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## **The consistency of EU external action post-Lisbon: Renewing appropriate measures against Zimbabwe in 2012**

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**Abstract:** The Lisbon Treaty has put the consistency of European Union (EU) external action high on the agenda but little is known about how this imperative is concretely given shape. Adopting a single-case-study approach on the EU's decision in 2012 to renew the partial suspension of development cooperation with Zimbabwe (Article 96 measures), this contribution aims to provide better insights into the question of the consistency of this decision. More specifically, this article focuses on the Commission's proposal, on the basis of which the renewal of the suspension was adopted. As a first step it examines the relevant legal (Treaty), substantial (policy framework) and procedural (decision-making) guidelines framing the consistency objective in the EU's relations with Zimbabwe. While this three-level framework plays an important role in facilitating the consistency of the Commission proposal, it is also clear that it does not provide a sufficient guarantee for a consistent policy output. The case study on Zimbabwe shows how other factors such as the international context, the positions of the member states as well as the preferences and interests of individual Directorate Generals play an important role in the final outcome of the Commission's decision-making process.

**Keywords:** CFSP; development policy; European Commission; Lisbon Treaty; policy coordination; trade policy; political science.

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## Introduction

In a new attempt to further increase the EU's international actorness, the Lisbon Treaty<sup>1</sup> has put the issue of the consistency of European external action high on the agenda. The abolishment of the pillar structure, the introduction of common objectives for the different external policies, and the creation of the new position of the High Representative for Foreign Affairs and Security Policy/Vice-President (HRVP) are some of the most visible measures that have been taken. Article 21.3 of the Treaty on European Union (TEU)<sup>2</sup> explicitly mandates the HRVP to assist the Council and the Commission to ensure the consistency of external action. This central role is not surprising. As chair of the Foreign Affairs Council and Vice President of the European Commission, the double-hatted HRVP, assisted by her own external action service, the European External Action Service (EEAS), is particularly well-placed to fulfill this mandate.

The merger of the three positions of the Commissioner of External Relations, the rotating Presidency and the High Representative (HR) (first established under the Treaty of Amsterdam<sup>3</sup>) was supposed to put an end to the inter-institutional wrangling and contradictory policy directions of the different players. In reality however, it quickly became clear that the

<sup>1</sup> Framework Programmes for Research and Technological Development (RTD), launched in 1984, are the Union's main instrument for funding research in Europe.

<sup>2</sup> Council of the EU (2012), Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, 6655/7/08 REV 7, 12. November 2012, Brussels, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%206655%202008%20REV%207>, accessed 01.12.2014.

<sup>3</sup> European Union (1997), Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Luxembourg: Office for official publications of the European Communities, [http://europa.eu/eu-law/decision-making/treaties/pdf/treaty\\_of\\_amsterdam/treaty\\_of\\_amsterdam\\_en.pdf](http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_of_amsterdam/treaty_of_amsterdam_en.pdf), accessed 21.11.2014.

setup had created new challenges. In the area of trade and development for example, the point of gravity today continues to be with the European Commission, whereas it remains with the Council and new players such as the HRVP and the EEAS in the field of foreign and security policy. The question therefore arising is whether the scope for consistency in the post-Lisbon period has really improved and whether the “cure” devised is not worse than the “disease”.

This contribution tries to get a better understanding of how, in the post-Lisbon era, the objective of consistency of EU external action is given shape. It does so through a single case study of the 2012 Commission’s proposal to renew Article 96 measures against Zimbabwe. Under this Article, the EU may adopt “appropriate measures” against an Africa, Caribbean and Pacific (ACP) partner considered in breach of the so-called “essential elements”. What constitutes “essential elements” is defined by Article 9 of the Cotonou agreement<sup>4</sup> as being the “respect for human rights, democratic principles and the rule of law”. While the decision to adopt such measures is, in the first place, a political one, it also has implications for the development cooperation and trade relations with the targeted country. The issue of the consistency of appropriate measures is central in the Commission’s thinking. Indeed, it considers that only a consistent approach may lead to an effective action – defined as the restoration of the essential elements in the country targeted. The consistency challenge is all the more relevant to study because since the initial decision to adopt appropriate measures against Zimbabwe in 2002, the EU’s action has often been criticized for its inconsistency. In the absence of earlier work on the case, we have opted for a process-tracing approach, examining in detail the drafting of the Commission’s proposal under the leadership of the EEAS in association with the Commission.<sup>5</sup> The paper only focuses on the Commission as it is the institution that has the initiative in the Article 96 procedure. The data for the case study has been collected through fourteen semi-structured interviews conducted with EU officials from the Commission and the EEAS and with national diplomats from Permanent Representations in Brussels.<sup>6</sup> EU officials from Directorate General (DG) Devco, DG Trade and the EEAS were selected for interviews on the basis of their involvement in the preparation of the Commission’s proposal on Zimbabwe. Interviews were successively triangulated with documentary analysis. Although the focus on a single case may not allow us to draw general conclusions at this stage, the detailed process-tracing should allow us to come to precise insights as to how the EU post-Lisbon deals with proposals touching upon different dimensions of EU external action.

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<sup>4</sup> Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005, OJ L 287/3-49, 4.11.2010.

<sup>5</sup> Although since Lisbon, the EEAS acts as *chef de file*, the proposal to renew Art. 96 is formally still a Commission proposal, adopted by the College of Commissioners (see *infra*).

<sup>6</sup> The list of interviews is available in the references section. In the article, interviews are coded as Interview 1, 2, etc. in chronological order. The set of interviews conducted on the 2012 proposal was complemented by another set of interviews conducted as part of a PhD research on the initial Commission’s proposal, adopted in 2002, to suspend development cooperation in Zimbabwe (Marangoni 2014).

The research question addressed in this article is to what extent the 2012 Commission proposal to renew Article 96 measures against Zimbabwe is consistent and how we can explain this outcome. The question is being addressed by successively examining how and at what levels consistency is aimed, to what extent the policy output is consistent and under which circumstances coordination, defined as a key instrument to realize a consistent output, is successful.

