

Learning to cooperate after Lisbon: Inter-institutional dimensions of the EEAS

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Resumen: La creación del Servicio Europeo de Acción Exterior (SEAE) plantea la posibilidad de que las tensiones registradas, antes del Tratado de Lisboa, entre las diversas instituciones de la Unión Europea sobre la conexión entre relaciones exteriores y PESC, puedan afectar de manera adversa su puesta en acción desde el primer momento. Sin embargo, tanto la Comisión, como la Secretaría General del Consejo, y los propios Estados miembros se han empleado a fondo en la creación del SEAE asumiendo importantes cambios por lo que se hallan vinculados inevitablemente a su eventual éxito o fracaso. Consecuentemente, el artículo sugiere, dadas las circunstancias, la necesidad de un nuevo aprendizaje institucional que pueda servir tanto al fortalecimiento de la relaciones exteriores de la Unión como a la mejora de la coherencia de su acción exterior.

Palabras clave: Unión Europea, relaciones exteriores, PESC, instituciones, aprendizaje.

Abstract: *The creation of the European External Action Service (EEAS) raises the possibility that the fundamental tensions that existed prior to the Lisbon Treaty between the diverse EU institutions with regard to the interplay between CFSP and community external relations in the EU’s international role may yet hobble the EEAS from the outset. But, alternatively, given that the Commission, the General Secretariat of the Council and the Member States have all invested in this new creation called the EEAS and they are therefore tied to its failure or success. Consequently, this article suggests that emphasis should be upon the learning element. The Service implies learning how to support the top EU external relations posts most effectively and to enhance the coherence of the Union’s external actions.*

Keywords: *European Union, external relations, CFSP, EEAS, institutions, learning.*

I. Introduction

When is an institution not an institution? The answer could be when it is the European External Action Service (EEAS). The EEAS has been described officially as a ‘functionally autonomous body of the Union.’¹ Yet, it has emerged for all ostensible purposes as a new institution in everything but name. The status of its staff, a dedicated budget within that of the Union, the ‘corporate board’ responsible for the day-to-day running of the Service and even the existence of a legal department, all make the EEAS look like a *de facto* institution. The eventual size of the EEAS, of around 6,000, makes this one of the most extraordinary institutional developments in the history of European integration.

The EEAS owes its existence to the Lisbon Treaty on 1 December 2009, although the evolution of the Service may be traced back to the Convention on the Future of Europe earlier in the decade. The difficult birth of the EEAS followed intense inter-institutional wrangling between the EU institutions as well as with the European Parliament. Following consultations with the European Parliament, the consent of the Commission and two draft proposals for a Council decision, a decision on the organisation and functioning of the EEAS was eventually adopted on 26th July 2010.² Its role has been described as that of providing ‘support to the European Council, the Council, the High Representative and the Commission concerning the strategic overview and coordination necessary to ensure the coherence of the European Union’s external action as a whole.’³

The early deliberations on the EEAS and specifically the 2005 Joint Progress Report, submitted jointly by the former High Representative for CFSP, Javier Solana, and the Commission President, José Manuel Barroso, described the EEAS as *sui generis*, by which it was meant that ‘the EEAS would not be a new “institution”, but a service under the authority of the [High Representative for Foreign Affairs and Security Policy], with close links to both the Council and the Commission.’⁴ While this moniker was politically expedient for 2005, it also left many questions regarding the institutional fit of the EEAS unanswered. The remaining questions were essentially twofold. First, how does a non-institution, that is not a decision-

¹ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, *Official Journal of the European Union*, L201/30, 3 August 2010, Article 1(2).

² *Ibid.*

³ *European Council Draft Conclusions*, 16 September 2010, from the General Secretariat of the Council to the General Affairs Council, 13460/10, Brussels, 10 September 2010, p. 8.

⁴ Progress Report to the European Council on the European External Action Service, The Council of the European Union, 9956/05, CAB 24, RELEX 304, Brussels, 9 June 2005, Para. 6.

making body but a *decision-shaping* body, define its space among the EU institutions? Second, and just as important, what space will the EU institutions give to the EEAS to achieve its designated support tasks?

The fundamentals of decision-making in EU external relations were left unchanged by the Lisbon Treaty. The former *communautaire* aspects still remain a matter for decision by the Commission (and increasingly, co-decision, with the European Parliament) while the foreign and security policy aspects fall under CFSP and are thus subject to consensus by the Member States sitting in the Council. This raises the possibility that the fundamental tensions that existed prior to the Lisbon Treaty between the ‘Community’ and the CFSP elements of the EU’s external relations may yet hobble the EEAS from the outset. Alternatively, the advent of the EEAS could make the pre-Lisbon institutional wrangling and competition a thing of the past, given that the Commission, the General Secretariat of the Council and the Member States have all invested in this new creation called the EEAS and they are therefore tied to its failure or success.

