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# Who Controls the European External Action Service? Agent Autonomy in EU External Policy

Mark FURNESS<sup>\*</sup>

*This article uses a principal-agent framework of analysis to discuss the European External Action Service's (EEAS) institutional design and policy mandates. Can the EEAS act autonomously with regard to the Commission and Member States? Are there policy areas in which the EEAS has greater decision-making autonomy than others? These discussions are central to understanding the post-Lisbon Treaty EU's external policymaking system and its potential strengths as an international actor.*

## 1 INTRODUCTION

This article uses a principal-agent framework as a basis for discussing the European External Action Service's (EEAS) institutional design and policy mandates. The EEAS was created by the 2009 Lisbon Treaty to support the new 'double hatted' office of European Union (EU) High Representative for Common Foreign and Security Policy/Commission Vice President (HR/VP). The Service is a bureaucratic actor comprised of units and staff from the former European Commission Directorates General (DGs) for external relations and development, the external affairs parts of the European Council Secretariat and Member State secondments. It is intended to better equip the EU to pursue European interests and values internationally and thus increase Europe's influence on global issues in a more multipolar world. The issue of the EEAS' autonomy is, therefore, of central importance. The EEAS is not meant to be autonomous in the sense that a nation-state has sovereign independence – indeed, national diplomatic services are never fully independent either, but are constrained by other bureaucratic and political actors in national systems. However, the Service needs to be strong and independent enough to take decisions in the policy areas under its mandate so that other actors will adhere to them, even though they may sometimes have to bear

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extra costs. The Service must also be accountable and thus a legitimate representative of European interests and values. The extent to which the EEAS is able to exert an independent influence on EU external policymaking – just like, as functionalist theory contends, the European Commission has been able to do with regard to former ‘first pillar’ policy areas – raises interesting (and controversial) questions about the way EU functions as an international actor.<sup>1</sup>

Will the EEAS be able to act autonomously, in the relative sense that it can take decisions that may restrict the freedom of other actors in the system to pursue their own interests? Are there policy areas in which the EEAS has greater decision-making autonomy than others? Since the entry into force of the Lisbon Treaty, EU Member States and the Commission have taken steps to guard against EEAS autonomy. They have not delegated all responsibility, retaining important roles for themselves which overlap with EEAS mandates. Consequently, the EEAS’ autonomy is severely limited, at least in the short term. The EEAS will have opportunities to carve out its niche, which may lead – through linked processes of accumulation and socialization – to greater autonomy in the medium to long term.

The article is arranged as follows. The next section outlines the literature on the principal-agent framework and its usefulness for explaining aspects of the EU integration and external policy processes. In helping to find answers to the questions posed above, this literature gives us two important clues: First, autonomy is potentially greater when there are several principals, because the agent can exploit differences among them. This may not result in more autonomy if principals are aware of this possibility and take coordinated steps to guard against it, or if some principals are more effective than others in establishing their preferred controls. Second, the nature and credibility of controls influence the degree of agent autonomy and may vary across policy areas. Such variations are highly likely in the EU external policy setting because of differences in the decision-making frameworks governing different policy areas. Section 3 discusses the first proposition of the literature with reference to the positions of the EEAS’ principals regarding the implementation of the Lisbon Treaty’s external policy provisions, and outlines the *ex ante* and *ex post* mechanisms that define the EEAS’ mandates and independence. Section 4 discusses the implications for policymaking in three key areas of the EEAS’ mandate: the Common Foreign and Security

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<sup>1</sup> For the purposes of this article, the term ‘external policy’ refers to policy areas under the mandate of the High Representative and the External Action Service. This includes ‘external relations’ (policy areas where decisions are taken in the European Commission) and ‘foreign policy’ (policy areas where decisions are taken in the European Council). The borders between these areas of responsibility are not clearly defined. Unless otherwise specified, the acronym ‘EEAS’ is taken to include the office of High Representative/Commission Vice President as well as the bureaucracy that supports her.

Policy (CFSP) with regard to diplomacy and diplomatic representation, the Common Security and Defence Policy (CSDP) with regard to missions, and development policy. The article concludes by suggesting some implications for the EU's international 'actorness.'

## 2 THE PRINCIPAL-AGENT APPROACH

The principal-agent (PA) framework is a microeconomics concept used extensively by political scientists for explaining actor relationships. Despite certain limitations, theories about principal-agent relationships have produced valuable hypotheses explaining why, how and under what circumstances political actors delegate policymaking and implementation and what the 'agent' does with the responsibilities it is granted.<sup>2</sup> The core assumption is that when one party (the principal) contracts another (the agent) to do something on their behalf, the agent has an incentive to act independently, potentially in ways that run counter to the principal's preferences.<sup>3</sup> This can create a form of moral hazard, as the agent can exploit information asymmetry about available options for action and take steps that harm the interests of the principal with minimal costs to itself.<sup>4</sup> The principal, aware of the potential for Pareto-sub-optimal outcomes, attempts to incentivize agent behaviour that is in line with its own preferences.

The essential tension in the principal-agent relationship is the possibility of 'agency slippage': the agent can undertake actions on its own initiative, including behaviour that the principal may not welcome. Principals can try to restrict agents, but this may be costly to implement and may limit the agent's ability to perform its tasks effectively.<sup>5</sup> Information asymmetries are central to this tension. An agent is likely to know more about its own interests and the way that it functions than any principal, and it may be difficult for principals to acquire this information.<sup>6</sup>

The Weberian bureaucratic autonomy concept illustrates the agency slippage tension: once created, bureaucracies can develop independently of the legislative and executive authorities that gave them their original mandate.<sup>7</sup> This has several implications for institutional design: first, established bureaucracies are often

<sup>2</sup> M. Bauer, *Limitations to Agency Control in European Union Policy-Making: The Commission and the Poverty Programmes*, 40 *J. Com. Mkt. Stud.* 3, 381–400 (2002).

<sup>3</sup> E. Fama, *Agency Problems and the Theory of the Firm*, 88 *The J. of Pol. Economy* 2, 288–307 (1980).

<sup>4</sup> Bauer, *supra* n. 2, at 382.

<sup>5</sup> H. Kassim & A. Menon, *The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?*, 10 *J. of European Pub. Policy* 1, 121–139 (2003).

<sup>6</sup> M.A. Pollack, *Delegation, Agency, and Agenda Setting in the European Community*, 51 *Intl. Org.* 1, 108 (1997).

<sup>7</sup> B. Beem, *Leaders in Thinking, Laggards in Attention? Bureaucratic Engagement in International Arenas*, 37 *The Policy Stud. J.* 3, 497–519 (2009).

assumed to be ‘sticky’ and do not give up policymaking responsibilities easily.<sup>8</sup> Second, individual bureaucrats sometimes act in accordance with the interests of their institution even when these are not the same as those of politicians who grant them their mandates.<sup>9</sup> Third, while bureaucratic inertia can be a convenient whipping-boy, demonstrations of competence and effectiveness over time, well organized networks, and a public reputation for even-handedness are all important sources of leverage that can induce cooperation with a bureaucracy’s chosen path. In the long run, bureaucracies acting in the international sphere can shape the strategies and even the preferences of domestic political actors.<sup>10</sup>

There are two main types of control that principals use to limit agent autonomy: *ex ante* controls built into an agent’s institutional design and policy mandates, and *ex post* controls that try to ensure that the agent remains within these boundaries. By defining the limits of the agent’s mandate, the procedures it must follow, and the oversight measures that monitor the agent *ex post*, principals can try to reduce agency slippage.<sup>11</sup> While the design of *ex ante* controls should be a direct trade-off between the principal’s willingness to bear costs and the agent’s ability to perform its function, there is a possibility that risk-averse principals will over-restrict an agent’s independence. *Ex post* measures include monitoring and sanctions, both of which are expensive: monitoring requires time, personnel and effort, while sanctions can also be costly for the principal. Over-zealous *ex post* controls also risk limiting the agent’s effectiveness.