This article starts by defining the multi-dimensional concept of consistency. It shows how a three-level framework – including the Treaty on European Union, the relevant policy framework and Commission internal decision-making – provides for the legal, substantial and procedural guidelines to meet the consistency objective. By analysing the Commission’s proposal on appropriate measures against Zimbabwe, it then provides a qualitative assessment of the consistency of the output. Lastly, it explores the internal and external factors that impacted the concrete implementation of the three-level guidelines for meeting the consistency objective.

## 1. Studying consistency

Consistency has been a concern in EU external action for four decades already. It was mentioned for the first time in the Treaties with the Single European Act<sup>7</sup>, only to be reaffirmed and emphasised more strongly by the Maastricht Treaty<sup>8</sup> and its successors (Duke 2002: 488; Smith 2001: 171; Nuttall 2000: 21). Many scholars and practitioners reflect on the consistency concern (for an overview, see for instance Duke 2011; Portela and Raube 2009). Although it goes beyond the scope of this article to repeat these previous debates, it is important to present a working definition of the term as well as to briefly introduce the different dimensions of the consistency challenge. In line with legal scholars, we define consistency as the quality of a policy output free of contradictions (Tietje 1997) and opt for the definition of Krenzler and Schneider who characterise it as a “coordinated (...) behaviour (...) where comparable and compatible methods are used in pursuit of a single objective and result in an uncontradictory (foreign) policy” (Krenzler and Schneider 1997: 134).

Besides emphasising the fact that the policy output should be contradiction-free, Krenzler and Schneider also outline that a mix of policies is needed to achieve a particular objective and they point to the centrality of coordination in achieving consistency. Consistency and coordination are not the same: coordination is an instrument of decision-making necessary to reach consistency and it is only if coordination is successful that the policy output is consistent. As a result, coordination will constitute a key dimension of the research (see

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<sup>7</sup> European Union (1987), *Treaties establishing the European Communities – Treaties amending these Treaties: Single European Act*, Luxembourg: Office for official publications of the European Communities, [http://europa.eu/eu-law/decision-making/treaties/pdf/treaties\\_establishing\\_the\\_european\\_communities\\_single\\_european\\_act\\_en.pdf](http://europa.eu/eu-law/decision-making/treaties/pdf/treaties_establishing_the_european_communities_single_european_act/treaties_establishing_the_european_communities_single_european_act_en.pdf), accessed 21.11.2014.

<sup>8</sup> European Union (1992), *Treaty on European Union*, Luxembourg: Office for official publications of the European Communities, available at [http://europa.eu/eu-law/decisionmaking/treaties/pdf/treaty\\_on\\_european\\_union/treaty\\_on\\_european\\_union\\_en.pdf](http://europa.eu/eu-law/decisionmaking/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf), accessed 21.11.2014.

below). In line with the English version of the Treaty on European Union, the paper uses the term consistency rather than coherence. As argued by Hillion (2008), coherence goes a step further than consistency and its requirement of an absence of contradictions: it implies positive synergies between different policy fields. This would require to also study the implementation of the Commission proposal and its consequences, a dimensions that falls outside the scope of this paper (Marangoni 2014).

Following from the above definition, a Commission's proposal is consistent if its content does not contradict its primary objective. Assessing consistency is not a binary choice – consistency or inconsistency – but a matter of degree. For the purpose of our analysis, we distinguish the following degrees along the consistency/inconsistency continuum:

1. High consistency: a proposal is highly consistent when all its provisions fully support and further strengthen the primary objective(s) that this proposal sets;
2. Medium consistency: a proposal reaches a medium degree of consistency when its provisions do neither contradict the primary objective(s) nor significantly add to its (their) achievement;
3. Low consistency: low consistency qualifies a situation in which none of the provisions of a proposal contradict the primary objective(s) but a few jeopardise its secondary objective(s);
4. Inconsistency: a proposal is inconsistent when there is a contradiction between its primary objective and its provisions.

This scale will be applied to assess the degree of consistency reached in the 2012 Commission's proposal (European Commission 2012b).

One of the challenges for those studying consistency is its multi-dimensional character. The literature has identified four dimensions, including vertical, institutional, horizontal and external consistency (Nuttall 2005: 96-107). While *vertical* inconsistency arises from contradictions between the action of the EU and of its member states, *institutional* inconsistency refers to inter- and intra-institutional conflicts at the European level. *Horizontal consistency* refers to the tensions that may arise between different policy areas. In the context of this article, it relates to the possible contradictions between objectives in the fields of trade, development and foreign policy. Lastly, *external consistency* refers both to an actor's capacity to present itself as acting consistently and to the way the partners of this actor perceive its action. This article mainly focuses on horizontal consistency (across external policies) within the Commission (intra-institutional consistency) and between the Commission and the EEAS (inter-institutional). The vertical dimension of consistency – between the EU and member states – will not be addressed as it concerns the implementation phase, which is outside the scope of this research that focuses on the Commission's internal decision-making up to the adoption of the proposal by the College of Commissioners.

A complex phenomenon, consistency is difficult to study and it is therefore not surprising that much of the literature remains at the more general or conceptual level (Hartlapp, Metz and Rauh 2012). This article however aims to go beyond this approach and has developed a conceptual frame through which it aspires to assess the consistency of the Commission's policy output. Focusing on the Commission and what substantially and procedurally

constrains its action, we have identified the different levels at which the consistency requirement is expressed. The combination of the following three levels aims to and realises consistency throughout the preparation of any Commission decision:

- EU Treaty framework,
- particular policy frameworks, and
- the Commission's internal decision-making process in external policies.

