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Creating the European External Action Service

Preconditions for Avoiding a Rude Awakening

Julia Lieb / Andreas Maurer

The Lisbon Treaty provides for the establishment of a European External Action Service (EEAS), which has tremendous potential for making European foreign policy both more coherent and more effective. However, if the EEAS is to be more than a paper tiger, forceful efforts to pave the way for its establishment must be made in good time. There are two key priorities here: firstly, to make sure that a core EEAS staff will be able to work effectively once the Lisbon Treaty enters into force, which could happen on 1 January 2009; and secondly, to ensure that a pragmatic plan for the EEAS's future establishment and continued development guarantees its long-term success.

The institutional changes set out for Europe's external relations in the rejected 2005 European Constitutional Treaty are virtually identical to those contained in the Lisbon Treaty. Indeed, the provisions on the new post of High Representative of the Union for Foreign Affairs and Security Policy (HRUFASP) have remained largely unchanged. The title of HRUFASP will effectively combine the two current posts of High Representative for the Common Foreign and Security Policy (CFSP) and External Relations Commissioner.

The HRUFASP, whom the Council will supposedly appoint by a qualified majority, that appointment then being duly confirmed by the European Parliament (EP) as part of the incumbent's investiture by the European Commission, will chair the newly

created formation called the Foreign Affairs Council. At the same time, as one of the European Commission's Vice-Presidents, the HRUFASP will be familiar with their responsibilities regarding the Union's external relations and will be answerable to the EP.

This institutional arrangement could give rise to synergy effects, since the 'two-hat' scenario will combine elements of European foreign policy that are currently accommodated at different levels. After all, not infrequently in the past the co-existence of CFSP activities and foreign policy measures for which the European Community is responsible has prevented the Union from adopting a coherent approach in the international arena.

At the United Kingdom's insistence, the Lisbon Treaty was accompanied by two separate (but legally non-binding) declarations (nos 13 and 14). Both these declarations stress the autonomy of national foreign policy and diplomacy vis-à-vis the new structures set up around the HRUFASP and reject any transfer of CFSP powers to the European Commission. These declarations could curb the scope for action by the HRUFASP, because presiding over the External Affairs Council will make him/her liable to the consensus that has to be reached between the Member States and thus susceptible to reservations expressed by those actors invoking the two aforementioned declarations.

In addition, the HRUFASP will have to come to terms with three other active players in the foreign policy domain: 1) the President of the European Council, a post newly created by the Lisbon Treaty; 2) the President of the European Commission, whose position vis-à-vis his/her Commissioners has been strengthened; and 3) the EP, which now also has more extensive budgetary powers in the foreign policy domain. At the same time, the HRUFASP could benefit from the support provided by a European External Action Service. Having said that, the form taken by the EEAS and its areas of intervention (and thus its potential contribution to a more effective and coherent European foreign policy) are still anything but clear, being the subject of tense negotiations between the EU's institutions and Member States.

The Outlines of the EEAS Remain Vague

What is more, the provisions in the Lisbon Treaty governing the establishment of the EEAS are the same as those set out in the European Constitutional Treaty, though the text leaves a great deal of leeway for interpreting the EEAS's actual role and orientation in potential clashes between the intergovernmental CFSP resulting from discretionary negotiations between the

Member States, on the one hand, and supranational policies on external trade, treaties, development, economic cooperation and neighbourly relations, on the other, these policies being the joint responsibility of the European Commission and the EP.

Article 27(3) of the Lisbon Treaty on European Union states that the EEAS will 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." The plan is for the EEAS's organisation and *modus operandi* to be determined by a unanimous Council Decision, acting "on a proposal from the HRUFASP after consulting the EP and after obtaining the consent of the Commission."

Yet the preliminary initial attempts to set up the EEAS after the signature of the European Constitutional Treaty by the respective EU heads of state and government in October 2004 already underlined just how hard it is to reach a consensus on specific parameters for the Service's establishment (see *SWP-Comments 36/2004*), for only the most threadbare of consensus was reached in a progress report on the results of the consultations between the Member States and EU institutions, which High Representative Javier Solana and Commission President Manuel Barroso submitted to the European Council in June 2005.

Uneasy, Caged Actors

Declaration 15 on the Lisbon Treaty states that preliminary work on the establishment of the EEAS should start immediately after the treaty's signature. However, the Slovenian EU Presidency took its time in setting the ball rolling, citing ongoing ratification procedures in the EU Member States and in particular the Irish referendum scheduled for early June 2008.

