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The European External Action Service: towards a common diplomacy? **

Abstract

The Treaty of Lisbon significantly alters the way in which the European Union (EU) defines and carries out its foreign policy. Alongside the collapse of the old EU ‘pillars’, and the merger of the posts of External Relations Commissioner and of the High Representative for CFSP, the new Treaty foresees the establishment of a European External Action Service (EEAS). Comprising Council and Commission officials, as well as Member States’ diplomats, and operating under the authority of the rebranded High Representative for Foreign Affairs and Security Policy (HR), the Service aims notably at enhancing the coherence of the Union’s external action, hitherto served by the European Community, the EU and its Member States.

In accordance with the procedure provided for in the Lisbon Treaty, the new HR, Mrs. Catherine Ashton, submitted to the Council a draft decision on the organisation and functioning of the EEAS. Having obtained the political agreement of the Member States, the proposal has since been discussed with the European Parliament, whose opinion, like the Commission’s consent, is required for the Council to take the final decision. The outcome of the current negotiations will determine the extent to which the Member States and the EU institutions are able to turn the opportunity provided by the new Treaty into a vehicle for strengthening the EU external action.

Introduction

The establishment of the European External Action Service (EEAS) is envisioned by the Lisbon Treaty which entered into force on 1 December 2009. The Member States, the Commission and the European Parliament are presently negotiating the nitty-gritty of its organisation and functioning. The outcome of these negotiations will determine the extent to which the Member States and the EU institutions are able to turn the opportunity provided by the Lisbon Treaty into a vehicle for strengthening the EU external action. Will

the EEAS become a genuine diplomatic service for the Union? Will it allow the Union to assert itself in a more efficient and coherent fashion on the international stage?

Background

Inspired by the innovations envisaged by the defunct Constitutional Treaty, the Treaty of Lisbon brings about two major reforms as regards the external policy of the EU.

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First, the new Treaty foresees a *rapprochement* between the ‘pillars’ established by the Maastricht Treaty, namely the ‘Community’ pillar, over which the European Commission has the upper hand, and the more ‘intergovernmental’ pillars, namely the ‘Common Foreign and Security Policy’ (CFSP) and the ‘Police and Judicial Cooperation in Criminal Matters’. In the same vein, the post of commissioner for external relations (detained in the previous Commission by Mrs. Benita Ferrero-Waldner) is merged with that of ‘High Representative for the CFSP’ (created by the Treaty of Amsterdam, and occupied since 1999 by Mr. Javier Solana). The new ‘double-hatted’ figure (Vice-President of the Commission - High Representative of the Union for Foreign Affairs and Security Policy) is indeed empowered to chair the quasi-monthly Foreign Affairs Council, thereby enhancing its ability to instil further impetus in the development of the EU external policy.

The second major reform is the creation, to the benefit of the HR, of a ‘European External Action Service’ (EEAS). In this respect, Article 27(3) TEU stipulates that:

In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

The establishment of the EEAS thus translates, in administrative terms, the double-hatting of the new HR. In effect, it merges the services of the two EU institutions that have hitherto been actively involved in the formulation and conduct of EU external relations, notably the Directorate General for External Relations of the Commission, and various services of the General Secretariat of the Council.¹

Beyond the administrative merging of services of the two institutions based on Rue de la Loi,² the Lisbon Treaty contains an additional novelty, namely the inclusion within the EEAS of diplomats from the Member States. This innovation reflects the belief that, while being a traditional domain of State sovereignty and therefore of inter-governmentalism, diplomacy can be instilled with elements of the ‘functionalist’ method promoted by Jean Monnet. More particularly, the institutionalised cooperation between Member States’ diplomats could generate a ‘de facto solidarity’, possibly leading to the emergence of a common diplomatic culture.

