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The European External Action Service

Elements of a Three Phase Plan

Andreas Maurer / Sarah Reichel

Upon the signing of the Draft Constitutional Treaty on October 29, the preparations for the development of a European External Action Service (EEAS) were formally started. The Service is to be assembled from the relevant departments of the Council Secretariat and the European Commission, and from diplomats from the national foreign ministries. With a view to the developing EEAS, competition has begun among the EU institutions for political influence on the reorganization of European foreign policy and the funds that will be distributed for this field. In order to prevent the Service from being torn apart by the Brussels power struggle and to ensure that the “Single European Voice” for EU external affairs, as contemplated by the Draft Constitutional Treaty, has a real chance, a coherent “three phase plan,” supported by all EU institutions and member states, for the construction and instrumentalization of the Service should be quickly put together.

Without a doubt, the EU external relations presently suffer, on the one hand, from a fragmentation of the rules of jurisdiction and, on the other hand, from a duplication of the institutions and instruments. As a result, the European Union “speaks” to other countries with at least two voices, one belonging to the Council through the High Representative for the Common Foreign and Security Policy (CFSP) and the other belonging to the European Commission for the Community external relations fields. Frequently, the EU is externally represented by 28 voices: the 25 member states, the Council Presidency, the High Representative and the Commission.

What Is the Benefit of the EEAS?

The empirically (and frequently) proven incoherence and inefficiency of the foreign representation of the EU should, with the installation of the Foreign Minister, come to an end. In the future, every aspect of the EU external relations should come together in the European External Action Service (EEAS), his “ministry,” and be uniformly handled in Brussels as well as in the new EU representations in other countries and international organizations. This requires improving coherence on three levels: within the Community external relations, between these relations and the inter-governmental CFSP fields of action and between these two fields and internal

policy issues with external or security policy aspects (e.g. international terrorism, issues related to fighting crime in home and justice policy and EU environmental policy). The goal of concentrating all external policy questions in one institution headed by a foreign minister is for the enlarged European Union to have a coherent, efficient and visible foreign representation and to be perceived and taken seriously as an actor on the global stage, as contemplated by the European Security Strategy (ESS). The Draft Constitutional Treaty (DCT) does not indicate, and nothing has yet been decided, about how the needed bringing together of all of the participants in the foreign affairs of the Union should concretely take shape.

“Ministry” with intergovernmental and supranational elements

The EEAS should be assembled from civil servants of the Council Secretariat, the European Commission and staff from the national foreign ministries of the member states (Article III-296 (3) DCT). For the expansion and long-term stability of the Europeanized external policy expertise, the Draft Constitutional Treaty contemplates a rotation on the three levels of the EEAS as mentioned above. Put together in this way, the conglomeration of different actors, processes and instruments of the intergovernmental CFSP on the one hand and the Community external relations, including the current 128 EU delegations, on the other hand, should support the European Foreign Minister with the fulfillment of his mission in the future (Article III-296 (3) DCT).

The Foreign Minister

The center point of the development of the EEAS is the European Foreign Minister. Under the catch phrase “double hat,” the European Convention and Intergovernmental Conference agreed on the fusion of the posts of the Commissioner for External

Relations and the High Representative of the Council for the Common Foreign and Security Policy. In the future, the Foreign Minister should coordinate all aspects of the European Union’s foreign affairs (Article I-28 (4) DCT). Thus, in his position as a vice president within the Commission, he will be responsible for the external relations of the Union. The Draft Constitutional Treaty does grant the Foreign Minister, within the Commission, general coordination authority, but certainly no authority to tell the other commissioners, who deal with external relations issues, what to do. Moreover, the Foreign Minister is equally subject to the authority of the Commission President as are the other commissioners.

Within the Council, the Foreign Minister takes over the leadership of CFSP (Article I-28 (2) DCT) and the permanent chairmanship of the “Foreign Affairs” Council. Vis-à-vis the office of the elected President of the European Council, which was also newly created, the Foreign Minister has no special authority. On the other hand however, Article I-22 (2d) grants the European Council President the right to “at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs.”