This contribution will consider these fundamental questions although it is necessary to make the obvious caveat that the EEAS is still under construction and it will be several years before any thorough assessment of the Service can be undertaken. The High Representative is obliged to deliver a report on the ‘functioning of the EEAS’ by the end of 2011 and, thereafter, a more comprehensive review by mid 2013.⁵ In the interim it can be anticipated that there will be jockeying, even friction, between the constituent parts of the Service as part and parcel of the introduction of the EEAS. The role of the Commission and the General Secretariat of the Council will be considered but it is also worth noting that the role of the Member States, who are contributing to the Service in numbers and roles not seen within the EU before, is an important difference from pre-Lisbon EU external relations. This raises the interesting possibility that it could be the Member States themselves who have a strong incentive to ameliorate any tendencies to revert to business-as-usual tendencies on the part of the EU institutions.

II. The emergence of the EEAS and the institutional context

The starting point for this examination of the EEAS goes back to the Convention on the Future of Europe. The Convention’s Working Group VII on External Action was primarily concerned with questions of the coher-

⁵ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, *Official Journal of the European Union*, L201/30, 3 August 2010, Article 12 (2-3).

ence of the Union's external actions as a whole (which included the overlap with so-called internal matters), the effectiveness of the institutions and their policies and the visibility of the Union as an actor on the international scene.⁶ The key response to the issue of coherence was the notion of combining the roles of the High Representative for CFSP and that of the Commissioner for External Relations into a new High Representative for Foreign Affairs and Security Policy as well as a Vice President in the Commission (henceforth HR/VP). This fusion was agreed to at the earliest stages of the Working Group's deliberations.

This simple proposition was to have far-reaching implications. By 'double-hatting' the High Representative's and Vice-President's duties it was clear that any support structure would have to underpin both roles. This implied any support service would not emanate directly from the Council Secretariat, which would have given it a distinct intergovernmental flavour, nor from the Commission, which would obviously have implied a more *communautaire* influence.

As with the HR/VP, the EEAS was therefore destined to become a hybrid; neither an institution *per se*, nor a fully fledged 'foreign service' at the European level. It was also evident that just as the HR/VP's legitimacy would have to stem *both* from the Commission and the Member States, the tripartite composition of the EEAS implied that it too would have to earn its legitimacy from all sources and satisfy the demands for accountability emanating from the European Parliament.

III. The Lawyer's Orgy?

The Council decision of 26 July 2010 establishing the organisation and functioning of the EEAS is a key document but it must also be seen as a compromise and, as such, leaves many questions in the air. One of the most fundamental is that the original role of assisting the High Representative has now mushroomed into a broader and more challenging support role. In this context, the decision is worth quoting at length:

«The EEAS will support the High Representative, who is also a Vice-President of the Commission and the President of the Foreign Affairs Council, in fulfilling his/her mandate to conduct the Common Foreign and Security Policy ('CFSP') of the Union and to ensure the consistency of the Union's external action ...The EEAS will support the High Representa-

⁶ Final report of Working Group VII on External Action to Members of the Convention, The European Convention, The Secretariat, Brussels, 16 December 2002 CONV 459/02 WG VII 17.

tive in his/her capacity as President of the Foreign Affairs Council, without prejudice to the *normal tasks* of the General Secretariat of the Council. The EEAS will also support the High Representative in his/her capacity as Vice-President of the Commission, in respect of his/her responsibilities within the Commission for responsibilities incumbent on it in external relations, and in coordinating other aspects of the Union's external action, without prejudice to the *normal tasks* of the Commission services».⁷

In a later article the Council decision adds that, 'The EEAS shall assist the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'.⁸

The parameters of the support role of the EEAS will therefore be defined by what falls beyond the scope of the 'normal tasks' of the Commission and the Council Secretariat. Any such legal determination will now have to be addressed by not only the legal services of the Commission and the Council Secretariat, but also the EEAS's own legal department. Pre-Lisbon external relations revealed numerous issues, such as human rights, conflict prevention, energy security, climate change, civilian crisis management or some defence industrial issues, that proved difficult to define in terms of competences. The Lisbon Treaty did not change this basic picture and the potential for another ECOWAS-type case cannot be discounted.⁹ The full details of the case are beyond the remit of this contribution but the essential ambiguities of the older treaties are replicated in the Lisbon Treaty.¹⁰ Key in this regard is that the Lisbon treaty replicates the old Article 47 (now Article 40 TEU) whereby, 'The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences...'. In a similar vein, when it comes to international agreements the question of whether the High Representative or the Commission should take the lead in the negotiations depends upon whether the agreement relates 'exclusively or principally to the common foreign and security policy' (Article 218 (3) TEC).

⁷ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Para. 3 (emphasis added).

⁸ Ibid. Article 2(2).

⁹ Judgment of the Court (Grand Chamber) of 20 May 2008, *Commission of the European Communities v Council of the European Union* (Case C-91/05), *Official Journal of the European Union*, C 171/2, 5 July, 2008

¹⁰ For a cogent analysis of this Vid. HILLION, CH. and WESSEL, R., "Competence distribution in EU external relations after ECOWAS: clarification or continued fuzziness?" in *Common Market Law Review*, vol. 46, 2009, pp. 551-586.