At the same time, a group of smaller EU Member States fears being marginalised when the EEAS is established. They are wary of the danger of the Union's major partner

countries (especially France, the United Kingdom and Germany) quickly and informally reaching agreement on EEAS structures, procedures and posts and thereby presenting them with a virtually unalterable *fait accompli*. If previous European negotiating practices in the foreign and security policy domains are anything to go by, these fears may well be justified. Having said that, there should be no over-estimating the degree of unanimity reached by the larger Member States regarding the future structure and remit of the EEAS, for although German and British ideas about European foreign policy aims have converged somewhat in recent years, their views on the institutional and procedural structure of the CFSP and supranational EU foreign policies are still very far apart. Germany still tends to favour persevering with the European Community method, i.e. and conducting common policies at the supranational level, including in the context of the EEAS, whereas actors in the UK are continuing to lobby for a greater predominance of more autonomous, bilateral solutions.

Meanwhile, France's position remains unclear. In the past, its representatives have invariably spoken out in favour of a strong, effective EEAS, yet at the same time the government in Paris is mindful of retaining its foreign policy autonomy. Furthermore, its extensive diplomatic network makes it less dependent on European diplomatic structures than other EU Member States, including key players. So the position France takes up on the EEAS in potential sparring between Germany and the United Kingdom will be of particular interest, especially since depending on how the individual Member States' ratification processes turn out, intensive and decisive negotiations can first be expected to take place under the French EU Presidency, starting in July 2008. A great many issues will then have to be resolved rather quickly and a long-term perspective for the institutional structures of a Common European diplomatic service developed.

A Catalogue of Issues to Keep the Debate Focussed

The structure of the EEAS will throw down a number of challenges that can probably only be overcome if fundamental guideline decisions determining the effective scope of integration policy are made. The following section lists the issues that most urgently need to be addressed.

1. The main problem with the establishment of the EEAS concerns its headquarters' *institutional location in Brussels and its powers*. Some EU Member States, especially smaller ones, are in favour of the EEAS being incorporated into Commission structures. Others, like the United Kingdom for example, would prefer to see the service based on structures of the Council Secretariat, and its Policy Unit in particular. That unit was set up as a planning and analytical tool to serve the needs of the High Representative for the CFSP, Javier Solana. It is composed of temporary agents from Member States and officials from both the Commission and the Council Secretariat. During the consultations on the EEAS held in 2004/2005, the EU institutions and partner countries agreed to set up an independent service of its own kind with close structural ties to the Commission and Council. However, it remained unclear precisely what would emerge from this arrangement, and the scope of the EEAS's future foreign policy powers was none too apparent either.

If the EEAS is supposed to help make European foreign policy more coherent, the possibility of tying it closely to the Commission should be given due consideration, because even early on in the foreign policy cycle the aim must be to merge a wide range of complementary or overlapping policy domains. The new 'two-hat' post of HRUFASP already takes account of the fact that over the past 50 years the European Commission has developed foreign policy skills, structures and procedures within its areas of competence and can now fall back on a worldwide network of over 120 delegations. Against this backdrop, any

measures designed to enhance the coherence of European foreign policy should set out to coordinate any foreign policy activities beyond the CFSP as well. But so far the relevant actors at European level and in the respective Member States have failed to agree on whether Commission units other than the External Relations Directorate-General (RELEX) should be incorporated into the EEAS. The only point on which unanimous agreement was reached after the discontinued consultations in 2004/2005 was that Directorate-General Trade (concerned with the most developed element in Europe's external relations) should remain part of the Commission. The patent indecision at the time regarding the extent to which the development policy powers currently allocated to various units within the Commission should be integrated into the EEAS highlights the complex, persistent need for clarification in connection with the Union's future foreign policy structures and procedures. Similarly, clear guideline decisions are required in this connection with respect to determining military structures and the continued development of consular practices.