These three levels can be seen as the three layers of a pyramid starting from the general and legal consistency requirement in the Treaty to its application in policy-specific settings and to its operationalization by specific decision-making rules. First, the *Treaty framework*, and more particularly its Article 21.3 TEU, provide for the general and legal framework for the consistency of EU external action (Nuttall 2005: 98-100). This general provision is supported by the existence of a single title on external action (title V) and a single set of principles and objectives (Articles 21.1 and 21.2 TEU), as well as by provisions specifying institutional responsibilities for consistency (Articles 13, 16.6, 18.4 and 21.3 TEU).

The second level of the *policy framework* specifies the general commitment to consistency provided for in the Treaty framework. This level refers to strategies and policy guidelines, providing – by definition – a policy-specific framework for consistency. For instance, in the case of appropriate measures, the Cotonou agreement, as well as the concept of targeted sanctions, frame the Commission's action. Overall, the policy framework aims at providing a comprehensive approach to any objective, outlining policy inter-dependencies and detailing the contributions of individual actions thereto.

The *Commission's internal decision-making process* constitutes the third level. It operationalises the consistency objective by specifying the consistency mandates of certain actors and the rules along which a proposal is drafted. Decision-making strongly emphasises the importance of coordination throughout the preparation of any proposal. Coordination is the practical instrument through which the EU puts into effect the consistency requirement between different policy domains. For instance, when the Commission drafts a proposal, inter-service consultation aims at coordination between DGs to produce a collegiate decision. Consequently, coordination will be at the centre of our attention when process-tracing the Zimbabwe case study. However, although coordination aims at ensuring the consistency of the policy output, it is not a sufficient guarantee for consistency. Whether or not coordination will be ultimately successful depends on the contextual factors in which the coordination process takes place. We will come back to this issue in the final part of this contribution. As a first step we will identify the provisions that were in place to facilitate the consistency of the Article 96 measures against Zimbabwe. While the Treaty provisions are of a general nature, the policy frame and the decision-making rules are case-specific.

## **2. The proposal to renew appropriate measures against Zimbabwe in 2012**

The Zimbabwean question has been challenging the EU since President Mugabe's accession to power in 1980. Once a hero of the independence war, he gradually started to engage in violent acts against his own population. Massive human rights violations, as well as disrespect

for democratic principles and the rule of law, led the EU to condemn the regime. Between 2002 and 2012, the Union has renewed its sanction package against Zimbabwe on a yearly basis, comprising CFSP sanctions and appropriate measures under Article 96 of the Cotonou agreement. It was not until 2008 that there were the first signs of a positive political evolution with the formation of the Government of National Unity (GNU) and the negotiation of the Global Political Agreement (GPA). The latter is an agreement signed between the ruling party and the opposition charting a new political direction for the country in an effort to address the political and economic crisis. It has led the EU to adjust its policy and reengage with Zimbabwe. Appropriate measures, the focus of this case study, have proved to be a delicate instrument to use, at the crossroads of foreign policy, development and trade objectives. The last renewal of these measures in 2012, on the basis of a Commission proposal, is discussed in detail below. The following sections explore how the three-level framework for consistency concretely played out in the Zimbabwean case.

## 2.1. The Treaty framework for consistency

As mentioned before, consistency is affirmed as a guiding principle of EU external action (Article 21.3 TEU). Significantly, in the set of common principles and objectives for EU external action, the TEU emphasises the integrated nature of foreign policy, development and trade (Article 21 TEU), *i.e.* all three dimensions of the partnership with Zimbabwe. It is more particularly specified that the Union aims to

- (a) safeguard its values (...)
- (b) consolidate and support democracy, the rule of law, human rights (...)
- (c) preserve peace (...)
- (d) foster the (...) development of developing countries (...)
- (e) encourage the integration of all countries into the world economy (...). (Article 21.2 TEU)

As such, the Treaty framework provides substantial guidelines that frame the Commission's action when adopting *i.a.* appropriate measures under Article 96 of the Cotonou agreement. Little is however said as to how these general principles have to be translated into practice. This is left to the policy framework and the decision-making process.

## 2.2. The policy framework for consistency

The policy framework is the second level of relevance for understanding the parameters within which various actors operate to put into effect the consistency requirement. It specifies the – general – Treaty framework for consistency in one particular area and therefore further contributes to the framing of EU action. For the case study on Zimbabwe, the policy framework consists of the Cotonou agreement, and more particularly its Article 96, as well as the concept of targeted sanctions.

The Cotonou agreement (2000-2020) encompasses all three dimensions of EU external action: development cooperation, foreign policy and trade. Development cooperation is often the first element that comes to mind since poverty reduction, sustainable development and integration into the world economy are the central objectives of the Cotonou agreement. They are pursued through integrated strategies bringing together these different dimensions. The European Development Fund (EDF) is the main financial instrument in that respect. Trade is understood as a key dimension to promote economic development and the integration of ACP into the world economy. Before 2007, the Cotonou agreement provided for non-reciprocal trade preferences. Today, EU-Zimbabwe trade falls under the Interim Economic Partnership Agreement (EPA) with Eastern and Southern Africa (ESA).<sup>9</sup> This agreement entered into force in May 2012 and introduces a duty-free-quota-free access for all imports from ESA (Interviews 2, 12; European Commission 2012a; European Commission, DG Development and Cooperation – EuropeAid 2010). Lastly, the foreign policy dimension gained a protected legal status with the introduction of conditionality during the mid-term review of Lomé IV in 1995. Human rights, democracy and the rule of law became “essential elements” (Article 9), whose continued respect is the objective of the Article 8 regular political dialogue between the EU and any ACP partner, as well as of the safeguard mechanism of Article 96.

Article 96 of the Cotonou agreement protects the so-called “essential elements” – democratic principles, human rights and the rule of law. The EU activates the mechanism to pressure a partner’s government into restoring essential elements through a partial or total suspension of EU development cooperation and the withdrawal of trade preferences (Portela 2007: 40). Benefits are restored only if conditions defined by the EU are fulfilled. For instance, the Commission’s proposal COM(2012)26 final recognises that “the overall situation has improved” but regrets that “the implementation of political reforms remains slow, and certain essential elements of the ACP-EU Partnership Agreement, to which the GNU has committed in the Global Political Agreement, still need to be implemented” (European Commission 2012b:7 and 3). As a consequence, it proposes to renew Article 96 measures.