To be sure, the Lisbon Treaty does not fundamentally affect the pre-Lisbon differentiation in the decision-making procedures in EU external relations. What has hitherto fallen within the purview of Community external relations remains essentially driven by the Commission (eg Trade, external aid programmes), while ‘foreign and security policy’ continue to be mostly decided by unanimity in the Council (and European Council).³

Thus, the Lisbon reforms may be regarded as essentially procedural and administrative in nature. The question therefore arises of whether these will be sufficient to trigger a momentum for the emergence of an EU diplomacy. In particular, will the institutionalised collaboration between officials from three different sources (Member States, Commission and Council), that have

¹ The CSG became home to the European Policy Co-operation, which preceded the establishment of the CFSP, when it was integrated into the European institutional framework through the 1986 Single European Act. Today, several CSG services relate to EU foreign and security policy, namely a Directorate General of the Secretariat General (DG E), a Policy Unit, a Crisis Management and Planning Directorate, a Civilian Planning and Conduct Capability, a European Union Military Staff, and a Situation Centre (‘SitCen’) for intelligence purposes.

² Commission’s DG Relex headquarters are hosted in the ‘Charlemagne’ building, next to the ‘Berlaymont’, the Commission headquarters; and opposite to the ‘Justus Lipsius’ building where the Council services are based.

³ Article 31(2) TEU however foresees possible recourse to qualified majority voting in the CFSP, in particular: ‘when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative’.

hitherto acted more in competition than in cooperation, in itself be able to generate a better coordinated and thus more efficient EU external action?

The negotiation and its actors

Some aspects of the EEAS had already been informally discussed prior to the entry into force of the Lisbon Treaty. Under Swedish Presidency, a report had been approved by the European Council (29-30 October), reflecting a broad Member States' consensus on key features of the future Service.⁴ For instance, it had been agreed that the EEAS would be a service of *sui generis* nature, separate from the Commission and the Council Secretariat. It had also been approved that the crisis management structures (ie Common Security and Defence Policy - CSDP - tools and CFSP budget) would be integrated into the Service while keeping their essentially intergovernmental nature; that the EEAS would play a strategic role in the financial programming of aid instruments (ie development); that it would cover all geographical areas in the world (though enlargement and trade policies would continue to fall within the Commission's remit); and, finally, that no distinction should be made between the three staffing sources (ie national diplomatic services and officials from the Commission and the Council), notably as regards the allocation of tasks and conditions of work within the Service. The Commission delegations, for their part, would be turned into EU delegations, integrated into the EEAS, and placed under the authority of the HR.

Given the late entry into force of the new Treaty, the Commission was sworn in only in February 2010, although Mr. José Manuel Barroso had already been confirmed back in September for a second mandate as Commission President, while Mr. Herman Van Rompuy and Mrs. Catherine Ashton had been appointed by the European Council in November, as Permanent President of the European Council and HR, respectively. In setting out his new college, and with the connivance of the European Parliament, President Barroso seemingly sought to ensure a strong influence of the Commission over the new European diplomatic service. Two elements may have helped him in this endeavour. First, HR

Ashton came herself from the outgoing Commission where she was in charge of one of the most Communitarian policies (she had succeeded to Mr. Peter Mandelson as Trade Commissioner), and second, President Barroso had appointed his former Head of Cabinet, Mr João Vale d'Almeida,⁵ to the influential position of Director General of DG Relex.

Using his power to attribute portfolios within the college, Mr. Barroso also decided that three commissioners would 'flank' Mrs. Ashton within her field of responsibility qua Vice President of the Commission: a commissioner for enlargement and neighbourhood policy (Mr. Štefan Füle, Czech Republic), a commissioner for development (Mr. Andris Piebalgs, Latvia), and a commissioner for humanitarian aid (Mrs. Kristalina Georgieva, Bulgaria). Moreover, the Commission President ensured that trade, an area of EU exclusive power, would fall outside the Vice President's attribution altogether. Such a careful distribution of portfolios suggested that the Commission would keep primary responsibility over significant aspects of EU external relations, alongside the EEAS, notably with respect to neighbouring East European and Mediterranean countries, where the EU probably exercises its strongest influence.