The limitations of the PA approach lie in its essentially positivist conceptualization of politics as an arena in which falsifiable hypotheses can be tested empirically against competing theoretical claims.<sup>12</sup> As such the approach cannot capture the normative dimensions of European integration – the ‘principle’ as opposed to the ‘principal’ acting as a driving force. There are certainly other ways of accounting for this: Manners, for example, argues that the notion that twenty-seven ‘mice-sized’ countries might create and empower an ‘EU elephant’ to face the ‘threats and beasts of a more multipolar world’ could simply be a myth to make Europeans feel better about themselves.<sup>13</sup> Pollack points out that the PA approach cannot explain the successive empowering of the European Parliament through delegation of budgetary and legislative powers under the EU’s Treaties, because the Parliament’s role is determined by concerns about democratic

<sup>8</sup> G. Alexander, *Institutions, Path Dependence and Democratic Consolidation*, 13 J. of Theoretical Pol. 3, 249–270 (2001).

<sup>9</sup> D. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton U. Press 2001).

<sup>10</sup> Beem, *supra* n. 7.

<sup>11</sup> Pollack, *supra* n. 6, at 108.

<sup>12</sup> Bauer, *supra* n. 2.

<sup>13</sup> I. Manners, *Global Europa: Mythology of the European Union in World Politics*, 48 J. Com. Mkt. Stud. 1, 80–82 (2010).

legitimacy rather than efficient delegation.<sup>14</sup> A further, methodological limitation noted by Hodson is that ‘the sheer applicability of this approach’ can lead to ‘over-determination of principal-agent relationships.’<sup>15</sup> Such caveats do not, however, detract from the usefulness of the PA approach as a tool for unravelling some of the complexities of institutional design and delegation in the EU, so long as it is ‘handled with care.’<sup>16</sup>

## 2.1 PRINCIPAL-AGENT APPROACHES TO EU INTEGRATION AND EXTERNAL RELATIONS

Principal-agent models and theories of delegation have revealed valuable insights about how the EU functions. As Billiet put it, ‘the genius of the PA approach... is that the notion of “delegation” accommodates, in a very simple way, much of the underlying institutional complexity of the European construction’.<sup>17</sup> In turn, the EU integration process has provided vast empirical material for testing PA theories. Much of this literature focuses on the degree of independence of supranational actors – especially the Commission – and asks about the extent to which Member States can control the actions of these actors.<sup>18</sup> Other studies have included analyses of the European Court of Justice, which through jurisprudence and accumulated legitimacy has evolved into a powerful actor in the EU system.<sup>19</sup> The European Central Bank has also been the subject of PA studies concerned with questions of efficiency, transparency and legitimacy.<sup>20</sup> Scholars have discussed the independence of EU agencies created to carry out various specific functions, including FRONTEX.<sup>21</sup> PA approaches have also been used to capture the dynamics of relationships between EU-level actors such as the Council and the Commission, where the division of labour is not always clear.<sup>22</sup> On a slightly

<sup>14</sup> Pollack, *supra* n. 6, at 107.

<sup>15</sup> D. Hodson, *Reforming EU Economic Governance: A View from (and on) the Principal-Agent Approach*, 7 *Comp. European Pol.* 4, 455 (2009).

<sup>16</sup> I. Maher, S. Billiet & D. Hodson, *The Principal-Agent Approach to EU Studies: Apply Liberally but Handle with Care*, 7 *Comp. European Pol.* 4, 409 (2009).

<sup>17</sup> S. Billiet, *Principal-Agent Analysis and the Study of the EU: What About the EC’s External Relations?*, 7 *Comp. European Pol.* 4, 451 (2009).

<sup>18</sup> J. Tallberg, *Delegation to Supranational Institutions: How, Why and with What Consequences?*, 25 *West European Pol.* 1, 24 (2002).

<sup>19</sup> J. Caporaso & S. Tarrow, *Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets*, 63 *Intl. Org.* 4, 593–620 (2009).

<sup>20</sup> J. Tallberg, *Handbook of European Politics* 195–212 (K. E. Jørgensen, M. Pollack & B. Rosamund eds., Sage 2006).

<sup>21</sup> J. Pollak & P. Slominski, *Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU’s External Borders*, 32 *West European Pol.* 5, 904–924 (2009).

<sup>22</sup> Bauer, *supra* n. 2; H. Dijkstra, *Commission Versus Council Secretariat: An Analysis of Bureaucratic Rivalry in European Foreign Policy*, 14 *European For. Affairs Rev.* 3, 431–450 (2009).



different tack, a few studies have discussed the ability of EU-level institutions to act as principals vis-à-vis Member States<sup>23</sup> and non-EU actors.<sup>24</sup>

The PA approach has been used less often to explain the EU's external policymaking and implementation, even though as Dür and Elsig point out, EU external policy is fertile ground.<sup>25</sup> 'Even after almost twenty years of CFSP', write Wessel and den Hertog, 'we have not been able to fully grasp the complexity of the relationship between the EU and the Member States in this area'.<sup>26</sup> There are strong incentives for EU member governments to use the EU as their international agent: once a common position on an international issue is reached, policy and implementation details cannot easily be worked out by national ministries because of informational, time and capacity constraints.<sup>27</sup> There is a string of principal-agent relationships between the various constellations of actors and levels in the system: societal interests, lobbies and voters delegate to national decision-makers, legislators delegate to executives, Member States delegate to the EU institutions, the EU delegates to third countries and international organizations.

Several studies have dealt with the Commission's agency in international trade negotiations, while other scholars have focussed on other aspects of external economic relations such as monetary policy, competition policy and development.<sup>28</sup> Davis-Cross analysed agency relationships in European foreign relations and the role of member state diplomats as facilitators of cooperation among EU Member States.<sup>29</sup> A more recent study of the pre-Lisbon Treaty EU external policy system found that small Member States were more likely to delegate crisis response authority to the EU's High Representative than larger Member States.<sup>30</sup> Sari and Wessel discussed the legal implications of agency for military missions conducted under the EU flag, concluding that the Commission

<sup>23</sup> Hodson, *supra* n. 15.

<sup>24</sup> T. Bodenstern & M. Furness, *Separating the Willing from the Able: Is the European Union's Mediterranean Policy Incentive Compatible?*, 10 *European Union Pol.* 3, 381–401 (2009); F. Schimmelfennig & H. Scholz, *EU Democracy Promotion in the European Neighbourhood – Political Conditionality, Economic Development and Transnational Exchange*, 9 *European Union Pol.* 2, 187–215 (2008).

<sup>25</sup> A. Dür & M. Elsig, *Principals, Agents and the European Union's Foreign Economic Policies*, 18 *J. of European Pub. Policy* 3, 323–338 (2011).