Article 96 is only activated when the regular political dialogue under Article 8 fails to prevent the breach or restoration of essential elements. In a first phase, it leads to the opening of emergency consultations between parties. These consultations are goal-oriented and aim at restoring essential elements. The second step is the resuming of the consultation phase: if a checklist and timetable have been agreed on by both the EU and the ACP country for restoring essential elements, no further measures are taken; otherwise, the EU may adopt appropriate measures (suspension of development cooperation and withdrawal of trade preferences) to force the ACP country into respecting its commitment.<sup>10</sup> These measures are renewed until the EU considers that essential elements are restored. By reconsidering the EU’s commitments in terms of trade and development, Article 96 measures are an instrument that aims at restoring consistency across the three dimensions of the Cotonou partnership.

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<sup>9</sup> Interim agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, OJ L 111/2-1172, 24.04.2012.

<sup>10</sup> The EU may impose additional measures such as CFSP sanctions, what further sharpens the consistency challenge.

Article 96 measures have to reach a balance between different concerns. Instead of imposing general economic sanctions that would have an indiscriminate effect, EU measures target the leadership responsible for the objectionable behaviour while trying to inflict the least suffering on the population (Portela 2007: 39). This is the concept of targeted sanctions: they are conceived to achieve maximum impact in terms of foreign policy objectives with the least collateral damage. They limit the possibility of the targeted leadership to instrumentalise the sanctions and any contamination effect of sanctions over particular areas of cooperation or to neighbours of the targeted regime (European Parliament 1982: 14).

### **2.3. The decision-making process of renewing Article 96 measures**

The third level to ensure consistency is the decision-making process of the Commission. It concretely implements the general and policy-specific commitment to consistency. In our case study, these are the rules of procedure applied by the European Commission when drafting its proposal to renew Article 96 measures against Zimbabwe. First, the consistency and coordination responsibilities as they have developed since Lisbon are specified; secondly, the drafting procedure itself is discussed.

#### ***2.3.1. The lead service on Article 96 since Lisbon***

Following the setting up of the EEAS, the Article 96 procedure was amended and the lead responsibility for preparing the Commission proposal changed.<sup>11</sup> Since January 2011, the EEAS has replaced DG Development as *chef de file* on Article 96. The EEAS' role is part of the support provided by the service to the HRVP in her capacity as VP of the Commission. The post-Lisbon era, although synonymous with a new institutional architecture and a new division of tasks, is *de facto* characterised by continuity. This is illustrated by the fact that the Commissioner for Development is co-responsible for the proposal (EEAS/European Commission 2012; EEAS/European Commission 2011). The change of the *chef de file* is actually more formal than substantial: according to interviewees (Interviews 1, 4, 11), little has changed but the name of the lead service as the officials from DG Development have simply changed hat and transferred to the EEAS. Until 31<sup>st</sup> December 2010, the desk Zimbabwe was based within DG Development but as from January 2011 onwards, it was relocated to the EEAS (Interviews 1, 4). However, the updated rules of procedure were only formally adopted in March 2012 (EEAS/European Commission 2012). The EEAS is now responsible for the inter-service consultation (ISC) on the decision to renew measures, in association with DG Devco (*ibidem*). Overall, the proposal remains a Commission proposal presented jointly by the HRVP and the Commissioner for Development (*ibidem*).

This new arrangement is both an advantage and a disadvantage. On the positive side, it allows to build on DG Devco's expertise in development cooperation. In addition, the EEAS'

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<sup>11</sup> The internal document specifying the new procedure under Article 96 was adopted only after the 2012 renewal (EEAS/European Commission 2012).

mandate puts the issue of measures against Zimbabwe in the broader context of EU action in this country and facilitates a comprehensive strategy towards Zimbabwe. The EEAS' responsibility, in association with DG Devco, for consistency and coordination within the Commission is complemented by its role within the Council. As permanent chair of the COAFR, the Council working group on Africa negotiating the political decision on Article 96 (EEAS/European Commission 2012), the EEAS bridges the gap between the Commission and member states.<sup>12</sup>

A weakness is that it introduces an inter-institutional dimension to the drafting process. In principle, this inter-institutional dimension complicates coordination, as the EEAS is not formally a DG of the Commission. The coordination between different institutions is generally more challenging and sensitive than intra-institutional coordination. First, from a procedural point of view, because the EEAS is an "outsider" and a new player, decision-making had to be adapted. New rules had to be established for the diplomatic service to work with the Commission in the preparation of Commission proposals and IT-systems supporting the Commission's internal decision-making process had to be updated to allow the participation of the EEAS. Second, from a substantial point of view, the EEAS and the Commission do not have the same competences. It follows that they may have conflicting objectives. Another consequence is that the EEAS and the Commission do not necessarily have access to the same information regarding the situation in a particular country, a fact that may also hinder the drafting of the proposal.

The Secretariat General of the Commission (SG) still plays a key role in supervising coordination in the post-Lisbon era. When the EEAS prepares a draft to be adopted as a Commission proposal, the Commission's rules of procedure apply. The EEAS, even if it is formally an autonomous body, has to launch an inter-service consultation (see next subsection) according to the same rules as any Commission DG. The SG ensures that any interested service is formally included in the consultation and substantially participates in the drafting, to ensure the consistency of the proposal despite the formal separation between services.

Lastly, EU delegations in third countries constitute a new player in the field as they have competences across the full range of the EU's external policies compared to the Commission's delegations in the pre-Lisbon era. In practice, the two main points about delegations remain the same before and after the Lisbon Treaty. First, delegations are in charge of monitoring concrete developments and of providing feedback to Brussels, should a particular situation arise that needs to be addressed. Second, a delegation's focus and role tends to be heavily influenced by the personality and background of the head of delegation, what may in turn weaken the (perceived) consistency of EU action (Interviews 3, 4). A head of delegation too close to the position of DG Devco will be criticised by some member states. At the opposite end of the spectrum, others will dislike too strong a focus on human rights issues (Interview 3).

