as on major decisions, such as treaty negotiations.

Second, regional integration takes place through creation and/or role-expansion of supranational institutions.³⁷ Through this the concepts of scope and locus are included in NF, although they are sometimes not clearly distinguished.³⁸ Nevertheless, the creation of new institutions includes an expansion of activities which refers to scope. The role-expansion is connected to the relative importance of each supranational institution and therefore relates to locus.

Third, states are not the unitary and most important actors of integration. Other actors, like interests groups and supranational institutions, are also influential.³⁹ Fourth, especially the created supranational institutions have their own life and act beyond the control of their “creators”.⁴⁰ Because of this self - life and the fact, that nobody is able to predict all consequences of decisions, the fourth assumption is the acknowledgement of so called *unintended side effects*.⁴¹ An example is the judicial review of CFSP-acts. The influence of the ECJ was teleological excluded through the TEU. It is an unintended consequence, that the ECJ did develop a way to have jurisdiction over CFSP-acts. Finally, the fifth assumption concerns different policy sectors; they are interdependent.⁴²

2.2.1.3. Mode of Integration

The mode by which integration takes place is called *spill-over effect*. If states integrate in one policy field and are confronted with insufficiencies, this creates pressures, which increase the need to integrate also in another policy field. Once supranational institutions have been established, they become advocates of further integration. They contribute to the pressure by upholding and upgrading common interests.⁴³ Three types of spill-over effects can be distinguished.

The first one is called functional spill-over. This is the original form of spill-over effects and refers to an increased need for more integration in more sectors, created by integrative pressures in another sector. The pressures have to be perceived as captivating by all participating actors. Eventually functional spill-over effects are most likely to occur if a high issue-density is present.⁴⁴ That means, if a high number of problems arise because only in one out of two or more connected sectors states

³⁵ Haas, 1950-1957, p. 16

³⁶ Nieman and Schmitter, in Wiener and Diez, 2009, p. 47

³⁷ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 46+47

³⁸ Börzel, 2005, p. 231

³⁹ Haas, 1950-1957, pp. 452

⁴⁰ Haas, 1950-1957, pp. 453

⁴¹ Nieman and Schmitter, in Wiener and Diez, 2009, p. 48

⁴² Nieman and Schmitter, in Wiener and Diez, 2009, p. 49

⁴³ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 49+50; Craig and de Burca, 1999, p. 3

⁴⁴ Nieman and Schmitter, in Wiener and Diez, 2009, p. 57

integrate, the likelihood for a functional spill-over is also high. For example, integration through the European Monetary Union increased the need to integrate the member states' fiscal policies.

The second spill-over effect is called political spill over. This effect arises from the pluralist characteristic of European political communities. Because policies are the result of conflict between groups, each of which try to achieve their own goals. Additionally, these groups are represented by bureaucratized organizations, which make it possible to steer the focus to their political leaders. Ultimately the political leaders will realize that their interests are better served by supranational and not national actions. The result is a loyalty shift of the political leaders.⁴⁵

Finally, the last spill-over effect is called cultivated spill-over. As the term implies, such spill-over effects are intentionally created by an actor. Considering supranational actors, which can be considered as having a strong interest in cultivating spill-over effects, the Commission is in a favorable position to do so. Such effects can be created through tabling proposals at a specific point in time, by maintaining good relations to the domestic governments and by drawing conclusions from previous functional spill-over effects (Instrumentalization).⁴⁶

2.2.1.4. Conclusion

Neo-functionalism can be applied to predict hypothetical changes in CFSP-integration. It considers ordinary decisions and treaty amendments. It considers states as influential but not as unitary actors. Supranational actors can also contribute to increased integration. Therefore the process of creeping competences or "Brusselization" is duly taken into account. Integration, as a gradual process, is considered as the creation and role-expansion of supranational institutions. Therefore scope and locus can be elaborated with NF.

2.2.2. Liberal Intergovernmentalism

The theory of liberal intergovernmentalism was developed by Andrew Moravcsik in 1993, to explain European integration. This theory enjoys a dominant status among integration theories, because it is a *base-line* theory. LI provides for a first-cut analysis of European integration, against which other integration theories can be compared. Another reason for this status is that LI does draw conclusions on the incident that the European Union is *sui generis* in character. But, in contradiction to NF, this is not a hard assumption; findings are grounded on more "microfoundational" assumptions.⁴⁷ Therefore LI to certain extent enabled a comparison of the EU to other international organizations.

Basically, European integration is not a gradual process, but a series of rational choices of national leaders.⁴⁸ Integration can stop, if national leaders take such a decision. According to LI integration, seen as international cooperation, can be explained in three stages: 1. Preference formation at the domestic level, 2. bargaining on the international stage over international agreements, and 3. Creation or adjustment of institutions to secure the application of the agreements by all signing states. In the third step the decisions will be taken, whether to delegate or shift sovereignty to a supranational institution.⁴⁹

⁴⁵ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 47+59

⁴⁶ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 60+61

⁴⁷ Moravcsik and Schimmelfennig, in Wiener and Diez, 2009, p. 67

⁴⁸ Moravcsik, 1998, p. 18

⁴⁹ Moravcsik, 1998, p. 20

The key assumption of LI is that states are unitary, and thus the most important, actors in integration. This assumption alludes to the relation among states. It does not mean that states are internally homogenous. On the contrary, national preferences are formed by contesting political groups.⁵⁰ On the same token states are forced to act in an anarchic international environment.⁵¹ This assumption points out that a major aim of states is to keep their sovereignty, which is perceived as survival.⁵² Furthermore supranational institutions, and non-governmental organizations do not have crucial influence, and this also makes the European Union comparable to other international organizations.

In addition states are rational actors. This assumption does not exclude that preferences can vary. It matters that states want to maximize their benefits through international negotiations.⁵³ States will cooperate/integrate if this is beneficial for them. Finally, the EU is perceived as an international regime⁵⁴ to reduce the transaction costs of cooperation/integration. Policy coordination is the only task of this regime; always accordingly to the will of the member states. Thus, states are the only crucial actors of European integration. Supranational institutions act always according to the member states' will, and decisions about integration are taken by the member states in three steps.

2.2.2.1. National Preference Formation

The initial step for international negotiations is the preference formation at the domestic level, because in this step it will be decided upon whether to participate in international negotiations. National preferences are an ordered and weighted set of values, related to future substantive outcomes. They are formed by those domestic groups, which influence the development of the state.⁵⁵ For the following international negotiations, the specific characteristics of national preferences matters.