The Foreign Minister can, during an institutional conflict, get caught between the goals and tasks of the European Council, the Council and the Commission. It is known that Great Britain and France favor a relatively strong tie up of the Foreign Minister to the guidelines of the European Council; smaller and unaligned countries prefer, in contrast, a position of the Foreign Minister independent from that of the European Council and its President. Ultimately, the real significance of the intergovernmental and supranational elements of the EEAS as a “ministry,” including the “embassies,” will depend on the concrete arrangement of the multiple functions of the Foreign Minister, which are spread over various institutions and pillars.

The Foreign Minister—Javier Solana is designated for this post—must submit the first formal recommendation for the organization and function of the Service. A definitive decision will be made after a hearing before the European Parliament and after the European Commission’s approval of the Foreign Minister. (Article III-296 (3)). Apart from the formal provisions of the Treaty, the real participation of the Parliament and the entire Commission college in the formation of the new ministry is thus at the discretion of the Foreign Minister and the Council.

Solana’s Options

Javier Solana indicated, in the European Security Strategy (ESS) that he authored, that bringing together all of the relevant external policy instruments and capabilities would be one of the biggest challenges of the EU in the future. In order to overcome the main threats agreed upon in the ESS, and in order to achieve the strategic goals of the Union, the European aid program, the development fund, the military and civilian capabilities of the member states, the diplomatic efforts, the development, trade and environmental policies should be brought into line with one overarching objective.

The question is whether Solana wants and can create a comprehensive Service, covering all aspects of foreign affairs, which participates both in the formulation of policy (*input*) and the implementation of Council decisions (*output*). Or does Solana plan a purely *input*-oriented Service, which concentrates on political analysis, but leaves the strategic implementation of European external and security policy to the governments of the member states?

A separately conceived *input/output* and purely *input* function of the EEAS for each policy field would also be conceivable, which would accommodate the different developments of the foreign aspects of individual EU policies; the EEAS involvement in health and education policy is

ultimately smaller than in the trade and development fields. This strategy, however, would fail to achieve the goal of the EEAS to improve coherence in the external affairs of the Union because different EU institutions would still be responsible for the same issues. The direct result of such unregulated strategies would be the duplication of work, insecurity on the part of the affected third countries and the risk of third parties instrumentalizing the acting EU actors.

The first “*input/output*” variant of an integrated Service would require the participating actors to agree on a clear goal and task definition for the EEAS. Here, without a doubt, the starting point would be the security strategy. However, it would also be necessary to consider which goals and tasks of the fields relevant to the EEAS are regulated by the Treaty and secondary law of the EU. The ESS would have to be updated accordingly. Specifically, for the integrated variant, the major portion of the financial means of the Community external relations would have to be received by the EEAS.

The second, purely “*input*”-oriented variant would be equivalent to Solana’s political staff enhanced by the analysis capabilities of the Commission. The administration of finances for carrying out EU measures would remain predominantly with the Commission. In this instance, the European Parliament would have a less significant role than the Council. However, it should also be kept in mind that after the Draft Constitutional Treaty comes into force, the “full parliamentarization” of the EU budget will drastically reduce the room for maneuver of the Council and Commission anyway.

Gray Areas of the Draft Constitutional Treaty

In a declaration to Article II-296 DCT, the High Representative for CFSP, the European Commission and the member states are called upon to “do the preliminary work” for the building of the EEAS. The start date given is not the coming into force of the

Draft Constitutional Treaty, but its signing! The pre-structuring of the EEAS thus formally began on October 29, 2004. However, in order not to further endanger the forthcoming referenda on the DCT, these preparations should not go too far. An irreversible “advance implementation” of the EEAS could cause a negative outcome for some referenda—and thereby interrupt the ratification process for an indefinite time. For this reason, the preliminary work for the EEAS is limited to defining its goals and tasks by the Commission, the Council, the European Council and Parliament, and the internal reorganization of the directly affected EU institutions (Council, Commission) and national foreign ministries.