<sup>26</sup> R.A. Wessel & L. den Hertog, *International Responsibility: EU and International Perspectives*, in *The International Responsibility of the European Union: European and International Perspectives* (M. Evans & P. KoutraKos eds., Hart Publishing 2013 - forthcoming).

<sup>27</sup> K. Smith, *European Foreign Policy in a Changing World* (2d ed., Polity 2008).

<sup>28</sup> E. da Conceição, *Who Controls Whom? Dynamics of Power Delegation and Agency Losses in EU Trade Politics*, 48 *J. Com. Mkt. Stud.* 4, 1107–1126 (2010); Billiet, *supra* n. 17; Dür & Elsig, *supra* n. 25.

<sup>29</sup> M.K. Davis-Cross, *The European Diplomatic Corps: Diplomats and International Cooperation from Westphalia to Maastricht* (Palgrave Macmillan 2007).

<sup>30</sup> H. Dijkstra, *EU External Representation in Conflict Resolution: When does the Presidency or the High Representative Speak for Europe?*, 15 *European Integration Online Papers*, Art. 1, <http://eiop.or.at/eiop/texte/2011-001a.htm> (2011).

has been eager to assume legal responsibility for the conduct of member state soldiers deployed on missions.<sup>31</sup>

## 2.2 A PRINCIPAL-AGENT APPROACH TO THE EEAS

This literature suggests two propositions for explaining the system of delegation incorporated in the EEAS' set-up, for predicting whether the new Service will attempt to carve out an autonomous role from the Commission and Member States, and the policy areas in which such efforts are likely to be more or less successful.

First, *the EEAS will attempt to build autonomy by exploiting differences among its principals*. Just as the Commission has at times pursued partisan objectives in several policy areas, the EEAS should not be expected to be a neutral representative of the EU in the international arena. It is likely that the EEAS will try to act in ways that increase its budget, widen its areas of responsibilities and increase its bureaucratic autonomy. Officials are likely to try to increase the power of the institution as a means of empowering themselves.<sup>32</sup> A likely strategy is to seek to play other actors off against each other and build coalitions with Member States, parts of the Commission or even non-EU actors on given issues. If Member States and EU-level actors are aware of these dangers, they can be expected to act by designing *ex ante* and *ex post* controls that limit the EEAS' ability to develop capacity to take decisions they might disagree with.

Second, *the EEAS' autonomy will vary across policy areas*. As Pollack argued, the efficacy and credibility of control mechanisms established by member state principals varies from institution to institution and across issue areas, leading to varying patterns of supranational autonomy.<sup>33</sup> The EEAS has responsibilities in several policy areas with different decision-making rules and procedures, and systems of checks and balances. The rules matter: the Commission has more influence on the outcome when it makes a proposal in policy areas operating under the Community method than those where decisions are taken intergovernmentally. Mixed competence policy areas raise further possibilities. The EEAS is responsible for policy areas operating under both types of decision-making procedure and some that fall into the grey area between them. It is therefore likely that the EEAS will have opportunities to push for greater autonomy in some policy areas and its options will be limited in others.

<sup>31</sup> A. Sari & R. A. Wessel, *International Responsibility for EU Military Operations: Finding the EU's Place in the Global Accountability Regime*, in *The Legal Dimensions of Global Governance: What Role for the EU?* (B. Van Vooren, S. Blockmans & J. Wouters eds., Oxford U. Press, 2013 – forthcoming).

<sup>32</sup> N. Brack & O. Costa, *Beyond the Pro/Anti-Europe Divide: Diverging Views of Europe within EU Institutions*, 34 *J. of European Integration* 2, 104 (2012).

<sup>33</sup> Pollack, *supra* n. 6, at 101.

### 3 THE 2010 EEAS NEGOTIATIONS: A BATTLE OVER *EX ANTE* AND *EX POST* CONTROLS

From an EU-integration standpoint, the Lisbon Treaty at last recognized the ‘functional indivisibility’ of CFSP and external relations decision-making, the mandates for which were previously split between the EU Council Secretariat and the European Commission.<sup>34</sup> However, the Treaty did not affect the various legal frameworks and decision-making procedures for different policy areas with international implications, such as foreign and security policy, trade, enlargement, migration, environment and development. Nor did the Treaty specify how the new institutional setting would work in practice when it came into force on 1 December 2009.

As more attention was given to the potential consequences of the Treaty’s external policy provisions for Member States and other EU-level actors, the fear that a monster was being created became palpable. Elmar Brok, the Parliament’s *rapporteur* during the negotiations, even worried that the EU was about to create a new bureaucracy ‘located in the middle between the Council and the Commission which in the long term would... lead a life of its own to become an independent kingdom outside our control’.<sup>35</sup> The 2010 negotiations leading to the EEAS’ launch were marked by at times acrimonious squabbling among Member States, the Commission, the Council Secretariat, Members of the European Parliament (MEPs) and the small coterie of officials tasked with designing the new Service. Some of these actors either seized on the Lisbon Treaty’s vague reference to the EEAS to push for greater influence over external policy, or tried to prevent perceived power-grabs by other actors. As one well-informed observer remarked, ‘the turf fighting that has accompanied the whole process should have surprised no one who has had any working experience of the Brussels decision-making machine’.<sup>36</sup>

The outcome of the first round of bargaining was the 26 July 2010 Council Decision establishing the organization and functioning of the EEAS.<sup>37</sup> The Decision gave the EEAS its initial policy mandates and established some control mechanisms but left key details regarding interaction between Member States, the various Commission DGs, the Parliament and the EEAS to be resolved through a ‘learning by doing’ process. Consequently, when the Service became operational

<sup>34</sup> S. Stetter, *Cross-Pillar Politics: Functional Unity and Institutional Fragmentation of EU Foreign Policies*, 11 J. of European Pub. Policy 4, 720–739 (2004).

<sup>35</sup> See Euractiv, <http://www.euractiv.com/en/future-eu/eus-new-diplomatic-service-links dossier> (accessed Dec. 23, 2010).

<sup>36</sup> D. Hannay, *Benchmarking the EU’s New Diplomatic Service*, 16 Europe’s World 78–83 (2010).

<sup>37</sup> European Council, *Council Decision of 26 July 2010 Establishing the Organisation and Functioning of the European External Action Service*, 2010/427/EU, OJEU 201/30 – 201/40 (Aug. 3, 2010).

on 1 January 2011 it was still not clear exactly what position it would occupy in the pluralistic EU external policymaking system. Nor was it clear that turf battles between the EEAS and the Commission had not resulted in design flaws that threatened to undermine the Service's effectiveness.

### 3.1 THE PRINCIPALS

As an agent, the EEAS acts on behalf of several principals. These include, *inter alia*, Member States with strong foreign policy preferences and global presence such as Britain, France and Germany (the 'big three'). Spain, Italy, the Netherlands, Sweden, Poland, Denmark, Belgium and Portugal have strong interests and influence in specific policy areas and regions, while smaller Member States delegate specific functions. Several institutional actors at the EU level also delegate to the EEAS, including the Commission, its President José Manuel Barroso, and the permanent Council Presidency headed by Hermann van Rompuy. Although the European Parliament does not explicitly delegate responsibilities to the EEAS, the Service acts on its behalf in a broader sense, particularly through EU delegations in partner countries and international organizations. Moreover, the Parliament has an important function in its role as the directly elected representative of the European public. All of these actors moved to limit the EEAS' autonomy through establishing *ex ante* controls.

