
EEAS in the EU External Action Architecture

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Summary: The article analyses the question of the introduction and building of the one of the newest institutional “agencies” of the European Union – the External Action Service. It offers the detailed elaborate of the historical and normative background of the introduction of the EEAS, the competences and instruments of this service and its role within the foreign policy of the EU.

Keywords: European Union, External Relations, Foreign Policy, European External Actions Service.

1. Introduction

Shaping of the EU as a foreign policy actor resulted from the durable evolution of its political and legal system, as well as gradual expansion of the scope of the EU’s external competences leading to strengthening of its position in global economic and political relations. Dynamics of the EU’s external action in the beginning of XXI century were underpinned with the necessity of the establishment of a new legal and institutional framework able to ensure conduct of the coherent EU foreign policy aimed at securing the EU’s leading position in the modern system of international relations. Establishment of such mechanism became one of the main goals of the Treaty of Lisbon which introduced important amendments and changes to the EU’s legal and institutional framework, namely in the external action area. The most important actors in the new legal and institutional framework of the EU foreign policy formulation and conduct are, inter alia, the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) and the European External Action Service (EEAS) placed under the authority of the latter.

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2. A once-in a generation opportunity

Principal agreement on the establishment of the EEAS was reached between the Member states as soon as in 2002 within the framework of the Convention on the Future of Europe, which elaborated the Draft Treaty establishing a Constitution for Europe presented in July 2003¹. Novels contained in the Treaty establishing a Constitution for Europe which hadn't entered into force though preserves historical importance witnessed the vital importance of the establishment of a new institutional mechanism for coordination of all the aspects of the EU external action². The merger of former posts of the High Representative for Common Foreign and Security Policy, placed under the direct authority of the “intergovernmental” Council of the European Union (Council), and the European Commissioner for External Relations, made it possible to merge departments of the European Commission (Commission) and the General Secretariat of the Council responsible for external relations into a new single body.

Prior to the Treaty of Lisbon the EU foreign policy apparatus existed in the form of the General Directorate for the External Relations (DG RELEX) within the Commission organisational structure. During the negotiations on the Treaty establishing a Constitution for Europe and those on the Treaty of Lisbon, the Member states strived to secure intergovernmental model of decision-making within the Common Foreign and Security Policy (CFSP) area, which led to the establishment of the *sui generis* EEAS instead of strengthening the Commission's external competences. In her speech before the European Parliament Catherine Ashton stressed that the creation of the EEAS should be regarded as “a once-in a generation opportunity” to enhance the EU foreign affairs coherence, namely in the area of security and defence, with the aim of securing the EU's common values and goals defined by the Treaty of Lisbon³. The legal basis for the creation of the EEAS can be found in Article 27 Treaty on European Union (TEU), which contains only general provision on its structure and functioning. The organisation, functioning and competences of the EEAS shall be established by a Council decision, acting on a proposal from the High Representative after consulting the European Parliament and obtaining the consent of the Commission.

¹ Final report of Working Group VII on External Action. The European Convention. The Secretariat, CONV 459/02. Brussels, 16 December 2002

² Piris Jean-Claude. *The Constitution for Europe: A Legal Analysis*. Cambridge: Cambridge University Press, 2006, P. 145–154

³ Ashton Catherine, High Representative/Vice President. Speech to the European Parliament's foreign affairs committee. European Parliament, Brussels, 23 March 2010.

3. The High Representative

The High Representative is one of the Commission's vice-presidents, besides she takes part in the work of the European Council and chairs the Foreign Affairs Council. The High Representative is appointed by the European Council acting by qualified majority with the agreement of the President of the Commission and consent of the European Parliament. She acts according to the mandate obtained from the European Council and is responsible for coordination of the EU external action. The High Representative is responsible before three institutions at once, namely the Commission, the Council and the European Parliament. Pursuant to the TEU the President of the Commission may request that the High Representative reside in line with the procedure laid down in Article 18 TEU without consulting the rest of the commissioners. The European Parliament may carry vote on a motion of censure of the Commission leading to the resign of the whole Commission including the High Representative, who will still preserve her post in the Council, namely the Foreign Affairs Council, until the new Commission is appointed. As a Vice-President of the Commission the High Representative carries the responsibilities incumbent on it in external relations area and ensures coordination between other aspects of the EU external action. In exercising the responsibilities within the Commission the High Representative is bound by the Commission procedures without prejudice to her responsibilities as the High Representative and those within the Council.