The preliminary work has not yet been coordinated. Solana has set up a reflection group composed of civil servants from the Council Secretariat and representatives of the member states, who are putting together the first ideas for the concept of the Service. The Commission has not yet been invited to participate in this group. Within the “gray areas” of inter-institutional cooperation which arises from the lack of coordination, competition between the Council and the Commission is already becoming apparent, on the one hand, for the gain of influence and, on the other hand, for the maintenance of influence on European external policy.

Big and Small Solutions

As indicated above, one can differentiate between a big, integrated (*input/output*) solution and a small (*input-oriented*) one for the development of the EEAS. The political reach and budget of the Service will depend on its concrete form. More than 5 billion euros are available in the budget for external policy fields.

The Commission’s Option

If it were up to the recommendations of the former Commission representatives to the Convention, Barnier and Vittorino,

then the future Service would include the field of the geographic and horizontal questions of the “RELEX group” of the Commission (the Directorates-General for External Relations, Trade, Development, Enlargement including the development policy services “EuropeAid” and “ECHO”). According to this model, the new institution would, at least from a budgetary policy perspective, be more strongly anchored to the Commission. Following a broad interpretation of this approach, a merger of the Commission’s Directorates-General responsible for external relations, could also entail the enlargement of the personnel and functions of the EU delegations led by it, by adding the analytical areas of the Council Secretariat and combining other policies which have external policy aspects (environmental, monetary, border control and anti-terrorism policies). The budget for the field of foreign affairs remains, as before, allocated to the Commission and the High Representative of the Council. The Commission college would decide on the use of its present majority share (funds for EU Programs). Solana would be, as the wearer of the “double hat,” a higher profile member of the Commission college and would have to reach a political agreement with his Commission colleagues responsible for the development, enlargement and neighborhood policies as well as in regard to the funding of his Service. The European Parliament and the Council would possess, in the framework of their powers as budget authorities, a clear potential to influence the development and strategic direction of the Service.

Even if there is presently no support in the Council Secretariat, this model is favored by the fact that it takes into consideration the already available and tested capabilities and capacities of the foreign representation of the Union, which presently rest with the Commission not the Council. From the Council’s perspective, the Commission option could raise the argument that the recent developments in the field of security and defense policy led to

institutional changes in the Council and not in the Commission. However, it would be tantamount to a narrowing of the security concepts operationalized in the ESS, if one would, in reliance on that argument, shift the EEAS to the Council.

The Council's Option

Alternatively, the service could be more firmly under the authority of the Council. The relevant departments of the Council Secretariat—such as the Political and Security Committee staff, the Situation Center and Directorate-General E—would be expanded by adding the Commission's aid programs, the development fund and the departments for development, trade, environment, home and justice policy. Following this option, Solana would receive, in addition to the 60 million euros from the CFSP budget, not only additional budget funds that would be under his control, but he would also take over the related executive tasks of the Commission. In this case, the question of what would remain from the Commission's present Directorates-General for Development, Trade and the Environment would have to be addressed to the Council, the Parliament, the Commission and the member states. Whether the responsible commissioners would still be satisfied with their portfolios, would be left to discussions within the Commission and should, above all, be decided by the Commission President who has been entrusted with new leadership responsibilities.

The institutional framework of the European Union stands in opposition to this second model, which will not be substantially changed by the Draft Constitutional Treaty. As before, the European Commission will carry out the budget plan, administer the EU programs and perform, in all policy fields with the exception of CFSP, the coordinating, executive and administrative functions of the EU.

One option is probable, at least in the current period prior the Draft Constitu-

tional Treaty's coming into force: The Council departments will be enlarged by the analytical capabilities of the Commission, but the Commission retains the executive and administrative functions and also the corresponding funds. The question of how the coherency and visibility of the EU's foreign affairs could be increased, will be shifted to the level between the Council and the Commission and thus postponed.