#### 3.1.1 Member States

The decision to create the EEAS revealed the reluctance of EU Member States to empower the Commission as their representative in international affairs. Although an external policy bureaucracy already existed in the form of DG Relex, Member States' desire to maintain intergovernmental decision-making on the CFSP necessitated the creation of a new Service, rather than strengthening the Commission's external policy competencies. The Commission, a well-established bureaucratic actor with a wide array of resources and a tradition of pushing the boundaries of its mandate, would have been far more difficult to control than a service with responsibilities limited specifically to external policy.

The central dilemma for the British, French and German governments during the EEAS negotiations was to balance their interests in a strong diplomatic role for the EU with their desire to maintain their own bilateral relationships and networks. They pushed for an arrangement that would empower the High Representative and the EEAS at the expense of the Commission, while at the same time limiting their independence by keeping them closely tied to the

European Council. HR/VP Ashton made several trips to Berlin, Paris and London to conduct meetings at the highest level and the big three moved to ensure representation in key positions of the EEAS hierarchy, even at the risk of occasional clashes. The French and German governments were uncomfortable with Ashton's reliance on British officials in her personal cabinet and EEAS working group, which they interpreted as a perfidious attempt to secure long-term influence over EU external policy for the UK. In a classic diplomatic 'shot across the bows', an internal German Foreign Ministry document leaked to the *Guardian* expressed Berlin's dismay at British domination of the EEAS' set-up.<sup>38</sup>

### 3.1.2 *The Commission and its President*

The Commission, acutely aware that the gathering Euro crisis was pressuring member state enthusiasm for integration, did not want to lose competencies accumulated over decades to the EEAS. Although Catherine Ashton is also a VP, she did not take the lead on behalf of the Commission in setting up the EEAS. Instead, President Barroso ensured strong Commission influence through his insistence that the Commissioners for Development, Enlargement/Neighbourhood and Humanitarian Affairs would work closely with the High Representative and the EEAS 'to ensure coherence in our external policy' in policy areas that were partially transferred to the EEAS.<sup>39</sup> Key policy areas including trade, humanitarian affairs, enlargement, climate action, energy and fisheries remained firmly under Commission control, and the College of Commissioners continued to have responsibility for coherence across all common EU policies with external dimensions.

Crucially, the Commission retained the ability to wield long-term influence through its control over the EEAS' operational budget. Legally, the EEAS does not have the status of an EU institution in its own right, but has been established as an 'inter-institutional service'. This means that the Service cannot spend money without Commission approval.<sup>40</sup> The Commission's Foreign Policy Instruments Service administers EU funds earmarked for core areas of EEAS operation, including the CFSP instrument, the Instrument for Stability, and the European Instrument for Democracy and Human Rights. The Commission's control over the EEAS' operational budget was confirmed by an inter-service agreement in

<sup>38</sup> I. Traynor, *Germany and France dispute Lady Ashton's 'excessive' EU powers*, *Guardian* (Feb. 28, 2010)

<sup>39</sup> J.M. Barroso, *Letters to Commissioners Piebalgs, Füle and Georgieva* (Nov. 2009/Jan. 2010).

<sup>40</sup> A. Rettman, *Commission Still Pulls Strings on EU Foreign Policy*, *EUobserver* (Feb. 6, 2012).

January 2012 which reaffirmed Article 17(1) TEU's assignment of responsibility over the execution of the budget and the management of programmes.<sup>41</sup>

### 3.1.3 *The European Parliament*

The European Parliament cannot be properly considered a 'principal' – it does not delegate authority to the EEAS. However the EP has more influence over EU external policy than many national parliaments have over the activities of the executive outside their borders. It holds hearings for Commissioners and exercises budgetary oversight of many of the EU's external policy instruments. It also has an important oversight role in external policy, a role that was enhanced by the Lisbon Treaty and by the July Council Decision on the EEAS, which several MEPs worked hard to influence.

In a statement responding to HR Ashton's initial 24 March proposal, MEPs argued that 'The proposed structure with an omnipotent secretary-general and deputy secretary-generals does not provide the politically legitimized deputies that the High Rep needs in order to do her job properly.'<sup>42</sup> Elmar Brok went as far as to refer to the post of EEAS Secretary-General as a 'French-style spider' running the EEAS 'web' from the centre. Later in the year Ingeborg Grässle, chair of the European Parliament's budgetary committee, tried to prevent Parliamentary approval of Ashton's proposal on the grounds that the Parliament was throwing away its ability to push for transparency in the EEAS' staffing and financial regulations. Grässle was able to delay the Parliament's final approval until October 2010 when an agreement was struck with HR Ashton and Member States granting the Parliament greater oversight and auditing powers.<sup>43</sup>

MEPs were less successful in their endeavour to include clauses in the EEAS' establishing documents that would enable meaningful Parliamentary oversight of new policy decisions and the activities of key officials. The preamble to the July Council Decision states that:

the European Parliament will fully play a role in the external action of the Union, including its functions of political control as provided for in Article 14(1) TEU... In accordance with Article 36 TEU, the High Representative will regularly consult the European Parliament on the basic choices of the CFSP and will ensure that the views of the European Parliament are taken into consideration.<sup>44</sup>

<sup>41</sup> European Commission Secretariat-General, *Working Arrangements between Commission Services and the European External Action Service (EEAS) in Relation to External Relations Issues*, SEC (1012) 48, 15 (Jan. 13, 2012).

<sup>42</sup> E. Brok, *EEAS Proposal Unacceptable to the European Parliament*, Press release Mar. 25, 2010, <http://www.elmarbrok.de> (accessed Dec. 20, 2010).

<sup>43</sup> C. Brand, *Stubborn Reformer*, *European Voice* (Oct. 28, 2010).

<sup>44</sup> European Council, *supra* n. 37, at 201/30.

This clause only places the onus on the HR and the EEAS to ‘consult’ the Parliament ‘on the main aspects and the basic choices of CFSP’ but not on specific policy areas or programmes.<sup>45</sup> Since the EEAS’ launch consultations have been frequent: officials from the HR/VP down have participated regularly in Parliamentary debates in the Plenary and the various committees dealing with external relations issues.<sup>46</sup>

In practice, the Parliament can act as an informed public overseer, but cannot stop a decision it does not agree with. This can be illustrated with reference to the Service’s budget: the EEAS’ administrative Directorate-General reports to Ashton in her capacity as Vice-President of the Commission rather than as High Representative for CFSP. This requires the EEAS’ budget to be subject to the same discharge procedure as that of the Commission, meaning that the Parliament has annual right of approval. However the extent to which this right gives Parliamentarians policy leverage is unclear, as refusing approval for the EEAS’ budget is a ‘nuclear option’ that would shut down the service completely and is unlikely to be contemplated even in the most serious of crises.

## 3.2 THE AGENTS

### 3.2.1 *The Office of the High Representative/Commission Vice President*

Baroness Ashton, it is often said, wears two hats: she is the EU’s HR and the Commissioner for External Relations, which carries the added responsibility of being VP. In fact, she has several other ‘hats’ as well: she is chair of the European Council foreign affairs and defence configurations which also deal with security policy, development policy and trade policy; she is the UK’s Commissioner, which implies an unofficial national advocacy role, and she is head of the EEAS, which means she is responsible for operations. Ashton’s ability to perform these many roles is crucial. As Elmar Brok noted, ‘the key to the EEAS’ success lies in the post of EU High Representative and Commission Vice President’.<sup>47</sup> As her job description is far too much for one person, Ashton must herself delegate certain responsibilities to deputies, parts of the EEAS and in some cases to parts of the Commission. Her cabinet has a key role in the EU system as conduit for this complex system of delegation.

