



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**ORGANISATION AND
FUNCTIONING OF THE
EUROPEAN EXTERNAL
ACTION SERVICE:
ACHIEVEMENTS,
CHALLENGES AND
OPPORTUNITIES**

AFET



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

**THE ORGANISATION AND FUNCTIONING OF THE
EUROPEAN EXTERNAL ACTION SERVICE:
ACHIEVEMENTS, CHALLENGES AND OPPORTUNITIES**

Abstract

The organisation and functioning of the European External Action Service (EEAS) has met both challenges and opportunities for improvement. These issues are explored from an internal and external perspective, covering both the EEAS at Headquarters in Brussels and the bilateral and multilateral Union Delegations.

The new institutional system has created opportunities and working mechanisms that aim to foster coherence, effectiveness and continuity in EU external action. There are examples that show positive developments, but also challenges. The EEAS should utilise its 'coherence mandate' towards becoming the prime diplomatic entrepreneur in EU external action by fostering reciprocal information sharing, cooperation and coordination between national and EU levels, shaping and proposing novel policy ideas, and promoting coherent external action across all policy domains. Three key steps are needed to attain this objective: (i) a 'new deal' between the Commission and the EEAS; (ii) stronger support from the Member States to the EEAS; and (iii) abandoning budget neutrality in favour of a more realistic focus on budgetary efficiency.

This study was requested by the European Parliament's Committee on Foreign Affairs.

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ACRONYMS

AFET	Committee on Foreign Affairs
BUDG	Committee on Budgets
CARICOM	Caribbean Community
CFSP	Common Foreign and Security Policy
CMPD	Crisis Management Planning Department
CODEV	Working Party on Development Cooperation
CONT	Committee on Budgetary Control
COO	Chief Operating Officer EEAS
Coreper	Committee of Permanent Representatives
CSDP	Common Security and Defence Policy
DEVCO	DG Development and Cooperation – EuropeAid
DG	Directorate General
DG ENER	Directorate General Energy
DG ENV	Directorate General Environment
DRC	Democratic Republic of Congo
EBRD	European Bank for Reconstruction and Development
ECHO	European Community Humanitarian Office
ECT	Energy Community Treaty
EDF	European Development Fund
EEAS	European External Action Service
EEAS HQ	European External Action Service Headquarters
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Policy Instrument
EP	European Parliament
ESS	European Security Strategy
EU	European Union
Eurostat	Eurostat the statistical office of the European Union
EUSR	European Union Special Representative
FAC	Foreign Affairs Council
FPI	Foreign Policy Instruments Service
FTA	Free Trade Agreement
GAC	General Affairs Council
HoD	Head of Delegation
HR/VP	High Representative of the Union for Foreign Affairs & Security Policy/Vice-President of the European Commission
IFS	Instrument for Stability
INTCEN	EU Intelligence Analysis Centre
MD	Managing Director EEAS
MDGs	Millennium Development Goals
MEP	Member of the European Parliament
MoU	Memorandum of Understanding
NGO	non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
PSC	Political and Security Committee
RELEX	External Relations
SNE	Seconded National Experts

TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNGA	United Nations General Assembly
US	United States
VP	Vice-President
WTO	World Trade Organization

EXECUTIVE SUMMARY

The European External Action Service (EEAS or Service) was set up to assist the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP) at ensuring coherent and effective EU external action. This study examines the organisation and functioning of the EEAS since its establishment, the challenges it has faced, and opportunities for improvement. The study explores these issues from an internal and external perspective, covering both the EEAS at Headquarters in Brussels and the bilateral and multilateral Union Delegations around the world.

In terms of its institutional set-up, the Service has been created as a functionally autonomous body, separate from the Council and the Commission. The study finds that this *sui generis* nature permeates almost all of the work of the EEAS. It renders the Service an indeterminate entity, at times functioning much like a Commission Directorate-General and at other times rather like the Council General Secretariat. There is no shared understanding among stakeholders outside or within the EEAS on the role, mandate and position of the Service within the EU external action architecture. Last but not least, under the current arrangements the office of the HR/VP evidently constitutes an impossible combination of tasks for one single person. The study therefore suggests that a system of deputisation needs to be developed.

The study finds that the organisation and internal structure of the EEAS is top-heavy. The structure at Headquarters comprises several duplicating layers of management, unclear hierarchy in terms of chain of command, and opaque relationships between different departments. The organisation chart should therefore be simplified in order to foster good relationships between various parts of the Service while ensuring sufficient strategic guidance. Among the staff, a lack of trust, of support from the top and of *esprit de corps* are serious problems undermining the current operation of the Service. A genuine human resources policy needs to be developed and implemented as a matter of priority, so as to regenerate morale.

Working relations between the EEAS and the other political actors in EU external relations vary considerably. The relationship with the European Council is well-established and generally positive. Relations with the Council receive a more mixed assessment. Generally, the permanent chairmanship of the Foreign Affairs Council (FAC) and of Council Working Parties contributes to more coherence. However, certain downsides were noticed, such as insufficient Member State ownership in the FAC and in some Working Parties as well as a lack of dynamism in their operation. In certain policy areas, such as European Neighbourhood Policy, relations and coordination between the Commission and the EEAS are functioning well. However, in other areas, such as development cooperation and external energy policy, this is far less the case. Given their respective roles in EU external action, a 'new deal' is required between the Commission and the EEAS. This implies a far greater 'coordination reflex' on both sides, i.e. a mutual understanding that the only way to arrive at coherent and effective EU external action is through a permanent structured relationship at all levels and close cooperation on all areas of EU external action. More extensive and efficient use should be made of the double-hattedness of the HR/VP and of the RELEX Group of Commissioners. The study also finds that despite efforts to establish a satisfactory accountability relationship between the EEAS and the European Parliament, which currently functions principally through the HR/VP, the existing arrangements should be improved. This could be done *inter alia* by establishing a permanent deputy to represent the HR/VP in parliamentary settings, an increase in the number of hearings of senior EEAS staff and a review of the current regime for access to confidential information by the EP.

Union Delegations are one of the success stories of the EEAS. The working mechanisms established between the Delegations and Member States' diplomatic missions in third countries and at international organisations broadly deliver in terms of coherent and effective EU external action. However, there is much room for improvement. With respect to bilateral Delegations, there is often a shortage of staff with the necessary political expertise, linguistic skills and country-specific knowledge. Problems have occurred with respect to information-sharing, political reporting and coordination on the ground. Lastly, Delegations often do not receive sufficient feedback and adequate instructions from EEAS Headquarters. With regard to multilateral Delegations, Member States still need to recognise the new function of the Union Delegations in coordinating and representing the Union in all pertinent multilateral fora.

Overall, the study finds that the new institutional system has created opportunities and, in fact, sets in place working mechanisms which aim to foster coherence, effectiveness and continuity in the EU's external action. The study highlights examples that demonstrate positive developments in that direction. However, the EEAS should to a much greater extent utilise its 'coherence mandate' towards becoming the prime diplomatic entrepreneur in EU external action by fostering reciprocal information sharing, cooperation and coordination between national and EU levels, shaping and proposing novel policy ideas, and proactively promoting coherent external action across all policy domains. Three key steps are needed to help the EEAS in attaining this objective: (i) a 'new deal' between the Commission and the EEAS; (ii) stronger support from the Member States to the EEAS; and (iii) abandoning budget neutrality for a more realistic focus on budgetary efficiency.

1. SCOPE, RESEARCH QUESTIONS AND CONTEXT

1.1 Introduction

1.1.1 Framing the Study in Light of the 2013 Review

The present study aims to assess the current state of play of the organisation and functioning of the European External Action Service (EEAS or Service), as set up by the Council Decision of 26 July 2010 establishing the organisation and functioning of the EEAS (EEAS Decision)¹. In light of the 2013 Review of the EEAS, the study critically assesses the achievements of the Service so far, as well as key shortcomings and opportunities for reform. It is crucial to recall that the EEAS was conceived in better times for European integration, whereas its setting-up from 2009 onwards occurred in times of deep constitutional and financial crisis. There have been highly ambitious expectations for the Service to provide an immediate, qualitative leap in EU external action performance 'post-Lisbon'. However, it takes time to set up a new external action service, and as a consequence, the mid-2013 Review is generally viewed as coming rather swiftly. Thus, more time needs to be given to the EEAS to fully realise its potential. Nonetheless, the upcoming Review provides an important opportunity to overcome some of the most urgent and immediate challenges and limitations of the current set-up.

1.1.2 Structure of the Study

The study has been structured as follows. The introductory part sets out the questions provided by the tender, and contextualises them against a background of research carried out by academia and think tanks. It then indicates key points regarding research methodology, including selection of interviewees and drafting choices. Part 2 (Organisation, Structure and Mandate) examines the EEAS as an entity, discussing its internal organisation, functioning, and mandate. Subsequently, the study consists of parts that contain the bulk of the findings. Parts 3 to 6 examine the relationship between the EEAS and other political actors in EU external action, the European Council (Part 3), the Council (Part 4), the European Commission (Part 5) and the European Parliament (Part 6). While the relationship between the EEAS and the European Parliament (EP) was not included in the questions provided in the tender (see below), the study briefly examines this relationship given the increasing role of the EP in EU external action. Part 7 turns to the 'external dimension', examining Union Delegations in bilateral and multilateral settings. Each part concludes with a summary of its main findings and a list of recommendations. Part 8 concludes with the study's overall findings and recommendations.

The parts of the study are structured in a similar way and touch upon common themes. First, all parts examine the achievements and challenges in light of the definition of effectiveness, efficiency, and coherence as provided below. Second, when focusing on the challenges, the study has been as inclusive as possible. The study uncovers some of the problems that stem from the set-up in the Treaty itself, issues which may not be immediately resolved through the 2013 Review or other reform. Furthermore, the study also points to what may simply be 'teething problems', issues that will either be resolved through time as the Service develops, or by making small adjustments to the EEAS Decision. Finally, there are also the problems over which the Service has no control, such as the absence of sufficient budget, or political support from the Member States. Throughout the study, a number of 'Policy Illustrations' are provided. These illustrations relate to on-going policy initiatives in which the

¹ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the EEAS, OJ L 201, 3.8.2010, p. 30-40.

EEAS has a role, illustrating issues of an organisational or structural nature. They also underline the fact that issues relating to one policy area may not necessarily be so in another policy area. Indeed, an assessment of the achievements and challenges of the EEAS requires a carefully balanced, policy-specific approach.

1.1.3 Main Research Questions

Upon the request of the European Parliament the following questions guided the research conducted in this study.

- 1) Impact of the establishment of the EEAS on EU foreign policy:
 - Did the replacement of the rotating presidency of the General Affairs and the External Relations Council with a permanent chairmanship of the Foreign Affairs Council, supported by the EEAS, strengthen the goal of a more effective and better coordinated and coherent EU foreign policy?
 - Has the new architecture facilitated more coherence on part of the EU even in third countries where certain Member States have strong national interests?
 - Do Member States acknowledge the new institutional architecture as an effective tool having an added value for EU foreign policy, or has the new institutional architecture led to a renationalisation of EU foreign policy?
 - Do Member States insist more on their national interests or prefer their national diplomatic structures for the implementation of foreign policy strategies in case of issues of particular importance to them, while outsourcing to the EU level the issues of less strategic importance/interest, possibly out of fear of loss of national influence in third countries?

One of the initial expectations of the EEAS was for the new body to serve the HR/VP to ensure more coherent and effective EU external action. Overall, the study analyses whether the current practice in EU external action meets these initial expectations². Has the establishment of the EEAS and various other institutional innovations introduced by the Lisbon Treaty, such as the permanent chairmanship of the Foreign Affairs Council, the Political and Security Committee and various Council Working Groups, increased coherence, effectiveness and continuity? Beyond EEAS Headquarters and the new Council setting, has the permanent representation of the EU through Union Delegations created more coherence and effective action on the ground, especially in third countries and at multilateral organisations, where observers have often witnessed special interests of Member States at the expense of a single EU external action? In other words, after the first two years of the EEAS and the new EU external action system, have these contributed to a significant improvement of the EU's coherence and effectiveness in its external action? In order to answer this overall question, this study examines a series of sub-questions, set out below.

² See *inter alia* Duke, S., 'Consistency, coherence and EU external action: the path to Lisbon and beyond', in Koutrakos, P. (ed.), *European Foreign Policy – Legal and Political Perspectives*, Edward Elgar, Cheltenham, 2011, p. 43.

- 2) Relations between the Commission and Union Delegations:
- What is the current level of cooperation of the Commission with EU Delegations, particularly in terms of support to Delegations in the implementation of the external dimension of internal policies?
 - What is the level of communication between EU Delegations and the Commission, particularly in terms of possibilities of the Delegations being able to draw on the Commission's expertise in particular areas, such as energy or climate change, and what are the possibilities for the Commission to acquire information on country-specific issues from EU Delegations?

Given the important role of the Commission in the EU's external relations system, the study pays critical attention to the coordination between the Commission and the EEAS, including the latter's external arm, the Union Delegations. Based on an initial expectation that overall coherence and effectiveness in EU external action can only be increased through close coordination between the Commission and the EEAS, the study focuses on present practices, both in Brussels and in the Union Delegations. Coordination between the Commission and the EEAS was never going to be easy. Even at the early stages of the new external action machinery the EEAS was often seen as the Commission's natural competitor regarding the implementation of EU external policies³. The intense relationship between the two has led to 'turf battles', especially when disputes arise over various competences in the field of external action⁴. This study portrays the current level and intensity of coordination between the EEAS and the Commission, with special attention being paid to the interaction between the Commission and Union Delegations.

- 3) Relations between EU Delegations and Member State Diplomatic Missions based in the same capitals, with particular reference to:
- What are the existing arrangements/mechanisms to facilitate an exchange of information, briefings, and local contacts at both political and civil society levels?
 - What is the current level of cooperation and coordination on issues of mutual interest, in order to enhance coherence and impact of EU actions?
 - What type of leadership structures/arrangements are in place in EU Delegations in selected policy areas/areas considered as a political priority in particular contexts?

Now that Union Delegations represent the EU abroad, a task previously carried out by the Diplomatic Mission of the Member State holding the rotating Presidency, the question arises how well the coordination mechanisms function between the Union Delegations and the Member States. The study not only analyses the relationship between Member States and the EU in third countries, but it also examines the situation at multilateral organisations, especially the United Nations. In multilateral settings effective EU representation not only depends on the coordinated diplomatic action of the

³ Ibid., p. 42.

⁴ See *inter alia* Hillion, C., and Levebvre, M., *The European External Action Service – towards a common diplomacy?*, Foundation Robert Schuman, European Issue No 184, 25th October 2010, p. 6.

Union Delegation and Member States, but also on the status of the EU within the institutional framework of the international organisation⁵.

- 4) Impact of the establishment of the EEAS on Member States diplomatic services and their human resource planning with particular focus on diplomatic-track staff since the entry into force of the Decision:
- Have Member States diplomatic services maintained the same level of staffing as far as diplomatic staff is concerned?
 - Have Member States diplomatic services started reducing their staff in a medium or long-term perspective, taking into consideration possible synergies with the EU Delegations, as well as often-predicted increasingly relevant role of EU Delegations in third countries/regions?
 - If reductions of diplomatic staff have taken place on the level of Member States diplomatic representations, due to budgetary cuts at a national level, have EU Member States diplomatic services factored in, while taking their decisions to reduce staff, the fact that some tasks could be taken over by EEAS?
 - Do Member States diplomatic services at present foresee an increase in the number of their diplomatic track staff, despite the creation of the EEAS?
 - In third countries where EU Delegations have a particularly strong/relevant presence (thematically or numerically), has this had an impact on the level of diplomatic staff assigned to Member State diplomatic missions in the same country?

One of the common expectations of the EEAS was that its establishment would allow Member States to reduce resources and staff in their own diplomatic missions, and that over time the EU would itself build up a complementary diplomatic network. This could only take place if the EU were gradually to take over the functions of national missions abroad⁶. The study analyses whether such a change actually took place within the first two years of the EEAS' existence, and whether there is any link between the presence and the new functions of Union Delegations and the reduction in staff and resources in Member State missions.

1.1.4 Methodology

The specific requirements of the tender as well as the complexity of the subject matter required an interdisciplinary approach bringing in analysis and expertise from EU law, EU politics and international relations. The research is predominantly based on extensive empirical data gathered specifically for the study, and is informed by research carried out by academia and think tanks in relation to the Service. In particular, in November and December 2012 more than 60 in-depth interviews were carried out, and over 30 written replies to detailed questionnaires by a variety of stakeholders have been processed.

⁵ Emerson, M., Balfour, R., Corthaut, T., Wouters, J., Kaczyński, P.M., Renard, T., *Upgrading the EU's Role as Global Actor – Institutions, Law and the Restructuring of European Diplomacy*, Centre for European Policy Studies, Brussels, 2011, p. 52. See also: Drieskens, E., 'What's in a Name? – Challenges to the Creation of EU Delegations', *The Hague Journal of Diplomacy*, Vol. 7 (2012), pp. 51-64.

⁶ Emerson, M., op. cit., p. 54.

As regards the selection of interviewees, the study sought to ensure a broad coverage of respondents. Interviewees and written respondents include officials within the EEAS (Headquarters and Delegations), Commission, Council, European Council, and Member State diplomatic services. Moreover, in order to guarantee that the analysis be grounded in representative information, persons at all stages of their careers and positions in the hierarchies were interviewed. The study has taken into account a variety of geographic areas and policy fields. Finally, all interviewees have been guaranteed anonymity so as to allow them to speak openly.

The content of the interviews incorporated the questions listed above, and interviewees were encouraged to provide their insights from their distinct backgrounds and expertise (so-called 'semi-structured' interviews). Each interview was composed of three main elements. First, interviewers inquired into the achievements of the EEAS since its setting-up, so as to find out how well the Service functions in light of the notions of coherence and effectiveness. Thereafter, central challenges for the EEAS were addressed. These included simple teething problems, internal systemic challenges to the Service itself, as well as obstacles beyond the control of the Service. Finally, all interviewees were asked to provide recommendations which could be implemented during the 2013 Review.

This study was conducted within a period of four months, which presents inherent limitations. Although all possible efforts have been made to ensure the most comprehensive coverage of the questions raised above, the study does not claim to offer an exhaustive treatment of the subject-matter. However, all efforts were taken to uncover common threads throughout the empirical material gathered for the study. In short, a sincere and impartial effort has been made, with all professional care, in order to obtain a better understanding of the EEAS' organisation and functioning and to make useful recommendations in this respect.

1.2 Legal and Institutional Framework of the EEAS

One of the main aspirations of the Treaty of Lisbon was endowing the EU with strengthened tools and instruments for assuming its responsibilities in the world and shaping globalisation⁷. The 'EU Declaration on Globalisation' adopted by the European Council on 14 December 2007 emphasised that '[t]he Lisbon Treaty, in setting a reformed and lasting institutional framework, improves our capacity to fulfill our responsibilities [...]. It will bring increased consistency to our external action.'⁸ The TEU requires the EU to ensure the 'consistency, effectiveness and continuity of its policies and actions'⁹. 'Consistency', also referred to as 'coherence'¹⁰, is a legal obligation in EU external relations, aiming at the absence of contradiction within external policies¹¹. Moreover, it has been stressed that coherence is to guarantee that policies arrive at synergetic effects of their respective instruments¹². Both the avoidance of contradiction and the guarantee of synergies are seen as tools to increase the effectiveness and

⁷ See *inter alia* Wouters, J., Coppens, D. and De Meester, B., 'The European Union's External Relations after Lisbon', in Griller, S. and Ziller, J. (eds.), *The Lisbon Treaty. European Constitutionalism Without a Constitutional Treaty?*, Springer, Vienna/New York, 2008, pp. 143-203.

⁸ European Council, Presidency Conclusions Brussels European Council 14 December 2007, 16616/1/07, 14 February 2008.

⁹ Art. 13(1) TEU.

¹⁰ De Baere, G., *Constitutional Principles of EU External Relations*, Oxford University Press, Oxford, 2008, p. 251.

¹¹ Portela, C. and Raube, K., 'The EU Polity and EU Foreign Policy Coherence', *Journal of European Contemporary Research*, Vol. 8 (2012), pp. 2 et seq.

¹² Hillion, C., 'Tous pour un, un pour tous! Coherence in the External Relations of the European Union', in Cremona, M. (ed.), *Developments in EU External Relations Law*, Oxford University Press, Oxford, 2008, p. 15.

continuity of EU external policies at large¹³. This implies close coordination between the EU and its Member States as well as between EU institutions. According to the Lisbon Treaty, the High Representative has a special responsibility in that respect. The High Representative 'shall be one of the Vice Presidents of the European Commission. [S]he shall ensure the consistency of the Union's external action'¹⁴. To this end, the Lisbon Treaty put in place numerous institutional changes in the EU external action system that allow the EU to live up to these high expectations – coherence, effectiveness, continuity – in EU external action. The EEAS is one of the main institutional innovations of the Lisbon Treaty in this respect. The EEAS provides the EU with a unique opportunity to bring 'greater coherence' to EU external action¹⁵. At the same time, the creation of the EEAS as a new 'institutional structure' testifies that while on the one hand the EU aims to have 'a strong, coherent voice on the international scene', it is on the other hand 'counterbalanced by the Member States' wish to retain control over various aspects of international relations'¹⁶.

Article 27(3) TEU provides the legal basis for the EEAS, spelling out that '[i]n fulfilling his mandate, the High Representative shall be assisted by a European External Action Service' which 'shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States'¹⁷. The TEU provides little on the EEAS other than its name, its basic composition and its task of assisting the High Representative/ Vice-President of the Commission¹⁸. The Treaty merely states that the EEAS' 'organisation and functioning [...] shall be established by a decision of the Council' who shall 'act on a proposal from the High Representative after consulting the EP and after obtaining the consent of the Commission'¹⁹. By leaving critical matters out of the Treaty, many of the major issues were left to be prepared and negotiated in the course of Spring 2010 in preparation for the Council Decision.

Although it is not the object of this study to revisit the protracted negotiation process of 2010²⁰, it is necessary to have a sound understanding of the basic choices in terms of institutional set-up of the EEAS that were made in the Decision. The first three articles of the Decision lay down fundamental principles in this respect²¹.

First, the EEAS was established as a 'functionally autonomous body' of the EU, 'separate from the General Secretariat of the Council and from the Commission' and 'with the legal capacity necessary to perform its tasks and attain its objectives'²². This indeterminate status is the consequence of

¹³ Van Vooren B, *EU External Relations Law and the European Neighbourhood Policy: A paradigm for coherence*, Routledge, Andover, 2011.

¹⁴ Art. 18(4) TEU.

¹⁵ See Blockmans, S., *Fit for Purpose? The European External Action Service one year on*, Oxfam, Oxfam Briefing Paper 159, 2012, p. 2.

¹⁶ See Van Vooren, B., 'A Legal Institutional Perspective on the European External Action Service', *Common Market Law Review*, Vol. 48 (2011), p. 477.

¹⁷ Questions have been raised regarding the adequacy of Art. 27(3) TEU as a legal basis for the EEAS, as the provision is part of a Treaty chapter with 'specific provisions on the Common Foreign and Security Policy'.

¹⁸ In the following, the High Representative/ Vice-President of the Commission is referred to as HR/VP. If specific tasks fall either in the function of the HR (e.g. CFSP-related issues) or the VP (e.g. acting in the College of the Commission) then these tasks are referred to by mentioning either 'the HR/VP in her function as HR' or 'the HR/VP in her function as VP'.

¹⁹ Art. 27(3) TEU.

²⁰ See *inter alia* Erkelens, L. and Blockmans, S., 'Setting up the European External Action Service: an act of institutional balance', *European Constitutional Law Review*, Vol. 8 (2012), pp. 246-279.

²¹ Arts. 1-3 EEAS Decision.

²² Art. 1(2) EEAS Decision.

disagreement between those Member States wishing to see the EEAS as a more 'intergovernmental structure', and the Parliament and Commission, who preferred it to be part of the Commission and therefore have a more 'communitarised' structure. The resulting compromise was to set up the EEAS as a '*sui generis*' body 'equidistant' from the Council (Member States) and the Commission²³. This classification glosses over the fact that numerous pertinent institutional questions could not be decided by the negotiators.

The enumeration of tasks of the EEAS set out in the Decision indicates just how complicated this structure is. First, the EEAS is to 'support the High Representative in fulfilling his/her mandates'²⁴, which include conducting the CFSP and CSDP, ensuring the consistency of the EU's external action²⁵, presiding over the Foreign Affairs Council and acting as Vice-President of the Commission. The latter capacity not only includes 'responsibilities incumbent on [the Commission] in external relations' but also 'coordinating other aspects of the Union's external action'²⁶. Second, the EEAS must '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'²⁷. Third, the EEAS is to 'support, and work in cooperation with, the diplomatic services of the Member States as well as the General Secretariat of the Council and the services of the Commission, in order to ensure consistency between the different areas of the Union's external action and between those areas and its other policies'²⁸. Fourth, it must 'extend appropriate support and cooperation to the other institutions and bodies of the Union, in particular to the European Parliament'²⁹. What is striking from this complex set of tasks is that they are largely – with the exception of the CFSP/CSDP – described by reference to other EU external actors, and that a fragile balancing act was pursued vis-à-vis ('without prejudice to the normal tasks of') the General Secretariat of the Council and the services of the Commission. Hence, it becomes clear from reading the Decision that the EEAS is a new 'institutional structure' in addition to existing EU institutions, many of which have themselves undergone institutional changes under the Lisbon Treaty.

Adding to this complexity are the numerous cooperative duties summed up in Article 3 of the Decision. In its task to assist the High Representative and their common quest to ensure coherence, effectiveness and continuity in EU external action, the EEAS is asked to act in cooperation with Member States and EU institutions. Most notably, the EEAS must not only work in cooperation with Member State diplomatic services. The EEAS and the services of the Commission 'shall consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by CSDP'³⁰. The EEAS 'shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area'³¹. The use of 'shall' refers to binding legal duties of cooperation in line with the principle of sincere cooperation in EU law³². Are the cooperative duties a two-way street? In Article 5(9) of the Decision, it is spelled out that 'Union delegations shall work in close

²³ See also: Van Vooren, B., 'A Legal Institutional Perspective on the European External Action Service', op cit., p. 501.

²⁴ Art. 2(1) EEAS Decision.

²⁵ Interestingly, Art. 2(1) first indent EEAS Decision, adds this task to the indent regarding the conduct of CFSP whereas Art. 18(4) TEU mentions this task in the paragraph of the High Representative in his/her capacity of Vice-President of the Commission.

²⁶ Art. 18(4) TEU.

²⁷ Art. 2(2) EEAS Decision.

²⁸ Art. 3(1) EEAS Decision. Compare Art. 21(3), second para., TEU.

²⁹ Art. 3(4) EEAS Decision.

³⁰ Art. 3(2) EEAS Decision.

³¹ Ibid.

³² Art. 4(3) TEU.

cooperation and share information with the diplomatic services of the Member States'. Although a reciprocal obligation to share information provided for in the initial draft does not appear in the final text of the Decision, it seems obvious, from a 'sincere cooperation' perspective, that this cannot be only a one-way process.