4. Negotiating the EEAS

In January 2010 the High Representative Catherine Ashton formed a High Level Group for coordinating the negotiations on the creation of the EEAS consisting of the representatives of the Commission, the General Secretariat of the Council, the Spanish Presidency and several other Member states. Propositions of the High Level Group were discussed during the meetings of the COREPER, meetings of the ministers for foreign affairs of the member countries held in Cordoba in March 2010, as well as within the Commission and during sessions of the Foreign Affairs Committee of the European Parliament in February-March 2010.

The negotiations on the creation of the EEAS faced some technical difficulties, but most of all they were complicated by the issues of the structure and mandate of the EEAS. The United Kingdom, France and Germany concentrated on securing the subtle balance between strengthening the EU's dip-

lomatic role and preserving the influence of their national diplomatic services. These states promoted the adoption of a decision providing for delegating the High Representative and the EEAS certain powers and competitions, while simultaneously limiting their scope by placing the High Representative and the EEAS under the authority of the Council. Less influential Member states expressed their own view of the structure and competence of the EEAS and criticized the dominant position on the United Kingdom, France and Germany in the negotiations process on the establishment of the EEAS. These states led by the Visegrad Group states didn't attempt to block this process though lobbied the presence of their representatives on the highest level within the newly created structures.

The President of the Commission Jose-Manuel Barroso made efforts during the negotiations to secure considerable influence of the Commission on the EEAS, insisting namely on ensuring close cooperation between the High Representative and the commissioner responsible for the European Neighbourhood policy with the aim of enhancing the overall coherence in EU external action⁴. Jose-Manuel Barroso also advocated for securing the Commission's pivotal role in formulation and conduct of the European Neighbourhood Policy and development policy as these areas are extremely important for the EU external action.

Catherine Ashton presented "Proposal for a Council Decision establishing the organisation and functioning of the European External Action Service" on 25 March 2010, reflecting mainly German and French stance on the issue than that of the Commission⁵. The Foreign Affairs Council expressed its agreement on the Proposal, but the European Parliament rejected it with a view that the Proposal would have made the EEAS responsible neither before the European Parliament nor before national parliaments of the Member states. Besides, the European Parliament pointed that the Executive Secretary General of the EEAS would have concentrated too much powers and that the proposed model of functioning and organisation of the EAAS would be insufficient for ensuring the coherence of the EU external action. Though the Treaty of Lisbon provided for the European Parliament only to be consulted on the EEAS establishment issues, it had to approve the necessary amendments to EU budget and to the EU Staff Regulation for the EEAS to be established.

⁴ Lefebvre M., Hillion C. *The European External Action Service: towards a common diplomacy?* European Policy Analysis, Stockholm, SIEPS, Issue 2010: 6epa, P. 3

⁵ Proposal for a Council Decision of establishing the organisation and functioning of the European External Action Service, 25 March 2010. Available at: http://eeas.europa.eu/docs/eeas_draft_decision_250310_en.pdf

During the negotiations within the Foreign Affairs Committee of the European Parliament the new package of proposals on the EEAS was elaborated and presented on 21 June 2010. The major difference from the Catherine Ashton's initial proposal was the introduction of administrative position of the Director-General placed under the authority of the High Representative as the Commission vice-president. Besides, it was agreed that the EEAS budget should be approved yearly by the European Parliament within the same procedure as the Commission budget. The said compromise satisfied the European Parliament and it approved the adoption of the Council Decision of 26 July 2010 establishing the organization and functioning of the EEAS (2010/427/EU).

5. Legal nature of the EEAS

Article 1 of the Council Decision 2010/427/EU stipulates that the EEAS is a functionally autonomous body of the EU, separate from the General Secretariat of the Council and from the Commission, placed under the authority of the High Representative⁶. The term functionally autonomous as suggested by B. Van Vooren implies that in supporting the High Representative the EEAS should take instruction only from her, but not from the Council or the Commission⁷. Due to its functionally autonomous status the EEAS doesn't enjoy the level of independence typical for EU institutions, meanwhile it has much more autonomy than COREPER, European Defence Agency and other EU bodies. As stressed by Benita Ferrero-Waldner, former EU commissioner for external relations, the EEAS has no model to follow, thus it should neither be intergovernmental, nor purely based on the Community method, but should embody a genuinely European approach⁸. Pursuant to Article 27 TEU the EEAS at the moment of its creation comprised officials from the relevant departments of the General Secretariat of the Council and of the Commission as well as staff from national diplomatic services of the Member states. Thus for, the relevant departments and functions were transferred from the Commission and the General Secretariat of the Council to the newly created EEAS together with the

⁶ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU)

⁷ Bart Van Vooren. A legal-institutional perspective on the European External Action Service. CLEER Working Papers, The Hague, The Netherlands, CLEER T.M.C. Asser Institute, 2010, No.7, p. 20