The impression that the EEAS is transgressing the ‘normal tasks’ of the Commission or Council Secretariat, whether wilfully or accidentally, could undermine the legitimacy of the EEAS from the perspective of the EU institutions. Legitimacy is of course possible where ‘normal tasks’ are clear and where all staff ‘conduct themselves solely with the interests of the Union in mind’, as is required under the July 2010 Council decision.¹¹ It remains an open question whether national diplomats will be in a position to uphold the ‘interests of the Union’, especially if the more normative or value-laden aspects of the EU’s policies (which may include essential elements, human rights or good governance clauses) complicate the more pragmatic national interests in a given country or issue area. The EEAS may yet surprise observers and draw its legitimacy precisely from the fact that it is a *European* service representing an increasingly important and growing level of diplomacy.

IV. The Commission’s role (and stake)

The EEAS is a Commission-dominated Service in terms of initial staffing and occupancy of the headquarter posts. This may largely be accounted for by the fact that the senior staffing levels from January 2011 until 2013 will be determined largely by bloc transfers from the Commission and the Council Secretariat. Thereafter, positions in the EEAS will be opened up to the EU institutions as a whole. The July 2010 Council decision lists in an annex those department and functions to be transferred to the EEAS which, in numerical terms means that for AD posts 585 will be transferred from the Commission (DG Relex), 93 from DG Development, and 436 posts transferred from DG Relex’s External Service (i.e. the delegations). In addition 411 were transferred from the Council Secretariat. 118 new posts will be created in the period 2011-2013 at AD level. The total is number of positions created in the EEAS at AD level is therefore 1,643.¹² Moreover, the Council decision states that ‘at least one third of the all EEAS staff at AD level’ shall comprise staff from the Member States (and that permanent officials of the Union should represent at least 60% of all EEAS staff at AD level). This implies that around 350 temporary agents posts will have to be filled by diplomats.¹³

¹¹ Ibid. Article 6(4).

¹² *A new step in setting-up of the EEAS: Transfer of staff on 1 January 2011*, IP/10/1769, Brussels, 21 December 2010.

¹³ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 9 (9).

Most of the Commission staff transferred to the EEAS at AD level emanated from the Directorate-General External Relations (DG RELEX). For the most part these were staff serving the geographical desks as well as the External Service (the delegation staff). The bulk of the staff have been transferred to the geographical and thematic Directorates-General in the EEAS. In the case of DG Development (DG DEV) the geographical directorates-general (D,E) will move to the EEAS which is consistent with the desire to create central geographical desks for all countries and regions with the sole exception of the enlargement countries (where the relevant desks will be retained in DG Enlargement). Of more interest is the status of those being transferred from the programming desks to the EEAS (C1 and C2). The retention of more senior staff in the former, in particular, would clearly signal an intention to maintain Commission dominance on the overall programming cycle. This will be a key indicator of the relative weight between the Commission and the EEAS.

What was left of the DG Development and the EuropeAid Cooperation Office was relaunched on 1 January 2011 as the EuropeAid Development and Cooperation Office (DevCo). This reorganisation was prompted by the transfer of just over 100 from the country desks to the EEAS. The Commission also created a Foreign Policy Instruments Service, staffed by the Commission but housed alongside the EEAS, to manage programmes like the Instrument for Stability (IfS).¹⁴

The structure of the EEAS, with its ‘corporate board’ (comprising an Executive Secretary-General, Pierre Vimont; two deputy Secretaries-General, Helga Schmid and Maciej Popowski; and a Chief Operations Officer, David O’Sullivan), a wider Policy Board and the various directorates-general, bears more than a passing resemblance to the structures within the Commission, the initial reservations from Commission officials slated for transfer were more of a personal nature; mainly concerning pay, promotion, retirement and staff mobility. Although these issues have been nominally addressed by the necessary revisions to the staff and financial regulations, agreed to by the European Parliament in October 2010, a measure of scepticism of many former DG Relex staff towards the EEAS remains.

The Lisbon Treaty left an inherent ambiguity about the nature of the Commission’s ‘responsibilities incumbent on it in external relations’ and those ‘other aspects of the Union’s external action’ subject to coordination. This formulation is of direct concern not only to the HR/VP’s roles, but also to the nature and scope of the EEAS’s support role. The distinction was

¹⁴ Vid. TAYLOR, S. and VOGEL, T., “EEAS appointments trigger mini-reshuffle” in *European Voice*, 28 October 2010.

clarified when Javier Barroso announced his new Commission in November 2009. He singled out the roles of three Commissioners who, in effect, flank the HR/VP:¹⁵ Štefan Füle, Enlargement and European Neighbourhood Policy; Kristalina Georgieva, International Cooperation, Humanitarian Aid and Crisis Response; and Andris Piebalgs, Development, all operate ‘in close cooperation with the High Representative/Vice-President in accordance with the treaties’.¹⁶ Trade was conspicuous by its absence in terms of any direct connection with either the HR/VP’s responsibilities or her wide coordination duties. DG Trade had already made it clear in 2005, prior to the negative French and Dutch referendum on the Constitutional Treaty, that they would remain at a distance from the EEAS on the grounds of exclusive competence (as would AIDCO for different reasons).