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<sup>45</sup> *Ibid.*

<sup>46</sup> European External Action Service, *Report by the High Representative to the European Parliament, the Council and the Commission*, 4 (Dec. 22, 2011).

<sup>47</sup> E. Brok, *It’s the EU Governments Who’ll Make or Break its Diplomatic Service*, 16 *Europe’s World*, 79 (2010).

Ashton's office has considerable agency embodied in the agenda-setting powers derived from her right to propose legislation on CFSP matters as HR, and on external relations matters as VP. However, the right to propose legislation does not necessarily translate into the ability to set the agenda for the external relations of the EU. Since taking office, Ashton's primary focus has been on establishing the EEAS itself. She has treaded carefully with member state sensitivities in many areas, particularly regarding the broad strategic direction of EU external policy. Her risk-averse strategy has led to unfavourable comparisons with her predecessor as HR, Javier Solana, who became known as 'Mr. CFSP' for his ability to manage relationships between Member States, the EU institutions and external partners, albeit with a much simpler mandate.<sup>48</sup>

Even though Commissioners have presented a united face externally, there have been some conflicts of interest between Ashton and her colleagues over policy responsibilities. As external relations Commissioner, Ashton has a special role in 'coordinating' the work of Development Commissioner Piebalgs, Enlargement/ Neighbourhood Commissioner Füle, and Humanitarian Assistance Commissioner Georgieva. This should make her the second most powerful member of the College of Commissioners after President Barroso. However, the Lisbon Treaty's vague demarcation of mandates between the Commissioners was not clarified by the July 2010 Council Decision, which stated that development, humanitarian and neighbourhood policy the 'responsibility' of the relevant Commissioners but did not detail how this responsibility would be exercised.<sup>49</sup> The reluctance of the three Commissioners to relinquish control over their policy areas led to the January 2012 inter-service agreement drawn up by the Commission. This reaffirmed the Commission's responsibility for drafting detailed proposals and implementing projects for all of the EU's external policy financial instruments.<sup>50</sup>

### 3.2.2 *The EEAS*

According to its founding document the EEAS is 'a functionally autonomous body of the Union under the authority of the High Representative'.<sup>51</sup> From the legal perspective the EEAS is different from other EU bureaucratic actors. It is not an institution like the Commission, Council, Parliament, the European Court of Justice or the European Court of Auditors, because has no powers of its own conferred by the EU Treaties but has rather been established to 'support' the High

<sup>48</sup> J. Cutileiro, *Death of the WEU – How Brussels Shot Itself in the Foot*, 19 *Europe's World*, 38–43 (2011).

<sup>49</sup> European Council, *supra* n. 37.

<sup>50</sup> European Commission Secretariat-General, *supra* n. 42.

<sup>51</sup> European Council, *supra* n. 37, at 201/30.



Representative. Nor is the EEAS an agency such as FRONTEX or the European Defence Agency, which implement policy, or the European Aviation Safety Agency which can take legally binding decisions in a specific policy area.<sup>52</sup> Its role is to ‘support’ the HR/VP but not in the same sense that the various Commission services provide administrative or legal support to multiple DGs and other actors. The EEAS’ legal status with regard to other actors in the EU system is not clear, and it is likely that grey areas will need to be defined over a period of time. Political decisions taken in the European Council and decisions on points of law by the European Court of Justice may be needed to resolve future conflicts over the limits of the EEAS’ mandates.<sup>53</sup>

The Lisbon Treaty’s unification of the posts of HR and VP necessitated combining the foreign policy units of the Council Secretariat and the Commission. The July 2010 Council Decision acknowledged that the EEAS will act on behalf of multiple principals by giving it two ‘tasks’ – supporting the High Representative in fulfilling the mandates outlined in Articles 18 and 27 TEU, and to ‘assist the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations’. Further, the EEAS ‘shall support, and work in cooperation with, the diplomatic services of the Member States’.<sup>54</sup> Senior EEAS officials have pushed for independence from all of these masters and the Commission has pushed back. The January 2012 inter-service agreement stated that the EEAS ‘shall refrain from taking any measures... on issues which fall within Commission competence’. Even for instruments for which the July 2010 Council Decision allocates the lead role to the EEAS, the inter-service agreement insists that ‘the relevant Commission service prepares the proposals in consultation with the EEAS’.<sup>55</sup> This was observed in practice in late 2011, when senior officials from the new Directorate-General for EuropeAid and Cooperation (DevCo) coordinated the Commission’s proposals for the entire external relations component of the EU’s 2014–2020 multiannual budget.

<sup>52</sup> European Commission, *European Agencies: The Way Forward*, COM(2008) 135 final (Mar. 11, 2008). There are several types of EU agency, see [www.europa.eu/agencies](http://www.europa.eu/agencies). The use of the word ‘agency’ to describe a type of bureaucratic actor is distinct from the more conceptual use of the term ‘agency’ in sec. 2.

<sup>53</sup> The 2008 ECOWAS ruling by the ECJ is an example of this kind of case. In early 2005 the Commission asked the ECJ to annul a 2004 Council Decision to fund an ECOWAS small arms and light weapons (SALW) project with a EUR 515,000 grant from the CFSP budget. The ECJ ruminated over its decision for three years, during which time the Commission kept security and development policy largely separate. In May 2008 the Court finally upheld the Commission’s complaint.

<sup>54</sup> European Council, *supra* n. 37, at 201/32. The Council Decision’s incorporation of the former DG Development’s country desks into the EEAS necessitated restructuring in the Commission also, especially the merger of DG Development’s policy units with DG EuropeAid to form the new DG DevCo.

<sup>55</sup> European Commission Secretariat-General, *supra* n. 42, at 16.

The EEAS may be able to build its agency through its delegations to third countries and international organizations. The former Commission delegations now represent the EU as a whole, and are expected to have a stronger political voice and to engage with host governments on political issues. The EEAS can be expected to use this ‘upgrade’ to increase its political influence within the EU system. Despite these changes some insiders do not believe that delegations have as much flexibility and autonomy following the Lisbon Treaty. Although heads of EU delegation have, in theory, the right of demarche over EU member state ambassadors, in practice this is unlikely to happen very often. Since the Treaty entered into force, member state foreign ministries and embassies have shown reluctance to accept secondary status to EU delegations in countries where they have a long-standing diplomatic presence.

### 3.3 *EX POST* CONTROL MECHANISMS

Pollack identified four mechanisms by which Member States can exercise *ex post* control over supranational agents: the comitology system and Council working groups, the possibility of judicial review by the ECJ, periodic Council Decisions that limit the Commission’s mandate, and the threat of amending the EU’s treaties.<sup>56</sup> Not all potential measures are relevant in the case of the EEAS – it is unlikely that, for example, a Treaty amendment on external policy requiring ratification by all twenty-seven Member States would be seriously contemplated in the short-to medium term. Monitoring is far more important for ongoing control, with the prospect of an ECJ or Council decision depending on the outcome.

