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European Union's External Relations: More Consistency?

Abstract: *This article analyses the innovations introduced by the Treaty on the European Union and the Treaty on the Functioning of the European Union to the Common Foreign and Security Policy. The article first examines the structure of the European Union's external relations after the Treaty of Lisbon. Secondly it analyses two of the most important innovations, namely, the new position of High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service. Thirdly, it outlines the future difficulties and challenges of the two innovations. The article demonstrates that these institutions' main aim is to ensure the consistency of EU's external action. In conclusion it is pointed out that these innovations do not provide all the necessary remedies for the shortcomings of the EU's external relations, but do provide the necessary basis upon which progress and change in the development of more consistent external relations can be realised, in particular by establishing the cornerstone of a new European-level of diplomacy.*

Introduction

The aim of the Treaty establishing a Constitution for Europe (the Constitutional Treaty or Constitution), which was rejected by the Dutch and French voters in 2005, was to bring consistency and coherence to the European Union's external relations.¹ The aim of the Treaty of Lisbon was to surmount the deadlock created by the failure to adopt the Constitutional Treaty. Yet

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¹ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty.html> (last visited 25.05.2010).

despite the rejection, the major text and reforms of the Constitution were kept largely intact in the Treaty of Lisbon.²

The Treaty of Lisbon of 13 December 2007, which came into force on 1 December 2009, has introduced major institutional innovations within the realm of the Union's external relations. As Jan Wouters states, the Treaty of Lisbon is aimed at bringing '*increased consistency to the external action of the Union*'.³ Important institutional reforms and innovations have been introduced to strengthen the collective action of the Union on the world stage. According to N. Nugent, consistency is a major factor that determines the extent to which a global actor can establish itself on the world stage and be effective. For the European Union, consistency has been a major problem in the conduct of its external relations.⁴ There are different reasons why consistency in EU policy is difficult to realise: Diversity of EU external relations' interests and activities; diversity of actors and EU external relations policies; differing competences according to different policy contexts; conflicting preferences of the Member States on some policy issues; different level of development of EU policies such as common commercial policy and military security policy; as well as consistency problems which occur at the representation level.⁵

With the ratification of the Treaty of Lisbon, amendments were introduced to the Treaty on European Union and the Treaty establishing the European Community, which after Lisbon has been re-named the Treaty on the Functioning of the European Union.⁶

This paper examines the following questions: What are the modifications/innovations which the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) bring to the external policy of the European Union, and to what extent will these modifications/in-

² J. Jacqu , *Les R formes Institutionnelles Introduites par Le Traite De Lisbonne (Institutional Reforms Introduced by the Treaty of Lisbon)* in: *Le Trait  de Lisbonne: Reconfiguration ou d -constitutionalisation de l'Union Europ enne? (The Lisbon Treaty: Reconfiguration or De-constitutionalisation of the European Union)*, eds. E. Bosset, C. Chevallier-Govers, V. Edjaharian, C. Schneider, Bruxelles 2009, p. 57–73.

³ J. Wouters, D. Coppens, B. De Meester, *The European Union's External Relations after the Lisbon Treaty* in: *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?*, eds. S. Griller, J. Ziller, Wien 2008, p. 143–203.

⁴ N. Nugent, *The Government and Politics of the European Union*, Basingstoke 2006, p. 519–522.

⁵ *Ibidem*, p. 519–520.

⁶ The Treaty on the Functioning of the European Union (TFEU) refers to the new re-numbered and re-named Treaty establishing the European Community, see Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 83, 30.03.2010., and the Treaty on European Union (TEU) refers to the new Treaty on European Union after the Lisbon Treaty modifications, see Consolidated Version of the Treaty on European Union, OJ C 83, 30.03.2010.

novations enhance EU's consistency in its external relations? The scope of this paper prohibits a detailed examination of all the new provisions, so we will focus on two of the most important institutional innovations of the Common Foreign and Security Policy (CFSP). In the first part, we will examine the external relations' structure after the Treaty of Lisbon. In the second part, we will examine the provisions on the High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service. In the third part, we will examine the future difficulties and challenges facing these two institutions.

1. The external relations' structure after the Treaty of Lisbon

Before examining the new institutions and their potential for bringing consistency into EU actions, we will briefly examine the general structure of the EU's external relations after Lisbon Treaty amendments.

The Common Foreign and Security Policy and the other areas of EU external relations are separated. The TEU has a new Title V '*General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy*'.⁷ Other aspects of the Union's external action are in Part V of the TFEU: '*The Union's External Action*'.⁸

The European Union's external action can be divided into two realms: CFSP/CSDP (Common Security and Defence Policy) and Community external policies.⁹ Both realms have broadly the same objectives, which helps

⁷ The European Security and Defence Policy is an integral part of the Common Foreign and Security Policy, '*The common security and defence policy shall be an integral part of the common foreign and security policy*' (Article 42 of the TEU). G. Quille, *The Lisbon Treaty and its Implications for CFSP/ESDP*, "Security and Defence Briefing Paper", February 2008, available at <http://www.europarl.europa.eu/document/activities/cont/200805/20080513ATT28796/20080513ATT28796EN.pdf> (last visited 21.06.2010).

⁸ The old Title V of the TEU '*Provisions on a Common Foreign and Security Policy*' is renamed as '*General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy*', which in turn is divided in two chapters: chapter I '*General Provisions on the Union's External Action*', and chapter II '*Specific Provisions on the Common Foreign and Security Policy*'. The CFSP chapter is divided into two sections: '*Common Provisions*' and '*Provisions on the Common Security and Defence Policy*'.