At first glance the HR/VP appeared to enjoy a strong role, with specific responsibility, for the three important areas mentioned above. Any such responsibility was significantly refined by the July Council decision where, it will be recalled, the prior consent of the Commission was essential. When looked at from a Commission perspective the fundamental purpose of the EEAS is to prepare ‘*decisions of the Commission* regarding the strategic, multiannual steps within the programming cycle’.¹⁷ At first glance, the assumption of responsibility by the EEAS for the first three stages of the programming cycle (country allocations, country and regional strategy papers, national and regional indicative programmes) would seem to mark a decisive move in terms of influence away from the Commission. But a closer look reveals specific safeguards built into the preparations pertaining to the European Development Fund and the Development Cooperation Instrument and the European Neighbourhood Policy Instrument where programming shall be prepared jointly by the ‘relevant Services’ in the EEAS and in the Commission under the responsibility of the Commissioner in the designated area and shall be submitted jointly with the High Representative for adoption by the Commission.¹⁸

The overall balance between the Commission and the EEAS is still very much up in the air. The decision to keep trade outside the HR/VP’s areas of responsibility, alongside the retention of programming responsibilities in key areas as well as the immediate geographical desks, suggests the reten-

¹⁵ The new Commission though did not in fact take office until February 2010, due to the ratification delays surrounding the Lisbon Treaty and the parliamentary hearings for the Commission nominees.

¹⁶ *President Barroso unveils his new team*, IP/09/1837, Brussels, 27 November 2009.

¹⁷ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 9 (3) (emphasis added).

¹⁸ *Ibid.* Article 9 (3-6).

tion of considerable Commission influence in key areas of EU external relations. A strong role for the Commission was supported by the European Parliament who not only enjoys right of co-decision in many areas as well as budgetary oversight, but had always preferred the idea of a Service that was administratively part of the Commission.

V. The General Secretariat of the Council and the shrinking Presidency

The situation regarding the relatively small numbers of staff (just over 400) transferred from the Council Secretariat is complex. Most of the staff transferred to the EEAS came from Directorate-General E of the Council Secretariat, under Robert Cooper (who re-emerged in the EEAS as Counsellor to ‘undertake specific tasks that require high-level engagement at an intensive level, working with the Policy Board’).¹⁹ The logic of the transfer was supported by the disappearance of the traditional role of the Council Secretariat in the CFSP realm which was to support the rotating Council Presidency. The appointment of a permanent President of the European Council, as well as the HR/VP, who in her ‘third hat’ also chairs the Foreign Affairs Council, made the rotating Presidency largely redundant in external relations.²⁰

The virtual disappearance of the rotating Presidency had implications for other levels as well, especially for the Foreign Affairs Council’s preparatory bodies. Although the working parties in the areas of trade and development continue to be chaired by the rotating Presidency, significant changes occurred in the geographical, horizontal (i.e. thematic) and CSDP-related working parties. Of the 28 working parties falling into the latter three categories, no less than 20 will be chaired by a representative of the High Representative or an official chosen by her.²¹ The November 2010 appointment of Olof Skoog, a Swedish diplomat and former ambassador to the Political and Security Committee (PSC), as the new permanent chair (serving a five year term) of the committee, marked a further significant move away from the rotating Presidency.²²

¹⁹ Catherine Ashton appoints Robert Cooper as Counsellor in the EEAS, A 245/10 Brussels, 2 December 2010.

²⁰ It should though be borne in mind that the Council Secretariat still has to support the rotating Presidency in the event that the rotating Presidency should be called upon to deputise for the High Representative for CFSP.

²¹ For an overview Vid. LINDSTROM, G., “The European External Action Service: Implications and Challenges” in *Policy Paper*, Geneva Centre for Security Policy, n° 8, November 2010.

²² EU High Representative Catherine Ashton appoints the Permanent Chair of the Political and Security Committee A 231/10, Brussels, 16 November 2010.

The virtual disappearance of the rotating Presidency in CFSP, commencing with the (deliberately) back-seat Belgian Presidency in the second half of 2010, implies that the Member States will have less room for agenda setting. The role of strategic agenda setting already appears to have been assumed by the Herman Van Rompuy, commencing in February 2010 with a speech to the College of Europe, Bruges, and several well publicised follow-on pronouncements on the EU's role in the world.²³ It remains to be seen, however, how the Strategic Policy Planning Department within the EEAS will be staffed and what their precise role will be. The department could possibly act as support for the HR/VP in those instances where she has been asked to develop aspects of strategy by Van Rompuy (as was the case where she was charged with elaborating upon key strategic partnership for the European Council) or they may even assume a more proactive role which would complement the HR/VP's ability to make proposals to the Council to develop CFSP.