2. ORGANISATION, STRUCTURE AND MANDATE

2.1 The Special Legal Nature of the EEAS

Article 1 of the EEAS Decision defines the Service as ‘a functionally autonomous body of the European Union, separate from the General Secretariat of the Council and from the Commission with the legal capacity necessary to perform its tasks and attain its objectives’³³. As a consequence, the EEAS does not fall within any of the common categories of EU institutional law broadly defined³⁴. Most importantly, it is not an institution such as those listed in Article 13 TEU, and lacks the legal powers enjoyed by these other institutions³⁵. This *sui generis* nature is a consequence of the negotiation process³⁶. Specifically, it is a compromise solution resulting from the tension between the Service becoming an exponent of the ‘Community method’ through functioning as a (special) Commission DG or being more dominated by a method where the Member States take centre stage. Some interviewees argued that many of the problems facing the EEAS can be traced back to this decision to establish the EEAS as an indeterminate entity, even describing it as the ‘original sin’ of the EEAS.

The ‘specific nature’ of the Service plays a crucial role in almost all aspects of its work. Many respondents point to the uneasy positioning of the EEAS between the major stakeholders in EU external action. As a consequence, there is a lack of a clear and commonly accepted understanding of its nature, mandate, powers and role in EU external relations. Within the EEAS itself its nature was described as ‘chameleonic’. Sometimes it functions as a Commission DG, taking part in inter-service consultations or summit preparations, working for the VP role of the High Representative. At times, in the Working Groups its functioning is akin to that of the Council General Secretariat. It was clearly acknowledged at the top of the EEAS itself that the Service exists in a space between the Commission and the Council. Most interviewees from all backgrounds in the EEAS, Union Delegations, Council, Commission and some Member States broadly agree that the *sui generis* positioning of the EEAS was a mistake. First of all, the paradoxical positioning of the EEAS leads the Commission to perceive it has lost powers which ought to be regained or protected, while the Member States feel the priorities set out by the EEAS often compete with their own national priorities. Second, the fact that the EEAS is not an institution proper significantly hampers the Service from fully performing its tasks. It lacks the capacity for legal enforcement of the EU common interest in external relations, and more generally, it does not have a final say over most of the EU’s external relations tools. Therefore, by its nature, the EEAS cannot fully and truly support the mandate of the HR/VP in attaining coherent EU external action³⁷. The status of the EEAS is essentially that of a bird with legally and politically clipped wings.

³³ See note 1.

³⁴ Van Vooren, B., *A legal-Institutional perspective on the European External Action Service*, op. cit.

³⁵ *Ibid.*, p. 486.

³⁶ Erkelens, L., and Blockmans, S., *Setting up the EEAS: An institutional act of balance*, CLEER Working Papers 2012/1.

³⁷ Art. 2 EEAS Decision and Arts 18 and 27 TEU.

2.2 Organisation, Structure and Staffing

2.2.1 EEAS Structure: A Reverse Pyramid

Article 4 of the EEAS Decision outlines in general terms the manner in which the central administration of the EEAS is to be organised. From this article it is clear that the EEAS is to be organised in directorates general, and that the central administration should contain at least the following elements:

- An Executive Secretary-General, with two deputies³⁸.
- A number of directorates-general comprising geographic desks covering all countries and regions of the world, as well as multilateral and thematic desks³⁹. The EEAS Decision does not indicate how the geographic division should be structured, how many DGs should exist, or which themes should be covered by the EEAS.
- A directorate-general for administrative, staffing, budgetary, security and communication and information system matters⁴⁰.
- The crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre. The EEAS Decision stipulates that these structures are to be placed directly under the authority of the HR/VP, and are to be kept separate from other competences of the Union, in line with Article 40 TEU.
- A strategic policy planning department, a legal department, and departments for inter-institutional relations, information and public diplomacy, internal audit and inspections, and personal data protection⁴¹.

The organisation chart has been drawn up in a piecemeal fashion, with revised versions of the graphic representation of the EEAS' internal organisation following each other in relatively swift succession since 2010⁴². Overall, interviewees agree that there remains much room for improvement in the structure of the EEAS. Respondents external to the EEAS (Commission and Council) commonly described the EEAS structure as a 'reverse pyramid'. It comprises several duplicating layers of management, uncertain hierarchy in terms of chain of command, and opaque relationships between different MDs. There is a broad consensus among respondents – from the top to the bottom of the hierarchy, and across institutions and the Member States – that the organisation chart of the EEAS needs thorough revision and could be far leaner. There is consensus even within the EEAS that there is no need for posts of Directors-General and Directors (sometimes one-to-one). It was felt that this set-up largely exists in order to create jobs that match the level of seniority of staff who are seconded from Member States.

Many respondents within the EEAS have pointed out that the chain of command is too long, and that 'too many signatures' are required in order to progress through the hierarchy and approve initiatives. It has also been reported that the intra-EEAS machinery functions primarily due to pre-existing personal relations, and that institutionalised structures are largely artificial in practice. Within the EEAS, it has been suggested that more could be done to build greater trust, delegation, cooperation and

³⁸ Art. 4(1) and (2) EEAS Decision.

³⁹ Art. 4(3)(a) EEAS Decision.

⁴⁰ Art. 4(3)(a) EEAS Decision.

⁴¹ Art. 4(3)(b) EEAS Decision.

⁴² For the version of December 2012 see: http://eeas.europa.eu/background/docs/organisation_en.pdf.

communication between the top (HR/VP and Cabinet) and the different organisational entities of the EEAS (Corporate Board, Managing Directors, Directors, to Heads of Units and all the way to desk officers). It was generally reported that an over-reliance on personal relationships creates unequal access of the management of Managing Directors to the HR/VP and her office. This is said to have a significant impact on policy-making, with policy-shaping and results regularly depending on the presence or absence of personal openness between different layers at the top of the hierarchy. Overall, interviewees suggest that the EEAS' senior management should ensure greater guidance, trust, cohesive relationships, and clear, consistent information-sharing with lower levels, and that this should be done in a structural, institutionalised fashion rather than through personal relationships. It was also felt that the chain of command should be shortened and that staff needs to be trusted with greater individual responsibility by delegating tasks from the top downwards.

In terms of putting in place working methods, rules of procedures and related administrative structures, respondents report that procedures either have to be built from scratch or have to be borrowed from the Commission. In either case, much work needs to be done to develop appropriate working methods, or to adjust what many consider onerous Commission working methods to the specific task of EU foreign policy. However, the fact that the EEAS does not consistently follow Commission methodologies (inter-service consultation etc.) is viewed from the Commission side as a key problem in matching Commission and EEAS activities. Many in the EEAS find the present approaches adopted from the Commission to be too slow for the fast moving requirements of foreign policy. Hence, much work remains to be done, and at present the amount of staff in the legal and human resources departments of the EEAS is insufficient to deal with this challenge. Several interviewees observed that the size of the EEAS legal department ought to be increased, and that notably its expertise in 'Community' matters should be significantly strengthened to mitigate its unipolar focus away from Council/Member State mind-sets to an overall EU orientation.

2.2.2 Constitutive Elements in the EEAS Organisation Chart

The Corporate Board stands at the top centre of the organisation chart, and is composed of the HR/VP, a Chief Operating Officer, an Executive Secretary-General, a Deputy Secretary-General Political Director, and a Deputy Secretary-General. Although it has been set up to implement Article 4(1) and (2) of the EEAS Decision, it has been noted that the functioning does not exactly replicate the Decision. This is mainly due to the fact that there is a great deal of inter-changeability and flexibility within the four members of the Corporate Board (other than the HR/VP). This is viewed as a positive arrangement by some, since the concept behind it was to have top people represent the constituencies that make up the EEAS, and allow them to smoothly divide work between them. However, most respondents in the EEAS and the Commission at all levels of the hierarchy agree that this set-up sometimes leads to confusion and can be time-consuming in order to progress on policy initiatives. There is no clear line of reporting and the division of tasks among the members of the Corporate Board is still not clear to many persons in the EEAS hierarchy. It has been reported that a note was circulated to explain who is responsible for which tasks, but some frustration is lingering. One respondent gave as an example that it seemed that the Deputy Secretary-General Political Director as well as the Chief Operating Officer (COO) were working on Russia-related matters, whereas that interviewee expected the COO position to focus on purely organisational and administrative matters. However, the view from the top of the EEAS hierarchy is that this layer acts as a safety net, vetting policy initiatives before they go out. It is argued by the EEAS hierarchy that this can make the process somewhat burdensome, since this is a logical consequence of balancing quality assurance with decision-making agility.

The crisis management structures are considered by a number of interviewees within the EEAS to be too much of an island within the EEAS. There are different views on how to assess the impact of this. Views from within these structures themselves are positive, noting for example the success of the 'comprehensive approach' (see below *Policy Illustration 2: The 'Comprehensive Approach'*). Others outside these structures view it in less positive terms, arguing that closer cooperation with the geographical desks is crucial in the case of a crisis. Respondents outline a picture whereby the crisis response structures are insufficiently aware of past EU action in a certain region. Apparently, this is due to internal structural divisions in the EEAS whereby there is insufficient cooperation between geographic MDs and the crisis management structures. It was argued that this is further illustrative of diverging personal relationships of trust in the EEAS management. Some interviewees observed that certain privileged links exist between high officials in crisis management and the HR/VP, which is said to have a significant impact on policy-making in this context. Overall, it could be considered to strengthen the role of geographical MDs and desks reinforcing their role for the strategic positioning of the EU vis-à-vis a third country or region, including crisis-management related actions. At the same time, it could be considered to incorporate crisis-management structures more fully into the overall EEAS structure.

Respondents agree that the Policy Coordination Unit is an excellent example of a well-run entity within the EEAS, providing an appropriate level of support to relevant actors such as the HR/VP but also the President of the European Commission and the European Council. The Unit is illustrative of the difficult birth of the EEAS, but also of the Service's achievements in difficult circumstances through personal commitment of highly skilled personnel. As with many aspects of the Service, relevant structures had to be set up from scratch. However, respondents positively evaluate the Policy Coordination Unit for its proficiency at providing relevant briefings, and ensuring 24/7 permanence in delivering EU statements and demarches.

As regards multilateral fora, EU efforts are managed by the MD Global and Multilateral Issues, which is reported to function well. Inter-service consultations are viewed as smooth and regular, and policy-related obstacles in complex fields such as development, energy and environment can thereby be overcome. For example, in the follow-up to Rio+20 or the preparation of the follow-up to the MDGs the EU needs a comprehensive view and is indeed developing one through efforts lead by the EEAS. Successes can also be noted within the geographic MDs. For example, cooperation on Russia and the Eastern Partnership is reported to be working well. The MD Asia has also received praise for continuing 'good practices', which include meetings with the Member States, working programmes, and monthly gatherings with Member State capitals. These have been maintained and are viewed as contributing to coherence and coordination with Member State foreign policies.

2.2.3 Staff Issues and Career Perspectives

In line with Article 7 of the EEAS Decision, during the start-up phase, the staff of the EEAS was composed of personnel transferred from the Commission and the Council General Secretariat, as well as diplomatic staff on temporary assignment from the Member States. This meant that the EEAS has had to build a common working culture. While an *esprit de corps* is expected to emerge over time, the issue of career perspectives for EEAS staff is broadly reported to be a pressing concern that needs to be urgently addressed.

Respondents in the EEAS, especially at the lower levels (both at Headquarters and Delegations) brought up issues regarding career progression, personnel practices and management, with many stating that the present situation is unsustainable. EEAS staff with an 'EU background' report that it has become particularly difficult to be promoted even to the level of a deputy head of unit, or to be posted in Union Delegations, predominantly due to the competition from Member State staff. Indeed, there is the

perception that Member State personnel are getting the best jobs within the EEAS. Although this is partly seen as the desire of Member States to stress national priorities, it is also recognised that these staff members are highly experienced, and are often in later phases of their careers. This makes it difficult for other staff to compete. More generally, EEAS positions present no clear career path or long-term career perspectives. Interviewees presently in the Commission are most vocal about this issue, with personnel at Head of Unit level and above stating that whenever a post is advertised, a large number of EEAS personnel apply in order to move back to the institution. Some interviewees even spoke of an 'exodus', although other interviewees within the EEAS refuted that statement. Overall, respondents from all backgrounds stated that it is crucial that a clear and professionally fulfilling career path is set out for staff joining the EEAS. At present, the EEAS is losing very motivated and capable staff, and there are reports of lower quality applications for current and future open positions.

Questions can be raised as to whether the EEAS ought to be a career in itself, and if it would become one, whether that would reinforce 'silo thinking' within the EU bodies. One proposal has been to create a spiralling career structure whereby 'RELEX personnel' would rotate between the Commission, Delegations, Council Secretariat and EEAS, and move upwards in the hierarchy as they progress. Finally, respondents (from the Council) have suggested that there needs to be ownership by the Member States of the EEAS in order to make it successful. This full ownership lies partly in the actual composition of the EEAS and in its management. Respondents from the Council and EEAS thus argued that there should be some way of countervailing the dominance of a few countries which are most efficient in lobbying for top positions. Indeed, as was observed by a high ranking EEAS official, the Service can become more effective if it cultivates a sense of ownership among the 'smallest of the large and the largest of the small' Member States, which see the added value of having a European diplomatic corps. In terms of staffing, this can be achieved by increasing the number of officials coming from these Member States⁴³.

One of the challenges to the creation of a common culture is the different backgrounds of EEAS staff. Having a background in either the Council, the Commission or a Member State shapes staff members' perceptions of the EEAS mandate in EU external action, and clearly impacts upon their day-to-day activities. EEAS staff who previously worked at the Commission often argue that their colleagues from the Member States and the Council need to adapt to new ways of working. Most notably this includes not always simply asking the Member States for support on policy action, but ensuring full inter-service consultations with relevant stakeholders, especially with relevant Commission DGs. As such, people coming from the Member States are said not to 'feel the role of the Commission' in EU external action, and they need to be reminded of the dangers of working in isolation on issues such as energy or environment. Generally, a cooperative culture between Member State, Council and Commission staff is growing but is certainly not fully in place. Additionally, interviewees from the Member States and the EEAS point to the fact that there is also some degree of mistrust between EEAS colleagues from different backgrounds. It was noted that because of their diverse statuses and career perspectives and importantly, differences in remuneration, this creates a sense of injustice and tension.

⁴³ For an in-depth study on this issue see Duke, S. and Lange, S., 'Achieving Geographical and Gender Balance in the European External Action Service', Directorate-General for External Policies of the Union, European Parliament, January 2013, <http://www.europarl.europa.eu/committees/fr/studiesdownload.html?languageDocument=EN&file=83850>.

2.3 Mandate and Performance

2.3.1 Mandate, Policy Coherence and Strategic Thinking

Article 2 of the EEAS Decision is entitled 'tasks', and defines the EEAS mandate in a dual fashion. First, it states that the EEAS is to *support* the High Representative as outlined in Articles 18 and 27 TEU. Second, it is 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. The first paragraph of Article 2 on *supporting* the HR is the most extensive of the article, and is composed of three bullet points which flesh out the role of the EEAS in relation to each of the 'triple hats' of the High Representative. The first indent states that the EEAS is to support the HR in 'fulfilling his/her mandate to conduct the Common Foreign and Security Policy ('CFSP') of the European Union, including the Common Security and Defence Policy ('CSDP'), to contribute by his/her proposals to the development of that policy, which he/she shall carry out as mandated by the Council and to ensure the consistency of the Union's external action'. The second indent states that the EEAS is to support the HR 'in his/her capacity as President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council'. Finally, the third indent states that the EEAS is to support the HR 'in his/her capacity as Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations, and in coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the services of the Commission'.

In terms of wording, Article 2 of the EEAS Decision meticulously balances the different functional and substantive functions and inter-relationships to ensure the '*sui generis*' nature of the EEAS in relation to the other actors mentioned in that provision⁴⁴. The tasks of the EEAS are vaguely defined and exist entirely by reference to the mandates, functions and roles of other actors. Additionally, it is broadly described in functional terms (assist, support etc.), and not in substantive policy terms. Only the CFSP is mentioned with regard to the HR, yet the VP role is defined by reference to 'the Commission responsibilities in external relations'. Aside from the role in development programming in Article 9 of the Decision, there are no policy areas for which the EEAS is explicitly responsible. Furthermore, the fact that the EEAS was to bring coherence to EU external action through a geographic focus in its support mandate is not mentioned in this provision⁴⁵. As a consequence, the mandate of the EEAS is defined in a rather open-ended fashion, and it has become clear that this very much complicates the day-to-day work of the EEAS.

Respondents within the EEAS, the Commission, the Council Secretariat, the Member States and Union Delegations broadly agree that it is imperative that a renewed consensus emerges on the EEAS' mandate. At present, respondents identify two key problems regarding the EEAS' tasks and mandate. First, interviewees mention that the EEAS often does not really know what it is supposed to do across different EU policies. Second, to the extent that the Service has made a choice regarding its policy priorities, respondents state that there is far too great a focus on classic foreign policy in competition with the Member States, with insufficient emphasis on the external dimension of internal Union policies. Several respondents within the EEAS' Headquarters and the Union Delegations stated that the EEAS is nothing less than the re-invention of 19th century diplomacy. This gives rise to two main

⁴⁴ See further 'Article 2 - Mandate of the EEAS', in Blockmans, S. and Hillion, C. (eds.), *EEAS 2.0: A Legal Commentary on Council Decision 2010/427/EU Establishing the Organisation and Functioning of the European External Action Service*, Centre for European Policy Studies (CEPS), Swedish Institute for European Policy Studies (SIEPS), and European University Institute (EUI), Brussels/Stockholm/Florence, 2013, pp.2 0-29.

⁴⁵ This is mentioned in Art. 4 EEAS Decision, on the organisation of the Central Administration of the EEAS.

negative consequences. On the one hand, interviewees argue that the EEAS is unnecessarily duplicating much of the foreign policy work of the Member States, leading to friction. On the other hand, the EEAS is viewed as duplicating the work of Commission DGs within the scope of their Treaty-based mandate. From the point of view of Union Delegations, respondents state that the EEAS' hierarchy has chosen to focus on policy domains where the EU will naturally lack influence. For example, the role of the HR and EEAS in managing the issue of Iran is touted as a success by the EEAS. However, some personnel in the Delegations and outside of the EEAS are of the opinion that the Iranians are in reality looking to the USA, with the EU merely playing the role of a middleman. Thus, staff in the Delegations emphasise that the real strength of the EEAS must lie in the external dimension of internal policies. This, of course, requires excellent collaboration with the Commission, as well as a clear division of tasks between the EEAS and that institution. Because there is no common, shared understanding of tasks of the EEAS among different stakeholders, the Service (and the thematic MD VI Global and Multilateral Issues in particular) is forced continuously to labour to define its role. Interviewees from the EEAS and the Commission state that this leads to new initiatives which actually reproduce the work that has been done, or which enters into policy domains where the EEAS lacks the expertise to deliver top quality due to understaffing. Thus, there is broad agreement on the need for a clearer definition (and as suggested by some, an expansion into new areas such energy, migration, and even trade) of the policy role and the coherence role of the EEAS. This would overcome the challenge of the EEAS being squeezed between the Member States' foreign policies and the Commission's external dimension of internal policies.

Policy Illustration 1: Water Policy

The EEAS has sought to bring greater coherence to the work of the EU and its Member States on water-related issues. This example illustrates the EEAS' difficulty in defining its mandate, but also the reluctance of the Commission to allow the EEAS to touch upon what it perceives to be its competence. Indeed, there has been some frustration over the EEAS' performance in relation to a recent informal meeting of foreign ministers (Gymnich) and the discussion on 'water'. From the EEAS perspective, water is not just a development issue, but a highly political one, especially if one looks at water issues in South Asia, the Maldives or Bangladesh. As a consequence, the EEAS states that it falls squarely within its 'coherence mandate' to discuss it at the level of foreign affairs ministers, and to take the necessary action thereafter. From the Commission side, there is frustration that the EEAS approaches issues with insufficient technical expertise, or is quite simply 'stepping on "Community" competences'. From the EEAS perspective, the latter approach is exactly the problem. The Commission does not always realise that with the mandate of the EEAS, the EU external relations institutional machinery has changed fundamentally, and that it is carrying out its coherence function. Interviewees report that in spite of this frustration, there is presently an on-going 'water mapping' policy exercise following from the Gymnich, but that this process does not include the Commission. Overall, EEAS staff argue that they are being deprived of financial and human resources, as well as support from the Commission and Member States, in order to truly address the political dimension of important global, thematic issues in a coherent fashion.

When asked for their opinions of what should be the EEAS' role, the responses of the interviewees diverged considerably. Some within the EEAS Headquarters (usually those with a Council or Member State background) view it as a purely supportive service within the sphere of the CFSP only, with little importance in other areas. At the other end of the spectrum, others (including Delegations, Commission

and Council Secretariat) hold the view that the EEAS should be a pro-active policy-generating entity, what one might term an 'entrepreneur' in EU external action⁴⁶. This means that the EEAS should work to establish mechanisms which coordinate policies in a geographic sense, similar to the strategic partnerships. They should ensure that there is full communication, ensure that there is no loss of information and ensure coordination between Brussels, Member States capitals, and the Delegations. In other words, the EEAS is to 'complement' the institutions. Overall, these responses underline that there is still no common understanding of what the EEAS is for, what its mandate is, what its place is in EU external relations. This means that some Member States are fine with its current performance, while others are woefully disappointed. It means some parts of the Commission want to see far more proactive engagement of the EEAS, and yet others simply want to see the EEAS merge back into the Commission structures like a strengthened DG RELEX.

Related to the definition of the EEAS mandate is the question of the width of its substantive policy scope. Whereas Article 2 of the EEAS decision explicitly refers to the EEAS supporting the HR in the CFSP related tasks, no specific policies are mentioned in relation to the VP task. Given that many suggested that the EEAS places too much emphasis on classic foreign policy issues, interviewees were asked whether the substantive scope of the EEAS mandate ought to be expanded. Whereas many respondents from the EEAS Headquarters are in favour of an extension of the EEAS mandate to former 'Community policies', it was made clear that an explicit extension of the EEAS mandate is not desirable without a corresponding increase of resources. Certain interlocutors within the EEAS, across different MDs were of the opinion that many if not all thematic policies with an external dimension should be moved to the EEAS, such as development, trade, and energy, and that more thematic capacity should be given to the geographical desks. Needless to say, Commission interviewees did not hold that view. They generally argue instead for a redefinition of the EEAS mandate through an anchoring or even reintegration of the EEAS into the Commission. In essence, both arguments are two sides of the same coin: the need for rapprochement between the Commission and the need for a clearer definition of the EEAS mandate in EU external relations. In summary, interviewees in the Commission and the EEAS argued that in light of the current EEAS mandate, the current set-up is in reality a transitional service, a 'half-way house' its start-up phase.

2.3.2 The 'Coherence Mandate' of the EEAS

The current European Security Strategy dates back to December 2003, and was clearly written in a time when the European Union and its Member States faced different challenges. In relation to the 'coherence mandate' of the EEAS, the question has been raised by academics and think tanks⁴⁷ whether the Service ought to take the lead in drafting a new fully-fledged security strategy⁴⁸. In light of the EEAS' rather open-ended mandate, it was inquired whether this might indeed be a core contribution of the EEAS to EU external action.

⁴⁶ Hemra, S., Raines, T., and Whitman, R., *A Diplomatic Entrepreneur: Making the Most of the European External Action Service*, Chatham House Report, London, 2011, p. 1.

⁴⁷ Upon being asked about the process driven by 4 Member States for a number of think tanks to draft a new 'Global Strategy', it was reported that the EEAS follows that process extremely closely, but that the Service does not view it as the best way of utilising scarce resources.

⁴⁸ Two vocal proponents include: Coelmont, J., *An EU Security Strategy: An Attractive Narrative*, Egmont Security Policy Brief No 34, March 2012; Biscop, S., *EU Grand Strategy: Optimism is Mandatory*, Egmont Security Policy Brief No 36, July 2012.

There is some level of consensus across the EEAS, Member States and Commission that there is a lack of strategic direction in EU foreign policy⁴⁹. However, many assert that developing a new ESS would not be a useful exercise. The view from the EEAS and the Commission is that this would cost a lot of energy, with little added value. This is because negotiating a new ESS would probably consist of bickering over the wording of sentences and Member States emphasising national priorities. Furthermore, EEAS respondents, argue that there is a serious risk of failure to attain agreement across 27 EU Member States. Some argue that the Member States would not let the HR fully play her coordinating role, and that there would be no point in making such attempt. Although there are rumours that the HR/VP is blocking attempts to revise the ESS, absolutely no evidence was found to that effect. Rather, the current HR/VP prefers smaller-scale and topical strategic approaches, rather than a single grand strategy. The more tailor-made policy-specific approach, such as the forthcoming Communication on the comprehensive approach, is generally viewed by the EEAS hierarchy as the more valuable way ahead. However, to ensure links between all current and future country and thematic strategies, Member State respondents argue that it is crucial to establish a connection between the respective strategies to ensure overall strategic direction. This view is mirrored in the Commission, with a clear demand for the EEAS to develop strategies specific to strategic partners, as well as the creation of permanent integrated task forces on specific issues (e.g. not just geographic such as the Egypt Task force). In this way, instruments, resources and personnel can be pooled. One suggestion from the Commission was to apply this approach to the issue of sanctions. In this fashion, 'ad hocism' could be replaced with a permanent on-going process on how sanctions should be organised, in which fields they should be applied (energy, visas, finance etc.), minimising the risk for the EU but ensuring maximum effect.

Policy Illustration 2: The 'Comprehensive Approach'

Rather than introducing an alternative to the existing ESS, at present the EEAS aims to coordinate actors and instruments by what is called the 'comprehensive approach'. This is in line with the perception within the EEAS that much in the ESS remains valid, and that there would be little added value in a new document.

Compared to the written ESS, the comprehensive approach has not yet been officially launched, although a Communication on this matter is forthcoming in 2013. By referring to the comprehensive approach, the EEAS aims to bridge different policy instruments by underlining the importance of a security policy that is not only concerned with the use of civilian and military crisis-management tools, but that also takes into account other instruments, such as those provided through the EU's development cooperation. There are still mixed views on the comprehensive approach, with one Member State diplomat arguing that it remains a rather 'elusive beast without a definition'. Without a defining policy document, it remains unclear what a 'comprehensive approach' precisely entails. Is it a comprehensive approach between different security instruments (such as civilian and military crisis-management, IfS, etc.)? Is it about the interface between security and development ('no security without development and vice versa')? Or is it about a thorough combination of policies and the application of all tools of EU external action at all times so that synergetic effects from one field of EU action spill over into another? A comprehensive approach that is of added value to stakeholders in EU external policy will in any event have to avoid being nothing more than 'old wine in new wineskins'. Most notably, it is in danger of becoming a new rhetorical device simply replacing the notion 'coherence' in EU external relations, such as that formulated in the Commission Communication on that topic of 2006.