⁹ The EU's external action is divided within the Treaties. It can be categorised into two spheres: the CFSP/CSDP and Community external policies, such as trade, development, enlargement, humanitarian aid...etc. '*The CFSP is subject to specific procedures and rules*'. The Lisbon Treaty has not eliminated the duality of this decision-making, and the specificities of the two domains have remained. In CFSP/CSDP, intergovernmentalism prevails, with the Member States deciding in the Council of Ministers unanimously without the European Parliament. On the other hand, in Community policies, the Community method applies.

preserve the coherence of the EU's external policy.¹⁰ Article 3 paragraph 5 of the TEU states the objectives of EU's external action,¹¹ and Article 21, Title V of the TEU states the principles and values that should be respected and promoted in the EU's external action.¹² As a consequence of the latter, in Association Agreements and international trade agreements, clauses on both human rights and sustainable development are included. But while the treaties provide a legal basis for including them, the TEU does not link them. J. Wouters explains that the objective of peace and security is not linked to the objective of eradicating poverty. If both objectives were recognised as complementary, this would strengthen the EU's developmental cooperation.¹³ The objectives differ according to the different areas of competence. The implementation of developmental policy, environmental policy, or common commercial policy, which must encompass the objectives of Article 21 of the TEU, do not affect the implementation of the CFSP (Article 40 of the TEU).

The different instruments of the CFSP are modified by the new Treaty.¹⁴ Article 25 of the TEU states '*the Union shall conduct the CFSP by (a) defining the general guidelines; by (b) adopting decisions defining (i) actions to be undertaken by the Union, (ii) positions to be taken by the Union, (iii) arrangements for the implementations of the decisions referred to in points (i) and (ii), and by (c) strengthening systematic cooperation between Member States.*' Within the CFSP sphere, acts are not of a legislative nature, while within the external relations realm, the Community methods for decision-making are applied for all domains of EU action. Thus for the CFSP and CSDP, where decisions are usually taken by unanimity and where intergovernmentalism prevails, qualified majority voting (QMV) applies to only some cases of the CFSP.¹⁵

¹⁰ J. Wouters, *op.cit.*, p. 146.

¹¹ '*In its relations with the wider world, the Union shall up-hold and promote its values and interests... contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights...*'.

¹² '*The Union's action on the international scene shall be guided by the principles...of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law*'.

¹³ J. Wouters, *op.cit.*, p. 148–149.

¹⁴ CFSP instruments are modified compared to previous instruments (Article 12 of the TEU before the Treaty of Lisbon), which were: '*The Union shall pursue its objectives by: defining the principles of and general guidelines for the common foreign and security policy, deciding on common strategies, adopting joint actions, adopting common positions, strengthening systematic cooperation between Member States in the conduct of policy.*'

¹⁵ J. Wouters, *op.cit.*, p. 148–149 and 161–162. One of the circumstances which allows the application of QMV in the CFSP realm is stated in the paragraph 2 of Article 31 of the TEU '*The Council shall act by qualified majority:...When adopting a decision defining a Union ac-*

Two declarations – No. 13 and No. 14 – followed the final act of the Intergovernmental Conference (IGC) which adopted the Lisbon Reform Treaty. These declarations reiterated that the institutional innovations do not affect the competences of the Member States in formulating and conducting their foreign policy, its national diplomatic service, relations with third countries and participation in international organisations. The innovations do not increase the power of the Commission to initiate decisions nor the power of the European Parliament in the CFSP realm.¹⁶ These declarations reflect the reluctance of the Member States to give up their sovereignty. Most importantly, they demarcate the limits of the new innovations, often referred to as the ‘*Communautarisation*’ of the CFSP.

Within the CFSP, the European Parliament and the Commission have restricted roles. The Commission has lost its autonomous right of initiative, it must support proposals submitted by the High Representative (Article 30 of the TEU). In the CFSP realm, the High Representative is the new contact person in the European Parliament, who shall regularly inform it and to whom it can address questions and recommendations (Article 36 of the TEU). The European Parliament should be regularly ‘*consulted on aspects of the CFSP and not only in CFSP issues*’.¹⁷ As the administrative and operating expenditures of the CFSP are within the Union budget, the European Parliament retains a certain influence via its budgetary control.¹⁸ The European Court of Justice (ECJ) remains excluded. The ECJ has no jurisdiction over the CFSP provisions, and has competence to monitor only in the cases stated in the Article 24 and Article 40 of the TEU and Article 275 of the TFEU.¹⁹

The Union is responsible for ensuring consistency between the different policies of its external action and between these and its internal policies (Article 21, paragraph 3 of the TEU).²⁰ The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security

tion or position, on a proposal which the High Representative has presented following a specific request from the European Council, made on its own initiative or that of the High Representative’. Even when a decision is adopted by QMV, Member States can invoke the ‘*national interest*’ exception.

¹⁶ Ibidem, p. 147.

¹⁷ W. Wessels, F. Bopp, *The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or Challenges ahead?* “Centre for European Policy Studies Research Papers” No. 10/2008, p. 1–37.

¹⁸ Ibidem, p. 14.

¹⁹ J. Wouters, op.cit., p. 164–165.

²⁰ Article 21 paragraph 3 of the TEU: ‘*The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect*’.

Policy, are responsible for ensuring this consistency and should co-operate to preserve it. Article 18 paragraph 4 of the TEU states that the High Representative must ensure the consistency of the Union's external action; the European Council with the High Representative can ensure consistency in the EU's external relations,²¹ thus increasing the role of the European Council. Jan Wouters explains that one of *'the instruments for ensuring consistency is placed in the hands of the European Council, which can adopt by unanimity decisions on strategic interests and objectives concerning the entire external actions of the Union'*,²² not just the CFSP.

The different instruments designed to make the EU's external action more consistent with its institutional innovations, namely the new functions of the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) and the European External Action Service (EEAS), are examined below.