2. When the Lisbon Treaty enters into force, the *Union's delegations* will be under the control of the HRUFASP and represent the EU abroad in third countries and vis-à-vis international organisations (see Article 221 of the Treaty on the Functioning of the European Union (TFEU)). Even though the treaty makes no explicit provision for this, it can be assumed that the existing Commission delegations will form the basis for the new network of EU delegations. Otherwise the Service would be limited to a format comprising a complementary analytical and strategic unit based in Brussels merely allocating additional human and financial resources. Having said that, precedents involving a 'two-hat approach' by the EU, namely in Macedonia and the African Union (where the head of the Commission delegation is also an EU Special Representative (EUSR)) show how problematic it can be to merge institutional struc-

tures of the Council and the Commission. To overcome these problems, viable and sustainable rules for issuing instructions and reporting will need to be drawn up and the Commission's and Council's different security and data protection requirements will have to be harmonised.

Past practices regarding EU-internal coordination in third countries – i.e. between Commission delegations, EUSRs and the representations of EU Member States – will have to be scrutinised anyway once the Lisbon Treaty takes effect, since its entry into force will mark the end of rotating six-month EU Presidencies in the domain of external relations. Up to now, it has been up to the country with the EU Presidency – or another EU Member State standing in for it – to run the Presidency in coordination rounds between the EU and third countries and to represent the European Council in the respective partner country. Under the Lisbon Treaty the Member States will have to hand over such duties to the future EU delegations or the EEAS, as appropriate.

3. *Personnel issues* constitute a third key point that needs to be satisfactorily resolved when the EEAS is established. More specifically, the status of the personnel deployed by the EEAS needs to be determined. On top of this, a sound staff rotation system will have to be devised, because rotation within the EEAS has to be rendered compatible with the practices of the Member States and EU institutions. This will entail answering the question of whether or not (and, if so, how) work done for the EEAS will count in the respective agents and officials' career planning. In addition to this, rotation into and out of the EEAS will have to be organised in such a way that it contributes towards the development of a European diplomatic 'esprit de corps,' for only then will the EEAS become established as a fully fledged institution concerned with the Union's external relations. For instance, it can be assumed that in the long run staff working for the EEAS will only identify with it if postings to the

Service adhere to the principle of equal treatment. This will necessitate robust legal arrangements and an adequate range of training and advanced training courses.

4. The decision on *how the EEAS is financed* will determine its operational potential for taking action and constitute a particularly controversial element in the negotiations on the Service's establishment. It is then, at the very latest, that the views of the EP will have to be taken on board, for Parliament is certain to make full use of its extended supervisory and budgetary powers.

5. Finally, power struggles between the various actors in Brussels can be expected when the EEAS's *internal European structures* are to be determined. The outcome of these struggles will also affect the Service's sphere of action. For example, one key issue will involve deciding who will chair the relevant Council bodies and thus effectively become future political agenda setters, no less. Clashes are also very likely over the question of who will be given access rights to the EEAS: the President of the European Council or the Member States themselves? To quell any such conflicts it would make sense to have the Council, Commission and Parliament negotiate an interinstitutional agreement that sets out conciliation procedures for political, budgetary and staff-related economic issues, organising them more flexibly than generally binding EU law.

Immediate Tasks with a View to 2009

The HRUFASP will take up office when the Lisbon Treaty enters into force, the planned date for this being 1 January 2009. The appointed individual will have to submit a proposal on the organisation and *modus operandi* of the EEAS to the Council. The first HRUFASP will probably only be able to act on an interim basis until the investiture of the new Commission after the European elections in 2009. The EP already made it clear that only the newly elected Parliament could approve a fully fledged

HRUFASP in the context of the appointment of a new Commission.

This is indication enough that the Service will not come into being within the next few months. Nevertheless, during its start-up period viable solutions will have to be found that both enable the HRUFASP to fulfil his/her duties and simultaneously open up the way for the gradual establishment and expansion of institutional structures for European diplomacy.

In the interim, EU Member States and institutions may be inclined to postpone decisions about the establishment of the EEAS and agree on makeshift solutions based on existing institutional structures. Yet, that would do nothing to resolve the fundamental problem arising from the existence of highly divergent notions about the future orientation of a common European diplomacy. If the EEAS is to function as a prominent driver of a more coherent European foreign policy in the near future, the actors at the Member State and European levels will have to modify and approximate their partially diverging models.

This does *not* mean that the design and functioning of the EEAS should be definitively and irrevocably determined by the time the Lisbon Treaty enters into force. Rather, it means that essential preliminary decisions should be taken on the basis of a coordinated list of priorities. At the same time, a medium and long-term plan for the Service's structure should be drawn up.