⁴⁹ In a similar vein see: Lehne, S., *More Action, Better Service: How to Strengthen the European External Action Service*, Policy Outlook, Carnegie Endowment for International Peace, Brussels, 2011.

Despite different perceptions among Member States and EEAS on the precise meaning of the 'comprehensive approach', the Horn of Africa Strategy and the Sahel Strategy are both consistently mentioned by EEAS officials as positive examples of such an approach in action. In fact, despite major setbacks in terms of incoherence in CSDP, such as the Libya case, Member States are cautiously positive and see the comprehensive approach as an effective tool for security policy coordination. This is because it unites the different missions, Delegations, geographical desks, and EUSRs under a political umbrella in order to foster a general approach and a long-term perspective.

The comprehensive approach needs to focus on including the involvement of all actors during all phases of EU external action, for example by means of so-called crisis platforms in the decision- and planning phase of specific missions, and continuous interaction between the Commission, the Council and the EEAS during the implementation of policies. The EEAS would be responsible for coordination at all stages.

From the EEAS perspective, the 'comprehensive approach' is a useful method to encourage the Commission to align its policies with EEAS over-arching political perspectives. However, there is the perception that an important shortcoming of the comprehensive approach is that it dilutes the CSDP and opens it up for discussions on which tools are needed, and whether CSDP is needed at all. In sum, the comprehensive approach makes decision-making rather slow and prevents swift action in a crisis.

2.3.3 Policy Performance as Viewed From the EEAS

Interviewees were asked to explain in which initiatives or policy domains they believed that the EEAS had achieved policy successes over the past two years. This part provides an overview of what the respondents from the EEAS viewed as positive developments.

One notable success is the swift response in the neighbourhood through the May and March 2011 Communications, in cooperation with the Commission (however, see below *Policy Illustration 5: European Neighbourhood Policy*). For example, the South Mediterranean Task Forces in Tunisia, Egypt and Libya have been able to mobilise private actors and international financial institutions. Respondents cited as a success the EEAS' work in Kosovo/Serbia, the EEAS' swift follow-up to the Japanese Tsunami and the EEAS' responses to crises in Africa, such as Côte d'Ivoire and Somalia (though they mentioned that the EEAS could do much more in public diplomacy to communicate the ATALANTA mission in Member States). The issue of Iran was often mentioned as a particular success, and the work of the EEAS has according to some helped to bring the Iranians to the table. Other examples include the existence of a multi-faceted China policy. In CSDP, the increased pooling and sharing but also the de-blocking of regional maritime capacity was mentioned as resulting from the EEAS' efforts. The ability to respond rapidly to crises was mentioned as a success, including the possibility of a new mission in Libya. At the time of the interviews in November – December 2012, the preparation and ambitious nature of the training mission in Mali were regularly mentioned as a success of the EEAS⁵⁰. Evidently, this has been overtaken by events in January 2013, with external commentators concluding that the failure to respond swiftly rather signals the demise of the CSDP⁵¹. Another perceived success is the comprehensive approach, which many respondents suggest has been successfully applied in the Horn of Africa (see above *Policy Illustration 2: The Comprehensive Approach*).

⁵⁰ Council Decision 2013/34/CFSP of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces, OJ L 14 18.1.2013, p. 19-21.

⁵¹ G. Faleg, *Castles in the Sand: Mali and the demise of the EU's CSDP*, CEPS Commentary, 28 January 2013.

2.3.4 Resources and Political Support as Obstacles to Good Performance

Overall, respondents from the EEAS argue that there is now a clearer political dimension to former Community policies. This broadening of the discussion and move towards looking at the root causes of certain problems is to be evaluated positively. If there are indeed external obstacles to the EEAS' performance, they lie in the lack of resources and consistent support from the Member States.

The EEAS was born in times of economic austerity, and as a consequence it was agreed that its establishment should not increase costs for EU external relations. Recital 15 in the preamble to the EEAS Council Decision states that the establishment of the Service 'should be guided by the principle of cost-efficiency aiming towards budget neutrality'. The question is therefore whether 'aiming towards' leaves some room for manoeuvre rather than a clear-cut focus on a 'zero-growth' approach to the EEAS' budget. The present study does not approach this matter from a quantitative perspective and an audit of the EEAS' costs and expenditure has therefore not been carried out. Rather, a qualitative approach is taken, and interviewees have been asked about their experiences on the impact of budget neutrality in carrying out their tasks in the best possible way. On this basis, the study concludes that focusing on budget efficiency is highly important, but that an over-emphasis on budget neutrality prevents the EEAS from fully carrying out its mandate.

The broad perception among interviewees is that the EEAS is too understaffed and underequipped to achieve the ambitious objectives of the Lisbon Treaty. Although Member States agreed to establish the EEAS, there is a broad perception that subsequently they did not wish to grant the necessary budget and resources to conduct an effective common foreign policy. In interviews with Member States representatives it was clear that in their services significant cuts in staff and foreign representation had been made too. However, not a single interviewee stated that budget reductions were made keeping in mind the possibility of efficiency gains by utilising the EEAS and Union Delegations to a greater extent (see also Part 7 *Union Delegations in Bilateral and Multilateral Settings*).

When asked to give concrete examples of where the EEAS' functioning is stifled due to lack of resources, many point to the field of IT. If the added value of the EEAS lies in coordinating policies and providing reciprocal information flows between EU institutions and Member States, the Service clearly must be given adequate financial means to set up a fully integrated and secure electronic platform such as those that exist in the foreign ministries of the Member States. Respondents state that on-the-ground sharing of information with Member States in third countries is seriously hampered because of this. This is also a problem in Brussels, where communication between Schuman (EEAS Headquarter) and Cortenbergh (EEAS' Security Policy and CSDP structures) can be difficult. Thus, the lack of secure channels in order to establish a systematic two-way information system between the pertinent EEAS stakeholders and the Member states is a problem on all counts. Furthermore, the lack of resources poses significant hurdles to the effort to staff Union Delegations with adequate EEAS officials able to cover the needs for political reporting and country-specific expertise on the ground. Overall, EEAS staff reports that one has to be realistic about what can be done with the current level of resources. Treaties and legal decisions are not enough, for ambitious goals also require means to achieve them.

In spite of successes in certain fields, respondents from all backgrounds agree that the EEAS has not led to a more coherent and effective EU foreign policy, based on more common EU positions and greater EU visibility. However, in spite of all the EEAS' internal structural challenges, the finger is mainly pointed to the Member States for blocking progress due to the renationalisation of foreign policy and overall resistance to use the framework set up with Lisbon⁵². Notably, on important issues such as the

⁵² Which is in line with declarations 13 and 14 attached to the Lisbon Treaty.

recognition of the opposition in Syria, certain Member States have stepped out of the common foreign policy framework. Thus, certain governments lack the political will to truly implement the Lisbon objectives. Importantly, this is a statement made not just by interviewees in the institutions, but equally by respondents from the Member States themselves. While it is *bon ton* to point to the United Kingdom for expressly questioning the EU external action framework, other Member States such as France or Germany often share the UK's view, especially in specific policy fields such as energy and climate negotiations. This seriously prevents the emergence of a unified EU voice based on a commonly perceived interest. The success of the EEAS ultimately depends on the political will of the Member States. Respondents broadly agree that the EEAS can only be an effective machine when it has a clear political mandate. This is currently lacking.

2.4 Office of the HR/VP/FAC Chair

2.4.1 Fundamental Obstacles to Triple Hatting

The Treaty of Lisbon has created the so-called 'triple-hatted' position of the HR/VP⁵³. According to Article 18 TEU the HR/VP has three main responsibilities: (1) to conduct the CFSP and CSDP and contribute to the development of that policy (Art 18(2) TEU); (2) to preside over the Foreign Affairs Council (Art 18(3) TEU); (3) to act as Vice-President of the Commission, to ensure the consistency of the Union's external action, and be responsible within the Commission for responsibilities of the Union's external action (Art 18(4)). The underlying purpose of this position is that the person holding this office would more smoothly integrate all aspects of EU external relations in order to ensure greater coherence across the multitude of EU actors and instruments⁵⁴.

Respondents within the EEAS HQ, the Delegations, the Council, and the Commission as well as Member State respondents broadly agree that the triple-hatting is a good idea in theory. However, its functioning in practice has been impeded by a number of initial choices made regarding its implementation. First, it is often noted that the person holding this office quite simply has an 'impossible' job. Regardless of experience or background of the person holding the office, time and agenda constraints simply do not permit the full and proper performance of all three positions. Second, it is procedurally and legally difficult to combine the position of HR and VP in one person, mainly due to the different legal procedures involved. Some (confidential) examples were given where action became impossible due to the fact that a choice had to be made whether to sign an international document in the name of the HR or VP, as this would create problems either in the Council (Member States) or in the Commission. Third, sources within the Council found that there is a clear mismatch between the triple-hatting of the HR/VP and the role, competences and mandate of the EEAS. The limited mandate and competences of the EEAS simply do not mirror the triple-hatting of the office of the HR/VP.

While time limitations are recognised as a problem⁵⁵, the triple-hatted HR/VP role is viewed as a success by the top of the EEAS hierarchy, who see it as having a positive impact on coherence in EU external relations. One example has been the coordination effort in Brussels with the Special Representative for the Sahel. In order to ensure that all information and efforts would be focused in a coordinated fashion,

⁵³ When this study refers to 'triple-hatting' this means the accumulation of the role of High Representative, Chairperson of the FAC and Vice-President of the Commission in accordance with Art. 18(2), (3) and (4) TEU; whereas "double-hatting" refers to the roles of High Representative and Vice-President only. (Art.18(2) and (4) TEU).

⁵⁴ The European Convention, *Final Report of the Working Group VII on External Action*, CONV 459/02, Brussels 16 December 2002, 19.

⁵⁵ In this vein, see: Missiroli, A., 'The new EU 'foreign policy' system after Lisbon: A work in progress', *European Foreign Affairs Review*, Vol. 15 (2010), pp. 427-452.

a meeting took place with the HR/VP, with personnel present from the Commission (ECHO, DEVCO) and from the EEAS (persons responsible for Sahel, military personnel, civil personnel, INTCEN). It was felt that it would simply not have been possible to create an 'EU view' two years ago, and that the Special Representative would have had to visit all actors individually.

Nonetheless, respondents were broadly critical of the manner in which the triple hats have been utilised. Two main elements were highlighted: the underused role of the Vice-President of the Commission, and the need for deputies to the HR/VP.

2.4.2 Under-Utilised Role of Vice-President of the Commission

The issue that evokes most dissatisfaction among respondents when discussing the role of the HR/VP is the fact that the role of High Representative is emphasised at the expense of other roles. The role as FAC chairperson and the role of Vice-President of the Commission are being under-utilised to the detriment of the 'coherence mandate'. Interviewees from the EEAS state that key to the problem is the lack of support for the VP role within the Commission itself. However, within the EEAS there is legal disagreement on the interpretation of Article 18 TEU, and its reflection in Article 2 of the EEAS Decision. Indeed, some departments argue that in fact Article 18 TEU imposes a hierarchy on the three hats. According to this interpretation, the HR is the primary role, followed by that of the FAC Chairperson role, and the role of Commission VP being only ancillary. However, another view, and that of a legal commentary on the EEAS Decision, is that this interpretation is incorrect⁵⁶. The purpose of triple-hatting is for all the roles to fit together on an equal basis. This view has been strongly confirmed by a broad consensus among respondents from the Commission, the EEAS, the Council and Member States. They state that the VP role should be boosted in a number of ways. For example, they argue that the VP should regularly call and personally chair the group of RELEX Commissioners, and that the VP could increase her presence at the college of the Commission (see also Part 5 *The Relationship between the EEAS and the Commission*). On the other hand, the Commission should cease to view the HR/VP as the 'fifth wheel on the wagon'. The Commission President ought to provide more room for giving the final coordinative say to the HR/VP across EU external action, regardless of underlying questions of competence.

2.4.3 Deputisation to the HR/VP

It is clear that the overburdening of the HR/VP/FAC has prevented the proper functioning of this position, which is an issue that needs to be urgently resolved. To that end deputisation of the HR/VP is suggested by many as a means to strengthen the office of the HR/VP. Interviewees did not view this as a critique of the office holder, but rather as a practical solution to the demands of the office. While many interviewees from all backgrounds do argue that deputisation is required, they disagree on how this should be implemented. Different opinions were given regarding what 'deputisation' means and how it could work in practice.

Prominent persons within the EEAS and the Commission suggested that the RELEX Commissioners could play a more formal deputisation role, building on experience and structures in support of the current cooperation between the HR/VP and the Commissioner for Enlargement/ENP. Another suggestion was for the Member States to give up the principle of equality of Commissioners, allowing junior Commissioners with RELEX portfolios to work under the HR/VP as senior Commissioner. However, this proposal would require a change in the Treaty. An example of where cooperation between the

⁵⁶ See 'Article 2 - Mandate of the EEAS', op. cit.

HR/VP and a Commissioner has worked well is the relationship with the Commissioner for Neighbourhood Policy and Enlargement (see below *Policy Illustration 5: European Neighbourhood Policy*). This proposal overcomes some of the limitations of 'deputising' using Member State foreign ministers, which is said to work only as long as foreign ministers do not take instructions from their capitals, which has been reported to occur in practice. Another option is to upgrade the managing directors in the EEAS to become 'geographical foreign ministers'. A problem here is that while exercising their deputising function they would still be civil servants and not politicians. An alternative could be to add politically accountable deputies to the HR with specific internal-institutional and external-policy related portfolios.

2.5 Main Findings and Recommendations

To this day, the EEAS remains an organisation in transition in terms of its legal nature, organisation, structure and mandate. Uneasily positioned in the EU external relations machinery, the Service itself, the institutions and the Member States have not yet adapted to the new situation following the Lisbon Treaty. This study finds that the internal organisational structure could be leaner, in particular as regards management. When it comes to the EEAS' mandate, there is no agreement on what the Service exactly is for, and what exactly its task of contributing to coherence in EU external relations entails. This leads to friction, turf battles, and inefficiencies. Whereas the 2013 Review comes rather early, a number of acute challenges may already be tackled so as to strengthen the EEAS' performance in the immediate future.

Nature and Mandate

- The 2013 Review should be used as an opportunity to attain a common understanding of the mandate, nature and role of the EEAS in EU external action, between the institutions, Member States and the Service itself;
- The EEAS must re-focus the balance between CFSP and non-CFSP tasks carried out by the Service. This entails a real commitment to linking TEU and TFEU policies, which in turn requires a 'new deal' between all stakeholders, notably the EEAS and the Commission;
- The EEAS should utilise its 'coherence mandate' in order to become the prime diplomatic entrepreneur in EU external action. It should foster reciprocal information sharing, cooperation and coordination between national and EU levels, shape and propose novel policy ideas through stimulating out-of-the-box thinking, and push the envelope beyond the common denominator of what Member States will permit at present.
- The EEAS should proactively promote coherent external action across all policy domains and pursue more strategic guidance through the elaboration of – if not a new European security strategy – separate geographical strategies and the creation of permanent integrated task forces focusing on specific themes. The 'comprehensive approach' can be a first step towards that objective.
- The 'comprehensive approach' should not be old wine in new wineskins. Building upon the idea of greater coherence in EU external action, it should rather be a specific set of procedures which apply in different policy fields of the TEU and TFEU to bring together all instruments at decision-making, planning and implementation level.
- The EEAS was born in times of austerity, and therefore should be guided by the principle of cost-efficiency 'aiming towards' budget neutrality. However, budget neutrality should not entail a 'zero-growth' approach to the EEAS' budget. Rather, there is an urgent need for a genuine consensus among EU Member States and institutions as to how the Service can be utilised

towards increased synergies and efficiency gains at the national, EU and international level.

- The Member States need to commit fully to the success of the EEAS, and resist the re-nationalisation of foreign policy.

Staff and Organisation

- The organisation chart of the EEAS requires reform to avoid duplication of managerial responsibilities, to increase the delegation of tasks, and to attain a shorter chain of command;
- The EEAS should decrease the complexity of its internal *modus operandi* and reduce the number of different stages and meetings, in order to remedy existing inefficiencies;
- A long-term career structure for staff, including greater equity and equality in personnel conditions, needs to be implemented so as to stimulate personal commitment and initiative, and retain and attract highly skilled staff;
- Greater attention needs to be paid to training so as to create a common *esprit de corps*, common knowledge about diplomacy, EU working methods, and notably a long-term, common vision on the purpose and functioning of the Service;
- A greater number of staff need to be dedicated to specific policy fields. This will help stimulate natural synergies with other EU actors working in these domains;
- More staff needs to be recruited to deal with legal and personnel issues so as to ensure efficiency and good-quality drafting as well as proper procedural institutionalisation of the EEAS;
- There is a need for greater integration of all Union Delegation officials, to make them operational immediately after their posting, and to improve their training in practices and structures both at national and Union level. A joint Commission-EEAS training programme on the working methods should be established;
- The role of geographical desks in relation to the EEAS' crisis management structures should be revised so as to ensure that the Service's full expertise is employed as regards EU actions abroad. At the same time, it could be considered to incorporate crisis-management structures more fully into the overall EEAS structure.

Office of the HR/VP/FAC Chairperson

- The office of the High Representative ought to do much more to utilise the Vice-Presidential role in the Commission, in order to carry out the 'coherence mandate' as provided in Article 18(4) TEU;
- The EEAS' support tasks for the various roles of the HR/VP/FAC Chairperson should be regarded as mutually reinforcing;
- There is a need for political deputisation to the office of the HR/VP/FAC Chairperson so as to fully realise the potential of triple-hatting. This would provide an opportunity to anchor further the Commission and the EEAS together, with the current cooperation between the HR/VP and the Commissioner in the field of European Neighbourhood Policy as an example for other policy areas;
- Budget neutrality needs to be abandoned in favour of a more realistic focus on resource efficiency. Even in times of austerity, ambitious goals require the means to achieve them;

3. THE RELATIONSHIP BETWEEN THE EEAS AND THE EUROPEAN COUNCIL

3.1 Cooperation and Communication Between the European Council and the EEAS

The President of the European Council is to ensure the external representation of the Union on issues concerning the CFSP 'at his level and in that capacity' and 'without prejudice' to the powers of the HR/VP⁵⁷. The most obvious division of labour would seem to be that the European Council President represents the Union internationally at the level of Heads of State or Government, while the HR/VP does the same at ministerial level⁵⁸. This appears to coincide broadly with current practice. Since the EEAS serves both offices⁵⁹, the relationship between the European Council and the EEAS clearly merits attention.

The level of cooperation between the European Council Presidency and the EEAS was in general assessed positively by respondents within the European Council. Specifically with respect to the exchange of information, the European Council Presidency is generally satisfied with what the EEAS provides. Nevertheless, one point of criticism was that the reporting from the EEAS is sometimes too 'technocratic' for the purposes of the European Council Presidency, as it occasionally provides long technical briefings that are not politically translated⁶⁰. Finally, interpersonal cooperation and practical coordination were both assessed positively. That sentiment was echoed by respondents within the EEAS, who emphasised the 'easy and straightforward relations' with the Presidency of the European Council. It was also noted that as a consequence thereof, the requests originating from the cabinet of the President are clear and the EEAS is given sufficient advance notice when the relevant deadline is tight. The cabinet of the President has apparently even sent examples of helpful briefings to the EEAS.

Nevertheless, from the perspective of the EEAS, the lack of clarity in the division of tasks between the President of the European Council and the President of the Commission was criticised⁶¹. This was pointed out by certain respondents within the Commission, who noted that this issue was illustrated by the fact that the President of the European Council had spent a significant part of his time on the euro area crisis, which *prima facie* does not belong to his core tasks, while spending comparatively little time on global foreign policy issues, which do belong in that category. That situation was readily confirmed by respondents within the European Council, who admitted that, because the European Council had had to devote 85% of its time and attention to the euro area crisis, foreign policy had become 'a topic of secondary importance'⁶².

⁵⁷ Art. 15(6), second subparagraph, TEU.

⁵⁸ Dashwood, A., 'The Draft EU Constitution—First Impressions', *Cambridge Yearbook of European Legal Studies*, Vol. 5 (2002–2003), Hart Publishing, Oxford and Portland, Oregon, 2004, p. 412; De Baere, G., *Constitutional Principles of EU External Relations*, op.cit., p. 128.

⁵⁹ Art. 2(1) and (2) EEAS Decision.

⁶⁰ cf. Burke, E., *Europe's External Action Service: Ten Steps towards a credible EU foreign policy*, Centre for European Reform, London, 2012, pp. 6-7.

⁶¹ Recall that Art. 2(2) EEAS Decision also provides for the EEAS to assist the President of the Commission in the exercise of his functions in the area of external relations.

⁶² Contrast with President of the European Council, 'The Challenges for Europe in a Changing World', Address by Herman Van Rompuy to the Collège d'Europe, Bruges, Concert Hall 'tZand, 25 February 2010, PCE 34/10, p. 4: 'Therefore I believe that the two most important domains of the European Council are economic policy and foreign policy'.

3.2 Mechanisms used to Foster Exchange of Information

The lack of an operational electronic system of information-sharing and archiving was cited as a major structural problem by respondents within the European Council. It was said that, within the EEAS, such matters very often are too dependent on personal relationships; in this regard, one interviewee in the European Council stated that 'sometimes, you feel like you are working in an NGO'. The lack of a central database for information sharing means that too much reliance is placed on e-mailing, which leads to further inefficiencies and deficiencies in follow-up when emails are lost or people are on leave. While the so-called AGORA system as used by, for example, the Union Delegation in New York was judged to operate satisfactorily, it is intended to communicate information to the Member States and has certain security limitations. It was therefore felt by respondents in the European Council that it could not be used more generally.

As a consequence of this modus operandi, policy information used as a background easily gets lost. That is of course also a problem for the Member States, as it remains very difficult to share confidential information between the EEAS and the Member State governments. As a respondent within the European Council explained, that situation in turn has a negative impact on the possibility to forge common EU positions, which requires at a minimum that every actor be sufficiently informed. An example that was cited in that regard was the euro area crisis. While the EEAS strictly speaking has no competence in that matter, the Heads of Delegation are very often asked about the crisis. The European Council therefore took the initiative to keep Heads of Delegation informed, taking the view that it was unacceptable for them to be compelled to use the internet to find out what was decided in a particular case.

3.3 Main findings and recommendations

The level of interpersonal cooperation, practical coordination, and exchange of information between the European Council Presidency and the EEAS was in general assessed positively. Nevertheless, the lack of clarity in the division of tasks between the President of the European Council and the President of the Commission was criticised. In addition, the lack of an operational electronic system of information-sharing and archiving was cited as a major structural problem. On that basis, this study makes the following recommendations:

- The effective communication between the President of the European Council and the EEAS should provide inspiration for improving the communication with other institutions and offices;
- The EEAS should be further encouraged to provide briefings that are adapted to the level of technicality needed for the purposes of the President of the European Council;
- The Presidents of the European Council and of the Commission should provide clear guidance to the EEAS regarding what topics they wish to be briefed on and with respect to their respective needs.

4. THE RELATIONSHIP BETWEEN THE EEAS AND THE COUNCIL

4.1 Performance of the Permanent Chairmanship of the Foreign Affairs Council (FAC)

The FAC is one of only two Council configurations explicitly mentioned in the EU Treaty, the other being the General Affairs Council (GAC). The FAC must elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council (which are in effect prepared by the GAC)⁶³, and to ensure that the Union's action is consistent⁶⁴. The FAC is to be 'responsible for the whole of the European Union's external action', namely the CFSP, CSDP, CCP, development cooperation and humanitarian aid⁶⁵. The FAC is also the only Council configuration with a permanent chair ('the permanent chairmanship'), namely the HR/VP in her function as HR⁶⁶. Nevertheless, she may, where necessary, ask to be replaced by the rotating Presidency of the Council⁶⁷.

Respondents within the EEAS cautioned against placing too much emphasis on the question whether the institutional changes brought about by the Lisbon Treaty have created greater coherence within EU external action, since the answer to this question requires taking into consideration certain counterfactual elements. That is especially so with respect to the changes brought about in the external action machinery in Brussels, where the impact is more difficult to assess than with regard to the Union Delegations, for which the positive impact is obvious to most observers. Bearing that in mind, it is no surprise that the assessment of the performance of the permanent chairmanship in the FAC varies rather widely depending on the source. That said, the evaluation of the permanent chairmanship by Member State respondents was generally positive.

4.1.1 Relative Position of the FAC Post-Lisbon

Respondents within the Council took the view that the importance of the FAC has clearly declined since Lisbon, going so far as to say that the level of the discussions in the FAC has deteriorated to the point where they have become 'discussions you can have over coffee'. Those same interviewees deplored the lack of transparency and the disappointing level of the preparatory processes within the EEAS, in particular with respect to issues that are not purely 'foreign policy', such as energy and environment. The fact that the preparatory process has allegedly been limited to a small circle within the EEAS was cited as an explanation for both these problems. One Council interviewee took the view that the EEAS should exercise greater control over the agenda of the FAC by being more strategic and forward looking through more advance planning and more leadership. That assessment was corroborated by respondents within the Commission, who criticised the sometimes poor communication and the sub-standard level of preparatory work done by the EEAS for FAC discussions. Respondents within the European Council and Member State permanent representations likewise took the view that a major problem within the FAC is the lack of planning. Documents arrive too late and Member States are ill-prepared. As a consequence, the FAC has allegedly not been able to have operational discussions. The lack of high-level discussions within the FAC was confirmed by an interviewee within the EEAS, who noted laconically that nothing much had changed in the FAC since 'it was a talking shop before'.

⁶³ Art. 16(6), second subparagraph TEU.

⁶⁴ Art. 16(6), third subparagraph TEU.

⁶⁵ Art. 2(5) Council Rules of Procedure.

⁶⁶ Art. 18(3) TEU.

⁶⁷ Art. 2(5) Council Rules of Procedure.

4.1.2 Continuity vs. Dynamism

While the permanent chairmanship of the FAC has clearly improved inter-temporal coherence compared to the former rotating Presidency, such improvement may have come at the cost of greater incoherence between the various existing preparatory organs for foreign affairs issues. A respondent within the European Council also noted that during the former rotating Presidencies, all the Member States were well-prepared and operations were well-planned, which led to more dynamism. By contrast, the current system has the disadvantage of sometimes leading to more bureaucracy rather than more dynamism. This was corroborated by respondents within the Council, who described the contrast slightly differently. According to them, some previous Presidencies brought a significant impulse and drive and had a clear agenda. There was, however, not necessarily a lot of continuity. By contrast, it was felt generally that the post-Lisbon permanent chairmanship gives rise to more continuity, but less initiative.