The Spanish Presidency of the EU, for its part, has had to adapt to the new constitutional circumstances. Prepared for a traditional presidency, Spain was looking forward to the opportunity to pursue an ambitious international agenda reflecting its priorities, including several summits with Latin American and Mediterranean countries. Given the entry into force of the Lisbon Treaty, the Spanish authorities have nevertheless had to tone down their ambitions, to let Mr Van Rompuy preside over the European Council and Mrs. Ashton chair the Foreign Affairs Council. In the present transitional phase, the rotating presidency nevertheless obtained some consolation. For instance, several summits with third countries took (or are still due to take) place in Spain, allowing its Prime Minister to preside over them. Also, the Spanish Foreign Minister was asked to represent HR Ashton on several trips abroad (eg in the Caucasus), and to chair various Council meetings

⁴ Presidency Report to the European Council on the European External Action Service ; 14930/09, 23 October 2009.

⁵ Since then, Mr Almeida has been appointed to the strategic position of EU Head of Delegation in Washington; an appointment that has led to mixed reactions from the Member States and from the European Parliament.

in her place. Indeed, pending the establishment of the EEAS and the appointment of its staff, Spanish officials have chaired various horizontal preparatory bodies in the Council, as well as the Political and Security Committee, all destined to be presided over by permanent chairs from the Service.⁶ Moreover, Spain was represented in the small team of diplomats and senior Commission and Council officials (13 in total), which HR Ashton set up to assist her in drafting the EEAS proposal.

As for the Member States, their interests and concerns have varied. On the whole, they have sought – especially the big ones – to counter the Commission’s attempts to take control of the EEAS, by making sure they are well represented in its structures. Their involvement is considered to be crucial for the success of the envisioned coexistence between the loosely coordinated Member States’ diplomacies under the CFSP, and the integrated ‘Communitarian’ external relations (based on law and common policies). In an area so imbued with national sovereignty as foreign policy, it is essential to ensure a good level of cooperation between Brussels and other European capitals, notably the biggest of them.

So far, the United Kingdom has been well served by the creation of the EEAS, being the country of origin of the HR. France, for its part, has put forward the idea that the latter ought to be assisted by a powerful Secretary General, and has not hidden its pretensions towards the post.⁷ Germany also showed an interest in the job. However, as it is set to get the position of Council Secretary General once Frenchman Mr. Pierre de Boissieu

retires, it may have to lower its ambitions and get a position of political director instead (which could be attributed to Mrs. Helga Schmid, currently head of the policy unit of the Council Secretariat General). While big Member States have thus attempted to snatch key positions within the future Service, others, in particular the small Member States and the new Member States from Central and Eastern Europe have asked for a fair representation of all nationalities, at all levels, in order avoid the big states holding the reins on European diplomacy.

On the basis of the October 2009 Presidency Report, and in accordance with the Treaty, HR Ashton drafted a decision on the functioning and organisation of the EEAS, which she tabled on 25th March 2010. The drafting process and the initial negotiations were facilitated by her close coordination with the Commission and the Member States - which had already approved the October Report, and which were represented in Ashton’s group by Spanish, Belgian and Hungarian representatives.⁸ After final negotiations within COREPER, a *political agreement* on the text was reached at the Foreign Affairs Council on 26 April.⁹

As to the European Parliament, its positions have benefited from a publicity that has been inversely proportionate to its formal power on the decision.¹⁰ According to Article 27(3) TEU, the EEAS is established by the Commission and the Council, while the Parliament is in principle only consulted. The latter has nevertheless used all leverages at its disposal (eg approval of the amended financial and staff regulations, both indispen-

⁶ Council Decision 2009/908 on the chairmanship of preparatory bodies of the Council foresees that the horizontal preparatory bodies of the Foreign Affairs Council which deal mainly with Common Foreign And Security Policy (Category 3), and with Common Security and Defence Policy (Category 4), respectively, continue to be chaired by the six-monthly Presidency during a transitional period of up to six months after the adoption of the Council Decision on the organisation and functioning of the European External Action Service (EEAS). See: Council Decision of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council (OJEU 2009 L322/28).