2. The major institutional innovations introduced by the TEU and the TFEU

The major innovations that have the potential to make EU external relations more consistent are the new post of High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service. They aim to allow the EU to have a continuous and visible representation and permit the EU to more coherently formulate and implement its external policies.²³

2.1. The High Representative of the Union for Foreign Affairs and Security Policy

The Lisbon Treaty did not adopt the term *'Union Minister for Foreign Affairs'* which was used in the Constitutional Treaty, namely due to the resistance of United Kingdom to the word *'Minister'*, instead creating the new title *'High Representative of the Union for Foreign Affairs and Security Policy'*.²⁴

The High Representative (HR) has two roles; she combines the position of the High Representative for the CFSP (Council) with the function of Commissioner for External Relations (Commission) (Article 18 of the TEU). The

²¹ J. Wouters, *op.cit.*, p. 149–150.

²² *Ibidem*, p. 149–150.

²³ C. Molling, *ESDP After Lisbon: More Coherent and Capable?* "Centre for Security Studies Analyses in Security Policy" Vol. 3/2008, p. 1–3.

²⁴ J. Wouters, *op.cit.*, p. 150.

previously separate roles of the Commissioner for External Relations (which was held by Benita Ferrero-Waldner) and High Representative of CFSP (which was held by Javier Solana) are abolished; the two roles are combined in the one person of the '*High Representative*'. The High Representative has the powers of initiative, management, and implementation in the CFSP realm.²⁵ The new High Representative is no longer the Secretary-General of the Council of the European Union, nor the Secretary-General of the Western European Union.²⁶

Moreover, the High Representative is the Vice-President of the Commission and chairs the Foreign Affairs Council (one the bodies of the European Council) (Article 18 of the TEU).²⁷ The activities of the Foreign Affairs Council is not limited to the CFSP, as it will also '*elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent*' (Article 16 of the TEU).

The High Representative is a member of the Commission and takes part in its decisions. She has a right of initiative in both her capacities as the High Representative and the Vice-President of the Commission.²⁸ The High Representative takes part in the work of the European Council,²⁹ but is not a member of the Council and does not have the right to vote. The High Representative is responsible for the consistency and elaboration of the Union's external action.³⁰

The High Representative is appointed by the European Council, acting by QMV and with the agreement of the President of the Commission; the same procedure is applied for his/her resignation (Article 18 of the TEU). As the High Representative has a dual role, the European Parliament has to approve her appointment inasmuch as the Commission as entity has to have the consent of the European Parliament (Article 17 of the TEU).

The High Representative's competences and responsibilities encompass the different dimensions of EU external activities. Together with the Mem-

²⁵ C. Kaddous, *Role and Position of the High Representative of the Union for Foreign Affairs and Security Policy Under the Lisbon Treaty*, in: *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?*, eds. S. Griller, J. Ziller, Wien 2008, p. 205–221.

²⁶ A. Missiroli, *Implementing the Lisbon Treaty: The External Policy Dimension*, "Bruges Political Research Papers" No. 14/2010, p. 6.

²⁷ The Lisbon Treaty divided the current General Affairs and External Relations Council into a General Affairs Council and a Foreign Affairs Council.

²⁸ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p. 7. The right of initiative is fundamental, since it gives its holder a important power in the definition of policy.

²⁹ Ibidem, p. 6. Moreover, among her different tasks the High Representative will chair the Boards of agencies such as the European Defence Agency, the EU Satellite Centre, the EU Institute for Security Studies and the European Security and Defence College (ESDC).

³⁰ J. Wouters, op.cit., p. 152.

ber States, the High Representative formulates and sets the policies and activities of the CFSP. The High Representative has the responsibility for external dialogue with third countries and representation of the EU in international organisations and at international conferences (Article 27 of the TEU).

The High representative's primary role is to bridge the tensions in the EU's external action. Firstly, within the Community's policies that have an external aspect, there are tensions between the Commission and the Council. In this sphere, the influence of the Member States is weakened by decision-making based on QMV. Second, there are tensions between the Community's external policies and the CFSP. And there are tensions between the Commission and the Member States.³¹ Article 18 of the TEU states clearly that the High Representative '*shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action.*' But do the treaties provide the High Representative with the necessary instruments to bridge these tensions and assure the consistency of Union's external action?³²

The High Representative's main aim would be to assure the consistency and coordination of inter-institutional relations regarding external relations. Article 18 of the TEU provides: '*He shall ensure the consistency of the Union's external action. He shall be responsible [...] for coordinating other aspects of the Union's external action.*' As Vice-President of the Commission, she is responsible for the coordination of external policies within the Commission. This might involve tensions between the President of the Commission and those Commissioners in charge of policies that have external implications. The High Representative is in charge of building bridges between the Commission and Council, and also between the different Commissioners responsible for different aspects of the EU's external relations, as well as Commissioners that are in charge of internal policies that have an external dimension.³³

According to Antonio Missiroli, '*such a multi-hatted position represents a unique opportunity to bring coherence to the Union's "foreign policy," but is also a daunting challenge for the post holder*'.³⁴

2.2. European External Action Service (EEAS)

The pivotal innovation of the Treaties is the establishment of the EEAS. The EEAS embodies the idea that the potential for more consistent external relations lies in establishing the basis for a new European-level of diplomacy.

³¹ Ibidem, p. 150–151.

³² Ibidem, p. 150–156.

³³ Ibidem, p. 152–154.

³⁴ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p. 7.