This assessment was also echoed by respondents within the EEAS, who pointed out that some of the dynamism has disappeared and the engagement of the Member States has decreased. Before Lisbon, Member States were driven by the fact that they would have an achievement at hand after six months. Similarly, it was recalled that while the rotating Presidency was not ideal, it did have several clear advantages. Each Presidency wanted to promote its own priorities and interests, which gave rise to regular EU foreign policy initiatives. Moreover, each Presidency wanted to ensure that its term was successful, which provided a strong political impetus to deliver results. By contrast, while the new system opens up possibilities for long-term strategies, the coordination between the EEAS on the one hand and the Member States or the Commission on the other hand is not yet smooth. That often results in a lack of impetus and a lack of initiatives. Furthermore, the end of the system of rotating Presidencies has also engendered a decrease in the necessary political will for certain policy areas to function, which is difficult to compensate for the EEAS. The difficulties experienced by the EEAS with respect to the coordination and the lack of dynamism and involvement on the part of the Member States were confirmed by other respondents within the Commission, Member State permanent representations, and the EEAS itself. An interviewee within the EEAS also deplored the fact that, while the rotating Presidencies in the past would agree that some things had to be prioritised, the new permanent chairmanship had not yet found a mechanism for that purpose, and was described as being 'too reactive'.

4.1.3 Advantages of Improved Continuity

The advantages of improved continuity should, however, not be underestimated. As one interviewee within the European Council put it, the permanent chairmanship enables the Union to act on the basis of a permanent relationship with external actors and third countries, without having to start from scratch every time. Respondents within the EEAS noted that third countries' perception of EU external action had improved, because the differences between the Member States are less visible and continuity is achieved to a greater extent. Other significant advantages cited by respondents within the European Council included the strategic depth with which the Union can now look at future work. This contrasts with the system of the rotating Presidency, where each Member State focused on its own semester. It was also dependent on the capacities of that Member State's ministry of foreign affairs, which was usually naturally inclined to further the interests of the Member State in question. By contrast, the permanent chairmanship is now explicitly empowered to further the interests of the *Union*. Furthermore, third parties no longer have to hunt to find out who is heading the EU at a particular moment, and it is now much clearer who they should address. This has promoted greater continuity and stability. Finally, meetings are now chaired by professional chairs, whereas under the system of the

rotating Presidency, meetings were chaired by national diplomats, who did not always possess the necessary expertise. Under the new system, the agenda of the chairs is the agenda of the EEAS, which leads to more constructive meetings. As remarked by a respondent within the permanent representation of a Member State, the permanent chair enhances continuity and has better established contacts. That assessment was corroborated by a respondent within another Member State diplomatic service, who emphasised that the added value of the permanent chairmanship of the PSC is especially obvious to most actors, in particular with respect to the possibility of forging a so-called 'comprehensive approach' (see above *Policy Illustration 2: The 'Comprehensive Approach'*) of which the policy towards the Horn of Africa is said to be a good example. The permanent chairmanship contributes to the comprehensive approach by integrating the perspectives of the Delegations, geographical desks and EU Special Representatives and by fostering a long-term perspective.

According to a respondent within another Member State permanent representation, the permanent chair imposes more discipline, depending on his/her character and style. That of course also implies that there are variations depending on the individual chair. The style of the chair as well as his/her leverage within the EEAS play a role in the efficiency and outcome of the work on each occasion. A respondent within the EEAS highlighted the fact that in the past, the rotating Presidencies tended to have 'pet topics', which were often abandoned by the subsequent Presidency. By contrast, the permanent chairmanship of the FAC has improved coherence over time, for example by making it easier to work on medium-term priorities at the UN, and to coordinate how candidates for international positions from EU Member States can be put forward more successfully. Such long-term thinking requires trust-building between the EEAS and the Member States, for which the permanent chairmanship is uniquely placed. A respondent within the EEAS also took the view that the lack of dynamism is compensated by the fact that the new permanent chairmanship can be proactive and has created the conditions to 'build momentum'.

4.1.4 Challenges for the Permanent Chairmanship

Numerous challenges were identified for the permanent chairmanship. An interviewee within the Commission stated that the HR/VP has a hard time imposing herself on the FAC, a consequence of the fact that Member States retain too much influence on agenda-setting. Conversely, a respondent within a Member State's permanent representation felt that the HR/VP is not always able to seize the opportunity to form a consensus among the Member States. The difficulty of finding a common EU position on the status of Palestine at the United Nations General Assembly was provided as an example in this regard.

Furthermore, the core of the problem facing the EEAS was said to be the fact that, from a policy point of view, it is much more difficult for the EEAS to ensure coherence than it was for DG RELEX. While the Secretary-General of the Commission can coordinate DGs, such is not the case for the EEAS. This is again due to the fact that it is not part of the Commission, but a 'functionally autonomous body'⁶⁸. That was said to be illustrated, for example, by the RIO+20 negotiations, which were coordinated by DG ENV and DG DEVCO, while the role of the EEAS was marginal at best. That negative assessment of the current level of coordination was corroborated by respondents within a Member State diplomatic service. They noted that the permanent chairmanship has the advantage of being able to set clear priorities. However, the case of the Arab Spring made it clear that instruments like the Task Forces are useful, but need to be backed up by horizontal coordination between CSDP policy makers and the Commission. It was said that the former rotating Presidency sometimes had clearer ideas about how to bring together

⁶⁸ Art. 1(2) EEAS Decision.

the various tools. A respondent within the Commission criticised the situation from a somewhat different angle, taking the view that there are currently too many different stages and meetings, and that the complexity of the system slows down the process. That assessment was underscored by another respondent within a Member State permanent representation, who indicated that the EEAS has created a number of inefficiencies, citing the example of the fact that all documents allegedly need to be cleared by the Cabinet of the HR/VP before they arrive in the PSC. Nevertheless, a respondent within the EEAS cited the crisis in Côte d'Ivoire as an example of good coordination between different institutions and services that gave rise to greater coherence. The same interviewee also pointed out that the permanent chairmanship puts significant pressure on the EEAS as a body, and that not enough account had been taken of the fact that the extra personnel provided previously by the rotating Presidencies has now disappeared.

The permanent chairmanship of the FAC therefore appears to be a step forward in terms of policy continuity, but has raised a number of problems with respect to the involvement of Member States in the process of policy-making that need to be addressed. Notably, the EEAS could be instrumental in concentrating FAC discussions on major policy issues by providing timely and substantial preparatory work.

4.2 The Permanent Chairmanship of the Council Working Parties

The HR/VP in her function as HR chairs a number of preparatory bodies within the Council. Nevertheless, of the two 'senior committees' within the Council, only the PSC is chaired by a representative of the HR, while Coreper is chaired by a representative of the Member State chairing the GAC⁶⁹. In general, the chairmanship of the preparatory bodies of the FAC is organised in four categories⁷⁰:

- 5) preparatory bodies in the area of trade and development, chaired by the rotating Presidency;
- 6) geographic preparatory bodies, chaired by a representative of the HR;
- 7) horizontal preparatory bodies, mainly CFSP, chaired by a representative of the HR, with a number of notable exceptions, including the RELEX Working Party, which are chaired by the rotating Presidency;⁷¹
- 8) CSDP-related preparatory bodies, chaired by a representative of the HR.

⁶⁹ Art. 2 of European Council Decision 2009/881/EU of 1 December 2009 on the exercise of the Presidency of the Council, OJ L 315, 2.12.2009, p. 50.

⁷⁰ ANNEX II of Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJ L 322, 9.12.2009, p. 28–34.

⁷¹ These are the Working Party of Foreign Relations Counsellors (RELEX), Working Party on Terrorism (International Aspects) (COTER), Working Party on the application of specific measures to combat terrorism (COCOP), Working Party on Consular Affairs (COCON), Working Party on Public International Law (COJUR), and Working Party on the Law of the Sea (COMAR).

Committees and Working Parties chaired by a representative of the HR⁷² :

- A.5 Political and Security Committee (PSC)
- A.10 Committee for Civilian Aspects of Crisis Management (CivCom)
- C.4 United Nations Working Party (CONUN)
- C.5 Working Party on OSCE and the Council of Europe (COSCE)
- C.6 Working Party on Human Rights (COHOM)
- C.7 Working Party on Transatlantic Relations (COTRA)
- C.9 Working Party on Eastern Europe and Central Asia (COEST)
- C.11 Working Party on the Western Balkans Region (COWEB)
- C.13 Middle East/Gulf Working Party (MOG)
- C.14 Mashreq/Maghreb Working Party (MAMA)
- C.15 Africa Working Party (COAFR)
- C.17 Asia-Oceania Working Party (COASI)
- C.18 Working Party on Latin America (COLAT)
- C.20 Working Party on Non-Proliferation (CONOP)
- C.21 Working Party on Conventional Arms Exports (COARM)
- C.22 Working Party on Global Disarmament and Arms Control (CODUN)
- C.25 Politico-Military Group (PMG)
- C.36 Nicolaidis Group

4.2.1 Consistency vs. Dynamism

In general, the fact that the permanent chairmanship of Working Parties brought consistency in the chairing is viewed as an improvement. Since policies are no longer subject to the priorities of a different chair every six months, there is a higher capacity for long-term planning, and there are more solid policy lines on which to base a consensus. This creates stability in the system and generates the necessary conditions for political initiatives at the Union level to emerge. It was also argued by various respondents that the chairs have more expertise and experience. There was almost general consensus among Member State respondents that the personal performance of the HR/VP and her substitutes in Council Committees and Working Parties had increased the vertical coherence of EU external action.

Several respondents confirmed that, as with regard to the FAC, the downside of increased consistency in the chairing of Working Parties is the lack of dynamism in discussions between Member States. Some respondents nevertheless believe that the continuity and the longer-term strategic benefit of the

⁷² Council Doc. 12223/12, ANNEX III. See Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJ L 322, 9.12.2009, p. 28–34.

permanent chairmanship will overcome the real or perceived benefits of dynamism of the rotating Presidency. However, respondents within the Commission expressed concern that because of the presence of the EEAS as chair of the Working Parties, Member States have the tendency to discuss matters exclusively with the EEAS, while trying to keep out the Commission.

4.2.2 Varying Origins or Affiliations of Working Party Chairs

As mentioned above, in some areas the Working Parties are still chaired by the rotating Presidency, notably the RELEX Working Party. Respondents within the EEAS pointed out that Member States did not want to lose control over those areas because of the sensitivity of the issues discussed. However, they still argued that the RELEX Working Party should logically be chaired by the EEAS. An interviewee within the Commission criticised the HR/VP for allowing important Working Parties to be run by the rotating Presidency, taking the view that a strong chair would not have allowed this to occur. It could be worthwhile to reconsider the issue of the Presidency of some of the Working Parties, notably the Working Party on Development Cooperation (CODEV) and the RELEX Working Party.

4.2.3 Non External Action Specific Working Parties

Some policies such as energy, transport or fisheries do not fall exclusively in the field of external action, and have an important economic dimension. For this reason, sectoral Working Parties or Coreper are also involved. This involvement is felt to be particularly important in the area of energy (see below *Policy Illustration 5: EU External Energy Policy*). Respondents from the European Council, the Council, and the Member States were of the view that EEAS contributions in such areas are often not well prepared, and that agendas and preparatory papers are delivered too late and are not transparent. This was a recurring concern, caused partly by the fact that the EEAS desk officers are required to get clearance from high up in the EEAS hierarchy, creating a bottleneck effect⁷³. Hence, management problems within the EEAS have the potential to affect the functioning of the Council Working Parties.

4.2.4 Relative Position of the Working Parties

Respondents within the Council and the European Council took the view that there are signs that the importance of Working Parties is declining. First, there is a clear disjunction between the agendas of the Working Parties and the FAC agenda, which remains rather *ad hoc*, dominated by the latest crisis, and is influenced by Member States addressing the HR/VP directly as chair. As a consequence, it is difficult to build a shared understanding through Working Parties. Second, Member State respondents cited the need to rely on national diplomats to gain access to the necessary information, especially in advance of meetings, as information via official channels often arrives too late. Larger Member States, however, were said to be usually consulted in advance before an initiative is tabled and discussed. Since the EEAS has fewer or smaller-scale initiatives than the rotating Presidencies used to have, Member States were said to tend to come together in groups of like-minded states and submit non-papers to the HR/VP in order to promote specific policies. Generally, the HR/VP welcomes these initiatives and often ensures a follow-up.

According to an interviewee in the European Council, many of the problems with the new system are caused by the fact that the chairs of the Working Parties are not treated by the Member States as 'one of them' or as 'honest brokers'. Before Lisbon, the Member States knew that they would have to undertake the same difficult task of chairing sooner or later. This helped foster institutional memory and

⁷³ cf. Burke, E., op. cit., p. 3.

ownership. Under the current system, the Member States have lost part of that ownership and developed the impression that certain policy areas, for example the CFSP, have become 'something outside them'. As a result, the smaller Member States are said to have become 'passive' and the larger Member States 'free-riders'.

4.2.5 Intertemporal Consistency vs. Coherent and Effective Output

Several respondents discussed the question whether the consistency and permanency in chairing has promoted the Lisbon aim of more coherent and effective output. A Council respondent noted that a number of Member States dominate certain files, for example with respect to Libya, while there remains a number of files where the FAC is hopelessly divided. A European Council interviewee cited as an example of a lack of vertical coherence the fact that some Member States decided to remove diplomats from Syria without discussing the matter or informing other EU Member States. A similar example was the statement by French President Sarkozy on Yemen, which took place without first informing the President of the European Council or the HR/VP, who had given a statement just two days before. The same interviewee from the European Council concluded: 'On paper Lisbon means five steps ahead, in practice we went ten steps back'.

Despite these examples, another respondent within the EEAS argued that in some areas coherence has been improved and reinforced. One example is the work on the post-2015 follow up of the Millennium Development Goals (MDGs)⁷⁴. In that area, integrated meetings and cooperation between relevant Working Parties led to a more consistent approach. On the vertical level, the Egypt Task Force and the informal donor coordination in the framework of relations with Belarus were both cited as examples of improved coherence. Somalia and the Horn of Africa are other examples of policy areas where coherence has been actively pursued. Nevertheless, a respondent within the Council stated that this level of coherence still largely depends on the extent to which Member States are willing to have their policies 'made coherent'.

4.3 The Position of the FAC and Working Party Chairs

Doubts were raised with respect to the often equivocal position of the permanent chairs in the policy-making process. One Council interviewee argued that the Presidency normally mediates in order to reach compromises, while interacting with the policy-making machine. The role of the Presidency is hence to forge an agreement between the Member States and the policy initiator, which is mostly the Commission. However, in the FAC, the policy initiator is also the chair. As a result, the EEAS chairs lose their neutral role and actually steer the policy line. That should also be seen against the background of the fact that the Presidency of the FAC is no longer a *primus inter pares*, and is indeed no longer even formally a member of the Council⁷⁵. Member States retain their veto power, but because of this new dynamic there is less interaction between the Member States, unlike in other Council configurations. Keeping in mind the dearth of external checks and balances by the Parliament or accountability to the Parliament, a Council interviewee took the view that the new dynamic in the FAC should be examined more closely. As a consequence of this problematic inter-institutional balance, the same Council respondent did not recommend expanding the system of permanent chairs.

⁷⁴ See also *Accelerating progress towards the Millennium Development Goals: options for sustained and inclusive growth and issues for advancing the United Nations development agenda beyond 2015*, Annual report of the Secretary-General, UN Doc. A/67/257.

⁷⁵ Erkelens, L., and Blockmans, S., 'Setting up the European External Action Service: an act of institutional balance', op. cit., pp. 257-258.

4.4 Cooperation and Communication Between the Council and the EEAS

From the point of view of the Council General Secretariat, the relationship between the Council General Secretariat and the EEAS was said to be improving. According to one respondent within the Council, the cooperation between the Council and the EEAS in general and their Legal Services in particular can be assessed positively⁷⁶. The mechanisms used to foster exchange of information remain mostly informal, however. Although there are no permanent structures in place through which information is shared, the information flow is regarded as being sufficient. The same respondent pointed out, however, that there are more difficulties in the relation between the Council General Secretariat and the EEAS, describing this relationship as ‘not very cooperative’. Those difficulties are at least in part caused by differing interpretations of the obligation for the EEAS to support the HR/VP in her capacity as President of the FAC ‘without prejudice to the normal tasks of the General Secretariat of the Council’⁷⁷. Conversely, the HR and the EEAS are to be assisted ‘where necessary by the General Secretariat of the Council’⁷⁸. Neither phrase seems overly conducive to clarity in the relationship between the EEAS and the Council General Secretariat⁷⁹. However, the problem was downplayed by another respondent within the Council, noting that from the point of view of the Council General Secretariat, the EEAS is not regarded as obstructive in any way and the input received from the EEAS is considered sufficient, despite the fact that there is no collaboration on a daily basis. There were some complaints that the EEAS is sometimes late in delivering information, but it was said that this was improving.

From the EEAS perspective, however, the relation with the Council was not evaluated as positively. An interviewee within the EEAS claimed that the EEAS does not receive any assistance from the Council Legal Service and that the Council Legal Service as well as the Council General Secretariat interpret their rules of procedure and their role in an excessively broad manner. The fact that the Council General Secretariat does not communicate with the Delegations was also regarded as a problem. From the perspective of the EEAS, there is therefore a great need to clarify the rules on cooperation.

4.5 Main Findings and Recommendations

The permanent Presidency of the FAC has improved inter-temporal coherence compared to the former rotating Presidency as well as third countries’ perception of EU external action, but that may have come at the cost of greater incoherence between the various existing preparatory organs for external action. The new system also has the disadvantage of sometimes leading to more bureaucracy rather than dynamism, as well as to a disengagement of Member States. Furthermore, the complexity of the multi-stage policy-making system slows down the process. The fact that the permanent Presidency of working parties has brought consistency in the chairing is also assessed relatively positively, but again the downside of this increased consistency is a lack of dynamism in discussions between Member States. That is not helped by the fact that documents for discussion frequently reach Member States too late and that EEAS desk officers habitually have to get clearance from high up in the EEAS hierarchy, creating a bottleneck effect. Doubts were also raised with respect to the often equivocal position of the permanent chairs in the policy-making process. In particular, whereas the Presidency normally mediates

⁷⁶ That would be in line with the obligation in Art. 4(3)(b), second dash, EEAS Decision for the EEAS legal department to ‘work closely with the Legal Services of the Council and of the Commission’.

⁷⁷ Art. 2(1), second dash, EEAS Decision. Cf. Lefebvre, M., and Hillion, C., *The European External Action Service – towards a common diplomacy?*, op. cit., p. 7.

⁷⁸ Art. 4(5) EEAS Decision.

⁷⁹ Cf. Blockmans, S. and Laatsit, M.-L., ‘The European External Action Service: Enhancing Coherence in EU External Action’, in Cardwell, P.J. (ed.), *EU External Relations Law and Policy in the Post-Lisbon Era*, TMC Asser Press, The Hague, 2012, pp. 143-146.

in order to reach compromises, while interacting with the policy-making machine, in the FAC, the policy initiator is also the chair. As a result, the EEAS chairs lose their neutral role and actually steer the policy line, which raises questions with respect to accountability. Based on those findings, the present study makes the following recommendations:

- The EEAS should enhance control over the FAC's agenda through more advance planning and more leadership, while at the same time stepping up coordination with the Member States and seizing opportunities to form a consensus among them;
- The EEAS should carefully prepare FAC discussions and ensure timely delivery of the necessary documents to all actors concerned;
- Greater coherence should be pursued between the agendas of the Working Parties and the FAC agenda;
- The permanent chairmanship should move away from an essentially reactive approach and put in place a mechanism for prioritising certain issues; to that end the permanent chairmanship should further invest in long-term strategic thinking and focus on trust-building between the EEAS and the Member States;
- The division between Working Parties chaired by a representative of the HR/VP and those chaired by the rotating Presidency should be reassessed, notably but not exclusively with respect to the RELEX Working Party;
- Member States should be encouraged to engage more actively and cooperatively with the EEAS within the FAC and the Working Parties and to use the possibilities for greater coherence and international impact to their fullest extent;
- The permanent chairmanship should carefully balance its role as policy initiator and that as mediator between the Member States;
- The current dearth of accountability mechanisms of the EEAS affects its legitimacy as a policy initiator and hence its impact, including but not limited to its role in the FAC, which is as a rule composed of Member State ministers backed by a national parliamentary majority. Further ways to enhance the accountability of the EEAS to the European Parliament should be sought beyond the existing arrangements;
- The basis for cooperation and the rules governing such cooperation between the Council General Secretariat and the Council Legal Service on the one hand and the EEAS on the other hand should be clarified.

5. THE RELATIONSHIP BETWEEN THE EEAS AND THE COMMISSION

5.1 The Functions of the EEAS 'Without Prejudice to the Normal Tasks of the Commission'

Pursuant to the EEAS Decision, the Service is to 'support' the HR/VP 'to conduct the Common Foreign and Security Policy ('CFSP') and to ensure the consistency of the Union's external action as outlined, notably in Articles 18 and 27 TEU'⁸⁰. Moreover, Article 3 of the EEAS Decision provides that the EEAS not only supports the HR in her function as 'President of the Foreign Affairs Council', but also as 'Vice-President of the Commission, in respect of his/her responsibilities within the Commission for responsibilities incumbent on it in external relations, and in coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the Commission services.'

The function of the EEAS is to support the double-hatted HR/VP but without interfering with the Commission functions in certain areas of EU external action. These Commission functions mainly spring from policies outlined in the TFEU⁸¹, with the exception of the EU's enlargement policy. In order to enable it to support the HR/VP, the EEAS has integrated services from the Commission and the Council pursuant to Article 10 of the EEAS Decision. Moreover, EEAS staff is composed of officials from the Commission, the Council Secretariat and the Member State diplomatic services⁸².

Following the integration of services and staff, the EEAS has taken on the function of supporting the HR/VP in ensuring coherent and efficient EU external action. Based on its 'normal tasks'⁸³, however, the Commission services are still involved in the development and implementation of policies touching upon areas of EU external action.

Overall, the set-up of the EEAS to support the HR/VP in conducting the CFSP and in ensuring coherence in the EU's external action leaves the Commission running a parallel organisational structure in many policies related to EU external action⁸⁴. This creates a clear duality in terms of services. This parallelism of structure and (partial) functions, though formally set out in the EEAS Decision, is often seen as detrimental to bringing about more coherent and effective EU external action.

5.2 Parallel Organisational Structures

The parallel organisational structure of the Commission corresponds with several Commission functions in various external policy fields, related to tasks which are spelt out by the TFEU and the EEAS Decision⁸⁵. The EEAS Decision states that in principle 'the management of the Union's external cooperation programmes is under the responsibility of the Commission' unless the EEAS Decision foresees other roles for the Commission and the EEAS⁸⁶. But the EEAS Decision further explains that in

⁸⁰ Art. 3 EEAS Decision.

⁸¹ See Bono, G., *The Organization of the External Relations of the European Union in the Treaty of Lisbon*, CLEER Working Paper 2011/3, The Hague, 2011, p. 22.

⁸² Art. 6(2) EEAS Decision and Art. 27(3) TEU.

⁸³ Art. 3(1) EEAS Decision.

⁸⁴ See Duke, S., Pomorska, K. and Vanhoonacker, S., *The EU's Diplomatic Architecture: The Mid-Term Challenge*, DSEU Policy Paper 10, February 2012, p. 5.

⁸⁵ See on the strategic decisions during the setting-up of the EEAS Erkelens, L. and Blockmans, S., 'Setting up the European External Action Service: an act of institutional balance', op. cit.

⁸⁶ Art. 9(1) EEAS Decision, and European Commission Secretariat General, Working Arrangements Between Commission Services and the European External Action Service (EEAS) in Relation to External Relations Issues, SEC(2012)48, 13 January 2012, p. 15.

order to ensure 'unity, consistency and effectiveness' the EEAS 'shall contribute to the programming and management cycle' by preparing decisions for those instruments which are mentioned in Article 9(2) EEAS Decision. Throughout 'the whole cycle of programming, planning and implementation' the EEAS is supposed to work with the Commission members and services⁸⁷.

Article 9(3) EEAS provides for the responsibility of the EEAS for the preparation of Commission decisions, especially with regard to 'the strategic, multiannual steps within the programming cycle': '(i) Country allocations to determine the global financial envelope for each region, subject to the indicative breakdown of the multiannual financial framework. Within each region, a proportion of funding will be reserved for regional programmes; (ii) country and regional strategic papers; (iii) national and regional indicative programmes.' At the same time, while the responsibility lies with the EEAS in these phases of the programming, the EEAS is asked to work together with the services and members of the Commission⁸⁸.

In the specific case of the EU's European Development Fund and the Development Cooperation Instrument, preparation is undertaken by the EEAS together with the Commission under the responsibility of the Commissioner responsible for development cooperation⁸⁹. It is tabled in the Commission College by the Commissioner 'in agreement with the High Representative'. In the case of the European Neighbourhood Policy and Partnership Instrument, almost the same procedure applies, but the HR/VP in her function as VP tables 'jointly' with the responsible Commissioner⁹⁰.

Given the EEAS' functions concerning the programming of EU external action instruments, the Commission continues to hold on to, among others, the following functions:

- the development of:
 - common commercial policy (trade), including the planning, negotiation and implementation of trade agreements;
 - energy policy, transport policy, etc.;
- the programming and implementation of:
 - EU enlargement policy, including the negotiation of accession agreements;
- the joint programming with the EEAS and the Commission implementation of:
 - development cooperation policy, including the implementation of the European Development Fund and the Development Cooperation Instrument;
 - the European Neighbourhood Policy, including the European Neighbourhood Policy Instrument;
- the implementation of:
 - tailor-made instruments of EU external action, such as the Instrument for Stability or the Instrument for Democracy and Human Rights.

⁸⁷ Article 9(3) EEAS Decision. See also Blockmans, S., 2012, *Fit for Purpose? The EU External Action Service one year on*, op. cit., p.13.

⁸⁸ Article 9(3) EEAS Decision.

⁸⁹ Article 9(5) EEAS Decision, and European Commission Secretariat General, Working Arrangements Between Commission Services and the European External Action Service (EEAS), op. cit., p.17.

⁹⁰ Ibid.

As a consequence of the complex set-up after Lisbon and the overall goal to enhance coherence and effectiveness of EU external action, the EEAS – by providing strategic guidance⁹¹ – is concerned with the overall programming and planning of policies jointly or in close relation with the Commission. Despite this, as this study highlights in the context of the EEAS mandate, the operationalisation and implementation of external policies and external policy instruments remains firmly based in the Commission⁹². For example, the EEAS is jointly in charge of the overall programming of the European Development Fund, whereas the Commission is in charge of its implementation. To this end, the EEAS coordinates the budgetary programming of the EDF with the Commission, whereas specific project coordination under the EDF is run by the Commission, e.g. DG DEVCO and the Commission-based staff of the Union Delegations⁹³. However, this division of tasks gives rise to tensions. In some cases, the EEAS could be seen as competing with the Commission, rather than complementing it as a ‘service’ providing strategic guidance to overall EU external action⁹⁴. One interviewee within the EEAS emphasised that the division of labour between political programming and the implementation is always ‘tricky’. The respondent suggested that this would be theoretically difficult, even within one DG like DG DEVCO, because in practice programming cannot be done without the ‘full agreement’ of those responsible for implementation, and vice versa. Both in Brussels and in the Union Delegations, the Commission is concerned with the implementation and processing of external instruments. In this respect, as one interviewee within the Commission mentioned, the Commission is running the ‘operational money’ of policy-related instruments. For the EEAS this is a problem (mostly in the Union Delegations), as it cannot spend the operational money. Hence, the relationship between DG DEVCO and the EEAS is regarded by interviewees in the EEAS as particularly problematic, as it provides more scope for fighting and disagreement than is the case regarding the relationship with other DGs. With the exception of some officials within the EEAS, there appears to be a consensus that it would be preferable not to extend the EEAS’ mandate to include development policy in an all-inclusive manner. That view is shared by many officials in the Commission, the Council and the European Council. The main argument put forward appears to be that the current problems will not be resolved by giving more powers to the EEAS. Rather, what is needed is improved coordination with the Commission.