A more serious challenge facing the EEAS is the relationship between the CSDP bodies and the Service. Although technically part of the Service, most of the relevant bodies have been left at arm's length from the EEAS. With reference to the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC), the EU Military Staff (EUMS) and the Situation Centre, the Council decision establishing the EEAS refers to the need to respect the 'specificities of these structures, as well as the particularities of their functions'.²⁴ The structures listed above are all heavily dependent upon seconded national experts (SNEs) which may explain some of the 'specificities'. The 'particularities' may refer in part to the sharing of analysis of intelligence which, in the absence of any European capacity to generate raw intelligence, is heavily reliant upon what the Member States choose to share (or not, as the case may be).

Member State sensitivities regarding these entities were made clear in a declaration attached to the Lisbon Final Act which recalled that 'the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States'.²⁵ The desire to maintain CSDP's unambiguously intergovernmental character was stressed by Arnaud Danjean before the United Kingdom's House of Lords:

²³ VAN ROMPUY, H., President of the European Council, "The Challenges for Europe in a Changing World", address to the Collège d'Europe, Bruges, Concert Hall 'tZand, PCE 34/10, Bruges, 25 February 2010.

²⁴ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, *Official Journal of the European Union*, L201/30, 3 August 2010, Article 4 (3).

²⁵ Declaration 14 concerning the Common Foreign and Security Policy.

«We want all the tools of crisis management in terms of defence and security to be included within the service because it gives strength and consistency to the service for the High Representative, but at the same time we want a clear chain of command and we do not want these two very specific tools about defence and security issues to be mixed in with a huge bureaucratic system with no clear chain of command and no clear chain of responsibilities. That is why in these specific matters, CSDP, we wanted a kind of specificity to be preserved with a single specific chain of command being directly preserved to the High Representative exclusively and not being Communitarised».²⁶

The state of play regarding CSDP runs contrary to the wishes of a number of prominent MEPs, especially Elmar Brok and Guy Verhofstadt, who wished to join together the conflict prevention, crisis management and peace-building aspects into a dedicated directorate-general in the EEAS. In the absence of any such entity the danger is that the EUMS Watchkeeping Facility and the Commission's Crisis Room and the Joint Situation Centre (Sit Cen) will not be as joined up as desired. The appointment of Agostino Miozzo as the EEAS Managing Director for Crisis Response is of significance in this regard since he is the obvious person to make the critical connections between the SitCen, the EUSRs, and the Chair of the EU Military Committee under the guidance of the HR/VP.²⁷ He will also have to consider EEAS relations with the possible emergence of a European Emergency Response Centre under Commissioner Georgieva.²⁸ This will demand significant efforts to join up the dots from all involved.

The role of the SitCen is particularly sensitive since this is where much of the analysis of intelligence is shared by representatives of the EUMS, the former Policy Unit (now disbanded) and seconded national intelligence officers from a number of EU Member States. The SitCen was never conceived of as a pure CFSP/CSDP body since their main mandate was counter-terrorism and, as such, they play a very important role in supplying services to other EU institutions. The reservations regarding the sharing of intelligence, referred to above, may limit the SitCen's role, as may more traditional concerns emanating from the Council Secretariat regarding the Commission's lack of any well-developed security culture.

²⁶ Hearings, House of Lords Sub-Committee on EU foreign affairs, defense and development, 14 July 2010, p.5 at <http://www.publications.parliament.uk/pa/ld201011/ldselect/lddeucom/999/ceuc14072010.pdf>.

²⁷ EU High Representative Catherine Ashton appoints EEAS Managing Director for Crisis Response, A224/10, Brussels, 2 December 2010.

²⁸ As suggested in LINDSTROM, G., *op. cit.*, note 21.

VI. The European Parliament

The European Parliament's formal role vis-à-vis the creation of the EEAS was weak since it was only accorded the right of consultations, whereas a Council decision was required establishing the organisation and functioning of the EEAS, acting on a proposal by the HR/VP and after obtaining the consent of the Commission.²⁹ The European Parliament therefore exploited the need for it to approve the necessary amendments to the staff and financial regulations necessary for the EEAS to begin operating, in order to win what were viewed as 'important concessions' and to force changes to the 25 March 2010 draft Council decision on the organisation and functioning of the EEAS.

In terms of accountability the European Parliament's argument was straightforward – the EEAS should be to the greatest extent possible administratively part of the Commission which, in turn, is accountable to the parliament. It had, however, already been established in the Solana/Barroso joint issues paper that the EEAS was *sui generis* by nature. The putative EEAS did not therefore fall under the normal precepts of accountability in institutional terms since it was of a hybrid nature being 'functionally autonomous', separate from the Commission and the Council Secretariat, but falling under the authority of the High Representative.³⁰

The European Parliament paid particular attention to the external representation of the EU. Accordingly, they argued that while the delegations are subject to the supervision of the HR/VP they 'should administratively belong to the Commission'.³¹ The European Parliament also asked for guarantees from the HR/VP to consult and also to the right, if the committee (on foreign affairs) so decides, to hold hearings with applicants to senior posts in the EEAS. Similar stipulations were made regarding the appointment of heads of delegation.

The European Parliament's pressure on the issue of political accountability eventually resulted in a declaration on the matter by the High Representative which was part of a political agreement reached with two of the Parliament's EEAS negotiators, Elmar Brok and Roberto Gualtieri, in June

²⁹ Consolidated Version of the Treaty on European Union, Article 27 (3).