According to A. Missiroli, the ultimate aim and strategic rationale of the establishment of the European External Action Service is *'the creation of a common culture and practice among European officials and diplomats...EEAS is meant to become an instrument for the cross-fertilisation of foreign policy-making across the EU and the inter-changeability between national and European administration'*.³⁵

The establishment of EEAS is contained in the provisions of Article 27 of the TEU: *'In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in co-operation 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 Member States'*. The EEAS is established by a decision of the Council on the basis of unanimity, the Council must act on a proposal of the High Representative after consulting the European Parliament and after obtaining the Commission's consent. On 25 March 2010, Catherine Ashton, the High Representative for Foreign Affairs and Security Policy, presented a proposal for a Council decision for the establishment of the organisation and functioning of the EEAS.³⁶ According to Article 27 of the TEU, the Council should review the High Representative's proposal and should reach to a decision no later than the beginning of 2014. On 26 April 2010, the General Affairs Council reached a political orientation on the draft decision on the establishment of the EEAS on the basis of the proposal presented by the High Representative. This agreement provided a basis for consulting the European Parliament.³⁷

Jan Wouters explains that the TEU article on the EEAS understates the difficulties in setting it up. The exact structure, scope and organisation of the EEAS are left vague and open.³⁸ The precise nature, status and scope of the EEAS are also left to future negotiations.³⁹ According to Jan Wouters, it would have been much better and correct if Article 27 of the TEU, which

³⁵ Ibidem, p. 17.

³⁶ Proposal for a Council Decision of 25 March 2010 establishing the organisation and functioning of the European External Action Service, from the High Representative for Foreign Affairs and Security Policy, see <http://register.consilium.europa.eu/pdf/en/10/st08/st08029.en10.pdf> (last visited 08.07.2010).

³⁷ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/114045.pdf#page=8 (last visited 27.06.2010).

³⁸ J. Wouters, op.cit., p. 156–157.

³⁹ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p. 9. The broad lines of the EEAS were agreed upon in early 2003 in the context of the Convention on the Future of Europe, but the actual talks concerning implementation began only in early 2010. A lot of time was wasted without engagement in serious discussions.

stipulates the establishment of the EEAS, was put under Chapter One of Title V concerning the Union's external action, which has a general application, instead of the CFSP Chapter, since the EEAS should bridge the different components of the Union's external action.⁴⁰

Moreover, Article 27 of the TEU is vague concerning who might serve in the EEAS; it merely states '*officials from relevant departments*'. In the preparatory phase of the EEAS different approaches were visible: minimalist and maximalist. In the minimalist approach, the EEAS should include the Directorate-General from the Council Secretariat, together with the Commission's DG External Relations (RELEX), with or without the Commission's current External Service.⁴¹ In this case the EEAS should coordinate with the relevant Commission DGs dealing with external relations such as Trade, Enlargement, Development, EuropeAid, and ECHO, all of which are outside of the EEAS. According to the maximalist approach, it should include all of the foreign policy units of the Council Secretariat, all of the External Relations DGs of the Community, the Union delegations, EuropeAid and ECHO.⁴² The minimalist approach, even though it is realistic, would make the EEAS's co-ordination tasks a great challenge. As for the maximalist approach, it requires enormous institutional reorganisation.⁴³

In addition, Article 27 of the TEU does not precisely specify the position of the EEAS. It is not clear if the EEAS should be an autonomous service, outside the Commission or the Council Secretariat, or whether it would be linked to one or both.⁴⁴ The first preparatory works of the EEAS indicated that the EEAS would be an institution under the authority of the High Representative. For the European Parliament, it was absolutely necessary that the '*EEAS be incorporated in organisational and budgetary terms in the Commission's staff*'.⁴⁵

The EEAS will play a pivotal role in assuring the consistency, coherence and effectiveness of EU external relations.⁴⁶ Based on the proposal presented

⁴⁰ J. Wouters, *op.cit.*, p. 156.

⁴¹ *Ibidem*, p. 157. The Commission has 136 Commission delegations, with the Treaty of Lisbon they become '*Union Delegations*' and are placed under the authority of the High Representative.

⁴² *Ibidem*, p. 157–158.

⁴³ *Ibidem*, p. 158.

⁴⁴ *Ibidem*, p. 158.

⁴⁵ *Ibidem*, p. 159–160.

⁴⁶ S. Duke, *The Lisbon Treaty and External Relations*, "EIPASCOPE" No. 1/2008, available at <http://www.eipa.eu> (last visited 26. 05. 2010), p. 13–17. Simon Duke explains that Member States' perception of the EEAS and their contributions in terms of staff to the EEAS will play a large role in shaping the Service, regardless of whether they choose to see the Service as an opportunity or a threat to the conduct of their foreign policy.

on 25 March 2010 by the High Representative, the following approaches have been adopted: the EEAS would be an *autonomous body*, a structure different and separate from the Commission and the General Secretariat of the Council; it will be a service in its own right; it will have a budget of an autonomous body; and the High Representative will be the only ‘*appointing authority*’.⁴⁷ Officials eligible for service in the EEAS will be from the General Secretariat of the Council, the Commission, and from the Member States⁴⁸ (which will make up one third).⁴⁹ In the initial phase (until 2013), recruitment would be limited to these three components, after which other officials and experts can apply. The transfer of officials will take effect on the date of the adoption of the amending Budget of the European Union.⁵⁰

The proposal presented by the High Representative insists that the role of the EEAS is to support the High Representative in ensuring the consistency of the EU’s external action. Article 2 of the proposal posits as one of the tasks of the EEAS: ‘*The EEAS shall support the High Representative in fulfilling her mandate to conduct the Common Foreign and Security Policy of the EU and to ensure the consistency of the EU’s external action*’.⁵¹

The European Parliament was formally consulted on the organisation and functioning of the EEAS.⁵² A large majority approved the opinion in support of a proposal for the EEAS on 8 July 2010 at a European Parliament session.⁵³

⁴⁷ The Union Delegations are an integral part of the EEAS. The Staff of the Delegations shall comprise EEAS staff and Commission staff. The Heads of the 136 EU Delegations in third countries and international organisations will be accountable to the High Representative. This has been also confirmed in the Council Decision on the EEAS. See: Decision No. 2010/427/EU of the Council of the European Union of 26 July 2010 establishing the organisation and functioning of the European External Action Service; OJ L 201, 03.08.2010, p. 30–40..