The Interests of the Member States

The smaller member states and many of the new member states in particular have a special interest in the EEAS. They see in it a chance to strengthen their external policy representation and to reduce their external policy administrative costs. With the future foreign representations of the EU, many expensive embassies in third countries and representations at international organizations will become superfluous for many of the smaller countries. Their diplomats, sent in the framework of the EEAS, will possibly be their only representatives in many third countries. In contrast, large members, especially France and Great Britain, consider the European Foreign Minister and his diplomatic service as potential rivals to their national, self-confident diplomacy. In order to pursue their strategic interests worldwide, unhindered, they will not be so quick to give up their own embassies and allow them to be replaced with diplomatic representation from the European Union. France and Great Britain are, in the framework of the International Organisation for Francophonie and the Commonwealth, integrated in a tight net of foreign, security and defense policy cooperation and support obligations. These could, with the development of the EEAS be called into question over the long term, the short and medium term, however will by no means be ignored.

Consequences for the Rotation Process

It still not clear which formula will be used to determine how large and small member

states will delegate their diplomats. It would be advisable to use a formula that takes into account the relative population sizes. This would have the result that the large member states would be represented by a corresponding larger number of diplomats in the new institution. Countries such as France and Great Britain, however, on the basis of their special interests, could be tempted not to send the expected number of diplomats to Brussels in order to intentionally weaken the EEAS personnel. Therefore, if reserved positions remain open, a “waiting list” consisting of staff from the Commission and the smaller countries should be established. However, this could result in a further conflict of interests, given that it would be in the interests of France and Great Britain, if the vacant positions were filled by—in their opinion—rather weak Commission civil servants and not with civil servants from the smaller member states.

A Chance for the EEAS

So long as no central coordinator prepares the development of the European External Action Service, each of the affected parts of the administration, including the 25 foreign ministers of the members, tinkers with constructing its own model. Whether, at the end, the individual models will be compatible and can come together as one unified Service without serious problems due to the models’ incompatibility, remains, under these conditions, left to coincidence and is rather unlikely in light of the diversity of the European policy and coordination systems of the member states. The overabundance of different concepts as well as disputes over competencies and fights over distributions among the EU institutions can only be avoided if, as soon as possible, a coherent *Master Plan* for the creation of the new institution is developed, which commits all of the participating actors to a strategic goal. It is essential to prevent the EEAS from being rendered useless by all of the participants in EU

external relations and from losing its credibility at the outset, during the early stages of its development. A convincing development plan should therefore defuse the obvious conflicting interests between the Council Secretariat and the European Commission on the one hand and between the large and the small as well as the new member states on the other.

A Three Phase Plan

The development of the plan should be transferred to a body, which, following the model of the Delors Group of 1989 (for the planning of the monetary union), could put together a multistage concept for the development of the EEAS. Members of this group should be: representatives of the member states, the Commission, the Council Secretariat, the European Parliament as well as selected experts from research fields that are close to the practice of politics. The group should not just sketch out the final form of the EEAS, but rather develop a step-by-step plan, which could include three phases:

By the end of **Phase I** in 2007, before the DCT comes into force, the coordination effort, for which the staffing and funding has been provided, for the strategy, analysis and early warning units of the external policy service of the Commission, the Council and the member states should be ensured. Therefore, the available coordination and communication systems (communication network COREU, the three units of the Joint Situation Centre (a) Civilian Intelligence Cell, (b) General Operations Unit and (c) Communications Unit as well as the planning and analysis units of the External Relations Directorate in the Commission and the national foreign ministries) should be checked for their adequacy for the EEAS and reformed if necessary.

In this context, offering uniform training for all of the forces rotating into the service, which prepares them for operating coherently in the sense of ensuring European values and interests, should be con-

sidered. In addition to the representatives of the three very heterogeneous administrations, ultimately diplomats from 25 completely differently structured national services and possibly other officials from other ministries (e.g. development, economy, environment) will have to work together. For the rotations through the EEAS, it would thus be necessary to develop a procedure that prevents the deliberate creation of a two class administration. If one wants to secure the acceptance of the EEAS in the capitals of the member states, then one should avoid giving the impression that a “EEAS core² of officials of the Commission and the Council Secretariat and a “EEAS Periphery” of the delegated national officials is emerging. By developing two to three month long EEAS training sessions, the shortening of the effective employment time of the rotating representatives of the member states, because the training is too long, should be avoided. This can be reinforced by ensuring that an assignment to the EEAS would cover a minimum time period of three to four years.