According to many Commission officials, relevant expertise and experience, as well as other competences that are closely related to development, such as trade, are situated within the Commission. Moreover, in addition to expertise on thematic external assistance instruments, DG DEVCO maintains parallel units to the EEAS which are concerned with ‘geographical coordination’. This demonstrates that the original idea of geographical expertise being primarily provided through units in the EEAS does not match the current situation. Given this fact, better coordination with the Commission is vital to ensuring coherent and effective external action.

Difficulties in coordinating external policies do not only occur within the EU. Just like its Member States, the EU and the EEAS grapple with the challenge of reconciling sectoral policies run by technical departments, with foreign policy overseen by a ‘foreign ministry’. The question both on the Member State and the EU level is whether foreign policy follows the sectoral logic, or vice versa? Given that the EEAS has only recently been established, high-level EEAS officials stress that one must remain realistic about the possibility of seeing significant improvements in this area. At present, there is a strategic group in the EEAS working on the issue, aiming to define how the EU can integrate horizontal linkages

⁹¹ See Duke, S., Pomorska, K. and Vanhoonacker, S., *The EU’s Diplomatic Architecture*, op cit., p. 5.

⁹² See also Van Vooren, B., ‘A Legal Institutional Perspective on the European External Action Service’, op. cit.

⁹³ For a more elaborated view on the Union Delegations see below Part 7 *Union Delegations in Bilateral and Multilateral Settings*.

⁹⁴ See also Duke, S., Pomorska, K. and Vanhoonacker, S., *The EU’s Diplomatic Architecture*, op. cit., p. 5.

in its foreign policy thinking. Within the EEAS, it is often argued that integration is not necessarily managed better in the Member States, but that contrary to them the EU lacks the ultimate hierarchical say of a Head of State or Government. Indeed, the EEAS can merely 'support' the President of the European Council – who cannot issue instructions to the EEAS (or to the Commission). Thus, the officials at the top of the EEAS agree that lines of hierarchy and instructions are presently blurred, and that this needs to be resolved.

Policy Illustration 3: Development Cooperation

The Commission-EEAS relationship is of particular importance in the field of development cooperation. Article 9 of the EEAS Decision concerns the division of labour between the EEAS and the Commission in the conduct of external action instruments and programming. The EEAS has a particular role in the programming, but the management of the Union's external cooperation programmes remains under the responsibility of the Commission, which retains the authority over the operational credits. Throughout the cycle of programming, planning and implementation, particular emphasis is put on cooperation between EEAS and Commission services. This cooperation is further developed in detail in agreements between the two actors. Pursuant to Article 5(2) of the EEAS Decision, DG DEVCO's main activities are conducted in the Union Delegations, where, according to one interviewee in the Commission, a majority of the DG's staff is employed. Initially, there appears to have been a turf war between DG DEVCO and the EEAS. However, at a later stage, both issued a joint note, setting out some criteria to divide the tasks. In accordance therewith, as one interviewee in the Commission mentioned, Commission personnel in the Delegations should not be used for other tasks over and above the agreed amount of 20% of their work time. An increasing number of similar arrangements, as one EEAS official explained, have been agreed between DG DEVCO and the EEAS to preserve the division of competences.

Nevertheless, there are attempts to increase horizontal coherence between security and development in a number of areas. The Horn of Africa and the Sahel are frequently cited by EEAS officials as good examples, where a large range of EU measures are employed in a comprehensive and coordinated manner. Problems nonetheless remain: the EU is uniquely placed with its array of policy instruments, but is hindered by issues such as the fragmentation of legal bases and of implementation measures, as well as by various procedural obstacles. These form a serious impediment to a coherent output and prevent appropriate timing.

The relationship between DG DEVCO and the Union Delegations is generally considered to be better than that between DG DEVCO and the EEAS Headquarters. One official from the EEAS Headquarters stated that things work quite well at an operational level, but matters are more problematic at the strategic level. One Commission official observed that the climate in the Delegations is better than in Brussels. Other Commission officials pointed out that because of the presence of Commission staff in the Delegations, communication with the EEAS works rather well, although much depends on the experience of former Commission officials who have worked together before and know how the Commission works. Therefore, a lot appears to depend on the personal performance and contacts of the Head of Delegation and his or her staff. However, according to another Commission official, staff from the national diplomatic services in the Union Delegations, including Heads of Delegation, do not always have enough know-how to work with the financing tools used in the Commission.

Commission officials underlined that there is political will in the Commission for the EU to speak with one voice, as well as to cooperate fully with the Union Delegations. There are different views within the Commission concerning the information they receive from Union Delegations. According to one official,

there were communication problems in the beginning, but these have been resolved and communication flows now work much better. Another source in the Commission, however, stated that while there is a good level of communication and information flowing from the Commission to the Delegations, it does not work as well in the other direction. A particular problem is said to be the lack of full reporting. Some Delegations only communicate on development issues, but not on wider, closely-related issues. In such cases, the Commission does not have the full picture of the strategic outlines and implementation, which can undermine overall coherence and effectiveness. At the same time, the Commission is sometimes said to act in a protective manner, as Commission officials try to defend their own turf. From the point of view of the EEAS, a serious problem is the fact that DG DEVCO retains strong influence in terms of instructions over the Delegation staff.

Between the EEAS Headquarters and Union Delegations, a recurrent problem is said to be the 'capital-centred approach', where the Delegations are not properly heard, informed or coordinated with. As a consequence a Commission official concludes that the overall success appears to depend significantly on the personal performance of the Heads of Delegation.

5.3 Coordination Between the EEAS and the Commission

The consensus among respondents is that the EEAS and the Commission need to coordinate their actions, as they both serve EU external action. The EEAS needs to involve the Commission in the planning of policies and budgets, which need to be implemented by the Commission. Conversely, the Commission needs to involve the EEAS, as the EEAS is focusing on the future programming of policies⁹⁵.

In this respect, a major point of concern is the weak coordination between the EEAS and the Commission⁹⁶. In the past, it was easier for the Secretary-General of the Commission to coordinate policies. In contrast, the EEAS cannot perform that coordinating role, because, as one Commission official rightly pointed out, the EEAS is an autonomous body outside the Commission. What also matters is that although the HR/VP is simultaneously part of the EEAS and the Commission, the EEAS itself is not – neither administratively nor policy-wise. This leads to a situation in which close coordination between the EEAS and the Commission often depends upon the coordination efforts of the HR/VP herself.

Several instruments have been established in order to achieve better coordination between the EEAS and the Commission, and these could be used even more extensively. One of them is the VP function of the HR/VP (see above Part 2.4.2 *Under-Utilised Role of Vice-President of the Commission*). This study will pay attention to issues of coordination instruments and examples that illustrate how the coordination function of the dual machinery can deliver greater coherence and effectiveness through intensified coordination between the EEAS and the Commission.

5.3.1 Enhancing EEAS-Commission Coordination

In areas where the EU has an exclusive competence and where the Commission is involved in the overall development of EU external action, such as in the Common Commercial Policy, the Commission is often said to act without coordinating with the EEAS. However, that assessment was contradicted by

⁹⁵ See also European External Action Service, Report by the High Representative to the European Parliament, the Council and the Commission, 22 December 2011, 6.

⁹⁶ The HR/VP reportedly 'denied the existence of systemic problems in cooperation with the Commission', see: EPIN Report, 2012, *Reviewing Member States' Commitment to the European External Action Service*, No. 34, November 2012, p. 3.

officials within the EEAS, who emphasised that DG Trade does not operate in a vacuum. Nevertheless, the same EEAS officials admit that while the Commission wants to learn about strategic considerations from the EEAS⁹⁷, for example in the case of trade partners like Russia, it has an interest in keeping the EEAS out of the trade negotiations itself. A resulting problem is that the EU often cannot bring to bear all its possible leverage across policies in negotiations with third parties.

Moreover, as was pointed out quite often by Commission officials, policy expertise still lies in the Commission in many areas such as development cooperation, energy, and trade. The EEAS, which is officially obliged to provide strategic guidance and to ensure the coordination and synergy of the various EU policies, remains understaffed. One Commission official noted that policy planning and initiative have not always originated in the respective units within the EEAS, but rather from the Cabinet of the HR/VP, where additional expertise proved to be very limited in certain cases.

Policy Illustration 4: EU External Energy Policy

The EEAS' involvement in EU external energy policy is exemplary of the complex relationship between the Service at Headquarters, the Union Delegations, and the Commission. With the Lisbon Treaty, the EU has obtained an explicit competence in the energy field (194 TFEU), and on the basis of legislation in the internal gas and electricity markets the EU has significant implied external powers. Furthermore, the Member States have retained competence over the composition of their individual energy mixes, and thus energy takes an important position in the foreign policies of individual Member States. Against this background there is the common EU interest, such as defined in Art 194 TFEU, to attain energy security, economic competitiveness, and environmental sustainability for the EU as a whole. In a field such as this, much can be gained through cross-policy coordination within and across the EU institutions; vertical information-sharing and liaising between the EU level and the individual Member States to ensure that the common EU interest is pursued.

Since the Lisbon Treaty, EU external energy policy has made significant progress in terms of substantive strategic thinking (the 2011 Commission Communication and relevant Council Conclusions), and collaboration between the EU level and the Member States (the 2012 information sharing mechanism). As for the EEAS' role therein, one must distinguish between Headquarters (and between its thematic versus geographic MDs) and the Union Delegations. At Headquarters, the thematic MD VI of the EEAS has not had any significant role in formulating, steering and implementing EU external energy policy, and a strong schism exists between the Commission and the EEAS in Brussels. Except for the EU-US Energy Council, the HR/VP has broadly lacked any presence in energy matters *inter alia* because she is overburdened with other tasks, and she is said to readily defer to the Commissioner with this portfolio. In this field, Commission-EEAS cooperation largely occurs through the geographic MDs where considered necessary, but takes place mostly directly between the Commission and Union Delegations in third countries. Overall, the field is dominated by DG ENER and its Commissioner, as well as by the Commission President where appropriate.

As a consequence the EEAS is currently not living up to expectations in terms of functioning as a coherence-enhancing body between the EU institutions and between the EU and the Member States in the external dimension of energy. To a significant extent, this is due to reasons beyond the control of the EEAS. First, it simply lacks the staff and expertise to handle this complex subject area. This is partially

⁹⁷ See also the statement that the HR/VP has 'responsibilities' in 'coordinating the external relations' in House of Lords European Union Committee (Subcommittee on External Affairs), Call for Evidence: Contribution of the European External Action Service, December 2012.

historic. DG RELEX had a small, dedicated staff working on external energy issues, but this personnel was transferred to the new DG ENER before DG RELEX was transferred to the EEAS in 2010. Second, as previously pointed out in this study, the mandate of the EEAS is not well-defined, and there is no consensus as to what should be the contribution of the EEAS at Headquarters to EU external energy policy. Third, the Commission now has a strong DG ENER, bundling all internal and external powers in the field of energy. This creates a sense in the Commission that the EEAS role in energy policy is rather unnecessary, and not seen to add value. Because of the perception that the real expertise lies with the Commission, as do the EU external competences, that institution has not always given the EEAS enough breathing space to develop its 'political' role in this policy domain. Thus, during the 2011 formulation of key external energy priorities there was an explicit effort 'to protect the house'. Aside from expertise, the view has been voiced that EU external energy policy does not wait for the Service to be set up, and DG ENER should thus move forward. From an external perspective, this is not viewed entirely positively. EU third country partners such as Turkey have reported that the strategic, foreign policy dimension of energy is in fact being ignored by the Union. This may be due partially to this institutional schism. The Member States are an important factor in all of this, as they are sometimes found to pressure the EEAS to act in the energy domain where they consider it a foreign policy issue in line with national interests. As a body whose mandate is rather ill-defined (see above Part 2.3 *Mandate and Performance*), this Member State pressure has led to the EEAS re-opening matters which may already have been settled.

To sum up, in Brussels the image of the Service in the energy field is not entirely positive. Where coordination does occur, the Service is reported sometimes to lack transparency and expediency in providing input on its coordination efforts, and follow-up to certain initiatives is lacking or may soon fade away. Thus, in Brussels the Commission remains firmly in the driving seat of EU external energy policy. That institution views the EEAS as but one of the 'stakeholders' like Member States, energy companies or third countries rather than being accepted as having a prevailing coordinating role for EU external energy policy.

The picture is different in the field, where links and cooperation between the Commission (Brussels) and the Union Delegations are systematic, smooth and intense. The Union Delegations regularly report back to Headquarters and these reports are considered to be of very high quality. Heads of Delegation will also get in touch directly with relevant staff in the Commission if such is deemed necessary. Additionally, the Commission is stimulating the Union Delegations to play an active role in coordinating energy issues on the ground, such as by chairing meetings on energy with staff of Member States' embassies.. This does occur, and in this fashion the Commission regularly sends information on that specific third country to the Member States. Reciprocity is limited, with the Member States not proactively and voluntarily sending information back. Still, DG ENER is aiming to cultivate a culture of trust and cooperation between it and the EU Member States.

5.3.2 Enhancing Coordination by Making Effective Use of the RELEX Group of Commissioners

In terms of cross-policy coordination, the RELEX Group of Commissioners (which includes the HR/VP in her function as VP) could be a promising forum to exchange views and to set horizontal policy or geographical priorities. Despite the role of the HR/VP to ensure the coordination and coherence of EU external action, the formal initiative to call a meeting of the RELEX Group rests with the President of the

European Commission. So far, as officials observe, the RELEX Group has been called only once or twice a year. It therefore has little relevance in terms of day-to-day or week-to-week coordination⁹⁸.

While formally the RELEX Group meeting needs to be called by the Commission President, the VP could have made an effort in her role as HR/VP. But, as explained by an interviewee within the Commission, it is felt that the HR/VP has not been very active in this role. It was stated that the HR/VP is not enthusiastic about meetings with RELEX Commissioners and is rather unwilling to interact in this format. If RELEX Group meetings do occur, the Commission President chairs them. This renders them even less attractive for the HR/VP, as one Commission official observed.

At the same time, an official from the Commission mentioned that the Commission President seems content about the fact that coordination takes place outside the RELEX Group, while the HR/VP avoids a coordination situation in which the HR/VP might find herself being guided by the Commission. The end result, as the Commission official explains, is problematic because 'there is no link between external policies of the Commission, and there is no link back from the CFSP to the external dimension of internal policies.' Rather than acting in a 'multilateral' fashion among all Commissioners whose portfolios contain policies relating to EU external action, there appear to be 'bilateral' relationships between the HR/VP and Commissioners in various policy fields. As a consequence, as one interviewee in the Commission mentioned, the HR/VP neither chairs the RELEX Group, nor does she report on foreign policy issues *vis-à-vis* her Commission colleagues. At the same time, her cabinet is seen by some in the Commission as not meeting a required level of seniority. This could be seen as detrimental for coordination among Commissioners and their cabinets. Furthermore, officials in the Commission note that the HR/VP misses out on another possible forum for coordination by not being present regularly during the meetings of the Commission College. An official from the Commission therefore stated that the HR/VP lacks, or fails to utilise, fora in which useful coordination can take place. Obviously, this concern needs to be seen against the HR/VP's busy work schedule and the question whether deputisation would not be a plausible answer to the current situation (See above 2.4.3 *Deputisation to the HR/VP*).

5.3.3 Enhancing Coordination Between HR/VP, EEAS and DGs

Overall, the HR/VP in her function as VP does not coordinate the different Commissioners through the RELEX Group, or in another systematically multilateral manner. But, as an interviewee from a Member State diplomatic service underlines, one must also take into account that most of the Commissioners are 'not naturally inclined' to accept the HR/VP's coordination. However, in certain policy areas, like development cooperation and the European Neighbourhood Policy, the HR/VP is said to have established good relations with the responsible Commissioners/DGs.

As an alternative to 'multilateral' coordination within the Commission, the HR/VP establishes coordination mechanisms with individual DGs and responsible Commissioners on a bilateral basis. In practice, however, the coherence of interaction varies from one DG to another. For example, in the field of policy coordination with DG DEVCO and DG Enlargement, the HR/VP is said to have established bilateral coordination practices which are working fine. This, as one Member State diplomat argues, implies that some Commissioners are actually getting involved in the political strategies developed by the EEAS while others are not. Indeed, in the case of some responsible Commissioners and DGs there is

⁹⁸ On the lack of coordination between the EEAS and the Commission in general by means of the HR/VP in her function as VP, see Balfour, R., and Raik, K., *Learning to dance to the same tune? The European Action Service and National Diplomacies*, European Policy Centre Commentary, 17 January 2013, p. 1.

a reported lack of coordination. For example, a European Council official reported that the relationship between the HR/VP and the Trade Commissioner is particularly problematic. The same official underlined that the EEAS can of course not dictate policy recommendations to the Trade Commissioner. As a consequence of that lack of hierarchy, inter-personal relations have become ever more important.

In addition to bilateral relations between the HR/VP and other Commissioners, some Commissioners dealing with the external domain have also established working relations among themselves. For example, the Commissioners responsible for energy policy and European Neighbourhood policy exchange views without any coordinating role being played by the HR/VP. Hence, coordination on external dimensions of EU policy evolves without any direct or indirect involvement of the HR/VP and the EEAS.

Policy Illustration 5: European Neighbourhood Policy

Coherence coordination between the EEAS and the Commission is assessed positively in the field of the European Neighbourhood Policy⁹⁹. What happened in the course of the Arab Spring and in the ENP review in March and May 2011 was described by an official within the EEAS as a very good demonstration of ‘economics meeting politics’ since the EEAS was able to ‘put on the table the full toolbox of Union measures’. However, interviewees did not give the same assessment regarding how well these coordination efforts have translated into effective policies on the ground.

In the course of the Arab Spring, the Commission developed the Communication ‘Partnerships for Democracy and Shared Prosperity’ in close coordination with the EEAS. As a follow-up to this Communication, one positive example of policy coordination and ensuring horizontal coherence is the establishment of the so-called ‘MinDan-Group’ (Mingarelli and Danielson Group). In this Working Group, as one observer in the EEAS explained, there is a meeting of EEAS and Commission officials who closely follow up what happens in the implementation of the ENP. All members equally contribute and circulate information, and specifics are agreed on which action is taken and which members are responsible for certain aspects.

The set-up in the field of ENP is an example of well-structured cooperation between the EEAS and the Commission. In terms of substance, interviewees in the EEAS describe the situation as an example of good cooperation that takes place without the need for political compromises. Rather, a concrete external need determined the structures that were established in order to draw up and implement the ENP.

At the top level, between the Commissioner responsible for ENP and the HR/VP there is said to be a ‘sophisticated communication system in place’. Both of their cabinets organise meetings, which the Commissioner attends, and cabinets are present at each other’s staff meetings. Moreover, documents between the services are shared. This enables the EEAS to shape political messages of the Commission in ENP. Due to the absence of staff dedicated to the ENP in the Commission, the Commissioner responsible for ENP uses the EEAS on a day-to-day basis. One official in the EEAS describes the situation as a ‘modus vivendi’, in which the HR/VP leaves the field largely to the Commissioner. However, regarding formal decisions and proposals, they act jointly. As an innovation, both issued their first Joint Communication in 2011.

The positive effects of these common coordination structures are clear. According to one official in the

⁹⁹ Evidence given in House of Lords European Union Committee, Call for Evidence: Contribution of the European External Action Service, op. cit., p. 4.

EEAS, the new coordination procedures result not only in shared communications of the HR/VP and the Commissioner responsible for ENP, but they also rule out the risk of contradictory statements and create increased public visibility. Indeed, one might regard the establishment of institutional coordination and effective results, such as the Communications in the wake of the Arab Spring, as a prototype of how things should be working. The EEAS remains close to the Commission through the coordination between the HR/VP and the responsible Commissioner and therefore good working relationships can help bridge the Commission-EEAS gap. At the same time, one interviewee in the EEAS states that in the ENP, the relationship with DG Trade also proved to work very well, for example with respect to the EU's recent policy towards Ukraine. Overall, it seems that coherence in the ENP is based on newly established institutional coordination procedures. The positive performance in this field is also partially due to the prioritisation of the ENP in both the EEAS and the Commission.

A number of officials within the EEAS Headquarters consider the approach to the Southern neighbourhood to be a success. This includes the rapid EU responses in the form of joint Communications in March and May 2011, which these interviewees argue is a novel response ('more for more' etc.), but also the Egypt and Tunisia Task forces which bring together a broad range of EU resources. Other persons, equally closely working on the Southern Neighbourhood in Brussels or in the field are more hesitant, however, arguing that the jury is still out. A few examples of these different views provide an illustration of the disagreement over whether EU policy coordination has actually translated into effective policies in the Southern Neighbourhood.

1) Following the March 2011 Communication, there has been a desire for countries in the South to join the Energy Community Treaty – first Egypt, and then the Maghreb. Indeed it is clear from that Communication that it is an EU foreign policy objective to extend also the ECT to those countries willing to join, such as Tunisia and Morocco. However, within the EEAS it is argued that this foreign policy objective is not pursued because DG ENER does not align itself with this objective.

2) A core issue within the Southern Neighbourhood is the rise of political Islam. For years Islamic groups have worked with the poor to provide social structures to compensate shortcomings of the state, and hence current developments in political Islam are not surprising. The rhetorical question posed by the interviewees in the EEAS has been whether the March and May Communications truly reflected on this issue, which goes to the heart of relations with these countries.

4) Not all respondents were happy with the substance of the two Communications, arguing that the policy papers are a merger of the Barcelona Process and the ENP from both a vocabulary and substantive point of view. As one EEAS official mentioned, language such as 'sharing prosperity' and 'deep and comprehensive FTAs' goes back to the nineties and the Barcelona Process, and is therefore a wholly inadequate response to today's challenges.

5) The EU Special Representative for Task Forces in the Southern Mediterranean is viewed highly positively. This person has been in charge of country task forces, of which there have been three: in Tunisia, Egypt and Jordan. The EEAS has an added value role because it can bring together all the stakeholders on specific issues: the EU institutions, the EBRD, the Member States, and the donors (even those outside the EU) making the link between different policies. As one EEAS official remarked, it provides the possibility for stakeholders to have a place to join forces and clarify how the different pieces of the policy puzzle really come together.

5.3.4 Enhanced Coordination Through the FPI

In order to arrive at effective and coherent EU external action, the Commission, the EEAS and the Commission have to work together by all means. Indeed, they 'are condemned to work together', as one interviewee put it. To this end, the Foreign Policy Instruments Service (FPI), a Commission-run service, is based on EEAS premises to facilitate the coordination between the EEAS and policy instruments which are to be programmed/planned by the EEAS and run by the Commission¹⁰⁰. Its position has been described as 'anomalous'¹⁰¹. The FPI was created by the Commission to coordinate policies with the EEAS – the EEAS providing 'strategic guidance and the Commission deploying the funding instruments'¹⁰². In this respect, the FPI is, as one Commission respondent explained, formally a part of the Commission, as only the Commission is accountable for managing the budget. As a Commission service, the FPI is under the direct authority of the HR/VP in her function as VP, in which she is directly accountable to the EP's Committee on Budgetary Control (CONT). Instruments coordinated by the FPI are, for example, the Instrument for Stability (IfS) or the European Neighbourhood Policy Instrument (ENPI). The FPI comprises only 120 people.

Despite the formal requirement to coordinate their tasks, one interviewee in the Commission mentioned that the relationship between the Commission and the EEAS is often difficult. In this perspective, the Commission and the EEAS are separated 'by a wall'¹⁰³, and the FPI's task is 'to make that wall transparent'. According to the Commission official, in its relationship with the EEAS the FPI applies the Treaties without making the work of the EEAS more difficult. According to another interviewee in the Commission, the FPI acts as a sort of watchdog to make sure that the new system performs properly. If the EEAS-Commission relationship was functioning perfectly, the same official added, the FPI would not be necessary.

Problems regarding the current situation of FPI relate to its ambivalent status, since the FPI is neither fully part of the Commission, nor part of the EEAS. On the one hand, according to one official in the Commission, not being fully part of the Commission underlines its status of not being part of the larger Commission structure. On the other hand, full integration into the Commission would potentially decrease the FPI's receptiveness towards the EEAS, which is especially informed by political priorities. Another problem is seen in the relatively small number of FPI staff who assist the HR/VP in her role as VP. According to the same interviewee, in contrast to the FPI's 120 staff members, 6000 people assist the HR/VP in her role as HR. It follows that the FPI should be seen as a facilitator of coordination between the EEAS and the Commission, rather than as a body outside the Commission or EEAS structures. Moreover, the HR/VP in her function as VP may want to enlarge the FPI, which has an important coordinating role to play in the exercise of Union instruments in EU external action. Overall, the position of the FPI, being a Commission service in the EEAS, needs to be reviewed.

5.4 Main Findings and Recommendations

The relationship between the EEAS and the Commission is highly complex. Both the EEAS and the Commission have particular functions to fulfill in terms of overall EU external action. In this part the

¹⁰⁰ European External Action Service, Report by the High Representative to the European Parliament, op. cit., p. 6.

¹⁰¹ Duke, S., Pomorska, K. and Vanhoonacker, S., *The EU's Diplomatic Architecture*, op. cit., p. 5.

¹⁰² Ibid.

¹⁰³ Balfour, R., and Ojanen, H., *Equipping the European Union for the 21st Century – National Diplomacies, the European External Action Service and the making of EU foreign policy*, FIIA Report 36, The Finnish Institute of International Affairs, 2013, p. 14.

study identified that the EEAS and the Commission run parallel organisational structures. These structures are partly an outcome of the complex arrangements provided by the EEAS Decision concerning the programming of external assistance instruments and the EDF. At the same time, the study points to tensions and a lack of coordination between the EEAS and the Commission. In that respect, the following recommendations focus on how to foster the relationship between the EEAS and the Commission under the present arrangements:

- There is a need for a ‘new deal’ between the EEAS and the Commission, implying a far greater ‘coordination reflex’ on both sides, i.e. a mutual understanding that the only way to arrive at coherent and effective EU external action is through a permanent structured relationship at all levels and a close cooperation for all areas of EU external action;
- A duplication of organisational structures between the Commission and the EEAS should be kept to a minimum;
- The HR/VP should make greater use of her function as Vice-President of the Commission; existing coordination mechanisms like the RELEX Group within the Commission should be used more extensively to enhance strategic coordination of all EU external policies;
- The right to call the RELEX Group should be re-instated to the HR/VP as Vice-President of the Commission in order to link the strategic dimension of the EEAS with the Commission;
- The specific coordination between the HR/VP Cabinet and some Commission DGs can serve as an example for other specific relations between the EEAS and Commission DGs, and should complement, but not substitute the overall coordination between all Commissioners dealing with EU external action;
- The position of the Foreign Policy Instruments Service, being a Commission service in the EEAS, needs to be reviewed;
- With regard to instructions to Union Delegations, there should be closer cooperation between the Commission and the EEAS in order to avoid sending conflicting or inconsistent instructions to Union Delegations.