⁴⁸ Personnel from the Member States that are eligible to the EEAS can be specialised seconded national experts (SNEs). This has been also confirmed in the Council Decision on the EEAS. See also: the High Representative’s Proposal to the Council, available at <http://register.consilium.europa.eu/pdf/en/10/st08/st08029.en10.pdf> (last visited 27.06.2010).

⁴⁹ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p. 18.

⁵⁰ <http://register.consilium.europa.eu/pdf/en/10/st08/st08029.en10.pdf> (last visited 27.06.2010).

⁵¹ *Ibidem*, p. 1–30.

⁵² Discussions between the Member States have been ongoing since 2004, before the entry in force of the Treaty of Lisbon. In order to move forward the negotiations, the Member States set the basis for the Service in their endorsement of the E. Broke report of the Swedish Presidency of 30.10.2009. (The current European Council’s decision of 26 July 2010 diverges from this report however. The Broke report was adopted to push forward the negotiations). The Parliament refused to give its approval for High Representative’s proposal of 25 March during its June session. See: <http://register.consilium.europa.eu/pdf/en/09/st14/st14930.en09.pdf> (last visited 30.07.2010).

⁵³ See http://www.europarl.europa.eu/news/expert/infopress_page/030-78057-186-07-28-903-20100707IPR78056-05-07-2010-2010-false/default_en.htm (last visited 30.07.2010).

The Parliament presented some changes to the proposal of the High Representative. The main elements insisted upon by the European Parliament were that the EEAS' identity as '*Commautaire*' must be strengthened, and its political and budgetary accountability to the Parliament must be ensured. The Parliament refused to allow civil servants to represent the High Representative in order to brief the Parliament. She could be replaced either by the EU commissioners for enlargement, development or humanitarian aid, or by the Foreign Affairs Minister of the country holding the EU presidency. The Parliament requested that the Commission maintain control over the external cooperation programs, development and neighbourhood policy, contrary to the High Representative's proposal, which gives more power to the EEAS in these areas.⁵⁴

On 26 July 2010, after several months of negotiations between the Member States, the High Representative, the Commission and the European Parliament, the Council adopted a decision establishing the EEAS. The Council decision was adopted unanimously by the Member States, agreed upon by the European Commission, and consulted with the European Parliament. The European Council's decision diverged from Parliament's recommendations on some important elements.

The European Council's decision of 26 July 2010 on the EEAS establishes the Service's nature, scope, budget, and staff. The Council's decision reiterates the High Representative's proposal of 25 March 2010, presented above. The decision on the EEAS can be summarised by the following main elements: The EEAS will support the High Representative in her tasks, as stated in Articles 18 and 27 of the TEU. It will also assist the President of the European Council and the Commission and its President in their functions in the external relations realm. It will cooperate with the Member States, General Secretariat of the Council, and the Commission in order to ensure consistency between different areas of the Union's external action. It will be functionally autonomous, separate from the General Secretariat of the Council and from the Commission.⁵⁵

As for the structure of the Service, it will consist of a central administration⁵⁶ and EU delegations in third countries and at international organisa-

⁵⁴ See: http://www.europarl.europa.eu/news/public/focus_page/008-76988-176-06-26-901-20100625FCS76850-25-06-2010-2010/default_p001c016_en.htm (last visited 31.07.2010).

⁵⁵ See: Decision No. 2010/427/EU of the Council of the European Union of 26 July 2010 establishing the organisation and functioning of the European External Action Service; OJ L 201, 03.08.2010, p. 30–40.

⁵⁶ As stated previously, the EEAS will be placed under the authority of the High Representative. It will be managed by a team consisting of an executive Secretary General, two deputies and a senior Director General for budget and administration.

tions.⁵⁷ Within the administration, the Service's activity will be organised in Directorates-General, with five Directorates-General encompassing geographical desks covering all countries and regions of the world (Middle East and South Mediterranean; Eastern Neighbours and Russia; Africa; Americas; and Asia) as well as thematic desks and a Directorate-General for administration, staffing, and budgetary, security and communication matters.⁵⁸ The Council decision foresees a separate DG for the coordination of the EU's external relations.

The EEAS has a significantly large scope. It will include a crisis management and planning directorate, civilian planning and conduct capability, the EU Military Staff and the EU Joint Situation Centre, which are placed under the direct authority and responsibility of the High Representative to assist her in the task of conducting the Union's CFSP. The EEAS encompasses the various external relations DGs of the Council and of the Commission, except the DGs for enlargement, humanitarian aid, and trade, which remain within the Commission's competence. It also encompasses the various external assistance financial instruments, as the Council decision on the EEAS reiterates the role of the High Representative in ensuring the consistency of the Union's external action by coordinating external assistance instruments.⁵⁹ Most significantly, EU Development Policy is transferred to the EEAS, which will improve the coherence of the EU's external action. The transfer of the Development DG to the EEAS demonstrates that political, military and developmental issues should be treated with parallel strategies.⁶⁰ As Javier Solana

⁵⁷ Not all the staff working in the EU Delegations will be considered as part of the EEAS, such as Commission staff dealing with management of aid or trade issues. The Heads of the Delegations will have authority over all staff. Delegations can receive instructions from the Commission. EU delegations will accomplish tasks previously carried out by the former rotating Presidency, such as representation of the EU in third countries. MEMO/10/311, EEAS decision-Main Elements, 08.07.2010, p. 1–3, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEM O/10/311&language=en> (last visited 30.07.2010).

⁵⁸ See: Decision No. 2010/427/EU establishing the organisation and functioning of the European External Action Service.

⁵⁹ The Development Cooperation Instrument, the European Development Fund, the European Instrument for Democracy and Human Rights, the European Neighborhood and Partnership Instrument, the Instrument for Cooperation with Industrialised Countries, the Instrument for Nuclear Safety Cooperation, the Instrument for Stability (Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing the Instrument for Stability; OJ L 327/2, 24.11.2006, p. 1–11). See: Decision No. 2010/427/EU establishing the organisation and functioning of the European External Action Service.