According to Moravcsik they are a mix of interacting positive-sum and zero-sum features.⁵⁶ In the zero-sum incidence, it is not possible for one state to advance its position without an equal loss for the other state. For example, state A gets 10.000€ through an international agreements. That means that state B suffers a loss of 10.000€. Both, positive and negative, gains add up to zero. Such situations occur if fixed amounts of resources have to be distributed among participants. Accordingly, in a positive-sum situation the sum of gains adds up to an amount bigger than zero. In such a situation the resources are not fixed, but for example increased through additional, external funds, or cooperation. The latter can reduce costs of any conduct, which would be higher, if one state works alone.⁵⁷

The mixture of both features enables the author to find the location and shape of the so called *pareto-frontier*. This frontier indicates all possible international agreements, which all participants will sign voluntarily.⁵⁸ The mix of positive- and zero sum preferences influences the pareto-frontier and eventually the possible international outcome. It can be concluded that national preference

⁵⁰ Moravcsik, 1998, p. 22

⁵¹ Moravcsik and Schimmelfennig, in Wiener and Diez, 2009, p. 68

⁵² Koenig-Archibugi, 2004, p. 139

⁵³ Moravcsik, 1998, p. 23

⁵⁴ Moravcsik and Schimmelfennig, in Wiener and Diez, 2009, p. 68

⁵⁵ Moravcsik, 1998, p. 24

⁵⁶ Moravcsik, 1998, p. 25

⁵⁷ Beyond Intractability, 2003

⁵⁸ Moravcsik, 1998, p. 25

formation paves the way for international agreements and cooperation. States decide about what they expect, and also what they are willing to give in for successful negotiations and possible integration.

2.2.2.2. Interstate Bargaining

The second state in the framework of international cooperation is interstate bargaining. The aim of interstate bargaining is a pareto-efficient outcome, because such an agreement will be signed by all participating states voluntarily. The *supranational bargaining theory* (SBT) and the *intergovernmental bargaining theory* (IBT) can be applied to explain the efficiency and distributional outcomes of European negotiations.⁵⁹ The SBT assumes an asymmetry of information. States do not have the same information and supranational institutions have more information than the states. Therefore the supranational actors have a comparative advantage. Because of the insufficient level of information in the member states, they cannot reach a pareto-efficient outcome without assistance of supranational actors.

Due to new information, national preferences are unstable. The outcome can only be efficient, if supranational institutions assist through innovative proposals issue linkages.⁶⁰ According to IBT the distribution of information is not asymmetric. Those states, which have the biggest stake in an issue, are able to make efficient proposals without supranational intervention. Additionally, states, getting the biggest gains, are willing to offer most concessions to those states, which are not willing to sign the agreement. Therefore the outcome is likely to move towards the position of unwilling states.⁶¹ Therefore the outcome of interstate bargaining depends on the distribution of information. If information is unevenly distributed, with a comparative advantage for supranational institutions, the outcome is likely to support further cooperation/integration.

2.2.2.3. Institutional Choice

Institutional choice is the third and final step of international cooperation. It is explained under what conditions states shift parts of their sovereignty to supranational institutions, once they have reached an agreement in interstate bargaining. Sovereignty can either be pooled or delegated. Pooling refers to the situation that member states will decide on future policies not by unanimity. Delegating sovereignty means that supranational institutions cannot take autonomous decisions on certain issues. The national support for delegation and pooling can vary across states, or issues, or both. The support varies across countries if ideology is concerned. Federalists will support pooling and delegation, and nationalists will not.⁶² The support varies across issues with regard to the need of centralized, supranational coordination. It varies across both with regard to the number of member states who wish to reach more credible agreements.⁶³

Most importantly, supranational institutions are created to resolve issues of control and incomplete contracting⁶⁴. Control refers to the relation among the states, thus, to prevent cheating, and to the relation between states and the institutions, to prevent them from acting against the member states' will. Incomplete contracting is related to adjustment of supranational institutions. If new institutions

⁵⁹ Moravcsik, 1998, p. 54

⁶⁰ Moravcsik, 1998, pp. 56+57

⁶¹ Moravcsik, 1998, pp. 60-62

⁶² Koenig-Archibugi, 2004, p. 167

⁶³ Moravcsik, 1998, pp. 67+68

⁶⁴ Moravcsik and Schimmelfennig, in Wiener and Diez, 2009, p. 72

act in a way, which was not foreseen at the signing of an agreement, member states will stop such behavior by an adjustment of the agreement. Such a situation is comparable to the neo-functional concept of unintended side effect. The difference is that, following LI-reasoning, unintended side effects will be corrected.

2.2.2.4. Sub – Conclusion

It can be concluded that according to LI member states integrate only as much as they wish to. They remain in full control over the general direction of European integration.⁶⁵ Accordingly, member states exclusively determine scope and locus of integration. The Lisbon Treaty amends the existing treaties and marks a re-launch for European integration, because the previous Constitutional Treaty was rejected. It had to be negotiated by the member states. On this account member states are important actors, who give the overall direction, with regard to further integration. This is emphasized by LI theory. Therefore this theory can be applied to predict hypothetic changes. Although LI uses different assumptions the functioning of integration is comparable to NF, as far as the final outcome is concerned.

2.2.3. Conclusion

Although both theories work with different assumptions, the functioning of integration is comparable, as far as the final outcome is concerned. According to NF involved actors ultimately establish a new political centre to meet their preferences. Using LI-reasoning supranational institutions are also established to serve national preferences. Both theories require trans-national negotiations, although among different actors. Integration is, according to both theories, ultimately procedure through which states shift parts of their sovereignty to the supranational level. The most important difference is that NF considers integration as a process, which cannot be controlled solely by the member states. On the contrary, liberal-intergovernmentalists perceive member states as being always in full control over integration. Therefore it can be expected that both theories will predict different changes to the CFSP. By following LI it is even possible that less integration is the outcome.

3. Hypothetic Changes

The theoretical background has been explained. Following from that, some hypothetic changes can now be elaborated. These changes shall point at what reforms can be taken in order to minimally increase the integration of the CFSP, based on predictions of the integration theories. These hypothetic improvements will later be compared to the factual changes.

3.1. Neo – Functional Changes

According to neo-functionalism, integration is a gradual process and works through spill-over effects, for which pressures in policy sectors are required. The establishment of the CFSP in 1993 can be perceived as the result of a spill-over.⁶⁶ The existence of a common market raised the need to have a common foreign policy, in order to make the first one more effective. Considering the status quo before December 2009 a neo-functional interpretation predicts more CFSP-integration.

The situation was that European foreign policies were artificially separated through the pillar-structure. In certain circumstances this lead to the situation, where members of the Commission and

⁶⁵ Hooghe and Marks, 1996, p. 345

⁶⁶ Börzel, 2005, p. 230

the Council sat together for negotiations in one room. Depending on the issue, different rules had to be applied for the same actors. Additionally the legal problem, whether the Commission's right to initiative is violated by CFSP provisions, has not been solved. It was the common practice that the Commission could make proposals without a clarified legal basis.⁶⁷ These incidences created pressures for functional spill – over effects, originating in the abolished first pillar. One emerging result of such pressures can be seen in the process of “Brusselization”. According to this process, national representatives, who (permanently) work in Brussels, do not just uphold domestic positions. They do also advocate European preferences, because they work together with other national agents. For the CFSP, this working environment resulted in the incidence that the CFSP is not purely intergovernmental, but more “brusselized”. Therefore the former pillar structure had become less important during the daily practice.⁶⁸ Thus, “Brusselization” is connected to the loyalty shift of actors. The shift was scientifically recognized before December 2009, but, so far, did not result in changed treaty provisions.

Because NF perceives integration as a gradual process, this theory cannot predict step-backs in integration. Therefore a spill-over can basically result only in more competences for the Commission; not less. A legal basis could be provided to allow the Commission to make CFSP-proposals. This would not affect the adoption of acts, but consequently and somewhat logically the competences of the ECJ would have to be extended, too. The pressure for this originates in the ECJ, which already indicated the applicability of judicial review.⁶⁹ Additionally, if the Commission would have the competence for CFSP-initiatives it is hardly sustainable to prohibit judicial review.