³⁰ This was the formulation that eventually appeared in the Council decision establishing the Service. Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, *Official Journal of the European Union*, L201/30, 3 August 2010, Article 1(2).

³¹ Committee on Constitutional Affairs, European Parliament, Report on the institutional aspects of setting up the European External Action Service, Rapporteur: Elmar Brok, A7-0041/2009, 20 October 2009, (2009/2133(INI)), Para.9.

2010. The declaration commits the High Representative to ‘seek the views of the European Parliament on the main aspects and basic choices’ of CFSP, as well as for briefings on ongoing CSDP missions including the exchange of confidential information; provision was also made for the parliament to be fully informed at all stages of the agreement of international agreements in the CFSP area; an ‘exchange of views’ will take place prior to the appointment of Heads of Delegations or Special Representatives to countries and organisations that the parliament considers ‘strategically important’; and, finally, provisions were explored (and later solidified) for a Commission representative or (for CFSP matters) a representative of the country holding the rotating Presidency to substitute for the High Representative when she cannot participate in a debate in the plenary of the parliament.³² The question of whether consultation and hearings become *pro forma* rather than substantive tools of accountability remains to be seen.

The question of who can deputise for the High Representative on CFSP issues was also of importance to the European Parliament who, in wishing to avoid the possibility of a *fonctionnaire* (the Executive Secretary-General) deputizing, opened the door to the rotating Presidency where one of the ‘trio’ foreign ministers can deputise for the HR on CFSP issues while one of the three key Commissioners can do so in their respective areas of competence. The arrangements for deputising of CFSP issues led Andrew Duff to warn of the possible ‘danger there that the trio of Presidency comes back into the picture of foreign and security policy whereas the imperative of the Treaty was to keep them out, so we have to be careful how this is going to work’.³³

The July 2010 Council decision notes that the EEAS ‘shall extend appropriate support and cooperation to the other institutions and bodies of the Union, *in particular* to the European Parliament’.³⁴ The European Parliament is again singled out when the decision states that ‘Union delegations shall have the capacity to respond to the needs of other institutions of the Union, *in particular* the European Parliament’.³⁵ The stipulations regarding programming and instruments, which were some of the most sensitive, leave the Commission in charge of the management of the instruments, ‘without prejudice to the respective roles of the Commission and of the EEAS in programming’ and the High Representative is bound to offer sup-

³² Declaration by the High Representative on Political Accountability, 21 June 2010.

³³ Hearings, House of Lords Sub-Committee on EU foreign affairs, defense and development, 14 July 2010, p.7 at <http://www.publications.parliament.uk/pa/ld201011/ldselect/lddeucom/999/ceuc14072010.pdf>

³⁴ Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 4 (emphasis added).

³⁵ Ibid. Article 5(7).

port for the exercise of the parliament's 'discharge authority'.³⁶ The former personal representative to the Javier Solana on human rights, Michael Mathiessen, is now in charge of an office in the EEAS addressing European Parliament affairs and relations with national parliaments.

Whatever gains may have been claimed by the European Parliament, CFSP remains largely a *chasse gardée*. The new rights regarding scrutiny of the EEAS budget, alongside the ability to subject senior EEAS appointments to hearings, introduce an element of scrutiny but it would be an exaggeration to claim that there have been significant advances in accountability. The concessions that were won are notable, if only because they signify the parliament's determination to play a stronger role in EU external relations.

VII. The Member States

The EEAS, first mentioned in Article 27(3) TEU, was charged to 'work in cooperation with the diplomatic services of the Member States'. In a similar vein, the EEAS 'shall act in close cooperation with Member States' diplomatic and consular missions', under the provisions of Article 221(2) TEC. These provisions of the Lisbon Treaty could be read as a defence of the traditional intergovernmentalism of the EU Member States and a means of safeguarding against any uploading of intergovernmental responsibilities. They must though be balanced against the stipulations of Article 21(2) TEU which states that the 'Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations'. In this case, a measure of coordination is called for between national policies and actions as well as for coherence within the Union's external actions.

The Member States have been actively involved in EU external relations, through the now defunct Policy Unit, the many CFSP working parties or in liaison with other EU institutions and the Commission delegations. The novelty of the EEAS lies in the scale and permanence of the envisaged involvement of the Member States. The original concept was to have permanent secondments to the EEAS from the Member States but the final decision limits the assigned period for temporarily assigned diplomats to a period not exceeding eight years, unless under exceptional circumstances it is extended for a further two years.³⁷ The average rotation

³⁶ Ibid. Articles 1(14) and 9(1).

³⁷ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 6 (11).

in the diplomatic services of the Member States is four years overseas, followed by a period in the capital. The possibility of eight years of EEAS service may prove too long, especially for the smaller Member States with fewer diplomats to spare (alongside the risk that diplomats may 'go native' if posted for too long overseas). The backgrounds of the national diplomats (and more pragmatic considerations such as overseas allowances) means that the majority will serve in the delegations and not in the Brussels headquarters.