⁶⁰ Within the context of the European Development Fund and the Development Cooperation Instrument, proposals will be prepared jointly by the EEAS and the Commission (Commissioner for Development). The Commission will be responsible for the implementation of the operational expenditures, while the EEAS is responsible for administrative expenditures. MEMO/10/311, EEAS decision – Main Elements, op.cit.

has stated '*the challenge is to bring together the different instruments and capabilities: European assistance programs, military and civilian capabilities from Member States, and other instruments such as the European Development Fund [...]. Our objectives should be to create synergy through a more coherent and comprehensive approach. Diplomatic efforts, development, trade and environmental policies should follow the same agenda*'.⁶¹

The EEAS regroups most of the external assistance instruments. The Service has the potential for forging a more coherent and consistent external policy, whereby political dialogue, CSDP missions, and development aid are conceived with a more coherent strategy. David Spence emphasises that '*(t)his proves the end of the independence of these individual sectors which Commissioners have long maintained*'.⁶² The Geographical desks are re-managed; for example Africa is a separate desk, detached from the group African, Caribbean, and Pacific States (ACP). The Council's decision establishes a separate DG for thematic issues such as terrorism, human rights, non-proliferation, and democratisation. This would allow the Service to adopt a more coherent and comprehensive strategy. As the geographical desks, thematic desks and structures of crisis management are regrouped, this will permit the Service to react to crisis more rapidly and pertinently.⁶³

The EEAS will consist of officials and servants of the European Commission, the Council, and personnel from the Member States (appointed as temporary agents). Staff from the Member States should represent at least one third of all EEAS staff, and this should be reached by 2013. The transfer of all the personnel from the relevant departments in the General Secretariat of the Council and in the Commission will take place on 1 January 2011.⁶⁴ Currently the EEAS does not have its own budget. The relevant budget from the Commission and the Council will be transferred to the EEAS once the Service is established. The budget for the year 2011 will be adopted in the second half of 2010, and a figure of approximately 9.5 million euros was agreed upon.⁶⁵

⁶¹ B.Hocking, D.Spence, *Afterword: Towards a European Diplomatic System?* in: *Foreign Ministries in the European Union*, eds. B.Hocking, D.Spence, Basingstroke 2005, p.286–305.

⁶² D.Spence, *The Commission's External Service*, in: *The European Commission*, eds. D.Spence, G.Edwards, London 2006, p. 421.

⁶³ M.Lanathoua, *op.cit.*, p. 6.

⁶⁴ The entities to be transferred to the EEAS are: 1) General Secretariat of the Council: CSDP and crisis management structures, Crisis Management and Planning Directorate (CMPD), Civilian Planning and Conduct Capability (CPCC) and European Union Military Staff (EUMS), EU Situation Centre, Directorate-General E, Official of the General Secretariat of the Council on secondment to EU Special Representatives and CSDP missions. 2) Commission: Directorate-General for External Relations, External Service, Directorate-General for Development. MEMO/10/311, EEAS decision – Main Elements, *op.cit.*

⁶⁵ *Ibidem*, p. 1–33.

The European Parliament was able to guarantee that the EEAS be accountable to the Parliament in political and budgetary terms. The operational part of the EEAS budget will be integrated in the Commission's internal budget. The EEAS' administrative budget will be a separate part of the EU budget. The Parliament will have the same right of scrutiny over the EEAS budget as with the Commission budget. Moreover, the High Representative will seek Parliament's views on CFSP and CSDP issues.⁶⁶ In order to brief the European Parliament, the High Representative will be replaced either by the EU commissioners for enlargement, development or humanitarian aid, or by the Foreign Affairs Minister of the country holding the EU presidency.⁶⁷ The Parliament assured itself an enhanced role in the EEAS through its budgetary control.

The Council decision on the EEAS insists, in paragraphs 2 and 3, on the importance of ensuring consistency between the different areas of the EU's external relations; and the role of the Service and the High representative, with the assistance of the Council and the Commission, in ensuring the co-ordination and consistency of the external relations of the EU.⁶⁸ As Lanathoua and Missiroli point out, the EEAS has several important features: it is a 'hybrid' institution;⁶⁹ it is linked to the Council for the CFSP issues and to the Commission for community affairs;⁷⁰ it has a mixed staff, bringing national officials and supranational officials together, and it has an important scope. These qualities give the Service the potential to gradually conceive a common European foreign policy and a common European diplomatic culture.⁷¹

3. Future difficulties and challenges facing the two innovative institutions

The High Representative and the EEAS will face numerous difficulties and challenges. First, as far as representation is concerned, the High repre-

⁶⁶ See: http://www.europarl.europa.eu/news/expert/infopress_page/030-78057-186-07-28-903-20100707IPR78056-05-07-2010-2010-false/default_en.htm (last visited 31.07.2010).

⁶⁷ See: http://www.europarl.europa.eu/news/public/focus_page/008-76988-176-06-26-901-20100625FCS76850-25-06-2010-2010/default_p001c016_en.htm (last visited 31.07.2010).

⁶⁸ See: Decision No. 2010/427/EU establishing the organisation and functioning of the European External Action Service.

⁶⁹ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p. 6.

⁷⁰ M. Lanathoua, *Le Service Européen pour l'action Extérieure: L'outil d'une politique étrangère commune? (European External Action Service: Instrument for a common foreign policy?)*, "Terra Nova", July 2010, p. 1–11, available at http://www.tnova.fr/index.php?option=com_content&view=article&id=1380 (last visited 28.07.2010).