6. THE RELATIONSHIP BETWEEN THE EEAS AND THE EUROPEAN PARLIAMENT

The EEAS Decision starts from the premise that the EP ‘will fully play its role in the external action of the Union, including its functions of political control as provided for in Article 14(1) TEU, as well as in legislative and budgetary matters as laid down in the Treaties’¹⁰⁴. The relationship between the EEAS and the EP covers issues ranging from budgetary control to legislation and political accountability¹⁰⁵. For example, the EP oversees the operational budget of the EEAS and other instruments pertaining to external action and has the right to consent to or to be consulted about international agreements that do not relate exclusively to the CFSP¹⁰⁶. As such, there is an inevitable link between the activities of the EEAS and the EP in EU external action.

6.1 Accountability Relationship

The accountability relationship between the EEAS and the EP is crucially dependent on the HR/VP in her various roles. In her role as VP, she is subject to a vote of consent by the EP, as are the President of the Commission and the other members of the Commission¹⁰⁷. Furthermore, if a motion of censure of the Commission is carried by the EP, the HR is to resign from the duties that she carries out in the Commission, together with the members of the Commission, who are to resign as a body¹⁰⁸. In her function as HR, she is to consult the EP regularly on the main aspects and the basic choices of the CFSP and the CSDP and inform it of how those policies evolve. She is also to ensure that the views of the EP are duly taken into consideration¹⁰⁹. The EEAS is to assist the HR in that regard¹¹⁰. In turn, the EP may address questions or make recommendations to the Council or the HR, and twice a year it is to hold a debate on progress in implementing the CFSP, including the CSDP¹¹¹. Furthermore, the Parliament is to be ‘immediately and fully’ informed at all stages of the procedure for the negotiation and conclusion of international agreements, including those in the area of CFSP¹¹². Where appropriate, the HR is also to keep the EP and the Council regularly informed regarding developments in enhanced cooperation¹¹³. With respect to budgetary control, the preamble to the EEAS Decision announces that the HR will provide the EP with all necessary support for the exercise of its right as discharge authority¹¹⁴. Additionally, each year the HR is to present a report to the EP and the Council on the occupation of posts in the EEAS¹¹⁵, which allows the EP to have an overview of the EEAS staff. Finally, pursuant to

¹⁰⁴ Recital 6 in the preamble to the EEAS Decision.

¹⁰⁵ Raube, K., ‘The European External Action Service and the European Parliament’, *The Hague Journal of Diplomacy*, Vol. 7 (2012), pp. 65-80.

¹⁰⁶ Art. 218(6) TFEU.

¹⁰⁷ Art. 17(7), third subpara TEU.

¹⁰⁸ Art. 17(8) TEU and Art. 234, second para TFEU.

¹⁰⁹ Art. 36, first para TEU.

¹¹⁰ Recital 6 in the preamble to the EEAS Decision.

¹¹¹ Art. 36, second para TEU.

¹¹² Art. 218(10) TFEU, recalled in European Parliament, ‘Report on the conclusion of an inter-institutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of common foreign and security policy’ (Rapporteur: Gerald Häfner), A7 0245/2012, p. 4, point F.

¹¹³ Art. 328(2) TFEU.

¹¹⁴ Recital 14 in the preamble to the EEAS Decision.

¹¹⁵ Art. 6(9) EEAS Decision.

Article 13(2) of the EEAS Decision, the HR submitted a report to the EP, the Council and the Commission on the functioning of the EEAS on 22 December 2011.

The EEAS has to extend appropriate support and cooperation to the EP¹¹⁶. Moreover, the Union Delegations are supposed to respond to the 'needs' of the Parliament in its 'contacts with international organisation and third countries to which the delegations are accredited'¹¹⁷ (see below Part 7.1 *Mandate of Union Delegations*). Overall, a unit on EP affairs has been established in the EEAS to facilitate the relationship between the EEAS and the EP.

6.2 HR/VP Declaration on Political Accountability

In the process leading to the establishment of the EEAS, the EP was able to persuade the HR/VP to make a Declaration on Political Accountability (DPA)¹¹⁸, which clarifies mechanisms of accountability as they derive from Article 36 TEU and the EEAS Decision. The relationship between the EP, the HR/VP and the EEAS in terms of accountability, revolves around three main issues:

- Exchanges between the HR/VP in her function as HR and the Parliament on issues of CFSP;
- Matters of deputisation if the HR/VP in her function as HR cannot appear in the Parliament in person;
- Organisation of so-called hearings for newly appointed Heads of Delegation before they take up their posts in third countries and international organisations;
- Parliamentary Access to classified documents and information in and outside the field of CFSP.

In accordance with Article 36 TEU and the EEAS Decision, the DPA emphasises the need for 'exchanges of views prior to the adoption of mandates and strategies in the area of CFSP', which will take place 'in the appropriate format', corresponding to the sensitivity and confidentiality of the topics discussed. In particular, the DPA provides for the practice of Joint Consultation Meetings with the Bureaux of AFET and BUDG to be enhanced. Furthermore, 'on top of regular meetings' additional Joint Consultation Meetings can be arranged. At all meetings, the EEAS presence will include in addition to the permanent Chair of the PSC, senior officials responsible for the policy¹¹⁹.

In its 2012 Report on the Annual Report from the Council to the EP on the CFSP, the EP calls for a full implementation of the commitment in Article 36 TEU. In particular, the EP notes that there is room for improvement with respect to informing the competent committee on the outcome of FACs as well as in consulting Parliament in order to ensure that its views are duly taken into consideration 'prior to the adoption of mandates and strategies in the area of CFSP'¹²⁰.

In those cases where the HR/VP cannot be present in a debate in the plenary of the EP, the DPA clarifies that a political 'deputisation' takes place by a 'Member of an EU institution', either by a Commissioner for issues falling exclusively or prevailing into its competence or a Member of the FAC for issues falling

¹¹⁶ Art. 3(4) EEAS Decision.

¹¹⁷ Art. 5(7) EEAS Decision.

¹¹⁸ Draft Declaration by the High Representative on Political Accountability, OJ C 210, 3.8.2010, p. 1–2.

¹¹⁹ Point 1 DPA.

¹²⁰ European Parliament, 'Report on the Annual Report from the Council to the European Parliament on the Common Foreign and Security Policy' (Rapporteur: Elmar Brok), A7 0252/2012, 29 August 2012, p.5, point 3.

exclusively or principally into the area of the CFSP¹²¹. In the latter case, the DPA provides for replacement to come either from the rotating Presidency or from the trio Presidencies. The EP watches closely if the HR/VP demonstrates her commitment by living up to the abovementioned rules of engagement. An incident in January 2013, when the HR/VP requested the Parliament to reschedule her appearance before the house due to a foreign ministers' meeting, illustrated how important a strict commitment by the HR/VP actually is for the EP¹²². An EEAS interviewee emphasised that relations with the EP are intense and that there exists a commitment to be in contact with the EP as often as possible. In general, if the HR/VP is unable to appear before the Parliament in person, use is made of political deputisation, including by Member State officials, as laid down in the DPA. At the same time, a non-rotating deputisation might serve the purpose of continuity and consistency of information flows towards the EP in a more effective way.

The DPA ensures the organisation of so-called hearings for newly appointed Heads of Delegation before they take up their posts in third countries and international organisations¹²³. Pursuant to the DPA, the HR/VP will also facilitate 'the appearance of Heads of Delegation, EUSRs, Heads of CSDP missions and senior EEAS officials in relevant parliamentary committees and subcommittees in order to provide regular briefings'¹²⁴. Despite some early irritation between the EP and the EEAS on whether hearings should be held in public or in camera only¹²⁵, the appearance of Heads of Delegation is regarded as positive both by the EEAS and the Parliament. According to one EEAS official, the informal in camera hearings are seen as 'a good compromise'. On the one hand, the newly appointed Heads of Delegation are provided with useful insights on current parliamentary views about relations with third countries and international organisations. On the other hand, Heads of Delegation provide the EP with information not only about their diplomatic profiles, but also their perspective on the work of the Delegation. Given such informal exchanges between the EP and EEAS staff, it might be useful to make even more active use of the possibilities to exchange information. To this end, points 5 and 7 DPA could be applied more often. In particular, point 5 could be used to 'hear' EUSRs before they are taking up their positions abroad, whereas point 7 could be used to facilitate exchanges not only before positions are taken up, but throughout the official's time in office.

6.3 Access to Classified Information

The preamble to the EEAS Decision declares that specific arrangements should be made with regard to access for MEPs to classified documents and information in the area of the CFSP. Until the adoption of such arrangements, existing provisions under the Interinstitutional Agreement of 20 November 2002 between the EP and the Council concerning access by the EP to sensitive information of the Council in the field of security and defence policy will apply¹²⁶. In addition, point 4 DPA notes that the HR can also provide access to other documents in the CFSP area on a need to know basis to other (duly security cleared) MEPs, where such access is required for the exercise of their institutional function on the request of the AFET Chair, and, if needed, the EP President. Nevertheless, gaps remain, as the 2002 Interinstitutional Agreement is very limited in scope with respect to the access to CFSP documents¹²⁷.

¹²¹ Point 6 DPA.

¹²² See EUObserver, 'EU parliament chief shows prickly temper' 15 January 2013, <http://euobserver.com/institutional/118737>.

¹²³ Point 5 DPA.

¹²⁴ Point 7 DPA.

¹²⁵ Raube, op cit., p. 76.

¹²⁶ Recital 6 in the preamble to the EEAS Decision.

¹²⁷ European Parliament, 'Report on the conclusion of an inter-institutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by

The DPA therefore provides for the HR to review and where necessary propose to adjust the existing provisions on access for MEPs to classified documents and information in the field of security and defence policy. Pending this adjustment, the HR will decide on transitional measures that she deems necessary to grant 'duly designated and notified MEPs exercising an institutional function' easier access to confidential information¹²⁸. Given the increased role of the EP after Lisbon and also in view of a more comprehensive approach towards EU external action in general, where an assessment of documents in all areas of EU external action seems necessary, the formalities involved in gaining access to documents should be reviewed by the HR/VP, including in the domain of the CFSP. Nevertheless, it remains open for MEPs to use the general access to documents regime under Regulation No 1049/2001¹²⁹ which also covers CFSP documents¹³⁰ and which, pursuant to Article 11(1) EEAS Decision, applies to the EEAS¹³¹.

6.4 Main Findings and Recommendations

Even though the formal mechanisms for accountability of the EEAS towards the EP are limited and to a large extent dependent on the HR/VP, especially in her role as VP, there appears to be regular interaction between the two bodies. The existing arrangements could nevertheless be improved on a number of points:

- A permanent deputy to represent the HR/VP in parliamentary settings if and when such representation is appropriate should be considered;
- Hearings with senior staff of the EEAS could take place more often. In particular, the Declaration on Political Accountability could be used to 'hear' EUSRs before they take up their positions abroad. It could also be used to facilitate exchanges throughout the official's time in office;
- The formalities involved for the EP or individual MEPs in gaining access to documents should be reviewed by the HR/VP, including in the domain of the CFSP.

the Council on matters other than those in the area of common foreign and security policy' (Rapporteur: Gerald Häfner), A7 0245/2012, p. 5.

¹²⁸ Point 4 DPA.

¹²⁹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48. See also Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 19 July 2011 on the rules regarding access to documents, OJ C 243, 20.8.2011, p. 16–18.

¹³⁰ See Recital 7 in the preamble to the Regulation. See further Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information OJ L 141, 27.5.2011, p. 17–65.

¹³¹ A notable recent example of an MEP making use of Regulation No 1049/2001 in order to gain access to documents with respect to EU external action (though not regarding a document held by the EEAS) is the judgment of 4 May 2012 in Case T-529/09: *In 't Veld v Council* [2012] ECR II-0000. The Council's appeal to the judgment is currently pending before the ECJ: Case C-350/12 P: *Council v In 't Veld*. See further 'Article 11 – Access to documents, archives and data protection', in Blockmans, S. and Hillion, C. (eds.), *EEAS 2.0: A Legal Commentary on Council Decision 2010/427/EU Establishing the Organisation and Functioning of the European External Action Service*, Centre for European Policy Studies (CEPS), Swedish Institute for European Policy Studies (SIEPS), and European University Institute (EUI), Brussels/Stockholm/Florence, 2013, pp. 95-100.

7. UNION DELEGATIONS IN BILATERAL AND MULTILATERAL SETTINGS

Union Delegations in third countries and international organisations constitute an integral part of the EEAS¹³². Being the ‘long arm’ of the novel EU external relations architecture, their role and function is crucial in instilling coherence, effectiveness and continuity in EU external action¹³³. Indeed, as was highlighted by both practitioners in the EEAS and the Council as well as by various academics, Union Delegations are becoming increasingly important in the eyes of EU partners¹³⁴. The Treaty of Lisbon transformed the previous Commission Delegations in third countries and international organisations to Union Delegations that represent the Union in its entirety – and not just with regard to the former first pillar¹³⁵. These Delegations are now under the authority of the HR¹³⁶. Union Delegations, however, replicate the legal and organisational duality that is observed in Brussels. Thus, they bring under one roof both Commission staff working on non-CFSP policies who receive instructions directly from the Commission, and EEAS staff working on the CFSP under the instructions of the HR/VP and the EEAS. The Head of Delegation is responsible for the totality of the tasks performed through these parallel structures, as discussed below.

Union Delegations are naturally still in a learning process regarding their exact role, and there remain a number of significant problems to be addressed. Currently, the EU is represented abroad by 141 Delegations and Offices around the world, eight of which are to international organisations¹³⁷. Some of the issues commonly faced by Union Delegations include the substance of their mandate, issues regarding staffing, coordination with the EEAS Headquarters, as well as the relationship between the Commission and the EU Member States’ diplomatic authorities on the ground. Union Delegations at multilateral fora are also confronted with a number of qualitatively different problems in their everyday work. Such problems have to do with their specific needs in terms of human resources, the status of the EU in international organisations and the allocation of competences between the EU and the Member States. These issues profoundly affect coordination on the ground and representation at the international fora.

7.1 Mandate of Union Delegations

The EEAS Decision sets out the mandate of Union Delegations and of Heads of Delegation¹³⁸. Union Delegations are to assist EU institutions, ‘in particular the European Parliament’, in their contacts abroad¹³⁹, and, further, ‘to support the Member States in their diplomatic relations and in their role of

¹³² Art. 1(4) EEAS Decision.

¹³³ As Hayes points out, despite the obvious significance of Union Delegations in the EU external relations set-up, a relevant in-depth analysis is eminently missing in the literature; see Hayes, S., 2013, *EU Delegations: Europe’s link to the world*, in Jorgensen, K.E., and Laatikainen, K.V. (eds.), *Routledge Handbook on the European Union and International Institutions*, Routledge, London & New York, pp. 27-39.

¹³⁴ Duke, S., ‘The European External Action Service: Antidote against Incoherence?’, *European Foreign Affairs Review*, Vol. 17 (2012), pp. 45-68.

¹³⁵ Art.221(1) TFEU.

¹³⁶ Art. 221(2) TFEU.

¹³⁷ The Union Delegations to multilateral fora are the Union Delegation to the United Nations (UN) in New York; to the UN in Geneva; the EU Permanent Mission to the World Trade Organization (WTO) in Geneva; to the UN, the OSCE and other international organisations in Vienna; to the UN in Rome; to the Council of Europe in Strasbourg; to the OECD and UNESCO in Paris; and to the African Union in Addis Ababa.

¹³⁸ Art. 5 EEAS Decision.

¹³⁹ Art. 5(7) EEAS Decision.

providing consular protection to citizens of the Union in third countries on a resource-neutral basis¹⁴⁰. In fulfilling this mandate each Union Delegation is to function under the authority of a Head of Delegation¹⁴¹. The Head of Delegation has authority over the entirety of the staff of the Delegation irrespective of its status¹⁴². This is understandable since the Head of Delegation is 'accountable to the High Representative for the overall management of the work of the Delegation and for ensuring the coordination of all actions of the Union'¹⁴³. The mandate of the Head of Delegation also encompasses 'the power to represent the Union in the country where the Delegation is accredited, in particular for the conclusion of contracts, and as a party to legal proceedings'¹⁴⁴. Lastly, the Head of Delegation 'shall implement operational credits in relation to the Union's projects in the corresponding third country, where sub-delegated by the Commission, in accordance with the Financial Regulation'¹⁴⁵.

Views on the performance of Union Delegations in their expanded representation mandate vary significantly. In particular, some EEAS officials consider that Delegations have not yet sufficiently undertaken the full scope of their role. Another Commission official states that Delegations are acting primarily as 'EEAS Delegations' rather than 'Union Delegations', thereby disregarding the role of the Commission. Other respondents from the EEAS are of the view that many Delegations have taken on their new tasks rather well, by playing a more political role but at the same time staying involved in project management, such as in the cases of China, India and Japan. Although problems were pointed out, they were not viewed as systemic issues. Rather, they generally stem from the process of establishing a new diplomatic system and can be ironed out over time.

An EEAS official serving at a Union Delegation observed that 'the idea was that the Union Delegations would function as the mouth, ears and eyes of the High Representative'. However, this becomes difficult due to the circumscribed political mandate of the Delegations to represent the HR/VP compared to, for example, US ambassadors with regard to the US Secretary of State. This problem is often accentuated by the lack of adequate political guidance from the EEAS Headquarters. This issue has to be addressed swiftly by the EEAS Headquarters in order to make full use of the potential of Union Delegations in effectively pursuing Union policies on the ground.

Turning to the role of Heads of Delegation, it has been noted generally that they provide Delegations greater unity and a clear chain of command that is missing in Brussels. This is the case since Heads of Delegation bring together the whole scope of external representation functions of the EU. The Head of Delegation is thus responsible not only for security issues but also for internal policies with external dimensions. This tends to prevent or mitigate conflicts such as those observed in Brussels between, for example, the EEAS and the Commission, especially in the field of development cooperation. Having regard to this comprehensive role of the Head of Delegation, it was repeatedly pointed out that it is highly important to appoint strong Heads of Delegation, as their personal performance impacts significantly on the effectiveness of the Union's external action on the ground.

The implementation of the full scope of the functions of the Head of Delegation is reported not to work optimally, mainly due to the heavy load of administrative tasks imposed on them. In line with this observation, recent academic literature has warned of the risk that senior staff in the Delegations, and the Head of Delegation in particular, are increasingly occupied with such tasks, limiting their ability to

¹⁴⁰ Art. 5(10) EEAS Decision.

¹⁴¹ Art. 5(2) first subpara EEAS Decision.

¹⁴² Art. 5(2) second subpara EEAS Decision.

¹⁴³ Ibid.

¹⁴⁴ Art. 5(8) EEAS Decision.

¹⁴⁵ Art. 5(4) EEAS Decision.

engage in the field¹⁴⁶. Some interviewees suggest that Heads of Delegation often dread the financial administration and the responsibility flowing from it and therefore delegate much of the administrative work. Heads of Delegation should therefore be freed of some of their administrative tasks. The decisions on operational tasks could, for example, be delegated to Deputy Heads of Delegation, in order to allow Heads of Delegation to focus on more political tasks. This, however, would require an amendment of the Financial Regulation¹⁴⁷.

Another recurrent concern from the side of the Commission with regard to the fulfilment of the mandate of Heads of Delegation stems from the fact that most Heads of Delegation are national diplomats with little or no experience of working for and with Union institutions. This means that they often suddenly find themselves responsible for issues such as EU programme financing, in which they may not have any experience. It has been suggested therefore that Heads of Delegation need to undergo intensive training on the work methods and structure of the Commission, as well as the EU financial development programmes before being sent to the Delegations. Some training is already offered to Heads of Delegation, as well as to Commission staff, focusing on issues such as EU financial management procedures¹⁴⁸. Further training courses, it has been suggested, would not only enhance the expertise within the Delegation, but would also facilitate the creation of a common culture among the entire staff of the Delegations. Providing training to all EEAS staff, and not only to Heads of Delegation, 'on existing practices and structures at national and Union level' is in line with the EEAS Decision¹⁴⁹. Some steps in this direction have been taken already, with training courses being offered by the EEAS for staff, and especially Heads of Delegation, prior to taking up a post in Union Delegations¹⁵⁰. Still, further improvement is necessary in the field of training of officials.

Most interviewees concur that Union Delegations are one of the success stories of the novel EU external relations set-up. However, they usually add that this is the case primarily due to the willingness of the individuals involved to make the system work. This success has occurred despite the lack of a clear mandate and less than adequate internal procedures. Most interviewees from all backgrounds broadly agree that much depends on the individual and the personal performance of the Head of Delegation.

7.2 Staffing

7.2.1 Integrating Staff in Union Delegations

Union Delegations suffer from the same problems as EEAS Headquarters with regard to the effort to create a common working language and corporate culture¹⁵¹. By November 2012, 39.5% of Union Delegation staff at AD level came from national diplomatic services, whereas the large majority of the

¹⁴⁶ Duke, S., 'The European External Action Service: Antidote against Incoherence?', op. cit., p. 65.

¹⁴⁷ This has been suggested by twelve Ministers of Foreign Affairs of EU Member States. See Joint letter from the Foreign Ministers of Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden To the High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission, Catherine Ashton, 8 December 2011, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/201/201203/20120321_fmletter_en.pdf.

¹⁴⁸ Lloveras Soler, J.M. *The New EU Diplomacy: Learning to Add Value*, EUI RSCAS 2011/05, 2011, pp. 16-17.

¹⁴⁹ Art. 6(12) EEAS Decision.

¹⁵⁰ See European External Action Service, 2011 Discharge to the EEAS, Answers by the High Representative/Vice President Catherine Ashton To the written questions of the Committee on budgetary Control (henceforth: 2011 Discharge to the EEAS), questions 48, 55, 97-98, 106.

¹⁵¹ See Spence, D., 'The Early Days of the European External Action Service: A Practitioner's View', *The Hague Journal of Diplomacy*, Vol. 7 (2012), pp. 115-134.

remaining posts were filled by permanent officials of the Union¹⁵². There are also some specialised seconded national experts (SNEs) whereas contract and local agents also work at Union Delegations¹⁵³. Since SNEs are entirely financed by the Member States, the different categories of personnel in the Delegations also have different levels of remuneration. The majority of the respondents agreed that the distinct origins, working cultures and financing of the personnel has given rise to misunderstandings and divided loyalties, thereby creating some obstacles to the creation of a common EEAS culture. Further, it has been observed by an EEAS official that temporarily placed agents may find it difficult to confront their Member States' positions. In this regard, an interviewee remarked that given the fact that Delegations have more direct contact with third parties, the 'hiccups' caused by the aforementioned divide within the Delegations were more significant and noticeable in external settings than those in the EEAS Headquarters. The same interviewee added, however, that although the different origins of the staff in Union Delegations increased the time and effort necessary for them to establish a common corporate culture, this has to a great extent already taken place in most Delegations, facilitated by the role of the Heads of Delegation. Whereas the coordination between the Commission and the EEAS in Brussels is problematic in certain areas, there is a general acknowledgement that a functioning culture of internal coordination at the level of Delegation is in most cases now in place.

7.2.2 Partial Lack of Political Expertise

The issue of adequate human resources for Union Delegations, both quantitatively and qualitatively, is a recurrent one and it has gained in significance in light of the economic crisis. Furthermore, it should not be ignored that the institutional divide affects efforts to make full use of the personal and professional capacities of EU officials posted in Union Delegations. This is the case since Commission officials in Delegations funded from the administrative budget can only perform CFSP tasks in exceptional circumstances without jeopardising the 'centre of gravity' of their tasks and for no more than 20% of their working time. Commission staff in Delegations funded from programmes cannot be used at all for any work not pertaining to their mandate. Conversely, EEAS staff in Delegations can generally work on non-CFSP policies. However, given the fact that the great majority of officials in Union Delegations – with the exception of Delegations in multilateral fora and Delegations in capitals of significant partners – comes from the Commission¹⁵⁴, this creates an apparent shortage of staff working on political issues. This obviously risks creating cleavages inside Union Delegations. As an EEAS official who originally came from the Commission argued, the 20% limit in the working time that can be allocated by a Commission official to CFSP duties should be dropped in favour of a more flexible approach. This, however, should not ignore the 'centre of gravity' of the official's duties.

Furthermore, some interviewees criticised the insufficient number of officials with political and diplomatic expertise in the Delegations and the unwillingness of some Member States to increase resources in order to tackle this problem. It was emphasised that only around 30 Delegations have a Deputy Head of Delegation, that the political sections of most Delegations are negligible, and that staff coming from the Commission often lack political expertise¹⁵⁵. Others pointed out the specific needs on

¹⁵² House of Lords European Union Committee (Subcommittee on External Affairs), Call for Evidence, Contribution of the European External Action Service, December 2012.

¹⁵³ In 2011, 188 contract agents and 1127 local agents were working in Union Delegations and Offices. See 2011 Discharge to the EEAS, op. cit., question 95.

¹⁵⁴ See Hayes, E., 'EU Delegations: Europe's link to the world', op. cit., p. 32.

¹⁵⁵ In 2011, there were only 333 AD EEAS officials working in the Union Delegations and Offices. See 2011 Discharge to the EEAS, op. cit., question 95. Furthermore, in 2011 there were 18 Delegations and Offices with only one AD EEAS Official, namely the Head of Delegation. See 2011 Discharge to the EEAS, op. cit., question 36.

the ground for greater expertise in areas ranging from security and military issues to cultural and language knowledge. This lack of specific expertise is considered to prevent the EU from being perceived as a real political player, especially as it often forces Delegations to rely on the Member States' diplomatic services. It should therefore come as no surprise that a substantial number of high-level interviewees within the institutions stressed that the existing level of expertise in Union Delegations must be increased, if necessary through additional budgetary allocations¹⁵⁶.

There is a different view, however, held by a minority of interviewees from the Council and Union Delegations. A high-level Council official argued that the resources problem is mainly situated at the Headquarters level and considers the Delegations to be adequately resourced¹⁵⁷. Others are of the view that the number of political analysts in the Delegations is sufficient, often accomplishing significant goals both in bilateral and multilateral fora. Another diplomat assessed positively the expertise of the staff in Union Delegations compared to most Member States' embassies. In addition, it was noted that within Union Delegations a natural process of mutual enrichment among the staff takes place. Thus, Union officials bring their expertise in handling programmes and in functioning effectively in a supranational bureaucratic structure whereas, as was pointed out by another EEAS official, national diplomats add to the mix their political instincts, substantially improving the political functioning and reporting of Union Delegations.