The assimilation of larger numbers of national diplomats within the EEAS gives rise to the question of the extent to which national diplomats will be perceived as defending or promoting wider European interests over national interests. This tendency may be especially prevalent in the delegations where the inevitable temptation will be for Member States to replicate patterns of national interest via key appointments to the delegations. In a Polish survey conducted by Ryszarda Formuszewicz and Jakub Kumoch, based upon a snapshot of heads of delegations (115 worldwide according to their survey) as they stood in mid June 2010, the need to 'safeguard that the service would represent their interests adequately and reflect their specific historical, geographical and cultural sensitivities' was very much to the fore.³⁸

The July 2010 Council decision notes that recruitment to the EEAS should be 'based on merit whilst ensuring adequate geographical and gender balance'.³⁹ The initial appointment of 27 heads of EU delegations and one deputy head superficially bears out the general trend observed in the Formuszewicz and Kumoch report. Of the 32 posts to be filled, 25 went to diplomats from the EU-15, with only four being awarded to the newer (post 2004) members (of which, two are Polish) and only seven to women. As Catherine Ashton observed when announcing the appointments, the positions above are part of a 'wider recruitment exercise' for the future EEAS, which include the top management posts within the EEAS, the permanent chair of the Political and Security Committee and 80 political posts in delegations and other vacant jobs in the headquarters.⁴⁰

³⁸ Vid. FORMUSZEWICZ, R. and KUMOCH, J., *The Practice of Appointing the Heads of EU Delegations in the wake of the Council decision on the European External Action Service*, Polish Institute of International Affairs, Warsaw, August 2010, p.8.

³⁹ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Preamble 13. The earlier draft decision, of 25 March 2010, only mentioned merit and 'the broadest possible geographical basis' and that the staff of the EEAS shall comprise 'a meaningful presence of nationals from all the Member States' (Article 6 (6)).

⁴⁰ *Press statement*, High Representative Catherine Ashton appoints new Heads and Deputy Heads of EU delegations under the 2010 rotation, A 181/10, Brussels, 15 September 2010.

The objective in staff hiring, according to the Council decision, is to ‘secure the services of staff of the highest standard of ability, efficiency and integrity’ which, it appears, has been achieved in the first round of nominations since only those with prior ambassadorial experience or status were short-listed.⁴¹ Whether this will continue to be the case remains to be seen, especially if some Member States are perceived to be privileged and others less so.

Any generalisations based on the initial appointments have to be treated with caution, but they have nevertheless led to anger in the European Parliament since they are perceived to go back on Ashton’s personal commitments to gender and geographical balance. These were contained in a speech to the European Parliament in Strasbourg on 7 July 2010:

«... I am clear that we need to ensure a proper gender and geographical balance, and not lose sight of wider diversity issues. I am personally committed to this. Diversity is strength. A service that represents the EU should reflect that diversity. The wealth of experience, insights and languages that Europe’s best diplomats will bring into the Service, will be one of our distinctive features and competitive advantage».⁴²

The nominations for the ‘strategically important’ positions, as defined by the European Parliament, appeared before the Foreign Affairs Committee in October for hearing.⁴³ The criticism of the procedures levelled by Jacek Saryusz-Wolski, a centre-right politician from Poland on the Parliament’s Foreign Affairs Committee, was met with a swift rebuttal by the HR/VP who noted that she had no control over who applied for the positions.⁴⁴ Nevertheless, any perception that the delegations are dominated by the EU-15 will naturally annoy and possibly alienate the newer members. On the other hand it could be argued that the older and often larger members, who have a longer and more diverse history of national diplomatic practice than many of the post-Soviet EU members, offer a richer pool of experience for the EEAS. For instance, the nomination for the Special Representative’s post in the Sudan, Rosalind Marsden, was the former United Kingdom ambassador to the country. The limited diplomatic experience of

⁴¹ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 6(8).

⁴² Speech to the European Parliament on the creation of the European External Action Service, Strasbourg, 7 July 2010, Speech/10/370.

⁴³ These are defined as China, Georgia, Japan, Lebanon and Pakistan and the EU Special Representative to the Sudan.

⁴⁴ Vid. VOGEL, T., “Ashton defends EEAS appointments” in *European Voice*, 23 September 2010.

most of the newer Member States was borne out by the fact that all of the applicants from the post-2004 EU members applied for just five positions – all of them in their traditional areas of interest to the east and none to, for example, Africa. It is also worth noting that not one French diplomat was appointed to a head of delegation position in the first round of nominations, in spite of considerable interest and applications from the *Quai d'Orsay*.⁴⁵

VIII. The EU delegations

The delegations have undergone the process of being converted from former Commission delegations to those of the Union. This implies that the delegations may address all areas of EU external action (buttressed by the attribution of international legal personality to the EU). The issue of the external legitimacy of the EEAS gives rise to questions that have already been broached in general terms, including what the EU stands for on the global stage and thus what the delegations represent to the outside world.