⁷¹ Ibidem, p. 1–11.

sentative can represent the Union at international organisations (such as at the Security Council) and international conferences (Article 27 of the TEU). This can be done only on the basis of a unanimous decision and a common position adopted by the Member States (Article 34 of the TEU).⁷² But the creation of the new post of High Representative does not create a single voice or a single representative of the Union,⁷³ as the President of the European Council is also mandated to *'at his level and in that capacity, ensure the external representation of the Union on issues concerning its foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy'* (Article 15 of the TEU). Thus the Treaty on European Union has not clearly divided the tasks of the President of the Council and the High Representative. On the contrary it has created an ambiguity.⁷⁴ It has been observed that there will be a sort of *'Troika'*: the High Representative, the President of the European Council,⁷⁵ and the President of the Commission. But to what extent will the *Troika* assure the consistency of the Union's policies? How will the High Representative balance his/her role with the presidents?⁷⁶ J. Wouters posits that the harmony among the three voices will largely depend on the chemistry of their personalities.⁷⁷ Kaddous points out that the relations between the High Representative and the President of the European Council are vague. Article 27 of the TEU states that the High Representative, through proposals, contributes to the development of the CFSP and implements the decisions adopted by the European Council and the Council. Kaddous raises the question of *'how the two powers of initiative and implementation will be combined on a day-to-day basis?'*⁷⁸

According to Lanathoua, the High Representative will also face difficulties in confirming his/her authority regarding the Delegations, since the Commission has the right to issue instructions to the Delegations regarding areas relevant to the exercise of its activities.⁷⁹ Difficulties will arise with the President of the Commission, since he/she will interfere in foreign relations, and it is unclear how the President of the Commission and the High Representa-

⁷² J. Wouters, op.cit., p. 153.

⁷³ W. Wessels, op.cit., p. 1–37.

⁷⁴ J. Wouters, op.cit., p. 153.

⁷⁵ The President of the European Council will be elected for 30 months, and the system of rotating presidency will be abolished; it will remain only in a reformed manner for the General Affairs Council (which deals with enlargement) and COREPER. The Foreign Affairs Council (FAC) falls under the authority of the High Representative.

⁷⁶ S. Duke, op.cit., p. 14.

⁷⁷ J. Wouters, op.cit., p. 154.

⁷⁸ C. Kaddous, op.cit., p. 211.

⁷⁹ M. Lanathoua, op.cit., p. 8.

tive will coordinate their relations in order to assure the ‘*coordination*’ of external relations. The Commission is involved in many areas that have an external dimension, such as enlargement, trade, justice and home affairs, and the internal market. This will make it difficult to set the boundaries of authority. Missiroli suggests that by reforming internal rules within the College of Commissioners, the Vice-President should get a coordinating and supervisory role.⁸⁰

Difficulties will emerge in the realm of CFSP and CSDP. The Foreign Affairs Council, which is presided over by the High Representative, is separate from the General Affairs Council. The presidency of the General Affairs Council and COREPER will change every six months. The General Affairs Council has authority regarding a number of administrative and budgetary issues involving CFSP and CSDP.⁸¹

As was stated previously, the new position of High Representative does not reduce the competences of the Member States within the CFSP domain. The institutional innovations do not affect Member States’ power to formulate and conduct their foreign policy. Two declarations – No. 13 and No. 14 – that followed the final Act of the Intergovernmental Conference (IGC) which adopted the Lisbon Reform Treaty, specifically state that the provisions on the EEAS and the High Representative do not affect the responsibilities of the Member States for the formulation and conduct of their foreign policy. Within the CFSP realm, the competences and efficiency of the High Representative are dependent on the Member States. While the aim of the innovations was to bring consistency, the High Representative does not have sufficient instruments or means to bridge the dividing lines between the Commission and the Council concerning external relations and to bring consistency and coherence to the different domains of the Union’s external action.⁸²

The High Representative has several roles. She is dedicated and accountable first to the Commission and second to the Council, which makes the High Representative’s position a very demanding job for one person. As J. Wouters points out, she is strongly linked to the European Council and the Council, which makes the ‘*Communautarisation*’ of the CFSP highly improbable.⁸³

For the EEAS, the upcoming difficulties and challenges will be the following: With the one-third rule, the size of the three components of the Serv-

⁸⁰ A. Missiroli, *The EU Foreign Service: How to build a more effective common policy*, “EPC Working Paper” No. 28, November 2007, p. 4–97.

⁸¹ C. Kaddous, *op.cit.*, p. 209.

⁸² J. Wouters, *op.cit.*, p. 156.

⁸³ *Ibidem*, p. 155.

ice is imbalanced; DG RELEX and the Commission Delegations outnumber the number of staff from the Council Secretariat. Moreover, the number of diplomats from the Member States will create an enormous budgetary pressure.⁸⁴ There are imbalances among the Member States in terms of the quantity and quality of eligible officials, including differences of experience, expertise, and approach.⁸⁵ Another question raised by the establishment of the EEAS is the training of diplomats. What kinds of training will the EEAS demand and who should provide it? A number of Member States have insisted on the necessity of common training programs and advocated for the establishment of a common European Diplomatic Academy.

EU Delegations will take a leading role in implementing the CFSP and its coordination with the Member States once they take over the tasks previously carried out by the former rotating Presidency (coordination of EU positions and representation of EU in third countries). In order to ensure efficiency, EU Delegations will work in close cooperation with the diplomatic missions of the Member States.⁸⁶ This will transform the EEAS into a foreign service of the EU and will correspondingly raise questions regarding the role of national foreign embassies.⁸⁷ It has already been argued that consular affairs could become an EU responsibility in the future, based on the idea that the Schengen visa makes the national visa requirements meaningless. Therefore, it is possible in the future to see European consular and visa facilities, with the Commission and EU Delegations charged with delivery of visas.⁸⁸ Such a development would lead to a reduction in the number of staff in the consular departments of foreign ministries and embassies. It is very early to make predictions, but fears have already been expressed regarding the effects of the EEAS on national foreign ministries. Moreover, there are different predictions regarding the perceptions of Member States towards the Service. Some consider that there will be Member States that will try to keep the EEAS weak in order to preserve the role of national foreign ministries, by weakly coordinating the relations between the EEAS, the Commission, and Member States. On the other hand, for some Member States the EEAS provides opportunities for participation in EU level diplomacy. It offers diplomats the potential for postings and career development. The rotation of national diplomats, after serving in the EEAS, to national ministries provides

⁸⁴ A. Missiroli, *Implementing the Lisbon Treaty...*, op.cit., p.18. The Council Decision No. 2010/427/EU establishing the organisation and functioning of the European External Action Service states that the Member States will support the Union financially for its temporary agents.