7.2.3 Instructions

The Head of Delegation receives instructions from the High Representative and the EEAS¹⁵⁸, while the Commission can also issue instructions to the Delegations concerning non-CFSP policies¹⁵⁹. To avoid inter-institutional conflicts the EEAS Decision provides for an agreement between the Commission and the EEAS on 'detailed arrangements relating to the issuing of instructions from the Commission to Delegations'¹⁶⁰. These arrangements will further oblige the Commission to provide the Head of Delegation and the EEAS a simultaneous copy of its instructions to the Delegation¹⁶¹.

Union Delegations are thus subject to two sets of instructions, those from the EEAS and those from the Commission. Despite this, the staff of the Delegations falls under the overall authority of the Head of Delegation. While the EEAS Headquarters provide guidance on representation by consulting with the Heads of Delegation and political counsellors as well as providing guidance notes on local representation, the Commission has maintained overall financial control over the Delegations and a strong influence in terms of instructions. This seems natural in light of the division between non-CFSP and CFSP policies. However, problems arise when instructions coming directly from the Commission apparently disregard political considerations on the ground and political priorities set by the EEAS. Such difficulties have been commonly reported by interviewees in the field of development cooperation.

¹⁵⁶ The overall strategy concerning the opening of Union Delegations and Offices abroad should take this need into account. In particular, the observed practice of the office of the High Representative to open new 'Union offices' abroad, which have ostensibly budgetary implications, when unable to secure the agreement of the Council or the Commission to open a Union Delegation instead, can prove to be at the expense of increasing the number of experts in existing Delegations, and should therefore be revisited.

¹⁵⁷ In 2012, on average 7% of all EEAS posts were not occupied. 4% of AD and 12% of AST posts remained vacant in the Headquarters and 6% of AD and 7% of AST in the Delegations. See 2011 Discharge to the EEAS, op.cit., question 94.

¹⁵⁸ Art. 5(3) first subpara EEAS Decision.

¹⁵⁹ Art. 5(3) second subpara EEAS Decision.

¹⁶⁰ Recital 13 in the preamble to the EEAS Decision.

¹⁶¹ See Working Arrangements between Commission Services and the European External Action Service (EEAS) in relation to external relations issues, SEC(2012)48, 13 January 2012.

These problems stem in reality from the often observed lack of successful cooperation between the Commission and the EEAS in Brussels.

According to one EEAS Headquarters official, this set-up should be revised. It is argued that consistency in approach and style is a major challenge that will take time and require flexibility, as well as a smooth system with one clear set of instructions for the Delegations. From the Commission perspective, it is clear that the Commission should instruct on non-CFSP matters, while the EEAS should take the lead in CFSP matters, and that they should cooperate when both of these issues are involved. It is argued that the EEAS as a newly created organ simply suffers from teething problems and is still in the process of finding its way. The study finds that the situation is constantly improving in most policy areas, especially as the Commission and the EEAS gradually find their respective positions in the new external relations set-up. However, there are still some policies where more effort is necessary from both sides in order to avoid sending conflicting or inconsistent instructions to Union Delegations.

7.3 Coordination Between Union Delegations and EEAS Headquarters

7.3.1 Cooperation Between Union Delegations and EEAS Headquarters

With regard to internal coordination between the Headquarters and the Delegations, it was reported that the approach of the Headquarters is too capital-focused and does not sufficiently take into account the analytic work of Delegations. A source within the EEAS complained that many Delegation reports have not been read and that the Heads of Delegation are not always consulted. The Headquarters also appear not to have the habit of informing the Delegations when they meet with the Permanent Representations. Although the increasing role of the Delegations is acknowledged, it seems that they are still not highly involved in the shaping of the Union's external action nor do they receive sufficient feedback from Headquarters. For example, the ENP Delegations in Morocco, Tunisia and Jordan are recognised as playing a key role in the area, but it has been suggested by EEAS Headquarters officials that the feedback from Brussels could be substantially improved.

7.3.2 Communication Between Union Delegations and EEAS Headquarters

Union Delegations are to provide political reporting to the HR/VP and the EEAS¹⁶². Interviewees were generally concerned about the information flow between the Headquarters and the Delegations. Although some high-level EEAS interviewees report that there is a permanent exchange of information through reports, email, telephone and seminars, a real problem shared by a great number of respondents at other levels is the lack of an information-sharing system. First, the information flow from the Headquarters is reported to be slow and inefficient. It is said that Heads of Delegation sometimes receive information from the Member States faster and more efficiently. This largely has to do with a lack of a proper IT-system and the absence of a central database or electronic archiving system (see above Part 3 *Relationship Between the EEAS and the European Council*) Secondly, the IT Services of the Council and the Commission never managed to reach a compromise regarding their working systems. As a result, there appear to be various secure systems of information sharing that are not necessarily compatible with each other. Consequently, confidential papers cannot always be securely shared electronically. This is regarded as highly problematic, especially in the CSDP domain.

¹⁶² Ibid.

7.4 Coordination Between Union Delegations and the Commission

7.4.1 Cooperation Between Union Delegations and the Commission

It has been generally acknowledged by respondents from both the Commission and the EEAS that the overall cooperation between the Delegations and the Commission is constantly improving. The original resistance within the Commission has mostly disappeared and the instructions within the Commission are strictly to cooperate with the Delegations. This was explained by a Commission official as a consequence of the desire of the Commission to maintain its influence and to make the Commission's expertise indispensable to the EEAS and the Delegations.

The intensity of cooperation differs, firstly, depending on whether the Delegation is at a bilateral or multilateral setting. As reported by Commission and EEAS officials, the Union Delegations' relationship with the Commission DGs and Legal Service is much closer and smoother at multilateral fora than it is at bilateral Union Delegations. Delegations in New York, Rome, and the one to the UN in Geneva ask for guidance more often, especially when there is a disagreement regarding EU representation.

Secondly, cooperation also differs depending on the area of competence under examination. Positive reports have been provided with regard to the fields of human rights, social affairs, energy and enlargement where cooperation is reported to be outstanding. For example, in 2012 the Delegations were asked to prepare a first draft for the annual progress reports. In previous years, the Commission had drafted the progress reports itself, based on the reporting of the Delegations throughout the year. In 2012, with the first draft of the Delegations, there was an inter-service consultation with all the different Directors-General (Eurostat, DG ENER, DG DEVCO) and all actors having the possibility to provide their views and comments. The successful outcome of this cooperation was due to a well-functioning information sharing system that provides all actors with a clear insight into the objectives and the overall goal of all action. Having this knowledge and overview, people are more willing to cooperate. Regarding energy, there are constant, intense, and direct relations between DG Energy and the Delegations relevant to their work relating to Ukraine, Azerbaijan, Algeria and Iraq.

More critical comments were given in the areas of trade and development. In the area of trade, it is said that because of the exclusive competence of the Union, the Commission is reluctant to let the Heads of Delegation – who often are national diplomats – intervene in negotiations. DG Trade is the main actor in direct contact with third partners, while the Delegations' role is limited to reporting to the Commission. In that context, it is significant that within all Delegations in East Africa, there is only one person responsible for trade. Although there have been several positive responses in the field of development, other respondents within the Commission have the impression that Heads of Delegation are starting to object to people from DG DEVCO being sent to the Delegations. Although development cooperation has always been one of the core tasks of the Delegations, it is observed that there is a growing resistance against tasks related to so-called 'Commission competences'. Some level of distrust is further detected on the side of the Commission. For example, in 2012 it launched an audit of the compliance with the flexibility criteria that envisage that Commission personnel in the Delegations are not used for other tasks over and above 20% of their work time¹⁶³ (see above *Policy Illustration 3: Development Cooperation*).

When it comes to the question of why these differences in the level of cooperation exist, many interviewees are of the opinion that it largely depends on personal relationships between the Commission officials and the Delegations' staff. The cooperation is said to work better when the Head of

¹⁶³ Commission Decision, On the management of Commission Resources in Union Delegations, (C (2012) 7200/2).

Delegation or a staff member previously worked in the Commission. Others are of the view that the structures and mechanisms put in place after the Treaty of Lisbon work, regardless of where the Head of Delegation comes from. Overall, good results seem to flow from a combination of sharing work methods and utilising personal contacts, with the field of enlargement as the shining example. In general, as discussed above, there is a discrepancy between the political turf battles between the EEAS Headquarters and the Commission in Brussels and the implementation in the Delegations where there is a strong will to act with one single voice.

7.4.2 Communication Between Union Delegations and the Commission

Union Delegations are to provide political reporting to the Commission President, relevant Commissioner(s) and Commission Services. A two way flow of information is essential, from the political and trade/economic sections of Union Delegations to the Commission Services and in the opposite direction. Hence, the Commission services are to keep Union Delegations informed about relevant developments¹⁶⁴. It seems that the level of communication between Union Delegations and the Commission has either stayed the same or improved, and the exchange of information between the two is generally regarded as a success.

The question whether Union Delegations are regularly contacted by the Commission to acquire information on country-specific questions, and further, whether they willingly offer this information, gave rise to mixed responses. Some respondents stated that the Commission contacts the Delegations on a regular basis and that the country-specific briefings from the Union Delegations to the Commission are constantly updated by weekly exchanges and/or monthly reports. Other interviewees – though fewer in number – expressed their discontent about the information flow from the Delegations to the Commission. They suggested that it might be a tactic of the EEAS to disclose only what they think needs to be disclosed in order for the Commission to perform its tasks. As a result, the Commission often does not have the full picture of the situation on the ground. It is also argued that there is no prescriptive rule requiring the Delegations to cooperate and that in practice it depends entirely on personal relationships and the backgrounds of the people involved.

The level of communication also depends on the competence in question and the attitude of the Head of Delegation towards the Commission. In trade, agriculture and energy, reports are sent on a regular basis from Delegations. Furthermore, reporting from Delegations to the Commission and the preparatory work by Delegations in case of visits by Commission members have been equally successful. Once more, it is especially in the development area that mixed signals were picked up (see above *Policy Illustration 3: Development Cooperation*). On the one hand, a lack of information exchange is said to prevent the Commission from having an overview of the strategic outlines and their implementation. Because development issues are often closely related to security issues, this is said to hinder the development of an efficient and coherent policy. While it appears from the interviews that there were initial communication problems, exchange of information has since improved. For example, Delegations send DG DEVCO an 'External Assistance Management Report' every two years.

More broadly, since there is no established system of political reporting, it appears that the decision as to whether or not to send certain information or reports to both the EEAS Headquarters and relevant Commission DGs depends entirely on the specific working culture of the Delegation. In that sense, no general findings can be made on this issue, beyond the fact that individual Heads of Delegation very much define the working methods of each Union Delegation. Therefore, it is recommended that the

¹⁶⁴ Working Arrangements between Commission Services and the European External Action Service, op. cit.

EEAS should draw up rules and uniform procedures with regard to reporting, applicable to all Union Delegations, in order to avoid discrepancies and to foster a genuine culture of reporting.

On the question whether there are certain policy areas where Delegations seek to draw upon the Commission's expertise, it is reported that Union Delegations generally follow a very pragmatic approach and constantly contact the Commission for specific advice or information on several policy areas, including health, trade, development, climate change, and energy. In the Commission Legal Service, the Heads of Delegation are said to contact the director or the Head of the RELEX team by email. Although some EEAS interviewees are of the view that the Commission could further improve its input, it appears from most interviews that Union Delegations have the same possibility to make use of the Commission's knowledge as when they were Commission Delegations.

7.5 Coordination Between Union Delegations and Member States

Union Delegations are to work in close cooperation and are to share information with the diplomatic services of the Member States. This is to ensure that decisions defining Union positions and actions are complied with and implemented¹⁶⁵.

On the whole, coordination between the Union Delegations and Member States' diplomatic missions in third countries has been assessed as effective. Most interviewees suggested that there are functioning structures and arrangements in place for coordination under the leadership of Union Delegations between them and the Member States' diplomatic authorities. More often than not, Union Delegations coordinate the agenda with the Member States and chair the coordination meetings. There are regular coordination meetings at ambassadorial level covering all policy areas as well as coordination meetings at the Delegations sect

Western Balkans), the Heads of Delegation are sometimes considered to be more important than Member State ambassadors.

Another deficiency of the coordination on the ground was reported to be the fact that personalities play too much of a role in the entire process. It has been stressed, therefore, that the relationship between Union Delegations and Member State diplomatic missions needs to be clarified. However, it was also emphasised that such a formalisation should not be adopted too early, in order for the underlying trust and confidence of the system to develop to a mature state before anything is codified. For many, the immediate goal is to be 'on top of things' in order to ensure that the Union is credible in chairing and providing leadership. The final goal is the reduction in the national embassies' staff and the partial integration of their means and counsellors in Union Delegations. As for now, a first step could be the creation of synergies, the pooling of resources and the co-location of national embassies with Union Delegations. However, not all Member States seem to support the idea of co-location. Furthermore, there are still unresolved legal issues with regard to possible conflicts of interest among individuals that will work in the same premises. Also, questions of cost-sharing between Member States and the Union in instances of co-location have to be addressed. However, it has been reported both by Member States and the EEAS that the physical co-location of missions as it already exists in Ethiopia and Yemen has been very successful¹⁶⁷. These examples of co-location are based on MoUs and can function as blueprints for addressing the aforementioned questions. In addition, most interviewees concurred that co-location is also helpful in crisis situations, such as the one in Syria. Moreover, a Member State made a proposal to co-locate national diplomats in the Union Delegation who would be accredited as national diplomats but also perform some tasks for the Union Delegation. Still, the mixed reactions of Member States show that developments in the direction of co-location will take time and effort from all sides.

In addition, even when internal coordination is successful, the Union Delegation's leadership in the external representation in both bilateral and multilateral fora is sometimes questioned, mainly by the larger Member States. Although legal arguments are used as pretexts for this, officials both from the EEAS and the Commission suggest that these actions are guided by the reluctance of these Member States to lose their visibility and favourable status in external relations. The enhanced role of Union Delegations is welcomed mainly by smaller and new Member States.

Lastly, the study picked up signals of what is referred to in the academic literature as 'offloading' and 'cherry-picking'¹⁶⁸. It has been stated that delivering an EU demarche has become a 'free for all' event where Member State Ambassadors join only when it is in their interest to do so alongside to Heads of Delegation. Similarly, national embassies are said often to hand over the 'dirty work' to the Union Delegations. In case of delicate issues, such as human rights, the Member States prefer an EU demarche. While this may impair the Union's relationship with the third country in question, it allows Member States to continue to maintain good relations with it.

¹⁶⁷ In Addis Ababa, the embassy of Luxembourg is located within the premises of the Union Delegation according to a Memorandum of Understanding signed between the EEAS and Luxembourg on 22 May 2012. In the same manner, based on a Memorandum of Understanding between the EEAS and Spain, the Spanish embassy in Yemen is situated within the Union Delegation.

¹⁶⁸ Balfour, R., and Ojanen, H., *Equipping the European Union for the 21st Century*, op. cit., p. 34-35.

Policy Illustration 6: Bilateral Union Delegations

Interviewees from different EU institutions concur that all in all Union Delegations have had a positive impact on the leverage of the EU vis-à-vis Strategic Partners who have come to accept the new EU actors. However, without exception, they also point to the fact that on issues of specific national interest, a coherent Union position and unified EU action is much more difficult to attain.

Washington

In Washington, the Union Delegation is said to perform an adequate job with regard to coordination, especially given the specific situation of all 27 different Member States being represented in the US capital. Coordination meetings do not take place at ambassadorial level, but there are weekly meetings with a broad agenda at section level. It has been reported that the Delegation prepares common reports, ensures the flow of information and occasionally coordinates joint initiatives. Although the Delegation sets and coordinates the agenda with the Member States and leads the coordination if possible, it was suggested that it mainly plays a role in bringing the Member States in contact with each other on various issues. While some respondents note that there is regular coordination of the 27 positions and a representation of the EU position in Washington, more sensitive policy discussions are said to take place in informal settings with a small group of interested Member States, with or without the Delegation.

It seems that the Delegation endeavours to put a strong emphasis on acting with a single voice, keeping a close eye on the agenda of the FAC in Brussels. However, in terms of coherence, the efforts of the Union Delegation are not always successful. A great number of Member States, even when agreeing with the EU position, continue to work bilaterally on the same issues. This can be explained by the importance of the US, with which many Member States consider to have a 'special relationship'. Thus, they maintain strong missions in Washington with substantially more resources than the Union Delegation and they are not willing to depend on the EU for policy guidance or on its Delegation for representation. Flexibility and prioritisation of national interests thus seem to be the guiding principles in EU coordination on the ground in Washington. Consequently, coherent outcomes in line with a common EU interest are generated in some matters, but certainly not in all domains. Some examples of topics where more coherence has been developed are the Visa Waiver Program, the EU's policy goals towards the Eastern Neighbourhood and the Western Balkans, the Transatlantic Free Trade Agreement, Iran sanctions, energy security and climate change. Conversely, this is not the case with bilateral trade relationships.

Kinshasa

In contrast with Washington, in Kinshasa only 10 Member States are represented. These are mainly Member States with traditional interests in the DRC: France, Belgium, the United Kingdom, Spain, Italy, Portugal, Greece, Germany, the Netherlands and Sweden.

Member States report that the communication between their ambassadors and the Head of Delegation there is outstanding. They not only gather in weekly meetings, but the small number of ambassadors also enables them to exchange information regularly at all kinds of social events. In the other direction, the Union Delegation automatically provides the national diplomatic services with reports and relevant documents. Often, these reports are even written together with the national diplomatic services by pooling the resources.

Concerning coordination mechanisms and leadership arrangements, it is stressed by the national diplomatic services in Kinshasa that the personal capability of the Head of Delegation is of the utmost importance. Independently of his background – whether coming from a national diplomatic service or

from the Commission – the personal performance of the Head of Delegation determines to a large extent the level of cooperation. Considered by the national ambassadors as a ‘primus inter pares’, it is the Head of Delegation who sets the agenda for coordination meetings and calls on the Member States to coordinate on various issues.

As a result of this extensive coordination, the message and actions by the EU and its Member States on the ground in the DRC are coherent. On many topics, the Union and the Member States are said to come out with a common EU position, especially with regard to human rights. It is reported, though, that whenever the political climate in the DRC improves, Member States tend to prioritise their limited national interests in the country.

Beijing

The impression of the Union Delegation in Beijing has been predominantly positive. There is a permanent exchange of information between the Delegation and the Member States through meetings at ambassadorial level every other week and ad hoc meetings both at ambassadorial level and at staff level. Further, the Union Delegation coordinates the Member States’ embassies. For example, on the issue of human rights in China, discussions were held at HOMS meetings in order to reach consensus on a common approach. Respondents concur that the personal performance of the experienced and respected Head of Delegation in China is rather beneficial for the coordination efforts. It is also noted that the coordination mechanisms in place have provided a clear identification of the political priorities of the Union. However, many national embassies report that although the new system has led to more coherence, the Delegation is not able to supervise or control the activities of the Member State embassies, preventing the Union from speaking with one voice on all matters.

Pretoria

In Pretoria, similar dynamics to those observed in Beijing seem to be in place. The Delegation’s work is regarded as having an added value in many areas, but not necessarily as leading to overall coherence. An exchange of information takes place between ambassadors or at the level of the heads of various sections (the political, economic, consular, development, cultural, climate change section, etc.). These meetings are organised monthly and every three months or when a certain situation calls for consultations.

The respondents indicated that the Delegation usually coordinates the agenda with the Member States missions and chairs the meetings in order to lead all actors in the direction of unified external action. It is noted that the new system has proved to be an efficient and useful tool in some domains, especially in the area of development aid and climate change. In general, it is reported that tighter coordination leads to more coherence. However, when key issues for Member States are at stake, again it becomes clear that the EEAS and the Delegation do not manage to get a firm hold of the Member States’ positions.

Policy Illustration 7: Coordination on Consular Matters

According to the third paragraph of Article 35 TEU, Member State diplomatic and consular missions and Union Delegations in third countries are to contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries in which the Member State of which they are nationals is not represented, recognised in Article 20(2)(c) TFEU and in Article 46 of the Charter of Fundamental Rights of the European Union. Article 5(10) EEAS Decision adds to this that Union Delegations, upon request by Member States, must support the latter ‘in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis’. The rationale behind European consular protection is the strengthening of the identity of the Union as perceived in third countries, as well as providing a concrete and tangible sign of European solidarity to Union citizens¹⁶⁹. There is disagreement regarding the exact role of the Delegations on consular matters¹⁷⁰.

On 14 December 2011, the Commission submitted a proposal for a Council Directive on consular protection for citizens of the Union abroad, based on the second paragraph of Article 23 TFEU¹⁷¹. It therein suggests a fairly limited role for Union Delegations in consular affairs. First, Article 14 discusses the coordination of consular affairs on the ground and the modalities of local meetings between representatives of all Member States’ consular posts and the Union Delegation. Second, Article 15, dealing with crisis cooperation, provides that Member States represented in a third country shall coordinate the contingency plans among themselves and with the Union Delegation. A more ambitious approach has been advocated by the EP, which has recommended a number of amendments to the proposal. Three changes were proposed that give a more prominent role to Union Delegations in consular affairs. First, in order not to put an unbearably heavy burden on the lead State, or any Member State present in the area, the Union citizen should be given the choice to contact the consulate or the Union Delegation to claim protection¹⁷². Second, Delegations should deal with coordination and cooperation activities, including the communication of contingency plans, evacuation, and the timely exchange of information¹⁷³. Finally, the EP recommended regarding Article 1 that ‘where relevant, Union delegations may also be entrusted with consular tasks for unrepresented citizens’. The latter implies the acceptance of the exercise of consular functions by the EU, which traditionally – and according to existing international law – remain the prerogative of sovereign states.

Furthermore, an interviewee from the Commission suggested that visa affairs should be handled jointly by pooling the resources of the Member States missions and the Union Delegations to establish a

¹⁶⁹ Recitals 4 and 5 in the preamble to Council Decision 95/553/EC of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations, OJ L 314, 28.12.1995, p. 73.

¹⁷⁰ See also European Parliament, Directorate-General for External Policies, Directorate B, Policy Department, Workshop on The Role of the European External Action Service in Consular Protection and Services for EU Citizens, January 2013.

¹⁷¹ European Commission, Proposal for a Council Directive on consular protection for citizens of the Union abroad, Brussels, 14.12.2011, COM(2011) 881 final. The European Parliament has formulated a number of amendments: legislative resolution of 25 October 2012 on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS)).

¹⁷² See European Parliament, Amendments 26 and 29 concerning Art. 2 (1) and Art. 4 (1) Proposal for Directive.

¹⁷³ European Parliament, Amendments 47 and 48 concerning Art. 15 (1) and (2) Proposal for Directive. The Commission had proposed: ‘Member States represented in a third country shall coordinate the contingency plans among themselves and with the Union delegation’. The EP amended Article 16 on the ‘lead State’ accordingly.

central consular office issuing EU visas. Since 2006, practice already has seen the joint establishment by Member States of 'Common Application Centres' (CACs) in third States¹⁷⁴. However, it should be noted that it is doubtful whether the EEAS, and by extension the Delegations, currently have the necessary legal competence to issue visas.

Among the Member States, opinions are divided. Some are in favour of an increased role for the EEAS. At present, the EEAS does not seem eager to get involved in consular matters, mainly due to a lack of resources and expertise. Such an endeavour would most likely mean violating the principle of budget neutrality. Consequently, consular affairs are portrayed as a non-priority of the EEAS. However, the main concern of Member States in favour of an increased EEAS involvement seems to be the workload of the national diplomatic and consular services and saving on budget rather than addressing the needs of the Union as a whole. Other Member States stress that they want to handle their own consular affairs for cultural and linguistic reasons. Thus, for the time being, there seems to be limited support from Member States and the EEAS for pooling everyday consular tasks at Union Delegations. On the other hand, there seems to be broader support for a coordinating role of the Delegations with regard to consular protection in crisis situations, as was the case recently with the Arab Spring and the earthquake in Japan in March 2011. In this context, reference can be made to useful tools such as the Community Mechanism for Civil Protection that was set up in 2001¹⁷⁵. This mechanism pools the civil protection capabilities of the Member States and other participating countries and has been activated over 150 times in crisis situations; for example, in 2004 after the Tsunami in South Asia, in 2010 after the earthquake in Haiti, and in 2011 during the civil unrest in Libya.

In short, views are divided with regard to the EU and EEAS' involvement in consular matters. However, a more effective consular protection would serve to increase the visibility of the EU abroad and give further substance to Union citizenship. Still, there are outstanding legal and political hurdles to this development.

7.5.1 Communication Between the Delegations and Member States

Most interviewees agree that the flow of information between Union Delegations and Member States' embassies is at a good level. Exchange of information between staff of the Delegations and staff of the Member State missions takes place in monthly meetings at ambassadorial level and in more regular meetings at section level. There is also permanent contact on various issues by telephone and email. A high level Council official stressed that the quality of reporting and the communication transparency have considerably improved and that Member States are generally happy with this. Moreover, for the first time, a political reflection on security reporting has also been launched.

Still, some deficiencies persist. Firstly, problems seem to exist with regard to the reciprocity of the information flow. From the EEAS side as well as from the Commission, it is reported that Member States do not voluntarily and proactively share their information, but only do so upon request, usually after the notice of a meeting that will take place, or not at all. However, it has been noted that having an information flow primarily from Union Delegations to Member States embassies is to a certain extent normal and expected, since Union Delegations have in most cases more input from different sources.

¹⁷⁴ This was done for example in partner States included in the European Neighbourhood Policy. In 2006 the Commission suggested setting up common offices in the Caribbean, the Balkans, the Indian Ocean and West Africa. See: European Commission, 'Green Paper on Diplomatic and Consular Protection', 28 November 2006 (COM(2006)712 final), p. 11.

¹⁷⁵ Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ L 297, 15.11.2001, p. 7–11.

Further, language barriers can slow the flow of information in the opposite direction. It was also observed that even unilateral reporting by the Delegations allows the Member States to progressively develop a common view. In this way, encouraging the Member States to provide feedback is already considered useful. It has been suggested by EEAS officials in Brussels and abroad that some see the EEAS role as the 'honest broker' which can help facilitate and increase the flow of information. From the Member States' perspective, some respondents complained that either important reports from the Delegations do not reach them because the EEAS Headquarters fear a leak of information, or that they receive information too late.

It will therefore not come as a surprise that some respondents pointed to the necessity of an enhanced information sharing system. As discussed previously in the study, in order for Member States to form a common understanding of external developments, they need to have access to the same pool of information. Little mention was made of online platforms, with the exception of previous experiments with a virtual portal 'NESCO' and an internal communication system 'AGORA'. The latter is a still functioning shared online platform where the Union Delegation as well as Member States can log in and post and consult information, thereby creating a historical institutional memory. It was noted that people in Brussels can consult the database, without being able to add to it. Nonetheless, it was observed that it is difficult to share confidential information between the EEAS and the Member States (see above Part 3. *Relationship between the EEAS and the European Council*). Currently, another project called ACID is being developed that should improve secure and fast communication between Union Delegations and Member States' Missions¹⁷⁶. Another relevant suggestion was to develop 'counsellor networks' led by the Delegations, where new information can be passed on. For example, in the domain of energy these kinds of issue-specific meetings of relevant personnel in the Member State embassies and Union Delegation are stimulated by DG ENER.