There is also the possibility for a political spill-over. The pressure stems from the amended TEU. The member states are attached to the principle of democracy⁷⁰ and they wanted to make the EU more democratic through the Lisbon Treaty.⁷¹ Within the old CFSP there was no European parliamentary control over the executive branch; whereas the latter is formed by the Council and partly by the Commission.⁷² Therefore it would be a political spill-over to attribute more competences to the European Parliament, because a more effective and democratic CFSP can only be created at the supranational level. Furthermore increased democratic control of the CFSP increased the quality of it; which is also an aim of the LT.⁷³

Next to that, the Commission could have cultivated spill-over effect with regard to external representation, ESDP and enhanced cooperation, by tabling proposals at a specific point in time, by maintaining good relations to the domestic governments and by drawing conclusions from previous functional spill-over effects (Instrumentalization).⁷⁴ One example is, for the Commission, to “instrumentalize” the ineffective reaction of the European Union to the conflict in former Yugoslavia.⁷⁵ By emphasizing European shortcomings during that time, the cultivated spill-over would result in a strengthened European defense policy (ESDP/CSDP). In addition faster coherence would be achieved through the abolishment of the abstention clause (Art. 23, TEU old).

⁶⁷ Craig and de Burca, 1999, pp. 108+109

⁶⁸ Wessel, 2009, pp. 128, 141+142

⁶⁹ Stetter, 2004, p. 725

⁷⁰ TEU, Preamble

⁷¹ European Commission, 2009

⁷² Stetter, 2004, pp. 721+722

⁷³ De Vreese and Kandyla, 2009, p. 456

⁷⁴ Nieman and Schmitter, in Wiener and Diez, 2009, pp. 60+61

⁷⁵ E.g.: Blockmans and Wessel, 2009, pp. 6-8; Posen, 2006, pp. 173+174

Following neo-functional reasoning the old CFSP-framework created pressures. Thus, spill-over effects were likely to occur. The hypothetic changes predict an increase of locus for all CFSP-activities.⁷⁶ To give the Commission a legal basis for initiatives is a likely change which would result in a chain-reaction. Additionally the European Parliament is likely to get more influence, according to NF. Ultimately the relative importance of supranational, European institutions (locus) in almost all CFSP-activities would increase.

3.2. Liberal – Intergovernmental Changes

Taking into account this theory, member states have a strong interest to keep sovereignty and to remain in control of the European project, in order to avoid that EU foreign policies run against their national interests.⁷⁷ But it is not adequate to perceive keeping national sovereignty as the most important goal of states in CFSP-integration. Koenig-Archibugi has analyzed national preferences in a longitudinal study. The basic conclusion was that keeping sovereignty is a goal, which is not equally shared among the European member states. For some members, a dominant role of the state is not important.⁷⁸ For example, military weaker states strongly support an increased CFSP-integration. Additionally federal states are also more likely to advocate for the delegation of sovereignty.⁷⁹ Nevertheless, further integration is only possible, if member states get enough benefits; it depends on their will. Supranational institutions are used to achieve domestic goals and act as agents of the member states. Therefore more integration will only take place, if member states see a compelling problem in the status quo.

Before December 2009 member states are almost exclusively in control over the CFSP. This is a beneficial incidence for them, in terms of control over the CFSP and survival. Therefore, taken a liberal-intergovernmental perspective, the role of the member states in the CFSP after the amendment is one prevailing concern of at least some member states.

The influence of the Commission is an important feature of the CFSP. Shifting more competences to the Commission would mean to take decisions beyond the control of individual member states and abolishes a national veto.⁸⁰ Furthermore, because subduing the Commission minimally requires a qualified majority in the Council, the Commission can exercise much discretion. Therefore the influence of the Commission is likely to increase, because it makes use of the discretion⁸¹; but only if supranational actors are perceived as active drivers of more integration. Therefore, because member states want to remain fully in control, they could perceive the Commission's discretion as an unintended side-effect. Correcting the incomplete contract by removing competences or increasing the Council's influence on the Commission is a likely intergovernmental prediction. In addition, giving the Commission the full control over the CFSP is not an LI-option because the resulting foreign policy is too much likely to contradict with individual, national preferences.⁸² Thus, LI predicts that the Commission's competences in the CFSP slightly be decreased. This would especially negatively affect the locus of "Proposing" and "Implementing CFSP – Acts", and "Judicial Review".

⁷⁶ See section 2.1.2. *Locus*

⁷⁷ Koenig-Archibugi, 2004, pp. 139+143

⁷⁸ Koenig-Archibugi, 2004, pp. 142+166

⁷⁹ Koenig-Archibugi, 2004, p. 167

⁸⁰ Koenig-Archibugi, 2004, p. 143

⁸¹ Jensen, Slapin and König, 2007, p. 391

⁸² Jensen, Slapin and König, 2007, p. 392

Considering the voting options in the Council, it can be summarized, that the more Unanimity is needed, the bigger is the bias towards the policy status quo. Negatively interpreted, this makes the decision-making process ineffective. Positively interpreted, unanimity places CFSP-decisions on the broadest consensus possible.⁸³ Therefore only agreements would be reached, which all participants can voluntarily sign. According to LI, this is required for a new international agreement (European treaty). Therefore it is not likely that the voting rules are changed through the Lisbon Treaty; the locus for “Adopting CFSP – Acts” remains unchanged, according to LI.

Another problem is how the European Union is seen by other states and international organizations, and the effectiveness of its external actions. For example Henry Kissinger once asked whom to call, if he wanted to reach Europe. One single voice in international relations is beneficial to all member states, because it increases the bargaining power. Therefore a change of the external representation is a liberal-intergovernmental increase of integration. This can be done through an increase in *scope*, thus, through a new institution. On this account a hypothetical change is the establishment of a “double-hatted” foreign minister, as it was already foreseen in the Constitutional Treaty.⁸⁴ This would also increase the Council’s control over the Commission. Therefore LI predicts a decreased locus for “External Representation”.

It has to be taken into account, that not all member states have the same preferences with regard to CFSP-integration (unequally shared goal). Some states have a strong interest in increased CFSP-integration. This may be due to their weakness or federal ideology. In addition, during the national preference formation, the voters of national leaders might also vote for more integration. If that is the case, this will be recognizable during interstate bargaining and the choice of institutions, because the voters have considerable influence on their leaders.⁸⁵ Therefore the pareto-frontier does not completely symbolize “no further integration”. But because those states, which have the elaborated and efficient domestic foreign policies, are able to make efficient proposals without supranational intervention. For example by convincing weaker states, that the status quo offers enough security and assistance. Additionally, states, getting the biggest gains from increased integration (weak states), are willing to offer most concessions to those states, which are not willing to sign the agreement. Under these circumstances the outcome is likely to move towards the position of unwilling states.⁸⁶ That is the reason why LI does not predict any substantial increase of locus.

To put all in a nutshell, liberal-intergovernmentalism does not predict any increase of locus. While more integration is perceived as being indicated by increasing competences of supranational institutions, LI does not predict more CFSP-integration.