⁸⁵ Ibidem, p. 18.

⁸⁶ MEMO/10/311, EEAS decision – Main Elements, op.cit.

⁸⁷ B.Hocking, D.Spence, op.cit., p.295.

⁸⁸ Ibidem, p. 295–296.

an opportunity for formation in European affairs.⁸⁹ Moreover, at the representation level, during the rotating presidency of the European Council the EEAS alleviates the burden of representation for some Member States that do not have a representation in areas which only a few Member States have. EU Delegations could make a great contribution in this regard.⁹⁰

As coordination efforts are imperative between the different structures, the Council Decision of 26 July 2010 has provided for the creation of a separate DG for coordination in the EEAS. The Council decision delineates in its Article 3 that the EEAS shall work in cooperation with the diplomatic services of the Member States, with the General Secretariat of the Council, and with the services of the Commission in order to ensure the consistency between the different areas of the EU's external action. The Service should be able to fulfil its role of coordinator and assure the coordination of the different external action policies, including even those internal policies that have an external dimension. Article 18 of the TEU does not specify exactly which policy; it states only '*shall be responsible for coordinating other aspects of the Union's external action*'. These policies might include trade, humanitarian aid, development, etc. Moreover, the EEAS should provide unified policy advice to the High Representative, to the Commissioners, and the President of the European Council. But will the EEAS be powerful enough to foster coherence and consistency within the broad confines of overall foreign policy? Will it be able to come up with a consistent policy orientation and strategy?

EEAS actions will be limited if an adequate budget is not allocated for external relations activities. In 2010, the budget was limited to 123 billion euros. For the years 2007–2013, the external action of the EU was allocated 56 billion euros, which represents 5.7 per cent of the budget. The amount allocated is small if one posits an ambitious external action by the EU. The debates on the budget for the years 2014–2019 are characterised by an intention to raise the amount allocated to EU external action.

Even though the EEAS is now launched, its actual implementation and development will require constant monitoring, revision, and adjustments. By mid-2013, the High Representative should provide a review on the organisation and functioning of the Service, and if necessary present proposals for reform/revision of the Council decision on the EEAS.⁹¹

⁸⁹ E. Geoffrey, D. Rijks, *Boundary Problems in EU External Representation in Institutional Competences in the EU External Action: Actors and Boundaries in CFSP and ESDP*, ed. L. Aggestam, "Swedish Institute for European Policy Studies" No. 6/2008, p. 72–83.

⁹⁰ *Ibidem*, p. 80.

⁹¹ See Decision No. 2010/427/EU establishing the organisation and functioning of the European External Action Service.

Conclusions

The innovations discussed above do not contain all the necessary remedies to the lack of coherence and consistency in the EU's external relations, but the EEAS and the High Representative do provide a basis upon which progress can be made.⁹² We can state that these innovations provide the necessary framework for a significant improvement in EU external actions.⁹³ They contain the potential for more consistent external relations by establishing the cornerstone of a new European-level diplomacy.

Simon Duke states that one of the challenges of the EEAS is '*the extent to which EU Member States are willing to amend their conceptions of diplomacy to include a European-level in which they actively participate*'. This requires a '*further transition away from purely national conceptions of diplomacy*' and preparedness to become diplomats at the European-level. Simon Duke further states that '*The EEAS offers a framework in which integrated diplomacy could flourish*'.⁹⁴

According to David Spence, European diplomacy is characterised by the existence of two broad diplomatic paths – national and supranational.⁹⁵ There already exists an emerging new European diplomacy, parallel to national diplomacies, which is founded on '*the decrease of national interests outside the EU and the complementarity between two distinct diplomatic communities – national and European*'.⁹⁶ David Spence concludes by stating that what makes European diplomacy original is its '*complementarity in parallelism*'.⁹⁷ The establishment of the EEAS obliges the Member States to adapt their representation at the EU level, as well as their perceptions of national needs. The EEAS is a unique innovation since it brings these two paths/communities – national and supranational – together in a single institution.

These innovations are the response to a growing need for more effective, coherent and consistent EU actions on the international scene. The success of these innovations depends largely on Member States' political will and the assertion of the High Representative's role.⁹⁸ The establishment of

⁹² S. Duke, *Providing for European-Level Diplomacy after Lisbon: The Case of the European External Action Service*, "The Hague Journal of Diplomacy" Vol. 4, No. 2/2009, p. 211–233.

⁹³ *Ibidem*, p. 214.

⁹⁴ S. Duke, *Providing for...*, op.cit., p. 233.

⁹⁵ D. Spence, *Taking Stock: 50 Years of European Diplomacy*, "The Hague Journal of Diplomacy" Vol. 4/2009, p. 235.

⁹⁶ *Ibidem*, p. 236.

⁹⁷ *Ibidem*, p. 251.

⁹⁸ M. Lanathoua, op.cit., p. 10.

the EEAS does not guarantee the development of an integrated ‘European foreign policy’, but the ‘merger’ of the European Community’s external structures, the CFSP, national foreign ministries, and Community’ officials presents an opportunity for the development of a more coherent and consistent EU external action.