Early on during Phase I, committing the personnel who are sent to the European External Action Service to a *Diplomatic Code of Conduct*, which forbids them—as with the Commission members today—from receiving instructions from a government, an organ, private industry or any other source, should be considered. The legal, political exertion of influence should be limited to the body designated for that purpose, the Council, in order to give the future European Foreign Minister and his diplomatic service, and thereby the “Single European Voice” a real chance.

By the end of **Phase II**, approximately in 2012 (the expiration of the financial perspective in effect from 2007), the strategic coordination capacities under the leadership and responsibility of the EU Foreign Minister should be thriving to such an extent that the EEAS could be tested and evaluated in selected “pilot representations.” The goal of the work in Phase II should be for the EEAS to collect its first

field experiences with foreign representation, which will be subject to an evaluation agreed to by all the member states and subsequently to develop general as well as policy, case and region specific standards for the foreign engagement of the EU. The expiration of the one-sided trade preferences for the countries of Africa, the Caribbean and the Pacific (ACP), already foreseen for 2008, in favor of regional partnership agreements could be instructive. The related negotiations with the Economic and Monetary Community of Central Africa (EMCCA) and the Economic Community of West African States (ECOWAS) already began in October 2003. The experience gathered in Phase II would eventually also be useful for the checking and updating of the ESS.

Phase III, the final phase, could be concluded in 2015. By this point in time, the indicators for reaching the “EEAS Critical Mass” will have been established. These indicators could be defined, based on the evaluation of Phase II and the number and quality of foreign representations and their functions. Towards the end of the third phase, the question about the right to give instructions to EEAS diplomats, and control thereover, which was also raised in Phase I, should finally be resolved legally. This would be possible through the establishment of the recommended *Diplomatic Code of Conduct*. A more robust alternative would be a formal Council decision, pursuant to which the institutions who are sending delegates declare a sort of renouncement of their right to instruct diplomats. For questions related to recruiting, training and evaluation, a legal and politically viable model should be developed during the third phase at the latest. This model must be based on the two pillars of: a *Diplomatic Academy* of the EU and EU-wide harmonized standards for the training and continuing education of the personnel.

The three phase concept has a realistic chance, on the basis of the already existing ideas and in consideration of the institutional framework of the EU, to develop a

coherent, efficient Service committed to continuity. By following a step-by-step approach, one can avoid the danger that the “double hat” and his Service will be rendered useless in the game of the arguing power interests of the participating actors.

Recommendations for Germany’s European Policy

For Germany’s European Policy, a strategy that consists of the following four pillars would be advisable:

First, the efforts of the government in the process of implementing the Constitutional Treaty should be aimed at creating a “double hat” and a Service that are loyal to the Community and the “spirit of Community.” The announcement by the Chancellor, that he wants to encourage a “strong Barroso Commission,” will, in potential conflicts over the EEAS both domestically and in the EU, be subject to a public litmus test. Therefore, comments and support for the double hat and EEAS related reform recommendations should not be made without prior consultation with the Commission. Moreover, Germany should push to enable the active participation of the Commission in those working groups which are occupied with the preparation of the EEAS.

Second, German actors should be motivated to find possible bases for compromise with the smaller countries in the anticipated argument between France and Great Britain on the one hand and the other countries on the other. In this conflict, Germany could again play its established role as the intermediary between big and small countries.

European policy and Europeanized foreign policy do not take place in isolation, in and between the foreign ministries. Although the German coordination system for foreign and European policy stands out due to a comparably complex, inter-ministerial need for coordination, it already more strongly resembles today the coordination systems of the EU organs

than the partially extremely hierarchical and centralized structures of the other member states. In this respect, it is worth considering, in connection with the development of the EEAS, the instruments and procedures for the “institutional export” of German structures.

Fourth, finally, the Germany’s European policy should not lose sight of the interests and demands of the European Parliament with respect to the political control of the Foreign Minister and his Service. The Parliament, with its budgetary authority and its authority to control and to sanction the Commission, possesses a remarkable potential to threaten the member states, which can be activated if the Parliament is bypassed during the development of new foreign policy structures. In the search for possible coalition partners, the Parliament should therefore be taken into account early on.

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