The hypothetical changes to the CFSP have been elaborated. According to NF the predicted changes point at increased integration, in terms of more competences being shifted towards supranational institutions. LI, on the contrary, does not predict such substantial changes. The latter predictions are more restrictive. For some activities the predictions even foresee a decrease of integration. In the following chapter the factual changes will be analyzed. The results are distinguished according to the respective scores of *scope* and *locus*.

⁸³ Jensen, Slapin and König, 2007, pp. 392+393

⁸⁴ Jensen, Slapin and König, 2007, p. 392

⁸⁵ Finke, 2009, p. 499

⁸⁶ Moravcsik, 1998, pp. 60-62

4. CFSP Analysis

Under the Maastricht Treaty (1993) the CFSP was established and codified and thus, one remaining part of exclusively national sovereignty was made subject to European integration. The other remaining part was that of Justice and Home Affairs (JHA; later renamed to Police and Judicial Cooperation in Criminal Matters (PJCC)).⁸⁷ But the member states were not willing to shift as much sovereignty to the supranational level, as they had done with regard to economic integration. Therefore the Maastricht Treaty established a completely new set of institutions, procedures and legal instruments for both, the CFSP and JHA. This strongly limited the influence of the more supranational institutions, such as the Commission and the European Parliament.⁸⁸ The result was commonly known as the “pillar structure” of the European Union. The first pillar included the European Communities, the second the CFSP and the third justice and home affairs.

Because of the pillar structure and the new institutions, procedures and legal instruments, policy-making within the CFSP was different to the European Communities. The first pillar was highly legalized and within it supranational institutions were heavily involved and enjoyed far reaching competences. Therefore processes in the former first pillar have been summarized under the concept of “community method”.⁸⁹ With regard to the second and third pillar processes were summarized as the “intergovernmental method”. This indicated less influence and competences of European supranational institutions. Furthermore within the CFSP obligations of member states were vague and even frequently ignored.⁹⁰ Ultimately it can be stated that different policy fields have been kept artificially separate through the pillar structure. Therefore, the level of achieved and possible integration varied across the pillars. It was high in the first pillar, compared to the second and third pillar. In this respect integration is the process of shifting competences to supranational institutions.⁹¹ The more competences are attributed to supranational institutions, the higher the level integration will be.

The amendments of the Treaties of Amsterdam (1999) and Nice (2003) did result in more integration in the JHA area, by moving parts of it to the first pillar. But both amendments did not provide for substantial increased integration in the CFSP-pillar⁹²; although some changes have been made, like for example the establishment of the High Representative of the CFSP. Since 2003 the three pillars could be ranked according to their respective level of integration from high to low: 1st pillar => 3rd pillar => 2nd pillar. The developments till December 2009 indicate that integration in the CFSP was not as advanced as in other policy fields.⁹³

Within this chapter the changes to the CFSP will be analyzed. The aim is provide the basis for an investigation of the level of CFSP-integration by scope and locus. Was the room for more integration filled, and if so, how has it been filled? The analysis is structured according to the scope of CFSP-activities. Each activity is analyzed by a comparison of the treaty provisions and the development of hypothetic changes, based on the integration theories.

⁸⁷ Börzel, 2005, p. 218.

⁸⁸ Börzel, 2005, p. 218.

⁸⁹ Koenig-Archibugi, 2004, p. 139

⁹⁰ Koenig-Archibugi, 2004, p. 139

⁹¹ Moravcsik, 1998; Haas, 1950-1957

⁹² Börzel, 2005, p. 218.

⁹³ Börzel, 2005, p. 219; Nugent, 2006, p. 66.

4.1. General Changes

The amendments of the Lisbon Treaty have changed the organization of the TEU and introduced new institutions. Whereas in the old TEU (TEU old) the CFSP was a separate section in which also each competences of involved institutions were mentioned, in the new TEU (TEU) global competences have been abstracted to new sections. A major change is provided through the inclusion of provisions on the European institutions in the TEU (Title III). On this account, the European Council was attributed with the status of an official EU institution (Art. 13.1, TEU). The next organizational change is that *enhanced cooperation* is codified in a separate section (Title IV). Therefore enhanced cooperation is available to all European policies under the same conditions; special CFSP-provisions on it have been removed. Finally, the former section on the CFSP (Title V) has been changed.

The beginning of the amended Title V is marked by general provisions on the Union's external actions⁹⁴, followed by concrete provisions on the CFSP. Within the second section the common CFSP-provisions⁹⁵ are kept apart from the most concrete provisions on the Common Security and Defense Policy (CSDP).⁹⁶ From the new organization two conclusions can be drawn. On the one hand, the CSDP is an integral part of the CFSP. Therefore the CSDP is also subject to special rules (Arts. 24.1 + 42.1, TEU). Secondly, the CFSP is one external action of the Union, and additional actions are legally possible and will be guided by the general provisions.

Next to the official recognition of the European Council, two important institutional amendments were introduced through the Lisbon Treaty. First, the European Council is different to the Council of Ministers, because of the non-rotating presidency. The president of the European Council is elected for two and a half years and is not allowed to hold a national office. The remaining members are the heads of state and governments of the member states and the President of the Commission. On that account, the President and the President of the Commission have to voting right in this institution (Art. 15, TEU). Second, the post of the High Representative of the Union for Foreign Affairs and Security Policies (HR UFASP) has been established. It is elected by the European Council (Art. 18, TEU). The HR has a special, inter-institutional role within the European Union. It is a vice-president of the Commission.⁹⁷

Thus, the High Representative fulfils the function as the Commissioner for External Relations. In addition she⁹⁸ presides over the Foreign Affairs Council. Therefore the rotating council-presidency has been abolished for this council-constellation. Finally, she can participate in the meetings of the European Council (Art. 15.2, TEU) and shall be invited to UN Security Council meetings, if a Union position has to be explained (Art. 34.2, TEU). In conclusion, the HR UFASP participates in the work of intergovernmental and supranational institutions.

4.2. Proposing CFSP – Acts

Comparably to the former second pillar, the proposition of CFSP-acts is still strongly influenced by two intergovernmental institutions: the European Council and the Council of Ministers. The Commission and the European Parliament have only marginal influence.

⁹⁴ Articles 21 – 22, TEU

⁹⁵ Articles 23 – 41, TEU

⁹⁶ Articles 42 – 46, TEU

⁹⁷ Articles 17.4 and 18.4, TEU

⁹⁸ Currently this position is held by Baroness Catherine Ashton (UK).

4.2.1. European Council

The European Council is an institution where the heads of state and government of the member states come together. The first meetings have been held in 1961. The reason for these meetings was the deviation of former French President Charles de Gaulle against the domination of integration process through supranational institutions. During that time, the European Council was not mentioned in the treaties. It was legally noticed in the Single European Act (SEA) in 1986 for the first time, but this did not make it a legal part of the Communities.

Through the Maastricht Treaty and the Nice Treaty its competences have been extended, especially with regard to the CFSP. But until December 2009 the European Council was not a fully-fledged European institution. This was indicated by the fact that it was not mentioned in Article 5 TEU old, where the institutions of the Communities were listed. Therefore the European Council is part of an unofficial integration.⁹⁹ Although the European Council was not a real European institution, it possessed considerable powers in the former second pillar.