⁷ The name of Pierre Vimont, former French permanent representative to the EU, currently France’s ambassador in Washington, has been mentioned for this post.

⁸ Representing the current ‘trio’ of presidencies of the Council.

⁹ EUROPE Documents No 2533, 30 April 2010. The specific procedure for the adoption of the EEAS decision is noteworthy. In contrast to the traditional EU lawmaking process, whereby the Commission takes the initiative, before entering a ‘trilogue’ with the Council and the European Parliament, the EEAS decision-making process involves a ‘pentalogue’. The HR who takes the initiative, negotiates both with the Member State and the Commission, but also with the Council Secretariat General and the European Parliament.

¹⁰ Note that Mrs. Ashton’s preliminary team did not include any representative of the European Parliament.

sable for the establishment of the EEAS) to promote its own conception of the Service. Its *rapporteurs*, German Elmar Brok MEP and Belgian Guy Verhofstadt MEP, have actively advocated a 'Communitarian' EEAS, attached to the Commission,¹¹ and over which the Parliament would be able to exercise tighter control. They also pleaded for the participation, in the EEAS leadership, of the Commissioners for neighbourhood, development and humanitarian aid, respectively, as well as the appointment of *political* deputies instead of senior civil servants (ie Secretary-General and his/her deputy SG). Such political deputies would give support to, and represent the HR, who might not be able to face alone her many calendar commitments. The Parliament also asked that appointees to senior EEAS posts (ie Heads of Delegations and EU Special Representatives to one specific region or conflict) be heard by the relevant parliamentary Committee.

While it will probably not succeed in imposing all its views, the Parliament has fulfilled some of its ambitions. It has already obtained budgetary control over the EEAS, and has earned the right to be informed on CFSP and CSDP developments, notably by hearing Heads of Delegation and Special Representatives, and to be consulted on the launching of new CSDP missions.¹²

The Ashton proposal

As agreed last October, the draft EEAS decision foresees that the Service should be 'a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council'. The notion of a 'sui generis' service referred to in the Presidency Report, has by contrast not been retained. That the Service should be autonomous may be

reinforced by the fact that it is treated as an 'institution' within the meaning of the Financial and Staff Regulations. Moreover, it ought to have the legal capacity necessary to perform its tasks and attain its objectives, as well as its own budget, its own staff, and a legal department.

Its task will be to support the HR in her threefold capacity, ie as HR for Foreign Affairs and Security Policy, as President of the Foreign Affairs Council, and as Vice-President of the Commission. It shall also help her to ensure the consistency of the EU's external action. In particular, it shall support and work in cooperation with the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission. It should also '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'.

In terms of structure, the draft decision envisages that the EEAS should be made up of a central administration and of EU delegations to third countries and to international organisations, placed under HR authority. It should be managed by an 'executive' Secretary General, assisted by two Deputy Secretaries-General, to ensure a 'collegiate' leadership of the Service. It should be composed of several Directorates General comprising geographic desks covering all countries and regions of the world, as well as multilateral and thematic desks, a Directorate General for administration, and a Directorate General for crisis management including the various CSDP structures. Importantly, the draft decision foresees that the latter's specific functions, recruitment and staff status should be respected, thus introducing differentiation in the functioning of the EEAS, depending on the subject matter.

¹¹ See the press release of the Conference of Presidents, on the report from the Parliament's three rapporteurs, Elmar Brok, Guy Verhofstadt and Roberto Gualtieri on the External Action Service, 10 June 2010 http://www.europarl.europa.eu/news/expert/infopress_page/030-75815-161-06-24-903-20100610IPR75814-10-06-2010-2010-false/default_en.htm

¹² Following a 'quadrilogue' between the Parliament, Council, Commission, and the HR, an agreement on the 'Declaration by the High Representative on Political Accountability', has been reached which reinforces the scrutiny of the Parliament over the CFSP and EU external action. Also, an agreement was found on a Statement by the HR on the Basic Organisation of the EEAS Central Administration, which notably gives assurances on priority arrangements for the promotion of human rights and on integrated crises management and peace-building structure, involving current Council and Commission services; see press release of the Conference of Presidents, *supra*.