The Service could certainly be made flexible, providing for time-frames to review current practices. But first of all three fundamental decisions have to be made: firstly, regarding the institutional arrangement of and for the EEAS; secondly, with respect to its powers; and thirdly concerning the concept for its financing up to 2013 (i.e. up to the end of the financial forecast 2007–2013).

Another key point should involve the establishment of a core staff for the EEAS, led by the HRUFASP. That staff, which right from the outset for reasons of acceptance should comprise personnel coming from all

three EEAS sources, must be given what it needs to draw up initial organisational plans and coordination procedures, job descriptions and draft budgets for the various EEAS units.

Temporary provisions would also have to be drawn up governing the Commission's or Union's delegations and their collaboration with EEAS headquarters back in Brussels. The EU's High Representative for the CFSP, Javier Solana, can currently rely on reports submitted by Commission delegations. On the other hand, the Commission does not automatically gain access to status reports drawn up by the Council's Policy Unit. In this connection, specific official standards need to be drawn up in good time for the future, and chains of instructions have to be defined with a view to avoiding any duplication regarding information procurement and analysis and also eliminating any asymmetries in information processing.

Finally, before the Lisbon Treaty enters into force, agreement needs to be reached on the role and function of the EEAS among the EU Council's foreign policy bodies. For whilst Commission staff currently only participate in the respective rounds of talks as 'counterparts' answerable to the Commissioner for External Relations, as EEAS staff members they could be entrusted with duties including the chairing of meetings and the mediation of initiatives stemming from the HRUFASP's role as a Vice-President of the Commission. Here again, agreement needs to be reached with the Member States on how far the powers of the officials they post to the EEAS should extend.

A Far-sighted Plan for the EEAS's Establishment

The EEAS will not suddenly materialise from one day to the next. A more conceivable scenario is a gradual process, analogous to that associated with European Monetary Union, which passed through three stages between the adoption of the Maastricht Treaty in 1993 and the intro-

duction of the euro. Consequently, looking to the medium and long term, it would make sense to fix threshold values characterised by individual stages in the EEAS's development. The first piece of the puzzle is provided by the EU budget deal for 2007-2013, which delimits the time frame for the Union's income and expenditure, both overall and in individual policy domains. As a result, any decision made by the Council on the procedure associated with the establishment of the EEAS should be reviewed once more towards the end of the current budget deal. The following measures could conceivably be implemented during the period up to 2013:

- ▶ *Development of a rotation system for EEAS officials that is accepted by all actors and puts paid to 'taking sides' (with a 'Brusselsised' core group of Commission and Council officials in one camp and a 'nationally shaped periphery' of diplomats from EU Member States in the other). Another factor to bear in mind with respect to the group of national officials is the need to make sure that contingents from individual countries are distributed within the EEAS in such a way that no nationally dominated domains come into being in the various departments in the EEAS's Brussels headquarters or EU delegations.*
- ▶ *Expansion of existing training courses in EU institutions and the Member States. Based on the Cutileiro report (COM(2006) 278 final), the Commission has already started reforming its own training system, opened up its training programmes to the Member States and intensified exchanges of personnel. In this connection, further developments at the European Security and Defence College (ESDC) should be monitored, since discussions about further expanding the ESDC's structures are currently underway, against the backdrop of the experience gained since the virtual college was set up in 2005.*
- ▶ *Drafting a 'European Code of Diplomatic Conduct' with the proviso that in the long*

run it is legally anchored by a Council Decision.

- ▶ *Conversion of the first Commission delegations into Union delegations.* Suitable candidates for this would be third countries and organisations 1) that are in line with the EU's strategic interests; 2) where not all EU Member States are represented by bilateral embassies; and 3) where none of the partner countries is asserting any particular national interests. Examples would include European Free Trade Association (EFTA) countries, the Central Asian Republics and the secretariats of those regional organisations with which the EU is currently concluding economic and partnership agreements, like the Caribbean Community (CARICOM), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), and so on. When preparing pilot projects, initial experience accumulated by the EU delegation to the African Union set up in late 2007, should be taken on board.