⁸ Quoted in Euractiv, 'The EU's new diplomatic service, published 09 March 2010, updated 08 February 2011. Available at: <http://www.euractiv.com/future-eu/eus-new-diplomatic-service-links dossier-309484?display=normal>

staff and temporary personnel holding post in these departments. From 1 July 2013 all officials and other servants of the EU can apply for vacant posts in the EEAS. The EEAS is not vested with delegated powers and is neither an intra-institutional body nor an auxiliary one, besides it is not an institution proper either. Therefore, it is an interinstitutional preparatory body and partially an organ of the EU responsible for its international representation⁹. The merger of different institutional working practices and methods within the EAAS organisational structure can contribute to formulation and conduct of a consistent and coherent EU foreign policy aimed at reaching the unified complex of political objective. Thus, the EEAS is an interinstitutional body responsible for ensuring coordination between the EU institutions in the area of external action.

Unlike the majority of the EU bodies, namely the European Defence Agency (EDA), the EEAS was not explicitly granted the legal personality. Council Joint Action 2004/551/CFSP on the establishment of the European Defence Agency in Article 6 clearly states that the EDA has legal personality necessary to perform its functions and attain its objectives¹⁰. Meanwhile in Article 1 of the Council Decision 2010/427/EU the EEAS is only granted the legal capacity necessary to perform its tasks and attain objectives. The EEAS may enter into service-level arrangements with the relevant services of the General Secretariat of the Council, the Commission, or other offices or interinstitutional bodies of the EU. The legal status of the EEAS resembles that of the entire EU prior to the Treaty of Lisbon, which was not given an explicit international legal personality, but was empowered to conclude international agreements in the CFSP area.

6. The EEAS organisational structure

The EEAS is comprised of the central administration placed in Brussels and EU delegations to third states and international organisations. The EEAS is managed by the Executive Secretary General (P. Vimont), operating under the authority of the High Representative. He is responsible for ensuring smooth functioning of the EEAS, including its administrative and budgetary management. The Executive Secretary General is assisted by two deputies: Deputy Secretary General for Political Director and Deputy Secretary Gen-

⁹ Bart Van Vooren. A legal-institutional perspective on the European External Action Service. CLEER Working Papers, The Hague, The Netherlands, CLEER T.M.C. Asser Institute, 2010, No.7, P. 31

¹⁰ Council Joint Action 2004/551/CFSP of July 2004 on the establishment of the European Defence Agency. Official Journal of the European Union, L 245, 17.7.2004, pp. 17–28

eral for Interinstitutional Affairs. The High Representative, Executive Secretary General, his deputies and Chief Operating Officer comprise Corporate board responsible for ensuring internal coherence and coordination within the EEAS. The central administration of the EEAS is comprised of a number of geographical departments covering all countries and regions of the world, and department dealing with global and multilateral issues. These departments should coordinate their activities with the relevant departments of the General Secretariat of the Council and the Commission. Managing Directorate-general on administration and finance is placed under the authority of the Chief Operating officer. Department responsible for crisis response and operational coordination, EU Intelligence Analysis Centre (INTCEN), Security Policy and CSDP Structures, EU Military Staff, as well as Foreign Policy Instrument Service, which is the Commission service, are placed under direct authority of the High Representative. The EEAS organisational structure also includes departments on strategic planning, policy coordination, strategic communication, as well as political and security committee placed under the authority of the Deputy Secretary General Political Director. The EEAS legal affairs department works in close cooperation with Legal Services of the Commission and the Council.

The EEAS should be treated as an institution of the Union for the purposes of the Staff Regulation of Officials and the Conditions of Employment of Other Servants of the European Union. The High Representative acts as appointing authority and authority to conclude contracts for the staff of the EEAS, with the possibility of delegating the said powers within the EEAS. If necessary, the EEAS may have recourse to a limited number of specialised seconded national experts. The general number of the EEAS staff is determined within the annual budgetary procedure. The staff of the EEAS shall act and carry out their duties solely with the interests of the EU in mind, they should not seek or take instructions from any government, authority, organisation or person outside the EEAS or from any body or person other than the High Representative. Recruitment policy within the EEAS should ensure adequate geographical and gender balance, as well as meaningful presence of nationals from all the EU Member states. The staff of the EEAS and the EU delegation fall within the scope of the Protocol on the privileges and immunities of the EU annexed to the Treaty of Lisbon and should enjoy privileges and immunities equivalent to those referred to in the Vienna Convention on Diplomatic Relations of 18 April 1961.