The Lisbon Treaty has introduced changes to the comitology system, which Member States have often used to pressure the Commission into specific actions. Decisions about the detailed implementation of EU legislation are taken in committees below the level of the Council of Ministers and the College of Commissioners. Several committees oversee areas under the EEAS’ mandate, including the political and security committee (PSC), the Foreign Affairs Committee (FAC) and the development committee (CoDev). These committees report to the Committee of Permanent Representatives (COREPER) chaired by the member state holding the rotating Presidency. Member State ministries have the opportunity to comment on documents presented by the Commission or the EEAS, which can amount to a veto depending on the policy area. For its part, the Commission has in the past taken care to prepare proposals that can be accepted by Member States with the minimum opposition.

<sup>56</sup> Pollack, *supra* n. 6, at 101.

The implications of the Lisbon Treaty's comitology provisions are potentially highly significant for the EEAS. The Treaty distinguishes between 'delegated' acts (Article 290 TFEU) which the Commission can amend and 'implementing' acts (Article 291 TFEU) which the Commission implements following the comitology process. For delegated acts, Member State regulatory committees that scrutinized Commission decisions were abolished and the Parliament was given equal status to the Council in approving legislation. Member States have reacted by trying to limit the instances in which it delegates decision-making to the Commission, and the Parliament has responded by arguing that such a step is contrary to the whole point of delegation, which is to speed up decision-making.<sup>57</sup> Even though most external policy areas concern implementing acts, more delegated acts in areas under the EEAS' mandate would mean that the Parliament has a bigger say in the Service's activities.<sup>58</sup>

A further monitoring mechanism is the inclusion of Member State officials in the EEAS. This is not a new development: national ministries have always seconded officials to Commission directorates and the Council Secretariat, often to work on issues of interest to the country or ministry sending the official. The EEAS takes this to a new level, as secondments – mostly but not exclusively from Member State foreign ministries – are to make up one third of the Service's staff. Secondments can be to Brussels and/or to delegations in partner countries and international organizations, and can last for up to ten years. The EEAS manages the recruitment process itself, and Member States have not been able to simply place their people in strategic positions at lower levels.<sup>59</sup> Officially, seconded staff owe first loyalty to the EU rather than to their home countries and have to report home via official channels.<sup>60</sup> In practice, secondment opens informal channels from Member States to the EEAS, especially as Member State officials expect to return to their home country administrations when their secondment ends. In time, socialization encouraged by secondments may contribute to deepening 'Europeanization' at the national level.<sup>61</sup>

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<sup>57</sup> European Voice July 15, 2010.

<sup>58</sup> P. Craig, *Delegated Acts, Implementing Acts and the New Comitology Regulation*, 5 *European L. Rev.*, 675 (2011).

<sup>59</sup> Z. Murdoch, J. Trondal & S. Gänzle, *The Origins of Common Action Capacities in EU Foreign Policy: First Observations on the Recruitment to the European External Action Service (EEAS)* (U. Agder ISL Working Paper No. 9, 2012).

<sup>60</sup> European Council, *supra* n. 37, at 201/31. The Council Decision states that 'the staff of the EEAS should carry out their duties and conduct themselves solely with the interest of the Union in mind'.

<sup>61</sup> M. K. Davis-Cross, *Building a European Diplomacy: Recruitment and Training to the EEAS*, 16 *European For. Affairs Rev.* 4, 447–464 (2011).

## 4 IMPLICATIONS FOR EEAS AUTONOMY: THREE KEY POLICY AREAS

### 4.1 THE COMMON FOREIGN AND SECURITY POLICY: DIPLOMACY AND DIPLOMATIC REPRESENTATION

The Lisbon Treaty was intended to strengthen the EU's diplomatic gravitas, increase its potential to influence international events, and enable it to 'speak with one voice' on the international stage. The Treaty clarified the EU's 'international legal personality' and the EEAS has subsequently assumed responsibility for negotiating international agreements that include CFSP matters.<sup>62</sup> This is likely to result in a more prominent diplomatic role for the EEAS. However proceedings are likely to be closely followed by Member States, especially where agreements touch on bilateral interests or where there is a perception that the Union's exercising of its competence would prevent Member States from exercising theirs. HR/VP Ashton cannot speak on behalf of Europe's Member States on foreign policy issues unless there is a clear common position, and this is difficult to forge in fast-moving diplomatic situations where member governments must themselves tread carefully. Moreover, Ashton cannot take the limelight away from Member State foreign ministers, prime ministers, presidents and chancellors, who like to be visible on the global stage. Consequently, the EU's diplomatic role is highly constrained and confined largely to second-order coordination and implementation tasks.

The 'Arab Spring' crisis surrounding the overthrow of the presidents of Tunisia and Egypt in early 2011 offers a useful illustration of a diplomatic process for which the EEAS was unable to play an autonomous role. The institutional structures of the EU's major diplomatic initiative in the region – the Union for the Mediterranean – were of no use in handling the crisis, while Ashton was widely criticized for not speaking out early and clearly in support of the protest movements in Tunisia and Egypt.<sup>63</sup> EU Member States, many of which have a long history of supporting the region's authoritarian governments, expressed varying views and there was no common EU position for Ashton to build on. Shortly before the resignation of former Egyptian president Mubarak, a joint statement by the UK, France and Germany called for free and fair elections and referred to the Egyptian 'regime'. Italian Prime Minister Berlusconi argued that Mubarak should remain in office while Egypt made the transition.<sup>64</sup> When the Libyan crisis deepened, Germany's abstention from UN Security Council

<sup>62</sup> Wessel & den Hertog, *supra* n. 26.

<sup>63</sup> See, for example, *The test for Ashton and Europe*, *Economist* (Feb. 3, 2011).

<sup>64</sup> I. Traynor, *Egypt needs reform not repression, say EU leaders* *Guardian* (Feb. 4, 2011).

Resolution 1973 authorizing a ‘no-fly zone’ surprised many observers. Although the reasons behind Germany’s decision were not clearly expressed at the time, the abstention revealed a deep divide among EU Member States regarding questions about the appropriate use of force in the region. It also effectively ruled out anything other than a supporting role for the EU in Libya.

As a result of Member State differences, the EU’s diplomacy on the Arab Spring veered ‘between being a relevant political actor in the MENA region and a simple spectator... overwhelmed by local and regional political developments’.<sup>65</sup> The EU’s initial response to the crisis, a review of the European Neighbourhood Policy released in May 2011, largely re-iterated the ‘positive conditionality’ approach that had failed to incentivise change in the region since the Barcelona Process’ launch in 1995, although it did promise around EUR 1 billion in new funds and stronger support for civil society actors in Arab countries.<sup>66</sup> The EEAS has focussed on coordinating other multilateral organizations, filling in gaps left by EU Member States and facilitating, rather than leading, the international response.<sup>67</sup>

#### 4.2 THE COMMON SECURITY AND DEFENCE POLICY: MILITARY MISSIONS

The EU has the capability to project force. CSDP missions to Congo, Chad and the Gulf of Aden are evidence that the EU and its members can send in military assets if there is a clear interest and no strong internal opposition. Nevertheless, decisions about the use of force are highly contested among EU Member States and therefore taken on a case-by-case basis. Moreover, concern among traditionally neutral Ireland, Austria and Sweden about the appropriateness of building the EU’s military capacities adds to the issue’s sensitivity.