The more specific issues relate to how the EEAS staffs the delegations and the roles they fulfill. The EEAS provides most, but not all, of the staff for the delegations. Commission staff may be charged with responsibilities for remits beyond those of the Service. The head of delegation shall have authority for all of the staff in the delegation and shall be accountable to the High Representative. The July Council decision establishing the organisation and functioning of the EEAS notes that, 'In areas where the Commission exercises the powers conferred upon it by the Treaties, the Commission may ... also issue instructions to delegations, which shall be executed under the overall responsibility of the Head of Delegation'.⁴⁶ This implies that in areas of EU competence, such as the common commercial policy, enlargement, development and AIDCO, the Commission could issue instructions and copy the instructions to the head of delegation. Instructions will otherwise come from the High Representative and the EEAS. The source of instructions should not be an issue in common service devoted to forwarding the interests of the Union but it will nevertheless be interesting to see how a temporarily assigned senior diplomat will take to being issued instructions by the Commission where he (or she) is only in copy.

The role and profile of the delegations will also be influenced by who heads the delegations and what relations they strike up not only with the

⁴⁵ The French appointments were from outside the French diplomatic service and, as with other EU members, appointments may be made from the EU institutions or other ministries.

⁴⁶ Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, Article 5(3).

host country but also the local diplomatic community. The issue of how a temporarily assigned diplomat will react to his or her national diplomatic representation and how much information will be exchanged (or not), are all open issues. The Council decision stipulates that the ‘Union delegations shall work in close cooperation and share information with the diplomatic services of the Member States’.⁴⁷ The question of the extent to which this may be reciprocated remains open. It is worth noting that the draft Council decision on the EEAS of 25 March 2010 was worded differently, stating that, ‘The Union delegations shall work in close cooperation with the diplomatic services of the Member States. They shall, on a *reciprocal* basis, provide all relevant information’.⁴⁸ As we have seen, the information flow is now one way which could mark the determination of the Member States (as noted in Declaration 14 attached to the Lisbon Treaty’s Final Act) to retain their powers ‘in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations’.

The issue of information exchange will also be complicated by the physical problems with the transferral of data from the delegations at the higher levels of classification. This will become an especially pressing issue when the delegations start dealing with greater numbers of CFSP and, in particular, CSDP issues. The extent to which local EU representation may assist in the transferral of such sensitive traffic is obviously very delicate, especially from the perspective of the temporarily assigned national diplomats in the delegations.

A further curiosity and potentially significant shift in terms of the balance between the Union delegations and the national representations of the Member States is in the area of consular protection which, formerly a matter for the Member States to organise on a mutually supportive basis, may now be provided by the Union delegations ‘on a resource-neutral basis’.⁴⁹ Consular and visa services had been identified as one of the possible areas which may be subject to adjustment by the Member States towards the EU delegations on a case by case basis with the cautionary note that ‘even consular services may not be obvious for some member states which expect (or whose parliaments expect them) to act nationally to rescue their nationals in any emergency’.⁵⁰

⁴⁷ Ibid. Article 5 (9).

⁴⁸ *Proposal for a Council Decision of (date) establishing the organisation and functioning of the European External Action Service*, 25 March 2010, Article 5(9), Emphasis added.

⁴⁹ Ibid. Article 5(10).

⁵⁰ Vid. CROWE, B., *The European External Action Service: Roadmap for Success*, Chatham House, London, 2008, p. 24.

IX. Conclusions

The emergence of what is in fact, if not in name, a major new EU institution is a noteworthy event. Inevitably, the appearance of the EEAS will require accommodation on the part of the other EU institutions, as well as the EU members themselves. This may seem counter-intuitive to an environment so steeped in bureaucratic politics. Any continuation of the former *communautaire* and intergovernmental tensions, of the type that periodically erupted before the Lisbon Treaty entered into force, will damage the EEAS. The emphasis therefore should be upon the learning element, as suggested by the title. The Service implies learning how to support the top EU external relations posts most effectively and to enhance the coherence of the Union's external actions. It will also imply learning how to nurture the increasingly important European-level of diplomacy and this will, in particular, involve an adjustment of state-centric Westphalian notions of diplomacy.

As has been suggested on a number of occasions, the EEAS remains an unfinished work. Further thought and effort is required when it comes to co-ordinating with important areas of EU external action that are not supported by the EEAS, most notably the trade dimensions. The sensitive crisis management dimensions also remain at arm's length from the Service and this will require further thought and adaptation to the particularities and specificities of CSDP, whilst recognising the wider and associated security challenges facing the EU as a whole.

The future of the EEAS will depend therefore, in equal measure, upon efforts to both 'un-learn' old patterns of behaviour, as well as to adapt to the demands befalling the new Service. Although it is difficult to predict the path ahead, two factors point to a more optimistic outcome. First, the fact that all of the institutions and the Member States are integral parts of the EEAS makes it more difficult for any party to walk away unscathed from any serious derailing of the Service. Second, all agreed in the Convention on the Future of Europe that the EU's external actions needed improved coherence, efficiency and visibility. Should the EEAS fail, this fundamental challenge would still remain but, this time, in an even starker form that would pose far deeper and more fundamental questions about the EU on the world stage.