First, it provided necessary impetus for the development of the Union and defined general political guidelines (Art. 4, TEU old). This included the CFSP, too. Article 13 TEU old described the powers of the European Council in the CFSP. It defined the principles and general guidelines of the CFSP. Additionally, it decided on common strategies, which had to be implemented by the Council of Ministers. Currently, the European Council defines the general political directions and identifies common interests of the Union.¹⁰⁰ These are binding to the Council of Ministers (Art. 26.2, TEU), because all related decisions are based on the guidelines. These guidelines form the bases for all related proposals. Therefore the European Council was and is heavily involved in the proposing-activity, the only considerable change was, that it has become a full European institution. Its competences have not been considerably changed.

4.2.2. Council of Ministers and Commission

On the same token, the Council of Ministers was responsible for the consistency of all the EU's external activities (Art. 3, TEU old). The Council had, in comparison, far more competences than the Commission. It was responsible for the CFSP by producing legal acts. The production of legal acts included their proposition. The Commission was "fully associated" with all processes related to the CFSP and could ask questions and make recommendations (Arts. 22+27, TEU old). But these provisions did not provide a legal base for the Commission to make proposals. Since 1993 it was questionable whether the exclusive right for initiative of the Commission was violated in the CFSP-framework and till December 2009 this problem has not been solved.¹⁰¹

The Lisbon Treaty did partly resolve the issue. Currently the Commission is literally not allowed to submit CFSP-proposals on its sole initiative. It can do so for other external actions than the CFSP (Art. 22.2, TEU). With regard to the CFSP, the Commission is authorized to support the High Representative in making proposals (Art. 30.1, TEU). All remaining proposals are initiated by the Council (Art. 36.2, TEU). Therefore the Commission is not "fully associated" anymore, but the HR is. As a member of the Council and participant in European Council meetings, the HR also contributes to proposals. She is explicitly authorized to submit proposals regarding the CFSP (Arts. 22.2 + 30.1, TEU). On this account a single kind of proposal is specifically mentioned. The HR has to submit a proposal

⁹⁹ Nugent, 2006, pp. 220+221

¹⁰⁰ Articles 15.1 and 26.1, TEU

¹⁰¹ Craig and de Burca, 2003, pp. 108+109

for the establishment of the EEAS (Art. 27.3, TEU). During the writing of this paper this has already been done by Catherine Ashton on 25 March 2010¹⁰² and an agreement has been achieved on 21 June 2010.¹⁰³

4.2.3. European Parliament

The EP could only minimally engage in the policy-making of the CFSP. It was informed and consulted by the Presidency. In this respect, the views of the Parliament should have been taken into account (Art. 21, TEU old). This was a quite general provision, because the EP had to be informed about the processes within the CFSP in general, and in practice this was an act of politeness of the Presidency.¹⁰⁴ With regard to the proposition of CFSP-acts the EP had no powers and could participate in the process. The reason for this was that the legal basis for EP-participation (Art. 192 TEC) was not included in Article 28 TEU old. The EP can still discuss CFSP-matters internally and its views are to be duly taken into account. The information of the EP is now conducted by the HR (Art. 27.3). The EP still cannot propose CFSP – acts, but it can make recommendations and ask questions (Arts. 36 + 41.3, TEU).

4.2.4. Conclusion

Therefore the competences of supranational institutions have not been increased. Thus, the Commission and the EP still enjoy no hard competences. Even the influence of the Commission in the CFSP has been reduced, because only one member of it, the HR, is able to make proposals on its own. The relative importance of the supranational institutions is therefore only marginal. The member states and intergovernmental actors are decisive. But proposing CFSP acts is not the exclusive competence of intergovernmental institutions. With special emphasis on the Commission's involvement, the locus for "Proposing CFSP – Acts" was 3 before December 2009. Through the amendment the score of locus has to be reduced to 2. This is in line with the liberal-intergovernmental predictions.

4.3. Adopting CFSP – Acts

Because the European Council has become an official institution of the Union, it can also adopt CFSP-acts. Thus, CFSP-acts can officially be adopted by the European Council and the Council. Both institutions can adopt different kinds of acts. The European Council cannot adopt legislative acts (Art. 15.1, TEU), but it adopts decisions on the general direction of the CFSP, which form the basis for Council decisions. Most relevant for the level of integration are the possible mode of decision-making, and the characteristics of specific CFSP-acts.

4.3.1. Mode of Decision – Making

Generally two different modes can be distinguished in the Council. The basic mode of decision-taking used to be unanimity (Art. 23.1, TEU old). Therefore all member states have to agree on a decision. The other mode of decision-taking is qualified majority voting (QMV). This mode leads to faster integration, because not all member states have to agree, but all member states have to comply with a decision. Within the old CFSP QMV was possible in certain situations (Art. 23.2, TEU old). Treaty provisions that allow a shift from unanimity to QMV are called "passarelle clauses".¹⁰⁵ The first situation was, if the Council of Ministers took a decision on basis of a common strategy. The

¹⁰² Duke and Blockmans, 2010, p. 2

¹⁰³ EU Observer, 21.06.2010

¹⁰⁴ Crum, 2006, p. 389

¹⁰⁵ Kurpas, 2007, p. 7

European Council decided about common strategies by consensus.¹⁰⁶ Because there was at least consensus in the European Council, the Council of Ministers could easily decide by QMV. Also the implementation of joint actions and common positions could have been decided by QMV. Such an incident did also not cause problems, because the initial joint action or common position was decided upon by unanimity. The Council of Ministers also authorized enhanced cooperation by QMV (Art. 27c, TEU old). But in any case, where QMV might have been applied, one single member state could state reasons against the application of QMV. In that case, a vote would have not been taken. The Council of Ministers then could have decided by QMV to refer the issue to the European Council (Art. 23.2, TEU old).

After the amendment the Council still takes decisions to implement the general guidelines from the European Council (Art. 26.2, TEU). This was also the rule in the old legal framework (Art. 13.3, TEU old). The basic rule of decision-making remains unanimity (Art. 24.1, TEU) and QMV can be applied exceptionally. Especially the Council can take decisions for Union action where there is the need for operational action (Art. 28.1, TEU). Such a decision can be decided by QMV, if the basis for the decision is a European Council act, or a proposal from the HR. Any succeeding decisions, which implement prior decisions, can also be taken by QMV (Art. 31.2, TEU). On that account, decisions of the European Council are also still taken by consensus (Art. 15.4, TEU), but exceptions have been included in the TEU. These include the appointment of the HR, where QMV is applied (Art. 18.1, TEU), and decisions about the Union's external actions. The latter decisions have to be taken by unanimity (Art. 22.1, TEU). A clear hierarchy between the European Council and the Council can be envisaged, because the EC provides the general direction, and the Council is obliged to follow. Also the possibility of one member state to prevent the application of QMV remains unchanged (Art. 31.2, TEU).

4.3.2. Specific CFSP – Acts

Articles 12 to 15 TEU old provided for the bases of the legal acts, which could have been adopted within the framework of the CFSP. Basically the involved Union-institutions could enact four different types: general guidelines, common strategies, joint actions and common positions. These were the instruments by which the Union should have achieved the objectives of the CFSP (Art. 12, TEU old).