The EU delegations would become part of the service, and depend on the HR. However, they would be able to accommodate personnel from the Commission (e.g. from DG trade, agriculture etc.), who would operate under the overall authority of the Head of Delegation, even if they receive instructions from their home service. In practice therefore, the Head of Delegation would have to coordinate the different impulses the Delegation is set to receive. The Ashton proposal also foresees that EU delegations should work in close cooperation, and share information with the diplomatic services of the Member States. Moreover, they might, upon the latter's request, support them in their diplomatic relations and in their role of providing consular protection to Union citizens in third countries. EU delegations could also take over tasks hitherto assumed by the rotating presidency in third countries (eg contact with authorities on behalf of the EU, chairmanship of meetings of EU Member States ambassadors).

Recruitment to the EEAS should be based on merit, and adequate gender and geographical balance. The draft decision underlines the principle of equality of treatment between the three sources of EEAS staffing. Thus, all officials should have the same rights and obligations, be treated equally, in particular as concerns eligibility to assume all positions, under equivalent conditions.¹³ Recruitment procedures should be tripartite: selection panels would include representatives of Member States, Council and Commission. The proposal however envisages that the Commission retain a veto right over the choice of Heads of Delegations.

In the longer term, it is expected that Member States' diplomats could amount to 1/3 of the EEAS 'administrators'. Indeed, in view of the diplomatic and military staffs already working in the EU institutions, notably in the crisis management structures or as 'seconded

national experts' ('SNEs'),¹⁴ the required amount of EEAS staff of Member States origin is almost reached.

In the initial phase, given the limited creation of new posts (the draft decision insists on cost-efficiency, budget neutrality, rationalisation to avoid unnecessary duplication of tasks, functions and resources), the EU diplomatic service could amount to 1 000-1 500 administrators (of which three quarters would be located in Brussels), and a total workforce of about 3 000 people. Half of the EEAS administrators may initially come from the Commission services (ie DG Relex, and parts of DG Development for African, Caribbean and Pacific countries, and delegations staff working on political affairs).

The proposal foresees that EEAS staff members should be subject to a high degree of mobility, notably between central administration and delegations, the principle being that all staff should periodically serve in delegations. As to national diplomats, the draft decision envisions a maximum service of eight years, with a possible, albeit exceptional extension of 2 years if in the interest of the Service. While the decision foresees the right for EU officials serving in the EEAS to apply for posts in their institution of origin on the same terms as internal applicants, it cannot be excluded that in the longer term, the original organic link between the Service and the bodies of origin will weaken, reinforcing as a result the institutional autonomy of the EEAS.

Finally, as regards the programming of EU external cooperation instruments,¹⁵ the HR and the EEAS are expected to work with the relevant members and services of the Commission, 'throughout the whole cycle of programming, planning and implementation of these instruments'. Strategic political guidance should come

¹³ Note that Member States diplomats would be employed by the Service as 'temporary agents'. Further on staffing, see: Proposal for a Regulation of the European Parliament and of the Council amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities; COM(2010) 309 final.

¹⁴ There are more than 200 'SNEs' (administrator-level) currently working on external policy for the Commission and the SGC (outside of military staff). It has been decided that their transfer to the EEAS would be subject to their Member States' approval; and that ultimately, there would no longer be any SNEs in the service.

¹⁵ Namely, the Development Cooperation Instrument, the European Development Fund, the European Instrument for Democracy and Human Rights, the European Neighbourhood and Partnership Instrument, the Instrument for Cooperation with Industrialised Countries, the Instrument for Nuclear Safety Cooperation, the Instrument for Stability, (regarding the assistance foreseen in article 4 of EC Regulation 1717/2006).

from the HR, while the EEAS should have responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle. All proposals for decision are destined to be prepared through Commission procedures and submitted to the Commission for decision.