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<sup>12</sup> In contrast, the ACP working group (that discusses the operational consequence of Article 96 decisions for development cooperation) is still chaired by the rotating Presidency; DG Devco represents the Commission in the group as well.

### ***2.3.2. Drafting the Commission's proposal to renew appropriate measures***

To prepare the 2012 renewal of appropriate measures, the decision-making procedure has only been adapted to the extent necessary to account for the Lisbon change in the responsibilities of the different actors. The Commission still adopts the proposal by written procedure even though the EEAS has now become the *chef de file*. Informal efforts and formal coordination processes hereby play an important role.

Informal instruments receive much importance in the decision-making process as coordination is not a one-time effort but a continuous process. In contrast to 2002 when the Article 96 measures were first adopted, the preparation of the 2012 proposal built on a long legacy of interaction and cooperation. The actors' positions are well known. Daily contacts, very close working relationships but also joint missions in the field serve the purpose of drafting a consensual proposal, which reflects every actor's input. These elements are considered informal because they do not constitute compulsory steps of the decision-making. Since they establish the different positions, identify the margin for manoeuvre and ease possible tensions, they facilitate the drafting. As a result, it becomes unlikely that a very sharp conflict arises during formal decision-making. Overall, the longer officials work on the same dossier, the more important informal contacts are and the stronger the position of the lead officer on the draft is. This was also the case with the EEAS desk Zimbabwe who, in 2012, had been working on Zimbabwe for three years, and was well aware of actors' positions and of institutional dynamics on Zimbabwe.

The EEAS-DG Devco "duo" (replacing the Relex-Development "duo" in the pre-Lisbon era) constitutes the nucleus of the Article 96 mechanism. This is illustrated by their participation in joint missions in Zimbabwe (Interview 4). They reflect the dual nature, foreign policy and development, of Article 96. DG Devco is a legitimate actor of the decision-making given its expertise of Article 96 in general and of Article 96 measures in Zimbabwe in particular. The EEAS adds the political dimension to the drafting of Commission proposal, bringing together the different aspects of EU action against Mugabe.

As mentioned, the formal decision-making for the 2012 renewal was led by the EEAS, in particular by its Zimbabwe desk. Through the inter-service consultation, it consulted DG Devco, Trade<sup>13</sup>, ECHO, DG Budget, the legal service and the SG (EEAS/European Commission 2011). These DGs, as well as the service of foreign policy instruments, had participated in the informal contacts made by the EEAS before the ISC (Interview 19). This network of services had been collaborating on the Zimbabwean dossier since 2001.<sup>14</sup> DG budget, the legal service and the SG must be consulted during any ISC. Therefore, we focus on the two substantial contributions made by Trade and Devco. DG Trade was included in the ISC because Article 96 measures could have an impact on the on-going negotiations of the

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<sup>13</sup> As trade concerns seems to be secondary in the EU's dealing with Zimbabwe, interviewees did not list DG Trade when first asked the question on the different DGs involved, but added it to the list of DGs included once asked specifically about DG Trade (Interview 4).

<sup>14</sup> Since 2001 and the opening of Article 96 consultations against Zimbabwe, the same networks of DGs has been involved in the preparation process. DG Aidco, DG ECHO, DG Relex, DG Trade, the SG and the legal service were consulted by DG Development during the inter-service consultation (European Commission 2001).

EPA between the EU and Zimbabwe. It had already expressed concerns, at an earlier stage of the drafting, about the opportunity costs of renewing sanctions and appropriate measures in the light of EPA negotiations. During the formal ISC, it emphasised the potential synergies of the EU's more flexible approach (resulting from the lifting of conditions and political reengagement) for trade-related activities and did not oppose the proposal.

DG Devco focused on both the amount of funding and the modalities of development cooperation with Zimbabwe. It raised its voice as to the potential inconsistency between the Article 96 measures and development cooperation at large, given the very important amounts of aid still available to Zimbabwe (see sub-section 2.2.). It refused the inclusion in the proposal of a specific amount of development aid that would commit the EU in spite of the sanction package against Zimbabwe (European Commission 2012b: Annex; EEAS/European Commission 2011; Interview 13). The proposal only left open the possibility to normalise EU-Zimbabwe development cooperation with the signing of strategic documents as soon as essential elements would be restored (EEAS/European Commission 2011; European Commission 2012b: Annex).

Once closed at DG level, the ISC went on at the political level. As the proposal was adopted by written procedure (EEAS/European Commission 2012), the process was rather straightforward. The proposal was circulated to all cabinets and as no objections were raised, it was deemed adopted. Interviewees did not refer to particular difficulties at cabinet-level. The Commission proposal COM(2012)26 final (European Commission 2012b) is a nine-page long document that consists of three parts. First, the explanatory memorandum traces back EU efforts to address the political situation in Zimbabwe and the evolution thereof. Second, it contains the proposal for the Council's decision renewing appropriate measures against Mugabe's regime. Third, the conditions of the renewal are specified in the Annex, "Letter to the President of Zimbabwe", which explains the reasons behind the renewal and details the conditions of EU continued engagement in the country.

In conclusion, this third level of analysis focuses on coordination, which is the key instrument to ensure consistency. It aims at ensuring the absence of contradiction between the different positions expressed within the Commission. Overall, it can be said that the coordination process went smoothly. The early exchange between different stakeholders, especially amongst the EEAS, DG Devco and DG Trade, helped to identify the different positions and concerns. In addition, it undoubtedly helped that several of the players involved had already a long track record of cooperation. The introduction by the Lisbon Treaty of one additional player added to the complexity of the coordination process. This challenge was however addressed elegantly by including the EEAS in the already well-established system of inter-service consultation.