The general guidelines were defined by the European Council. They included approaches for the CFSP in general, and also for issues with defense implications (Art. 13.1, TEU old). These guidelines were important for the Council of Ministers. This institution implemented the CFSP. For this task the Council of Ministers had to base its decisions on the general guidelines, as decided upon by the European Council (Art. 13.3, TEU old). But it has to be emphasized that the general guidelines could not be considered as Community-law, because the European Council cannot enact formal legislation.¹⁰⁷

Common strategies were established by the European Council and implemented by the Union. One requirement for a common strategy was that the member states had a common interest in a particular strategy. Furthermore their objectives, duration and the means had to be made clear (Art. 13.2, TEU old). Therefore common strategies could have been seen as concrete general guidelines, because the latter entailed fewer details. Common strategies were especially implemented by the Council of Ministers through the adoption of joint actions and common positions. Additionally, the

¹⁰⁶ European Union Glossary, 1995-2010

¹⁰⁷ European Union Glossary, 1995-2010

Council of Ministers could also recommend a common strategy to the European Council (Art. 13.3, TEU).

Joint actions were provided for in Article 14 TEU old. They were adopted by the Council of Ministers and had to address a specific situation where action of the Union is required. Joint actions had to entail their objectives, scope, means, duration and conditions for implementation. They were valid, as long as the Council did not change them and binding for the member states, in relation to the position they have adopted and to the conduct of their activities. Common positions were regulated in Article 15 TEU old, and adopted by the Council. Common positions defined a Union's approach towards a geographical or thematically issue. Member states have to make their national policies conforming to common positions (Art. 15, TEU old). Both instruments were legal acts, which formed the secondary CFSP – legislation.¹⁰⁸

These prior instruments of the CFSP have been replaced by decisions, except for general guidelines and common positions, which are still instruments of the European Council. Decisions are the main instrument of the CFSP.¹⁰⁹ But the adoption of legislative acts in the CFSP is deliberately excluded in the TEU (Art. 24.1, TEU). Therefore CFSP-decisions are not part of community law. In that sense, the European Council and the Council conduct the CFSP by defining the general guidelines, adopting decisions, defining actions and positions, and strengthening systematic cooperation among member states (Art. 25, TEU). The difference between decisions and legislative acts is that the legislative acts are adopted through the new ordinary legislative procedure (Arts. 289 + 294, TFEU). The application of this procedure would mean the involvement of the Commission (Art. 17.2, TEU) and the EP. Therefore there is still a difference between the CFSP and other EU policies related to both, legal instruments and competences of supranational institutions.¹¹⁰

4.3.3. Conclusion

It can be deduced that unanimity was and still is the basic mode of decision-making. The exceptions for QMV-application in the Council remain unchanged in the TEU. But general guidelines for the CFSP have to be decided upon by unanimity in the European Council, whereas such decisions could have been taken by consensus in the old CFSP. Therefore no supranational institutions have been included in the adoption process and the applicability of QMV is partly even more limited. Additionally the adoption of legislative acts is excluded, in order to affirm the exclusion of the Commission and the European Parliament. Since no supranational institution was involved in the adoption process, the initial score of locus was 1. The treaty – amendments did not raise this score, although it was predicted by NF. Again, the predictions of LI have been met and NF did not predict the achieved changes. The scope remains unchanged and the score for locus is 1, because no supranational institution is involved.

4.4. Implementation of CFSP – Acts

The implementation of CFSP-acts is conducted by the European Council and the Council (Art. 24.1), on behalf of the European Union (Art. 24.2, TEU). Before December 2009 the Council could have been considered as the sole legislator of the CFSP. The Commission was fully associated, but had no decisive powers, such as a veto-right, and the European Council was not mentioned in the Treaties;

¹⁰⁸ Wessel, 2009, p. 129

¹⁰⁹ Savaşan, 2007, p. 8

¹¹⁰ Savaşan, 2007, pp. 8+9

on this account. The Council was only bound to the general guidelines from the European Council. But such guidelines were also produced in cooperation with the Council (Art. 13.3, TEU old).

Currently, assistance is provided by the HR, who shall implement CFSP decisions (Art. 27.1, TEU) and generally puts the CFSP into effect (Art. 26.3, TEU). Additional assistance is provided by the Political and Security Committee (PSC) (Art. 38, TEU), which is part of the Council of Ministers. Not all involved actors are purely intergovernmental. The HR is also part of the Commission. But the Commission used to be fully associated as a whole institution. From this point of view the influence of the Commission slightly decreased. The control of the Council over the Commission increased. Therefore the initial locus (3) is reduced to 2, because supranational involvement is not fully excluded. This confirms the LI-prediction.

4.5. ESDP/CSDP

In the old TEU such provisions were referred to as acts with military and defense implications and they were commonly known as the ESDP. Through the Lisbon Treaty the ESDP is renamed to Common Security and Defense Policy (CSDP), which might result in a common, European defense. But such a decision has to be taken unanimously by the European Council. Like the ESDP, the CSDP is an integral part of the CFSP (Art. 42, TEU). Two major changes have been made to the CSDP.

First, the budget of the CSDP can now, under certain conditions, be charged on the Union budget (Art. 41.3, TEU). This basically increases the influence of the Commission and the EP.¹¹¹ Second, enhanced cooperation is now possible in the framework of the CSDP. Enhanced cooperation with military or defense implications was specifically prohibited (Art. 27b, TEU). In addition a special kind of enhanced cooperation is now possible for member states with advanced military forces and more binding commitments among them.¹¹² This is called “permanent structured cooperation” (Art. 42.6, TEU). States with no advanced military forces (weak states) were likely to advocate for strong military cooperation among all member states.¹¹³ But this would have been too costly for advanced military forces, because the remaining forces would have had to be effectively integrated. With this outcome the military advanced states are able to secure all member states at lower costs. Therefore the introduction of “permanent structured cooperation” can be seen as an LI-outcome of international bargaining, with no supranational involvement.

If member states wish to establish any kind of enhanced cooperation among them, the Council and the HR have to be notified. All CSDP decisions have to be taken unanimously (Art. 42.4, TEU), except for the case, that a member state wishes to participate in permanent structured cooperation; then QMV is applicable (Art. 46.3, TEU). It can be concluded that the CSDP experienced major changes, in comparison to its setup before December 2009. The influence of the Commission, mostly through the HR, and the EP, through the budget, has increased. Therefore the locus for this activity rises from one to two. In addition, the scope of the CFSP has to be widened, because enhanced cooperation is possible in the CSDP, as it is possible in other European policy fields.

¹¹¹ Crum, 2006, p. 390

¹¹² Kurpas, 2007, p. 6

¹¹³ Koenig-Archibugi, 2004, p. 143

4.6. Enhanced Cooperation

This process can increase the flexibility of the Union, because some member states can proceed with certain programs, while those, who are not willing to proceed, can remain with the status quo.¹¹⁴ Enhanced cooperation in CFSP matters was codified in Articles 27b to 27e TEU old, and the general provisions were Articles 43 to 45 TEU. It was possible, as long as it was related to the implementation of a joint action or common position. This limited the possibilities to make use of enhanced cooperation and could have been a reason why enhanced cooperation has not been established in the old CFSP.¹¹⁵ Enhanced cooperation with military or defense implications was specifically prohibited (Art. 27b, TEU).