Defence cooperation between France and Britain deepened in November 2010 with the London agreements signed by French President Sarkozy and British Prime Minister Cameron. Some observers expected that closer ties between the EU’s two biggest military powers would drive deeper cooperation on defence across the EU, as was the case following the 1998 St. Malo *entente* which led to the European Security and Defence Policy (ESDP).<sup>68</sup> Indeed, the agreement stated that the EU ‘must have the capacity for autonomous action, backed up by credible

<sup>65</sup> T. Schumacher, *The EU and the Arab Spring: Between Spectatorship and Actorness*, 13 *Insight Turk.* 3, 108 (2011).

<sup>66</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *A new response to a changing Neighbourhood*, COM(2011) 303 (May 25, 2011).

<sup>67</sup> European External Action Service, *supra* n. 47, at 2–3.

<sup>68</sup> B. Jones, *Franco-British Military Cooperation: A New Engine for European Defence?*, European Inst. for Sec. Stud. Occasional Paper 88 (Feb. 2011).

military forces, [and] the means to decide to use them'.<sup>69</sup> This has not materialized due to divisions between the big Member States on how best to use the EU as a platform, while British and French commitment to raising EU capabilities may be dependent on Germany also playing a greater role.<sup>70</sup> France and Britain have taken steps towards pooling resources bilaterally, but thus far have not included Germany, Poland or Spain. Germany and France are far more enthusiastic about a CSDP coordinated in Brussels than is the UK, and the German, French and Polish foreign ministers have urged Ashton to take a leading role in facilitating discussion on boosting intra-EU military cooperation.<sup>71</sup> External pressure may concentrate minds – the United States, long suspicious of the rivalry deeper EU military cooperation may pose to NATO, has in recent years taken a firmer position favouring pooling of military assets and procurement among EU Member States.<sup>72</sup>

Decisions about when and where to launch missions are taken unanimously in the European Council and Member States retain full command over the forces and personnel which take part in the mission, although tactical command is the responsibility of the EU Military Staff and the mission's Commanding Officer.<sup>73</sup> For example, the decision to launch the Atalanta naval mission in the Gulf of Aden was taken by the European Council in December 2008. EU Member States provide political guidance, staff and assets to the mission, and several non-EU countries have also joined. The EEAS does not have a strong agency role in the mission, but rather facilitates coordination and acts as a link between Member States.

#### 4.3 DEVELOPMENT POLICY

EU development policy is a 'shared competence' between the European Commission and the Member States. Policymaking and implementation is a mixture of bilateral Member State programmes, Member State and Community contributions to multilateral organizations such as the United Nations and the World Bank, Member State contributions to the EU-administered European Development Fund (EDF), and Community programmes funded by the EU budget, including the Development Cooperation Instrument (DCI) and the European Neighbourhood and Partnership Instrument (ENPI). Member State bilateral development relationships are considered a national prerogative, especially

<sup>69</sup> Quoted in A. Vines, *Rhetoric from Brussels and the Reality on the Ground: the EU and Security in Africa*, 86 Intl. Affairs 5, 1091 (2010).

<sup>70</sup> R. Kempin & N. von Ondarza, *CSDP on the Brink*, 13 SWP Comments (May 2011).

<sup>71</sup> EU Observer Dec. 13, 2010.

<sup>72</sup> See J. Blitz, *Defence Accords Give Tantalising Hint of an EU Undivided*, Fin. Times, 'The World 2011', 8 (Jan. 26, 2011).

<sup>73</sup> Sari & Wessel, *supra* n. 31.

by the larger EU members. Coordination and coherence across such a complex system has long been considered an almost insurmountable challenge.<sup>74</sup>

The prospect for agency slippage is higher in development policy than in classical diplomacy or CSDP. The main reason for this is that the Commission acts as a principal in this policy area and has carved out its own policymaking responsibilities over the years. Development cooperation agreements have traditionally been considered ‘mixed agreements’ which the Commission has negotiated and concluded even though some clauses may not have fallen within exclusive Commission competence. Member States have exercised oversight on policy proposals through Council working groups and the EDF committee, but in general they let the Commission lead the process because it has full competence over the DCI and ENPI.<sup>75</sup> Recent Commission initiatives to push the use of budget support to directly fund developing country government agencies and for joint programming of EU country interventions indicate that Brussels and the delegations can take the EU’s role further than many Member States feel comfortable.<sup>76</sup>

The July 2010 Council Decision transferred developing country desks into the EEAS and gave the Service co-responsibilities for the first three stages of the programming cycle for the EU’s development financing instruments, namely country allocation, country strategy papers and national indicative programming.<sup>77</sup> Annual action programmes and implementation remained with the Commission’s new DG DevCo. Development Commissioner Piebalgs kept overall responsibility for EU development policy, although Ashton is to ensure overall consistency of EU external action. This complicated arrangement caused consternation among the development policy community largely because it was unclear how the relationship between the EEAS, DG DevCo and the relevant commissioners would work in practice, potentially placing development policy’s poverty eradication goals at the service of less altruistic foreign policy interests.<sup>78</sup>

Commissioner Piebalgs and HR/VP Ashton have repeatedly expressed their commitment to work together to improve the EU’s effectiveness as a development actor and to improve the coherence of development and foreign policy. Unless

<sup>74</sup> M. Carbone, *Mission Impossible: the European Union and Policy Coherence for Development*, 30 J. of European Integration 3, 323–342 (2008).

<sup>75</sup> European Commission Legal Service, *Entry into Force of the Lisbon Treaty on the External Relations of the EU: Frequently Asked Questions – Practical Answers*, JUR (2009) 50315 (Nov. 26, 2009).

<sup>76</sup> J. Faust, S. Koch, N. Molenaers, H. Tavakoli & J. Vanheukelom, *The Future of EU Budget Support: Political Conditions, Differentiation and Coordination*, European Think Tanks Group/Institute of Development Policy and Management, U. Antwerp Policy Briefing (May 2012).

<sup>77</sup> European Council, *supra* n. 37, at 210/36.

<sup>78</sup> S. Duke & S. Blockmans, *The Lisbon Treaty stipulations on Development Cooperation and the Council Decision of 25 March 2010 (Draft) Establishing the Organisation and Functioning of the European External Action Service*, CLEER Legal Brief (Maastricht May 2010).

Member States move to reduce the Commission's development policy responsibilities, the EEAS and the Commission can play an increasingly independent role by working together. There is much potential for this: the role of the Commission and the Parliament in development policymaking was enhanced by the Lisbon Treaty, especially as some regional and thematic programmes are considered 'delegated acts'. Moreover, the transfer of the former DG Development's country desks to the EEAS meant that the Service was launched with a great deal of development policy expertise, albeit not at senior management level. Since the merger, the EEAS and the new DG DevCo have started to build a pragmatic working relationship. The legislative proposals for the EU's external policy financial instruments, presented to the Parliament in December 2011, were largely drafted by EEAS officials. The 2011 Commission Communication on the future of EU development policy, grandly titled 'Agenda for Change', was prepared by the DevCo policy unit with minimal EEAS involvement.<sup>79</sup>

## 5 CONCLUSIONS

EU Member States decided to establish the EEAS because they wanted to pool resources, consolidate the EU's existing external policy responsibilities and improve efficiency, but were wary of further empowering the Commission to act in the external policy domain. This led to the creation of a new bureaucratic actor, over which Member States, the Commission and the European Parliament have tried to establish controls. The PA framework helps us understand several aspects of this process. The framework does not presuppose a zero-sum game between delegation and control: just because Member States have an interest in trying to control processes and influence outcomes does not mean they do not have an interest in delegating responsibilities and pooling resources. The EEAS and the officials who work there can be expected to seek opportunities for independent action where they can, and they will sometimes succeed in wriggling free from Member State, Commission and Parliamentary control.