### **3. Coordinating foreign policy, development cooperation and trade**

Building on the discussion of the three levels of the Treaty and policy frameworks, as well as the decision-making process, this section aims at assessing the consistency of the Commission's proposal as it was ultimately adopted by the College of Commissioners. It does

so by discussing the absence or existence of contradictions between the actual content of the proposal and its primary objective, namely the restoration of essential elements in Zimbabwe (EEAS/European Commission 2011).

By definition, Article 96 places *foreign policy objectives* at the top of the hierarchy of objectives. Legally, recognised as “essential elements”, democratic principles, the rule of law and human rights have to be respected. Whenever an ACP country violates any of these elements, the EU may pressure it into normalising the situation. The primary objective of the 2012 Commission’s proposal was the restoration of essential elements in Zimbabwe. Although it recognised that the political situation had positively evolved (European Commission 2012b: (3), (4)), the EU nevertheless renewed the measures because the progress made did not suffice. It was argued that “the implementation of political reforms [had] remain[ed] slow and certain essential elements of the ACP-EU partnership agreement, to which the GNU [Government of National Unity] had committed in the Global Political Agreement [GPA], still need[ed] to be implemented” (European Commission 2012b: (4)). In particular the constitutional process, the organisation of peaceful and credible elections (European Commission 2012b: Article 1) and the areas of respect for human rights and the rule of law needed further efforts (European Commission 2012b: Annex). Yet, measures were renewed for only 6 months, a shorter period than the previous one-year renewals. This illustrated EU reengagement and a much more dynamic approach to Zimbabwe (European Commission 2012b: Article 1). In conclusion, the renewal was justified on the basis of the insufficient respect for essential elements. The more flexible framework introduced by the renewal – as well as the support provided by the EU to regional mediation efforts led by South Africa – showed a pro-active Union, eager to ensure that its decision would contribute to the realisation of the primary objective in all its dimensions. Therefore, it qualifies for a high degree of consistency with the EU’s foreign policy objectives in the country.

While being a possibility under Article 96, *development* cooperation with Zimbabwe was never fully suspended. Although this may have given a strong message to the Zimbabwean government, it would have been in contradiction with EU development objectives. Appropriate measures led to the imposition of very specific conditions upon development cooperation, aimed at a continued support of the population. First, appropriate measures reduced the availability of EDF for the country targeted. The adoption of the measures prevents the use of the A-envelope for a country (*l’enveloppe pays*) aimed at general budget support. Funds may however still come from the B-envelope, which the EDF reserves for unforeseen needs (Interviews 4, 5, 6, 13; European Commission, DG Development and Cooperation – EuropeAid (n.d.); Article 3.2 of the Annex IV of the Cotonou agreement). Secondly, it means that, for EDF and other budget lines and financial instruments to be used, certain conditions must be met. Funds are available to activities in direct support of the population, in particular in the social sectors, democratisation, respect for human rights and the rule of law (European Commission 2012b: Annex). The EU also provides support to institutions and processes related to the implementation of the GPA since 2010 (Council of the EU 2010: 2). The 2012 renewal reaffirmed these conditions and the EU’s commitment to support the implementation of the GPA (European Commission 2012b: Annex). Overall, the difference compared to a country not targeted by Article 96 measures is not the amount of aid

but the modalities of development cooperation. A total suspension would have given ACP countries the opportunity to coalesce against the EU. For Zimbabwe, it could be a chance to “demonize” the EU while the population was suffering, in turn strengthening the country that the EU was sanctioning and jeopardising the realisation of the EU’s primary objective (Interviews 1, 2, 3, 4). In conclusion, there was no contradiction between the partial suspension of development cooperation and the primary objective of the EU in Zimbabwe. With the progressive relaxation of the conditions under which development cooperation could take place, the objective is for the action taken in this dimension to fully contribute to the restoration of essential elements, what illustrates again the EU’s active reengagement strategy (Council of the EU 2012). Also with regard to the overall development objectives towards Zimbabwe, the proposal qualifies for a high degree of consistency.

In an effort to adopt a consistent proposal there was a consensus to exclude *trade* restrictions from appropriate measures since 2002. This approach was motivated by two reasons.<sup>15</sup> First, trade measures would also have run counter to development objectives as trade is seen as an instrument for economic development. Trade measures would have mostly threatened farmers, the engine of the economy, thus further weakening Zimbabwe’s economic development. It would have clearly jeopardised economic and development objectives. Zimbabwe’s government would also have instrumentalised trade measures the way it did with appropriate measures and sanctions in general as targeting an innocent population. Second, trade sanctions (in the form of withdrawal of trade preferences) would have jeopardised broader foreign policy objectives. They would have put a strain on the EU-ACP partnership. ACP states participating in the initial consultations in 2002 had already expressed their concerns that it would constitute a precedent in the mutual relationship (Interview 2). The EU could not take the risk to create a hostile coalition of ACP states, which in turn would have reinforced Zimbabwe’s position and correspondingly weakened the overall EU’s position (Interviews 1, 2, 3, 4). In conclusion, the renewed exclusion of trade measures in 2012 did not contradict the primary foreign policy objective in Zimbabwe but it did not actively contribute to its realisation either. This qualifies for a medium degree of consistency between the appropriate measures and the EU trade objectives vis-à-vis Zimbabwe. Interestingly, trade relations actually even provided a venue for continued interaction between the EU and Zimbabwe and created a challenging situation for the larger EU-ACP trade relationship. Indeed, in 2012 the EU and Zimbabwe (a member of the Eastern and Southern African grouping) were negotiating a new trade agreement, the Economic Partnership Agreement (EPA). Although the Zimbabwean crisis did not constitute a contentious issue during the negotiation of the agreement, Mugabe’s government delayed ratification to express its discontent, thereby weakening the EU’s position in international trade negotiations between February and May 2012 (Interview 12; European Commission 2012a).