The establishment of enhanced cooperation depends on the member states. There must be a willingness among some of them to integrate through cooperation in a certain area. The conditions for enhanced cooperation have changed. Most importantly, the minimum of participating member states has been increased from eight to nine (Art. 20.1, TEU). Therefore a restrictive use of enhanced cooperation can be expected. Before enhanced cooperation can be authorized, member states have to inform the Commission, which will elaborate, whether this project suits the goals of the Union. The EP has to be informed. Then, the final decision about the authorization is taken by the Council, acting unanimously (Art. 329, TFEU). This way of including the Commission and the EP remained unchanged (Arts. 27c+27d, TEU old).

In conclusion, the changes to enhanced cooperation are not revolutionary, with regard to its potential to reinforce integration. The threshold of minimum-participants has been increased only by one state. The influence of the supranational institutions remained unchanged. In sum, these framework conditions do not heavily affect the use of enhanced cooperation. Therefore the score for locus remains 3.

4.7. Abstention

The abstention-clause gives each member state the possibility to slow-down and/or to weaken CFSP-processes. In the old TEU, each member state could explain its abstention, with the result that a certain CFSP-decision has not to be applied by that member state. So far this clause weakens the intergovernmental character of the CFSP, because a decision could still be taken.¹¹⁶ But if the number of abstaining states represented one third of the votes within the Council, a CFSP-decision could not have been adopted (Art. 23.1, TEU old). In this respect the intergovernmental character is strengthened and only enhanced cooperation could prevent a decision from being completely abolished. The possibility of abstention is still given. The only change is related to the blocking minority. This changed from “more than one third of the votes” in the Council, to “at least one third of the Member States comprising at least one third of the population of the Union” (Art. 31.1, TEU). Therefore the locus for this activity remains one.

4.8. Budget

The CFSP-budget was codified in Article 28 TEU old. Administrative expenditure was taken from the Communities, and operational expenditure was also taken from the Communities budget. But as far as military and defense processes (ESDP) were considered, the money was to be charged from the

¹¹⁴ Nugent, 2006, p. 101

¹¹⁵ Wessel, 2009, p. 125

¹¹⁶ Wessel, 2009, p. 125

member states. Also with regard to other decisions, the Council of Ministers could decide by unanimity to take the money from the member states. If a member state has made an abstention, this state could not be charged for a particular operational expenditure.

The CFSP-budget was not completely affected through the artificial pillar structure. Although CFSP-acts are not made through the community-method, the whole budget, except for military and defense operations, could be charged to the Community budget. The budgetary procedure provides for more influence of the Commission and the EP, because these institutions are involved in setting the whole budget of the Communities (Arts. 28.4, TEU; 272, TEC).

Through the Lisbon Treaty the term “Community Budget” has been replaced through “Union Budget”. The administrative expenditure is still taken from the Union budget (Art. 41.1, TEU), and the operational expenditure is also taken from the Union’s budget. Member states are charged in cases with military and defense implications, and if the Council decides to charge the member states (Art. 41.2, TEU). If the money is charged from the Union’s budget, the ordinary budgetary procedure applies (Art. 314, TEU), and therefore the Commission and the EP have still a strong, but unchanged influence on the CFSP budget.

But a new provision limits this influence. The Council will setup procedures to change the Union’s budget if rapid action is required (Art. 41.3, TEU). It is clear, that the new procedures are required, in order to act fast and effective. But this includes a decreased EP influence. But these procedures are a way to charge the Union’s budget for CSDP acts. Thus, charging the Union’s budget for CSDP acts through the ordinary procedure is excluded, but special procedures can be established for this purpose. It can be concluded that the influence of the Commission and the EP on CSDP financing has been deliberately excluded, and on the same token the Union budget can be charged for that.

If CSDP missions cannot be financed through the Union’s budget, member states shall setup a fund (Art. 41.3, TEU). This fund will be established by the Council, and administered by the HR, after particular authorization through the Council.

The Council still dominates the CFSP-budget, because it has gained the possibility to finance CSDP missions through the Union, even without the application of the community method. Considering the remaining fields of CFSP finances, the competences of the European institutions have not been changed. Because the overall scope of the CFSP budget has been widened, but without a simultaneous increase of supranational competences, the score for locus is reduced to 2. Supranational institutions have an overall decreased influence over an in scope increased budget.

4.9. Judicial Review

Considering the old CFSP provisions, judicial review was not possible. But the ECJ has clarified the conditions under which the Court could have had jurisdiction, which affects CFSP-measures. The pillar structure did only describe different capabilities, with different legal instruments, and not different institutions. Therefore legal principles of the former first pillar could also be applied in the CFSP pillar¹¹⁷, which means, that the European Court of Justice could have had some, albeit limited, jurisdiction over CFSP measures. Since 1993, there are judgments of the ECJ which can be named as “cross-pillar-litigation”.¹¹⁸ The first case is called the *Airport Transit Visa* case.¹¹⁹ The main issue of the

¹¹⁷ Stetter, 2004, p. 725

¹¹⁸ van Ooik, 2008, p. 400

¹¹⁹ Case C-170/96

case was a third-pillar joint action. According to this, the ECJ should have had no jurisdiction at all. But the applicant (Commission) intended to get a declaration, that the third-pillar joint action should have been adopted under the first pillar.¹²⁰ In the end the Court annulled this application. But it is most important, that the ECJ also found, that it did have jurisdiction to review the content of the third-pillar act, in order to investigate, whether Community powers are affected.¹²¹

Thus, the ECJ had jurisdiction of the demarcation between pillars¹²² and its judgments could have had influence on CFSP acts. This had an important implication for the European legal system. The ECJ is the only institution, which can annul Community acts.¹²³ If an act should have been legally adopted under the first pillar (Community act), it is then exclusively up to the ECJ, also to declare CFSP-acts invalid. This means that domestic courts will also have to refer to the ECJ if CFSP-acts are a matter of a national proceeding.¹²⁴ Therefore the ECJ has actively contributed to the legal permeability of the CFSP. Considering the process of integration the ECJ has (again) proven that the Court is clearly in favor of increased integration. In the ECOWAS case¹²⁵ the Court annulled a CFSP-Council decision, because the decision affected the powers of the Community, as provided for in Article 47 TEU old. This was the first case, in which the ECJ directly ruled on the border between the first and second pillar.¹²⁶

This past development of the Union law gave the opportunity to the Commission and the EP to get influence on CFSP policies. In sum, the Court has clarified, that it could have had jurisdiction to mark the border between the pillars. But the pillar structure has officially been abolished. Nevertheless, some parts of it remain existent. One is that the jurisdiction of the ECJ over CFSP acts is now explicitly excluded (Arts. 24.1, TEU; 275, TFEU). A reason for the explicit exclusion is that inter-institutional conflicts (ECOWAS) make the CFSP ineffective, because necessary decisions are delayed through court proceedings.¹²⁷ That was not the aim of the Lisbon Treaty. But, with regard to ECJ-competences in general, there are two circumstances, when the ECJ can have jurisdiction. First, it has jurisdiction to rule on proceedings reviewing the legality of restrictive measures against natural or legal persons (Art. 275 + 263, TFEU). Secondly, the amended procedure for the conclusion of international agreements (Art. 216, TFEU) is also important for CFSP acts, and this procedure is not outside the Court's jurisdiction.

Thus, the competences of the ECJ have slightly been increased, and at least, it can be a step forward, towards a stronger role of the ECJ.¹²⁸ It can be concluded that the score for locus is still 2.