At the very latest by 2013, when the current financial period comes to an end, strategic coordination capabilities under the leadership and responsibility of the HRUFASP should be thriving well enough to ensure that the EEAS can be evaluated in *pilot representations* that will need to be selected by that date. Then, on the basis of the experience gained by these first Union delegations, a general, transnational model for the design and modus operandi of the future EU delegations could be developed and policy-, case- and region-specific standards for the EU's foreign commitments devised. To make this possible, efficiency and performance indicators already need to be defined now and then used to help ascertain when a certain critical 'EEAS mass' has been reached. After the evaluation process (Foreign Policy Impact Assessments analogous to the tried-and-tested Sustainability Impact Assessments in trade policy) these same indicators should go on to serve as benchmarks for the number and

quality of external representations and their functions.

The expansion of the EEAS should be monitored by a body in which representatives of Member States, the Commission, the Council Secretariat, the EP and independent experts meet up regularly. A group of this kind outside the existing Council and Commission apparatus would probably provide a better guarantee of the EEAS's long-term perspectives being monitored by a body with no narrow institutional interests. After all, the aim, beyond resolving inevitable technical issues, is to make sure that the overall context is taken into account when individual phases of the Service's development are thought through.

Taking Up the Challenge

Brussels and the EU's capitals are currently working on various models for the establishment of the EEAS, and it would be advisable at an early stage to consider the competing concepts with a view to reaching a consensus. Otherwise the Union may risk losing sight of the strategic elements of institutional reforms while engaging in hurried negotiations of a purely technical nature, and that would undoubtedly impair the EEAS's effectiveness.

The Union for the Mediterranean (UfM) will provide a first litmus test for the EEAS. Once Chancellor Merkel had succeeded in persuading French President Nicolas Sarkozy to drop his original idea of setting up an autonomous 'Mediterranean Union' outside or 'alongside' the EU, in March 2008 the heads of state and government reached agreement on the institutional cornerstones of the UfM in the form of an autonomous Secretariat and a rotating double Presidency provided by the EU, on the one hand, and its southern Mediterranean neighbours, on the other. Since the UfM will be the first example of the organisation of European foreign policy after the entry into force of the Lisbon Treaty, the EU's establishment of the respective

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structures should be guided by the new provisions of the treaty. Accordingly, any presidential duties fulfilled by the EU should be discharged by the President of the European Council (at the level of the heads of state and government) and the HRUFASP (at foreign minister level). From the EU's point of view, the UfM Secretariat should be conceived of as belonging to the EEAS. The initial provisions of the Lisbon Treaty should then serve as a basis for detailed discussions about the organisational conditions under which other functional departments should be involved in the UfM and how their work is to be coordinated. After all, the treaty contains no provisions for any kind of rules governing coordination between the presidential duties of the HRUFASP in the Foreign Affairs Council and the continuing rotating presidencies of ministers in other domains, which alternate between Member States.

The next few EU summits will show whether or not Europe's heads of state can agree on a recipe for 'Europeanising' their foreign policy that takes sufficient account of 1) the supranational elements in the HRUFASP's powers; 2) the intergovernmental structures surrounding European Council Presidencies; and 3) the multilevel nature of specific European policy domains between 1) and 2). Unless this comes about, there is a real danger of parallel foreign policy structures being created, which would not only undermine the coherence to which the Lisbon Treaty aspires, but already do so immediately upon the treaty's entry into force.

Consequently, Germany should vigorously pursue the debate on the establishment of the Service. Mindful of the UK's and France's reservations about any swift merger of foreign policy powers within the EU (for which the Lisbon Treaty clearly paves the way and which both the UK and France officially support), Germany's federal government could seek to strengthen the group of actors with a particularly strong interest in seeing a forceful EEAS, i.e. one that plays a promi-

nent role and is capable of taking effective action. From this position Germany could endeavour to mediate between the various conflicting points of view. In so doing, it will have to bear in mind that European actors will probably have to be excluded as potential co-mediators, because the Commission and the General Secretariat of the Council are pursuing strong interests of their own where the EEAS is concerned. As a result, both the Service itself and the HRUFASP are reliant on a universally recognised mediator. During Germany's EU Presidency in 2007, the federal government impressively demonstrated that the clout of the EU's largest Member State is entirely consistent with an ability to serve as an effective mediator to resolve EU-internal conflicts.

The reluctance shown by the Union's institutions and Member States to 'break cover' is understandable, both since they want to adopt the most effective negotiating tactics and also bearing in mind the sheer number of issues to be settled, such as who should fill which top posts in the EU institutions. Yet at the same time, the focus must remain firmly on achieving the aim of conducting more coherent and effective external relations, as pursued by the institutional innovations set out in the Lisbon Treaty.