Given its primary objective of the restoration of the essential elements in Zimbabwe, finding the balance between foreign policy, development and trade objectives was a challenging exercise for the Commission. Although foreign policy objectives such as the respect for human rights, democratic principles and rule of law were the priority, neither development nor trade concerns were disregarded. Within the substantial limits defined by the policy

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<sup>15</sup> The only trade element is the arms embargo in CFSP sanctions.

framework, development and trade were part of EU strategy in Zimbabwe and considered to be the vector of continued support to the population in the field. In addition, EU actors were also aware of the risk that a total suspension of development cooperation and trade restrictive measures could be instrumentalised by the Zimbabwean government, what would have in turn jeopardised the realisation of the primary objective. In conclusion, the Commission's proposal to renew appropriate measures reached a medium to high degree of consistency and there was no contradiction between the specifics of these measures on one hand and the primary objective of the restoration of essential elements on the other hand.

#### **4. Factors of consistency and factors of inconsistency**

So far, this research has mainly looked into how different levels providing for consistency have been applied in practice with special attention for the third level and its provisions on coordination. The application of the three-level framework is however not a sufficient guarantee for consistency. There will always be contextual factors, which may impact on the consistency of the proposal. Building on the empirical findings and the interviews conducted for the case study, the next section identifies these factors and explains successively how the international context, member states' pressure and internal factors influenced the consistency of the proposal.

##### **4.1. The international factor**

The international factor is the first element that we have identified as having an impact on the consistency of the proposal. As is the case with any foreign policy player, the EU rarely acts in isolation. Its foreign policy is often formulated in interaction with policies conducted by third countries or by other international fora. In 2012, the EU took a regional perspective and chose to support mediation efforts led by South Africa, a country considered as a strategic partner (Interviews 1, 4, 8). Reassured by South Africa's new approach (SADC 2011), the EU decided to accompany mediation by relaxing the restrictions imposed by Article 96 measures (European Commission 2012b: Explanatory memorandum (11), (12)). It did not agree to an immediate and complete lifting of appropriate measures but provided for more flexible conditions in development cooperation and enhanced its reengagement strategy.

##### **4.2. The member states factor**

Member states formally only come in once a Commission proposal is on the table. However, in general, as the Commission wants its proposals to be acceptable to member states, it will, already at the drafting stage, take into account the views of the Council. One interviewee even called the discussion at the Council the "third step of inter-service consultation" (Interview 4). This is not always easy since on many foreign policy issues, national positions tend to diverge. The particular nature of the Cotonou agreement gives even more power to the

member states. Indeed, this agreement is a mixed agreement, what implies that different institutions have their word to say in the final decision: the EEAS, the Commission and the Council. The multiplicity of actors implied that a choice had to be made between different preferences, a choice rendered more complex by the fact that foreign policy remains inter-governmental, development is a shared competence and trade an exclusive competence of the EU. All this made the internal coordination efforts within the Commission more challenging (Laakso, Kivimäki and Seppänen 2007: 22).

In addition, Zimbabwe is a case where member states' interests have always been particularly salient (Grebe 2010: 12-13; Stübiger 2007: 2; Interviews 3, 4, 9). Their prime concern was to send a strong signal against an illegitimate regime. This was illustrated by the fact that Article 96 consultations were opened upon request from the Council and not on the Commission's own initiative. When appropriate measures were first adopted in 2002, the salience of member states' opinions on Zimbabwe, especially of hardliners such as the United Kingdom and the Nordic countries, steered the drafting towards the adoption of appropriate measures. The latter worked hard to ensure compliance with their requests while upholding the principles and values of the Cotonou agreement (Laakso, Kivimäki and Seppänen 2007: 29; Hazelzet 2005: 11).

Also in 2012, the Commission again faced the challenge to come up with an acceptable proposal in the context of renewed inter-institutional dynamics. The influence exercised by the Council, informally, was particularly powerful in the decision-making. The presence of the United Kingdom in particular made the lifting of the measures impossible (Interviews 7, 8, 9). However, the evolution of the Nordic countries towards a more relaxed position allowed for a more dynamic approach (Interview 9). The result was the renewal of appropriate measures for a shorter period of time than the previous renewal and under relaxed restrictions (European Commission 2012b: Explanatory memorandum (5), (6), (7), (9)). Besides, tensions with member states were felt not only during the initial drafting of the Commission's proposal. They also re-appeared at a later stage, when the Commission's proposal was discussed within COAFR, the Council working group on Africa.

A further challenge for the Commission was that consistency was not the member states' primary concern. They had focused on sending a strong, decisive signal from the outset of the crisis, without consideration for the risk of instrumentalisation and criticism of inconsistent measures, a point that the Commission had raised repeatedly. It was the role of the EEAS and the Commission in 2012 to ensure the consistency of the decision, also taking into account the trade and development dimensions. Exploring internal dynamics, to which the paper now turns, will help to better explain the content of the proposal.

### **4.3. Internal factor**

To better explain the content of the 2012 Commission proposal, it is also relevant to look at the internal dynamics within the leadership on Article 96. Overall, coordination under the leadership of the EEAS and DG Devco went smoother in 2012 than in 2002 when measures were first adopted. Indeed, although not normalised yet, the situation in Zimbabwe had

improved. Besides, the positions of different actors had moved closer together as they had been working for ten years on the dossier. The change from a crisis response to what can be considered a form of repetitive decision-making had created a common ground on which to prepare the proposal. We concentrate on the contributions made by DG Trade and DG Devco in response to the draft circulated by the EEAS during the inter-service consultation.