4.10. External Representation

The external representation was conducted by the Presidency, which is a part of the Council and rotated every six months. The Presidency was assisted by the HR CFSP, the member states, the Commission and the external delegations of the Commission (Art. 18.3, TEU old). The Commission was fully associated in the external representation of the CFSP to third countries and international

¹²⁰ Case C-170/96, paragraph 10.1

¹²¹ Case C-170/96, paragraph 17

¹²² Van Ooik, 2008, p. 400

¹²³ Case C-314/85, Foto-Frost

¹²⁴ de Burca, 2003, p. 123

¹²⁵ Case C-91/05

¹²⁶ van Ooik, 2008, p. 399

¹²⁷ Hillion and Wessel, 2009, pp. 584+585

¹²⁸ Savaşan, 2007, pp. 16+17

organizations (Arts. 18+20, TEU old). With regard to the conclusion of international agreements, the Commission could have been authorized to conduct the negotiations. The final conclusion has to be done by the Council (Art. 24.1, TEU old). This process was also dominated by the Council. But the Commission has considerable competences and all involved actors had to coordinate their activities and work closely together. This closer cooperation has been included in the TEU only for the external representation.

The Lisbon Treaty changed the institutional setup for this activity. The external representation of CFSP matters is conducted by the President of the European Council (Art. 15.6). This is a change to the prior situation, in which the Presidency of the Council was responsible for the external representation, and rotated every six months. Now there is a representative, who is elected for two and a half years. The President fulfils this task in collaboration with HR. The HR is especially responsible for political dialogue with third countries and the CFSP-representation to international organizations and conferences (Art. 27.2, TEU). The HR will be assisted by a new institution; the EEAS. The personal of this service will come from the Council Secretariat, the member states and the Commission (Art. 27.3, TEU). But it will be an institution on its own. The Commission, as a whole institution, has been excluded from this process (Art. 17.1, TEU). But the former Commission's delegations¹²⁹ will represent the Union (Art. 221.1, TFEU), are placed under the authority of the HR (Art. 221.2, TEU) and will be a part of the EEAS.¹³⁰ Therefore parts of Commission's staff remains involved in the external representation of the CFSP. But the influence of intergovernmental institutions has been increased. Especially the European Council now enjoys considerable influence in this respect. The fact that also the HR takes an outstanding position in this process, upholds indirect influence of the Commission. Thus, the score of locus has to be reduced from three to two.

4.11. Sub-Conclusion

The changes of the Lisbon Treaty have been incorporated into the analysis about the CFSP-activities, including the hypothetic changes. It can be deduced that the CFSP has been subject to some changes. The majority of changes did not result in increased integration. For the CFSP-activities "Adopting CFSP – Acts", "Enhanced Cooperation", "Abstention" and "Judicial Review" the status quo could not be changed. On this account status quo refers to the situation under the treaties, before they have been amended. Increased integration is the result for ESDP with regard to locus, and for CSDP enhanced cooperation, because the scope of the CFSP has been widened. Considering "Proposing CFSP – Acts", "Implementing CFSP – Acts", "Budget" and "External Representation", the locus even decreased.

It becomes clear, that the room for more integration has not been extensively used. Only in one activity, the "ESDP/CSDP", locus increased. For four CFSP-activities the locus decreased and for the same number of activities it remained unchanged. In addition, LI-predictions have been fulfilled for 6 activities; NF-predictions only for one.

The integration theories have not predicted the overall outcome. Liberal intergovernmentalism has predicted six out of nine outcomes, but in none of these activities the status quo changed. Neo-functionalism has predicted the right outcome for just one out of nine activities. All results are summarized and illustrated in *Figure 1*.

¹²⁹ Now called: Union Delegations

¹³⁰ General Affairs Council, 2010, p. 8

	Locus NF	Locus LI	Locus before December 2009	Locus after December 2009
Proposing CFSP-acts	4	2	3	2
Adopting CFSP-acts	2	1	1	1
Implementing CFSP-acts	4	2	3	2
ESDP/CSDP	2	1	1	2
Enhanced Cooperation and CSDP	-	-	-	3
Enhanced Cooperation	4	3	3	3
Abstention	5	1	1	1
Budget	4	3	3	2
Judicial Review	3	1	2	2
External Representation	4	2	3	2

Figure 1: CFSP-Integration

5. Conclusion

The aim of the project was to analyze the changes of the Lisbon Treaty, made to the CFSP. It is the political aim of the LT to increase the effectiveness of the Union's external actions by bringing together Europe's external policy tools, when developing and deciding new policies. Under the assumption, that this aim can be achieved through increased integration, the process of integration is understood as shifting more competences to supranational institutions and more communitarized decision-making in intergovernmental institutions. The shift is of competences is considered together with the abolishment of the pillar structure because the pillar structure kept the CFSP apart from other Union policies, with regard to the specific rules and procedures.

Eventually, integration in the CFSP was not as advanced as it was in other policy fields, although the former pillar structure became increasingly less relevant through "Brusselization". The second basic assumption was that there is room for more integration, because unless there is a completely integrated policy field, there is always room for more integration. Thus with an obvious room for more integration and the official abolishment of the pillar structure, the Lisbon Treaty should have resulted in more CFSP-integration.

The detailed analysis delivers a different result. The first sub-question was whether the room for more integration has been filled. A comparison of locus for nine CFSP – activities before and after December 2009 indicates that only very minimal increased integration has been achieved. In addition the undertaken changes can be characterized as being more intergovernmental than supranational, because six out of nine LI-predictions have been confirmed through the amendment. Supranational institutions, the Commission, EP and the ECJ, have not been attributed with increased crucial competences. Especially the Commission and the EP still can and have to rely on "Brusselization". The NF-pressure, created through "Brusselization" was strong enough to result in the official abolishment of the former pillar structure; but in turn the procedural limits of the former pillar structure have been incorporated into the amended treaties through a new wording.

For example by globally stating that the CFSP is subject to specific rules and procedures (Art. 24.1, TEU). Furthermore more communitarized decision-making by QMV has not been introduced. The provisional possibility for increased integration can only be observed in the CSDP. Through enhanced cooperation supranational institutions enjoy increased competences and influence. This is the result of an extended scope, and not a widened locus. Defining increased integration being indicated through more supranational competences and more communitarized decision – making leads to the conclusion that the room for more integration has been minimally filled.

The research question is, whether the Treaty of Lisbon changed the status quo of CFSP and lead to increased integration, or did the former second pillar remain *de facto* in place? This question has to be answered as follows. The minimal increase of locus and the slight extension of CFSP – scope are not crucial. The main reason for this is that supranational institutions have not been attributed with considerably increased competences.

Furthermore the abolishment of the pillar structure only changed the structure of the treaties. Although the question of Henry Kissinger can now be answered with greater precision¹³¹, the legal and procedural results of the former pillar structure have been incorporated in the amended CFSP-provisions. The CFSP still is a separated policy field. That affirms the fact that foreign policies are pivotal to national sovereignty and that further integration is quite unlikely. Within the European treaties the CFSP-provisions have been re-ordered, and revised, in order to sustain the special status of this policy field. Therefore the former second pillar remained *de facto* in place.

¹³¹ Since December 2009 the Union has two institutions responsible for external representation, which are also not rotating every six months.

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