The retention of intergovernmental decision-making over the EU's strategic direction, the desire of member governments to be visibly influential on high-profile international events, Member State positioning of nationals in key senior positions and the Commission's reluctance to relinquish policy competencies and budgetary control means that the potential for the EEAS to take independent policy positions is very limited. Indeed, the only way the Service will be able to build an autonomous role vis à vis Member States is to work closely

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<sup>79</sup> European Commission, *Increasing the Impact of EU Development Policy: An Agenda for Change*, COM(2011) 637 final (Oct. 13, 2011).



with the Commission in areas in which the latter already has competence – essentially, for the EEAS to become an extension of the Commission with special responsibilities. This is much more likely in the development policy field than in diplomatic representation where the EU's role is distinctly second-order, or in policy areas with security and defence implications where Member States remain in charge and where Brussels' role is heavily circumscribed by the EU treaties.

The discussion of the EEAS' potential autonomy also has important implications for the EU's international 'actorness' in a more general sense. The Service's capacity for independent decision-making and implementation is an indicator of the European commitment of to strengthen the supra-national aspect of the EU's external relations, and to invest in 'more EU' in a traditionally sovereign state-dominated domain. Several potential outcomes are possible, from a best-case scenario where the EEAS sits at the centre of a whole-of-EU external policymaking system with clearly defined objectives and efficient division-of-labour arrangements. At the other extreme, the new arrangements may fail to integrate important EU external policy actors, overlapping responsibilities may result in damaging turf wars leaving the EEAS high and dry, and individual actors may look for opportunities to pursue their own objectives at the expense of the system as a whole. A third – and more likely – scenario is that an imperfect system will function better in some policy areas than in others because certain decision-making procedures and means of delegation are more amenable to the new system and its actors than others.

The EEAS is unlikely to be given sufficient autonomy to represent EU members on the world stage while there is little agreement on the concrete strategic objectives the Service should pursue and the appropriate division of responsibilities between the EU, Member State bilateral activities and other international actors like NATO. The EU remains divided over what kind of international actor it should be – whether it should limit itself to economic power, or whether it should pursue a broadly normative agenda and lead by example, whether it should develop its ability to coerce and punish other actors. Incoherence is built into the system because actors do not feel that they can risk ironing out sensitive issues, and in the short- to medium-term overlapping mandates are likely to limit the EEAS' efficiency, although not necessarily its effectiveness.<sup>80</sup> In the longer term, the lack of strategy could present the EEAS with serious problems. Internally, senior management will find priority-setting difficult because they will not have a strong sense of the organization's interests beyond maximizing its own bureaucratic responsibilities. Externally, if the EU

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<sup>80</sup> D.C. Thomas, *Still Punching below its Weight? Coherence and Effectiveness in European Foreign Policy*, 50 J. Com. Mkt. Stud. 3, 457–474 (2012).

cannot articulate a common position with regard to other international actors, such as China, Russia, Israel and Iran, then these actors will not take the Service (or the EU) seriously.

This article has deployed the principal-agent framework to help clarify some issues raised by reforms to the EU's external policy bureaucracy following the Lisbon Treaty. Future studies may support or disprove the hypothetical propositions posed above: that the EEAS can exploit differences among its many principals to build its autonomy, and that autonomy is likely to vary across policy areas. In particular, indicators for autonomy applicable to the EEAS context need to be specified so that the extent to which the Service's policies and activities restrict the freedom of Member States to act can be more accurately estimated. Once the EEAS has been in operation for a few years, comparative 'before and after' studies based on hard data will enhance academic and policy discussion on these issues.



## **[A] Aim of the Journal**

The aim of *European Foreign Affairs Review* is to consider the external posture of the European Union in its relations with the rest of the world. Therefore the journal focuses on the political, legal and economic aspects of the Union's external relations. It functions as an interdisciplinary medium for the understanding and analysis of foreign affairs issues which are of relevance to the European Union and its Member States on the one hand and its international partners on the other.

The journal aims at meeting the needs of both the academic and the practitioner. In doing so it provides a public forum for the discussion and development of European external policy interests and strategies, addressing issues from the points of view of political science and policy-making, law or economics. These issues are discussed by authors drawn from around the world while maintaining a European focus.

Authors should ensure that their contributions will be apparent also to readers outside their specific expertise. Articles may deal with general policy questions as well as with more specialized topics.

## **[B] Contact Details**

Manuscripts should be submitted to the Deputy Editor, Dr. Saïd Hammamoun.  
E-mail address EFAR@kluwerlaw.com or said.hammamoun@gmail.com

## **[C] Submission Guidelines**

- [1] Manuscripts should be submitted electronically, in Word format, via e-mail.
- [2] Submitted manuscripts are understood to be final versions. They must not have been published or submitted for publication elsewhere.
- [3] Manuscripts should be between 6,000 and 8,000 words.
- [4] Only articles in English will be considered for publication. Manuscripts should be written in standard English, while using 'ize' and 'ization' instead of 'ise' and 'isation'. Preferred reference source is the Oxford English Dictionary. However, in case of quotations the original spelling should be maintained. In case the complete article is written by an American author, US spelling may also be used.
- [5] The article should contain an abstract, a short summary of about 200 words. This abstract will also be added to the free search zone of the Kluwer Online database.
- [6] A brief biographical note, including both the current affiliation as well as the e-mail address of the author(s), should be provided in the first footnote of the manuscript.
- [7] An article title should be concise, with a maximum of 70 characters. Short titles are invited for use as running heads.
- [8] Special attention should be paid to quotations, footnotes, and references. All citations and quotations must be verified before submission of the manuscript. The accuracy of the contribution is the responsibility of the author. The journal has adopted the Association of Legal Writing Directors (ALWD) legal citation style to ensure uniformity. Citations should not appear in the text but in the footnotes. Footnotes should be numbered consecutively, using the footnote function in Word so that if any footnotes are added or deleted the others are automatically renumbered.
- [9] This journal should be cited as follows: (2013) 18 EFA Rev.
- [10] Tables should be self-explanatory and their content should not be repeated in the text. Do not tabulate unnecessarily. Tables should be numbered and should include concise titles.
- [11] Heading levels should be clearly indicated.

For further information on style, see the House Style Guide on the website: [www.kluwerlaw.com/ContactUs/](http://www.kluwerlaw.com/ContactUs/)

## **[D] Review Process**

- [1] Articles will be subjected to a review procedure, intended to establish and maintain a high standard in order to attain international recognition. Before submission to the publisher, manuscripts will be reviewed by the Board of Editors and may be returned to the author for revision.
- [2] The journal's policy is to provide an initial assessment of the submission within thirty days of receiving the posted submission. In cases where the article is externally referred for review, this period may be extended.
- [3] The editors reserve the right to make alterations as to style, punctuation, grammar etc.
- [4] In general the author will not receive proofs of the article. Proofreading will be taken care of by the Board of Editors.

## **[E] Copyright**

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