7. The EEAS tasks and duties

The mandate of the EEAS entails two main dimensions: coordination of the EU external action at the level of decision-shaping and implementation¹¹. The main task of the EEAS is supporting the High Representative in fulfilling her mandate to conduct CFSP, including CSDP, and to ensure the consistency of the EU external action. The High Representative is supported by the EEAS while acting in her capacity as the President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council. The tasks of the EEAS also include supporting the High Representative in her capacity as the Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations, and coordinating other aspects of the EU external action, without prejudice to the normal tasks of the Commission services. Besides, the EEAS assists the President of the European Council, the President of the Commission, and the Commission in the exercise of their functions in the area of external action.

In order to ensure consistency between the different areas of the EU external action and between those areas and its other policies the EEAS is obliged to work in cooperation with the national diplomatic services of the Member states, the General Secretariat of the Council and the services of the Commission. The services of the Commission and the EEAS shall consult each other on matters relating to the EU external action in the exercise of their respective functions, except matters covered by the CSDP. Besides, the EEAS shall be fully involved in the preparatory work and procedures relating to acts prepared by the Commission in the area of the EU external action.

The EEAS should support the High Representative in ensuring full-fledged involvement of the European Parliament in the conduct of the EU's external relations, namely through the functioning of an effective system of political control. Members of the European Parliament should be given the right of access to all the relevant documents and information in the area of CFSP. The High Representative should also exercise her duties arising from the founding acts of the European Defence Agency, European Union Satellite Centre, European Union Institute for Security Studies and European Security and Defence College. Therefore, the EEAS should provide these bodies with the necessary support, as previously did the General Secretariat of the Council.

¹¹ Blockmans S., Laatsit M.-L. The European External Action Service: Enhancing Coherence in EU External Action? In: *EU External Relations Law and Policy in the Post Lisbon Era*, ed. by P.J. Cardwell. The Hague, T.M.C. Asser press, 2012, pp. 141

8. EU delegations

Pursuant to the Treaty of Lisbon Commission delegations to third states and international organisations were transformed into the Delegations of the EU representing the entire Union and all of its policies instead of solely the Commission, whose key priorities are trade and development aid¹². The place of the Union delegations within the EU institutional framework was defined by the Council Decision 2010/427/EU, which incorporated them into the EEAS organisational structure. The High Representative can decide to open or close a Union delegation in agreement with the Council and the Commission. Each Union delegation is placed under the authority of a Head of Delegation, who is responsible before the High Representative for the overall management of the work of the delegation and for ensuring the coordination of all actions of the EU. EU delegations staff comprises EEAS staff and, where appropriate for the implementation of the EU budget and its policies other than those falling within the EEAS mandate, Commission staff. The Head of Delegation takes instructions from the High Representative and the EEAS and is personally responsible for their implementation. Besides, the Head of Delegation is empowered to represent the EU in the country where the delegation is accredited, in particular for the conclusion of contracts, and as a party to legal proceedings. The Commission may also issue instructions to delegations in the areas falling within its mandate. The operation of each delegation is periodically evaluated by the Executive Secretary General of the EEAS. The High Representative should take the necessary measures to ensure that the Union delegations, their staff and their property be granted privileges and immunities equivalent to those referred to in the Vienna Convention on Diplomatic relations of 18 April 1961. The Union delegations should respond to the needs of the EU institutions, namely the European Parliament, in their contacts with international organisations or third states to which the delegations are accredited. Besides, the Union delegations work in close cooperation and share information with the diplomatic services of the Member states. Upon request by the Member states the Union delegations shall support them in their diplomatic relations and their role of providing consular protection to the EU citizens in third countries.

¹² Wouters J., Duquet S. The EU, EEAS and Union Delegations and International Diplomatic Law: new horizons? Leuven Centre for Global Governance Studies Working Paper, No. 62, May 2011, pp. 7–8.

9. Conclusions

The EEAS is the *sui generis* body of the EU, placed under the authority of the High Representative, granted with functional autonomy and legal capacity necessary to perform its tasks and attain objectives. The overall goal of the functioning of the EEAS is ensuring consistency, coherence and effectiveness of the EU external action. The EEAS should function smoothly within the EU's legal and institutional framework and minimise the duplication of functions and duties within the EU external action institutional mechanism. Human resources policy and professional training of the EU diplomatic corps shall contribute to increasing the added value of the EEAS to the EU's foreign policy. The EEAS should also strive to increase the coherence in the EU external action: the EU's CFSP and its external economic policies should be coordinated, or at least one of them should not create obstacles for the successful implementation of the others. It is also vitally important for the EEAS to prove its status of a legitimate actor in the EU's foreign policy by contributing to reaching the consensus among the Member states and enlisting the active support of the EU Member states and third states in performing its tasks, which would create the necessary prerequisites for the EEAS attaining strong political position within the EU and among its partners all over the globe.