With respect to instruments related to Neighbourhood and Development, any proposals, including those for changes in the basic regulations and the programming documents, should be prepared by the relevant services in the EEAS and in the Commission, under the direct supervision and guidance of the responsible Commissioner (neighbourhood, or development) and then jointly submitted with the HR for decision by the Commission. The CFSP budget and parts of the stability instrument would nevertheless remain within the EEAS orbit, while the Commission would keep control of the Instrument for Pre-accession in view of its enlargement competence.

Innovation or business as usual?

Will the establishment of the EEAS lead to the development of a genuine common diplomacy? Will it ensure more coordination between the EU action and national diplomacies? Or will the new Service's role be circumscribed by the Member States' external competence, which the Lisbon Treaty has not fundamentally affected? Without pretending to provide an answer to these questions, suffice it to mention the following three points.

First, the creation of the EEAS may create opportunities to pull together the scattered and sometimes competing resources in the EU system of external relations. Embodying a rapprochement between the Communitarian and the CFSP logics, the service is expected to forge a EU common diplomatic culture, under the authority of the HR. Yet, risks of cacophony and overlaps between the Commission services, between HR Ashton and other commissioners, between Presidents Barroso and Van Rompuy, should not be underestimated.¹⁶ In

particular, the draft decision contains many ambiguous clauses whose interpretation will probably generate turf battles. One glaring example can be found in Article 2(1) that defines the tasks of the EEAS. It is mentioned that it shall support the HR notably:

- in her capacity of President of the Foreign Affairs Council, *without prejudice to the normal tasks of the General Secretariat of the Council*;
- in her capacity as Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, *without prejudice to the normal tasks of the services of the Commission*. (emphasis added)

It is not unlikely that the expression 'normal tasks' might have a different meaning whether read by a Commissioner, or by an EEAS staff member. Indeed, the functioning of the Service will probably remain determined by an invisible yet genuine distinction between two cultures: a Communitarian-like culture inherited from DG Relex (which will be numerically dominant in the EEAS, and which will most likely have the greatest influence on the geographic and thematic DGs, and on delegations); and a political culture inherited from the Council policy unit and crisis management structures, deemed to retain a certain autonomy within the Service. In this respect, the draft decision suggests that the EEAS might well internalise past bureaucratic conflicts, rather than do away with them.

Second, the interface between the EEAS and the Member States is equally fraught with uncertainty. Through their membership of institutions like the UN Security Council, the G8 and G20, and their differentiated participation in crisis management (eg the 'Balkan Contact Group' or the E3/EU group on Iran, involving France, Germany and the UK), Member States (in particular the big ones) will undoubtedly continue to play a key role. A good interaction between the EEAS and EU

¹⁶ See T. Chopin and M. Lefebvre, « Après le traité de Lisbonne : l'Union européenne a-t-elle enfin un numéro de téléphone ? », Fondation Robert Schuman, Questions d'Europe n°151, http://www.robert-schuman.eu/doc/questions_europe/qe-151-fr.pdf

capitals – either through Brussels structures (COPS, COREPER, working groups), or through key people in the EEAS, or in political *cabinets* – will remain essential. Whether such coordination will prove sufficient to tame national ambitions, if and when they express themselves, remains however to be seen.

A third significant element ought to be pointed out. The broader context within which the Lisbon Treaty enters into force and the EEAS is set up, may well prove con-

ducive to the latter's significance: European states tend to become marginal on the international scene, US Administration's interest in Europe is declining, and new global powers are emerging. Against this backdrop, a stronger EU could compensate for the relative decline of its Members, if they are able to define their common interests, affirm a common will, and act as a collective whole. In establishing a rotation of diplomats between the EEAS and Member States' MFAs, the Lisbon Treaty may well offer an opportunity – a starting point for an integrated EU diplomacy.