Although appropriate measures did not include a trade dimension, DG Trade was consulted on the draft proposal. Its contribution focused on the opportunity costs to renew appropriate measures while being at the same time negotiating an EPA with Zimbabwe. The negotiation of the trade agreement was giving Zimbabwe leverage over the EU as its ratification was needed. Indeed, the text of the EPA with ESA had been initialled at the end of 2007 by six (out of 11) ESA countries but signed by four countries only in August 2009 (European Commission, DG Trade 2012). As the ratification of four ESA countries was needed for the EPA to be applicable, ratification by Zimbabwe was a *sine qua non*. To a certain extent, Zimbabwe could hold the EU and the other ESA countries hostage but the EU eventually received Zimbabwe's ratification instrument in May 2012. DG Trade expressed, informally, its concern that the proposal prepared by the EEAS to renew appropriate measures – and the sanction package in general – would further delay the ratification process and create a politically and legally challenging situation for the EU. However, it did not raise any obstacles during the formal inter-service consultation (EEAS/European Commission 2011; Interview 12).

To a certain extent, the position of DG Devco was ambiguous. On one side, DG Devco advocated reengagement with Zimbabwe. Highlighting the added value of continuous efforts towards the support of political developments taking place, Devco supported the lifting of conditions to allow the EU to significantly support the GPA and GNU (European Commission 2012b: Explanatory memorandum (10); Interviews 1, 4). It also supported the proposed step towards the normalisation of EU-Zimbabwe relations and the readiness of the EU to reconsider its action in the country at any time, should Zimbabwe make new political progress. On the other side, DG Devco proved strict on the possibility to commit EU development funds to Zimbabwe as was initially envisaged by the EEAS. The drafting of the proposal took place in the middle of a review exercise conducted by DG Devco on the consistency of EU development aid in general. Devco raised several concerns in that respect. Above all, it was concerned about the large amounts of aid still channelled to Zimbabwe despite the existence of Article 96 measures. Compared not only to amounts available to other countries targeted by Article 96 measures but also to countries not targeted by this mechanism, this raised serious consistency issues for EU development policy in general (Interview 13). For this reason, it did not want to include in the proposal a commitment to additional funds for Zimbabwe. The issue was not only raised during the inter-service consultation but also within the Council, where some member states wanted to restate their interest for Zimbabwe by already defining specific amounts of aid. Eventually, the decision did not commit EU funds but made a step towards the normalisation of the relation with Zimbabwe.

Tensions within the Commission as well as between the Commission and the EEAS illustrate the politicisation of the discussion on Zimbabwe and the salience of diverse interests. They

are to a large extent embedded in Article 96 itself as this mechanism requires at the same time a strong political decision and adaptation of the framework for development cooperation (Interview 4).

## Conclusion

Under the Lisbon Treaty, consistency of EU external action has become a real buzzword but little is known about how this imperative is concretely given shape. By empirically studying how the EU is translating the consistency requirement into practice in the case of the adoption of appropriate measures against Zimbabwe, this paper tried to get a better insight into this issue.

As a first step, this article examined the relevant legal (Treaty), substantial (policy framework) and procedural (decision-making process) guidelines framing the consistency objective in the EU's relations with the ACP countries. The first level of the Treaty framework outlines the mutually reinforcing nature of the different dimensions – foreign policy, development and trade – on which the Cotonou agreement builds. At the second level of the policy framework, the EU has proactively set up mechanisms to avoid contradictions between different objectives in the design of appropriate measures. In particular, the B-envelope of the EDF for unforeseen needs ensures, under specific conditions, that development cooperation continues despite the existence of appropriate measures. This allows for hitting a government in breach of democratic principles (foreign policy objective) while simultaneously continuing to support the population (development objective). The third level of the decision-making process consists of mechanisms and rules of procedure that aim at reconciling different objectives through a well-developed process of inter-service coordination. The introduction of the EEAS as a new actor in the leading role of the drafting of the Commission's proposal by the Lisbon Treaty has proved relatively unproblematic. This can mainly be explained by the fact that the EEAS participates in the inter-service consultation of the Commission according to the same rules as any Commission DG.

The three-level framework we identified plays an important role in facilitating the consistency of a proposal but is not a sufficient guarantee for consistency. The case study on Zimbabwe illustrated that the success of this framework in leading to a consistent output is influenced by other factors such as the international context, the positions of the member states as well as the preferences and interests of individual DGs. Overall our analysis has shown that the 2012 proposal to renew the appropriate measures against Zimbabwe reaches a medium to high degree of consistency. This has to do with several factors that contributed to the emergence of a consensus around the necessity to adopt a more comprehensive approach to Zimbabwe in order to support the realisation of the primary foreign policy objective. First, the evolution of the regional context and more particularly mediation efforts by South Africa led the Union to adopt a more pragmatic attitude towards Zimbabwe, leading to more flexible conditions in development cooperation. Second, this trend was reinforced by member states' readiness to rethink the strategy vis-à-vis Mugabe's government and to allow for more relaxed restrictions, reducing the tensions between foreign policy and development objectives. Lastly, over time,

an integrated network of officials working on Zimbabwe grew, allowing for the development of a comprehensive strategy towards the political situation, coordinating different dimensions and approaches for more effectiveness. The three factors had a mutually reinforcing influence on the content of the proposal. *A contrario*, the changes introduced by the Lisbon Treaty were not influential in explaining this outcome.

Since this contribution is limited to only one case study, it would at this stage be inappropriate to try to draw general conclusions on the consistency of EU external action post-Lisbon. Still, the three-level framework of extensive legal, substantial and procedural guidelines identified in this article indicates that the consistency aspiration of the EU is more than an empty shell. The fact that the general Treaty articles have been translated into extensive policy and procedural guidelines is certainly encouraging. However, this article has also shown that a consistent policy output is not merely dependent on well-developed guiding principles. They are a first step and a helpful instrument but in the end their success will heavily depend on the broader context in which they are applied. Further research, possibly based on the framework used in this article, should allow to further sharpen our insights.

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5. Interview former EU official, by email 25 January and 6 February 2012.
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7. Interview national diplomat, by email, 9 February 2012.
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11. Interview EU official, Brussels, 7 March 2012.
12. Interview EU official, Brussels, 13 April 2012.
13. Interview EU official, Brussels, 27 April 2012.
14. Interview EU official, Brussels, 4 May 2012.

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