Finally, a great number of respondents stressed the need for a pooling of resources and a division of labour between the national embassies and the Union Delegations with regard to reporting and media communication. At present, it is widely observed that the entire EU external action process suffers from a troubling waste of human resources, especially with respect to reporting. For example, when it comes to economic reporting, every embassy has to send their own economic report to the Headquarters. The result is 23 or 24 reports of the same level of generality and only a few more in-depth reports from Member States possessing more resources to write them. It has been suggested that more flexible arrangements need to be put in place, where separate teams cover different aspects, sectors or specific problems, in order for the report to present a comprehensive overview. Similarly, the national diplomatic services and the Union Delegations could also pool their resources with regard to the daily press reviews, which could enable them to cover not only the written press, but also television, radio and online communication. In short, the information sharing interaction could be increased.

7.5.2 EEAS Impact on Staffing in Member States' Diplomatic Services

When asked about the influence of the new system on their national diplomatic staff, most Member States indicate that either their staff number has decreased due to budgetary constraints or that their staff number has increased based on their own political interests or human resources policy. It is generally considered that there is no relationship between the creation of the Union Delegations and the number of staff of the national diplomatic services¹⁷⁷. It is also important to note that although many national embassies are cutting back on staff, the EEAS budget has not been increased. Some

¹⁷⁶ Balfour, R., and Ojanen, H., *Equipping the European Union for the 21st Century*, op. cit., p. 44.

¹⁷⁷ In a similar vein see Balfour, R., and Ojanen, H., *Equipping the European Union for the 21st Century*, op. cit., p. 37.

Member States, however, do refer to the possibility of Union Delegations functioning in a complementary fashion to Member States' embassies. This has for example been the case in Syria.

7.6 Union Delegations in Multilateral Settings

In addition to its bilateral relationships with third states, the EU has also been active for a long time in a number of international organisations and multilateral fora. The need to develop cooperation with these bodies is enshrined in the Treaties¹⁷⁸. While the transformation of former Commission Delegations to Union Delegations in third states has been described as a relatively smooth affair, it has proven to be much more complex in multilateral settings 'given the greater complexity of legal and competence issues', as was noted by the HR/VP in her 2011 Report on the EEAS¹⁷⁹. This quote alludes to the two major issues giving rise to problems in the coordination and external representation of the EU at international fora. These are the internal division of competences in the EU, especially the existence of shared competences, and the differing statuses of the EU in international organisations.

Additionally, the lack of adequate human resources in these Union Delegations has made it very difficult for them to take over immediately the entirety of the functions previously carried out by rotating Presidency at international organisations. Interviewees both in Brussels and in the Delegations made some critical remarks with regard to these issues. However, they seem to agree that the situation is constantly improving through pragmatic, though not permanent or legally absolutely satisfactory, solutions that allow the EU to deliver a more coherent and effective message in international fora.

7.6.1 Staffing

Upon entry into force of the Treaty of Lisbon, Union Delegations at multilateral fora were expected to 'assume as soon as possible the role and functions [...] performed by the rotating Presidency in terms of local coordination and representation of the Union'¹⁸⁰. In light of the multifaceted work of international organisations, this constituted a heavy additional workload for Union Delegations without an immediate and sufficient increase in human resources¹⁸¹. Some Delegations, such as the one in New York, had embarked on a comprehensive preparation process beforehand, and were capable of immediately assuming these additional responsibilities with apparent success. Elsewhere, such as in Geneva, no such pro-active spirit was observed, making the transition much more protracted and difficult. However, in all these circumstances Union Delegations had to work with the rotating Presidencies to find pragmatic solutions, referred to broadly as 'transitional arrangements' in order to implement the changes arising from the Lisbon Treaty. EEAS officials as well as interviewees from Member States missions to international organisations suggest that since then Union Delegations in multilateral fora have developed to become fully-fledged actors in EU external representation. Currently, these Delegations, especially the one in New York, are larger and have more resources than

¹⁷⁸ Art. 220(1) TFEU.

¹⁷⁹ European External Action Service, Report by the High Representative to the European Parliament, op. cit., p. 8. See also European Parliament, Directorate-General for External Policies, Directorate B, Policy Department, Workshop on The Role of the European External Action Service in Consular Protection and Services for EU Citizens, January 2013.

¹⁸⁰ Council of the European Union, Presidency report to the European Council on the European External Action Service, (14930/09), 23 October 2009, para. 31. See also European External Action Service, Report by the High Representative to the European Parliament, op. cit., p. 16.

¹⁸¹ Skytte Christoffersen, P., 'The Creation of the European External Action Service', in Jacqu , J.P. (ed.), *A Man for All Treaties : Liber amicorum en l'honneur de Jean-Claude Piris*, Bruylant, Brussels, p. 124.

most of the Permanent Representations of EU Member States¹⁸². Still, it has been observed that there is willingness by the EEAS to increase the number of officials in multilateral Delegations with expertise in political reporting and diplomacy. However, as pointed out by an EEAS official, this effort is severely hampered by budgetary constraints. An interviewee familiar with the situation on the ground in New York noted that there is a need to increase the number of native English speaking staff in the Union Delegation there in order to speed up the process of reporting on the coordination meetings from the Delegation to the Member States' missions and, thereby, increase the latter's dependence on the Union Delegation. Thus, staffing has been referred to as an area in which Union Delegations in multilateral fora could be improved.

7.6.2 Coordination Between Union Delegations and Member States on the Ground

The coordination between Union Delegations at international organisations and Member States' Permanent Representations has been positively assessed overall. In most cases, the Member States have come to accept and appreciate the leading role of Union Delegations in internal coordination on the ground. There is also an understanding that the more accustomed Member States become to these procedures, the more differences will be 'ironed out'. Findings with regard to coordination in New York and Geneva are discussed below.

In New York, the coordination mechanism took off immediately after the coming into force of the Treaty of Lisbon. Currently, more than 1300 coordination meetings among the Union Delegation officials and Member States' diplomats at all levels take place there every year. Among these, many are held at the level of Heads of Mission in order to coordinate with respect to the political priorities of the EU in the specific context of the UN. In addition, as was mentioned above, the internal system of communication AGORA assists in cooperation efforts. Thus, reports concur that Member States' diplomats in New York seem to accept the leading role of the Union Delegation in convening and chairing coordination meetings as well as in setting the agenda. One national diplomat participating in the coordination in New York pointed out that the Union Delegation, with the acceptance of Member States, even chairs coordination meetings on the UN budget, and the negotiations and management of the reform process of the UN despite the fact that the EU has no competences in these matters. This has obviously had a positive effect on sending a coherent and common EU message at the UN. A concrete example of the intensive coordination with Member States' Delegations is that of the Millennium Development Goals (MDGs) agenda. That being said, coordination obviously has limits when it comes to sensitive foreign policy issues, especially where public opinion may differ significantly among Member States. The recent General Assembly Resolution that accorded Palestine 'non-member observer state status'¹⁸³ in the United Nations was such an example, where there was a three-way split of the votes of EU Member States.

The leadership of the Union Delegation has far less a role when it comes to the UN Security Council. In this organ the Union has been visible through the High Representative or the Head of the Delegation regularly presenting the EU's views in open sessions of the UN Security Council. However, this cannot happen formally when the UNSC is in closed session. In these cases, the United Kingdom and France always retain a leading role.

¹⁸² However, the Permanent Representations of the two EU Member States holding a permanent seat at the UN Security Council, the United Kingdom and France, continue to be larger than the Union Delegation. The same is the case temporarily with the Permanent Representations of those Member States that serve on the UN Security Council.

¹⁸³ United Nations General Assembly, *Status of Palestine in the United Nations*, Resolution adopted by the General Assembly, UN Doc. A/RES/67/19, 4 December 2012.

While the transition in New York went well, it was a different story in Geneva. It took much more time and effort until a smooth process of coordination was put on track, mainly due to disagreements among EU Member States with regard to questions of shared competences¹⁸⁴. Further, the very complicated legal environment regarding the levels of participation of the EU in the different international organisations in Geneva provoked yet more disagreements among Member States and the Union Delegation as to the Delegation's coordination role. Eventually, transitional arrangements were agreed upon. The fact that there was no Head of Delegation for a considerable period of time was also cited as a problem. Currently, around 1000 coordination meetings take place every year in Geneva, involving both the Union Delegation to the United Nations and the EU Mission to the WTO.

It is not clear, however, how much time in these coordination meetings in multilateral fora is spent on substance as opposed to disagreements about the competence of the Head of Delegation to deliver an EU statement, and on whose behalf this should be made. It has been observed that time spent on these coordination meetings often comes at the expense of outreach efforts both by the Union Delegation and the Member States' diplomatic representations. It is for this reason that as the new external relations architecture of the Union matures, the number of coordination meetings on the ground should be kept to the number absolutely necessary in order to free up time and energy for European diplomats to reach out to third countries.

7.6.3 Representation Role of the Union Delegations

It is in the representation of the Union in international organisations that the most problems have arisen. One of the challenges facing Union Delegations is the differing levels of status of the EU in multilateral fora. In very few cases the EU is a full member but in most instances the EU remains an observer¹⁸⁵. This limits the EU's capacity to participate fully in the work of most international organisations forcing it to rely – at least partly – on its Member States. In light of this problem with respect to the UN, the EU attempted to solve the problem in having a UN General Assembly resolution adopted in May 2011 granting it enhanced participation rights¹⁸⁶. Reaction to this resolution has been mixed both in academia and among interviewees. Some have argued that it provides the EU rights equivalent to those of a full UN member. Yet others have commented that the resolution has not been implemented to its full extent, especially within UNGA bodies outside New York, and that the EU paid a high price to get the resolution adopted. In addition, both the EEAS Headquarters and the Union Delegation in New York, with the assistance of EU Member States, had to continue struggling for months for the implementation of the UNGA Resolution in New York against differing interpretations by CARICOM. Eventually, the problem was solved thanks to demarches made to the capitals of the CARICOM countries and to a political deal with the African group that the latter would speak ahead of the EU when asking for the floor. This deal isolated CARICOM forcing it to tone down its disagreements about the proper interpretation of the UNGA Resolution. To date, the diplomatic effort to upgrade the EU's status in the UNGA has not been replicated or attempted in any other international bodies. Although the lack of status within multilateral bodies was often mentioned as an impediment to the

¹⁸⁴ Skytte Christoffersen, P., 'The Creation of the European External Action Service', op. cit., p. 123.

¹⁸⁵ Wouters, J., Odermatt, J., and Ramopoulos, T., 2013, 'Interactions between the ECJ and the EU Legislature in the Application of International Law', in Cremona, M., and Thies, A. (eds.), *The European Court of Justice and External Relations Law - Constitutional Challenges*, Hart Publishing (forthcoming).

¹⁸⁶ For the first failed attempt to have this resolution adopted by the UNGA, see Wouters, J., and Emerson, M., 2010, *The EU's Diplomatic Debauch at the UN: What else and what next?* CEPS Commentaries, 2010; United Nations General Assembly, *Participation of the European Union in the work of the United Nations*, Resolution adopted by the General Assembly, UN Doc. A/65/276.

EU's participation in multilateral fora, there has been no mention of another organisation where the EU may seek a similar upgrade. In these situations, the EU still has to rely on the Member States for representation.

Another issue of note was the initial blocking of EU statements within the UN and OSCE by the United Kingdom. The fact that these multilateral bodies cover issues that straddle multiple fields of competences has given rise to disputes both between the EU and its Member States, and between EU institutions. In particular, there have been differing interpretations between the EU Member States and the institutions regarding how the EU should be represented in multilateral settings. In the Report of the HR/VP this was noted as a particular issue, stating that the 'blocking of statements has resulted in a temporary reduction in the number of EU statements in particular in the UN and the OSCE. It is to be hoped that the recent clarifications in this area can lead to a more visible and active EU presence in future.'¹⁸⁷ The 'general arrangements for EU statements'¹⁸⁸ are considered to constitute a working solution for the time being, although legally they are far from perfect¹⁸⁹. The arrangements were supposed to be revisited a year after their adoption, however there seem to be no current plans at least from the side of the EEAS to revisit these arrangements.

Still, there is an understanding that the arrangements are not set in stone, and can still be improved upon and adapted. Although such arrangements allow the EU to have a unified representation in multilateral settings, internal discussions regarding competences and in whose name statements are to be delivered can detract from other important efforts. It has been noted by interviewees that it was not the Lisbon Treaty itself that gave rise to this issue regarding the delivery of statements; rather it was a reaction of the Member States to these changes. The United Kingdom remains concerned that external representation could lead to a gradual shift in competences. Despite this disagreement, it soon became clear that a solution was required, since the continued blocking of statements was harmful to the EU's image in the international community. Although a compromise was eventually reached, the general arrangements have not solved the underlying issue regarding external representation in areas of shared competences¹⁹⁰. In 2012, over half of the EU statements delivered at the United Nations were delivered 'on behalf of the EU and its Member States' while many others were delivered 'on behalf of the Member States of the EU'. Where statements were made 'on behalf of the EU', it was usually in the field of the CFSP (as agreed upon in the general arrangements). It is submitted that a more permanent solution respecting the letter and spirit of the Treaties should be found with regard to the external representation of the Union in international organisations. That said, such a solution is not meant to curb the existing flexibility of EU external relations actors on the ground to have both the Union Delegation and Member States deliver statements in multilateral fora for reasons of political expedience.

¹⁸⁷ European External Action Service, Report by the High Representative to the European Parliament, op. cit., p. 8.

¹⁸⁸ Council of the European Union, EU Statements in multilateral Organisations: General Arrangements, 15901/11, 24 October 2011.

¹⁸⁹ Ramopoulos, T., and Odermatt, J., 2012, 'EU Diplomacy: Measuring Success in light of the Post-Lisbon Institutional Framework', in Boening, A., Kremer, J.F., and van Loon, A. (eds.), *Global power Europe – Vol. 1*, Springer Verlag, forthcoming.

¹⁹⁰ The Polish Institute of International Affairs ('PIIA'), *The EU external representation in the area of shared competences*, January 2012. For an example of the problems involved in EU international representation in an area of shared competences, see De Baere, G., 'Mercury Rising: The European Union and the International Negotiations for a Globally Binding Instrument on Mercury', *European Law Review*, Vol. 37 (2012), pp. 640-655.

7.7 Main Findings and Recommendations

Union Delegations are one of the success stories of the novel EU external relations set-up and are set to continue to grow in importance. Heads of Delegation offer Delegations unity and a clear chain of command although they are overburdened by administrative responsibilities. Still, their role generally has positive results in terms of internal cooperation and coherence of external actions. Nonetheless, Union Delegations are confronted with specific problems stemming principally from a lack of specificity of their mandate, insufficient staffing – a problem particularly pertinent with regard to Delegations in multilateral fora in light of their very specific increased need in political expertise – and often inadequate instructions and feedback from the Headquarters.

In addition, the relationship between the Commission and the Delegations has been constantly improving. Good results seem to flow from a combination of sharing work methods and making use of personal contacts. As to the relationship between the Member States' diplomatic authorities abroad and Union Delegations, this is generally smooth despite the initial resistance by some Member States especially regarding representation issues in multilateral organisations. Generally, good cooperation results in more coherence in EU external actions although more synergies need to be developed. Furthermore, there are some limitations in cooperation when it comes to special interests of Member States or to the relationship with important political and economic capitals. In both relationships, though, the personal performance of the Head of Delegation and the specific working culture plays too much of a role in the entire process. Finally, it is generally considered that there is no relationship between the creation of the Union Delegations and the number of staff of the national diplomatic services.

- The EEAS Headquarters should give more political and strategic guidance to Union Delegations;
- The burden of administrative tasks for the Heads of Delegation should be eased in order for them to focus more on their political and representational functions;
- The limit of 20% of the working time that can be allocated by a Commission official to CFSP duties must be abandoned in favour of a more flexible approach;
- The existing level of expertise in Union Delegations must be increased, if necessary through additional budgetary allocations; expertise in strategic and political issues must be enhanced whereas linguistic skills and country-specific knowledge should be improved;
- The strategy concerning the opening of new Union Delegations and Offices should not divert necessary budgetary allocations from the effort to increase the level of expertise in current Union Delegations;
- The EEAS should draw up rules and uniform procedures with regard to reporting, applicable to all Union Delegations in order to avoid discrepancies and to foster a genuine culture of reporting;
- The number and length of coordination meetings, especially at multilateral organisations, need to be kept at a minimum while focusing on the substance of the issues rather than questions of representation;
- The relationship between Union Delegations and Member States diplomatic missions needs to be clarified;
- Union Delegations and Member States diplomatic missions should pool resources with regard to

reporting and media communication;

- In order to create synergies, co-location of national embassies with Union Delegations could be envisaged using existing co-location arrangements as a blueprint to address outstanding legal issues;
- A greater role for Union Delegations in the coordination and cooperation on consular matters should be encouraged since it will give further concrete and tangible substance to Union citizenship while increasing the visibility of the Union to third states.

8. MAIN FINDINGS AND RECOMMENDATIONS

8.1 Main Findings

This study examined the organisation and functioning of the EEAS since its establishment, the challenges it has faced, and opportunities for improvement. The study explored these issues from an internal and external perspective, covering both the EEAS at Headquarters in Brussels and the bilateral and multilateral Union Delegations around the world. The present part summarises the main findings and recommendations of the study.

In terms of its *institutional set-up*, the Service has been created as a functionally autonomous body, separate from the Council and the Commission. The study found that this *sui generis* nature permeates almost all of the work of the EEAS. This renders the Service an indeterminate entity, at times functioning much like a Commission Directorate-General and at other times rather like the Council General Secretariat. There is no shared understanding among stakeholders outside or within the EEAS on the role, mandate and position of the Service within the EU external action architecture. Last but not least, under the current arrangements the office of the HR/VP evidently constitutes an impossible combination of tasks for one single person. The study therefore suggested that a system of deputisation needs to be developed.

The study found that the *organisation and internal structure* of the EEAS is top-heavy. The structure at Headquarters comprises several duplicating layers of management, unclear hierarchy in terms of chain of command, and opaque relationships between different departments. The organisation chart should therefore be simplified in order to foster good relationships between various parts of the Service while ensuring sufficient strategic guidance. Among the staff, a lack of trust, of support from the top and of *esprit de corps* are serious problems undermining the current operation of the Service. A genuine human resources policy needs to be developed and implemented as a matter of priority, so as to regenerate morale.

The study found that *working relations between the EEAS and the other political actors in EU external relations* vary considerably. The relationship with the European Council is well-established and generally positive. Relations with the Council receive a more mixed assessment. Generally, the permanent chairmanship of the Foreign Affairs Council (FAC) and of Council Working Parties contributes to more coherence. However, certain downsides were noticed, such as insufficient Member State ownership in the FAC and in some Working Parties as well as a lack of dynamism in their operation. In certain policy areas, such as European Neighbourhood Policy, relations and coordination between the Commission and the EEAS are functioning well. However, in other areas, such as development cooperation and external energy policy, this is far less the case. Given their respective roles in EU external action, a 'new deal' is required between the Commission and the EEAS. This implies a far greater 'coordination reflex' on both sides, i.e. a mutual understanding that the only way to arrive at coherent and effective EU external action is through a permanent structured relationship at all levels and a close cooperation for all areas of EU external action. More extensive and efficient use should be made of the double-hattedness of the HR/VP and of the RELEX Group of Commissioners. The study also found that despite efforts to establish a satisfactory accountability relationship between the EEAS and the European Parliament, which currently functions principally through the HR/VP, the existing arrangements should be improved. This could be done *inter alia* by establishing a permanent deputy to represent the HR/VP in parliamentary settings, an increase in the number of hearings of senior EEAS staff and a review of the current regime for access to confidential information by the EP.

Union Delegations were found to be one of the success stories of the EEAS. The working mechanisms established between the Delegations and Member States' diplomatic missions in third countries and at international organisations broadly deliver in terms of coherent and effective EU external action. However, there is much room for improvement. With respect to bilateral Delegations, there often is a shortage of staff with the necessary political expertise, linguistic skills and country-specific knowledge. Problems have occurred with respect to information-sharing, political reporting and coordination on the ground. Lastly, often Delegations do not receive sufficient feedback and adequate instructions from EEAS Headquarters. With regard to multilateral Delegations, some Member States still need to recognise the new function of the Union Delegations in coordinating and representing the Union in all pertinent multilateral fora.

Overall, the study found that the new institutional system has created opportunities and, in fact, sets in place working mechanisms which aim to foster coherence, effectiveness and continuity in the EU's external action. The study highlighted examples that show positive developments in that direction. However, the EEAS should to a much greater extent utilise its 'coherence mandate' towards becoming the prime diplomatic entrepreneur in EU external action by fostering reciprocal information sharing, cooperation and coordination between national and EU levels, shaping and proposing novel policy ideas, and proactively promoting coherent external action across all policy domains. Three key steps were found to be needed to help the EEAS in attaining this objective: (i) a 'new deal' between the Commission and the EEAS (ii) stronger support from the Member States to the EEAS and (iii) abandoning budget neutrality for a more realistic focus on budgetary efficiency.

8.2 Recommendations

8.2.1 Nature and Mandate

- The 2013 Review should be used as an opportunity to attain a common understanding of the mandate, nature and role of the EEAS in EU external action, between the institutions, Member States and the Service itself;
- The EEAS must re-focus the balance between CFSP and non-CFSP tasks carried out by the Service. This entails a real commitment to linking TEU and TFEU policies, which in turn requires a 'new deal' between all stakeholders, notably the EEAS and the Commission;
- The EEAS should utilise its 'coherence mandate' provided in Article 18(4) TEU in order to become the prime diplomatic entrepreneur in EU external action. It should foster reciprocal information sharing, cooperation and coordination between national and EU levels, shape and propose novel policy ideas through stimulating out-of-the-box thinking, and push the envelope beyond the common denominator of what Member States will permit at present.
- The EEAS should proactively promote coherent external action across all policy domains and pursue more strategic guidance through the elaboration of – if not a new European security strategy – separate geographical strategies and the creation of permanent integrated task forces focusing on specific themes. The 'comprehensive approach' can be a first step towards that objective.
- The 'comprehensive approach' should not be old wine in new wineskins. Building upon the idea of greater coherence in EU external action, it should rather be a specific set of procedures which apply in different policy fields of the TEU and TFEU to bring together all instruments at decision-making, planning and implementation level.

- The EEAS was born in times of austerity, and therefore should be guided by the principle of cost-efficiency ‘aiming towards’ budget neutrality. However, budget neutrality should not entail a ‘zero-growth’ approach to the EEAS’ budget. Rather, there is an urgent need for a genuine consensus among EU Member States and institutions as to how the Service can be utilised towards increased synergies and efficiency gains at the national, EU and international level.
- The Member States need to commit fully to the success of the EEAS, and resist the re-nationalisation of foreign policy.

8.2.2 Staff and Organisation

- The organisation chart of the EEAS requires reform to avoid duplication of managerial responsibilities, to increase the delegation of tasks, and to attain a shorter chain of command;
- The EEAS should decrease the complexity of its internal *modus operandi* and reduce the number of different stages and meetings, in order to remedy existing inefficiencies;
- The role of geographical desks in relation to the EEAS’ crisis management structures should be revised so as to ensure that the Service’s full expertise is employed as regards EU actions abroad. At the same time, it could be considered to incorporate crisis-management structures more fully into the overall EEAS structure;
- A long-term career structure for staff, including greater equity and equality in personnel conditions, needs to be implemented so as to stimulate personal commitment and initiative, and retain and attract highly skilled staff;
- Greater attention needs to be paid to training so as to create a common *esprit de corps*, common knowledge about diplomacy, EU working methods, and notably a long-term, common vision on the purpose and functioning of the Service;
- A greater number of staff need to be dedicated to specific policy fields. This will help stimulate natural synergies with other EU actors working in these domains;
- More staff needs to be recruited to deal with legal and personnel issues so as to ensure efficiency and good-quality drafting as well as proper procedural institutionalisation of the EEAS;
- There is a need for greater integration of all Union Delegation officials, to make them operational immediately after their posting, and to improve their training in practices and structures both at national and Union level. A joint Commission-EEAS training programme on the working methods should be established.

8.2.3 Office of the HR/VP/FAC Chairperson

- The office of the High Representative ought to do much more to utilise the Vice-Presidential role in the Commission, in order to carry out the ‘coherence mandate’;
- The EEAS’ support tasks for the various roles of the HR/VP/FAC Chairperson should be regarded as mutually reinforcing;
- There is a need for political deputisation to the office of the HR/VP/FAC Chairperson so as to fully realise the potential of triple-hatting. This would provide an opportunity to anchor further the Commission and the EEAS together, with the current cooperation between the HR/VP and the Commissioner in the field of European Neighbourhood Policy as an example for other policy areas;

8.2.4 Relationship Between the EEAS and the European Council

- The effective communication between the President of the European Council and the EEAS should provide inspiration for improving the communication with other institutions and offices;
- The EEAS should be further encouraged to provide briefings that are adapted to the level of technicality needed for the purposes of the President of the European Council;
- The Presidents of the European Council and of the Commission should provide clear guidance to the EEAS regarding what topics they wish to be briefed on and with respect to their respective needs.

8.2.5 Relationship Between the EEAS and the Council

- The EEAS should enhance control over the FAC's agenda through more advance planning and more leadership, while at the same time stepping up coordination with the Member States and seizing opportunities to form a consensus among them;
- The EEAS should carefully prepare FAC discussions and ensure timely delivery of the necessary documents to all actors concerned;
- Greater coherence should be pursued between the agendas of the Working Parties and the FAC agenda;
- The permanent chairmanship should move away from an essentially reactive approach and put in place a mechanism for prioritising certain issues; to that end the permanent chairmanship should further invest in long-term strategic thinking and focus on trust-building between the EEAS and the Member States;
- The division between Working Parties chaired by a representative of the HR/VP and those chaired by the rotating Presidency should be reassessed, notably but not exclusively with respect to the RELEX Working Party;
- Member States should be encouraged to engage more actively and cooperatively with the EEAS within the FAC and the Working Parties and to use the possibilities for greater coherence and international impact to their fullest extent;
- The permanent chairmanship should carefully balance its role as policy initiator and that as mediator between the Member States;
- The basis for cooperation and the rules governing such cooperation between the Council General Secretariat and the Council Legal Service on the one hand and the EEAS on the other hand should be clarified.

8.2.6 Relationship Between the EEAS and the Commission

- There is a need for a 'new deal' between the EEAS and the Commission, implying a far greater 'coordination reflex' on both sides, i.e. a mutual understanding that the only way to arrive at coherent and effective EU external action is through a permanent structured relationship at all levels and a close cooperation for all areas of EU external action;
- A duplication of organisational structures between the Commission and the EEAS should be kept to a minimum;

- The HR/VP should make greater use of her function as Vice-President of the Commission; existing coordination mechanisms like the RELEX Group within the Commission should be used more extensively to enhance strategic coordination of all EU external policies;
- The right to call the RELEX Group should be re-instated to the HR/VP as Vice-President of the Commission in order to link the strategic dimension of the EEAS with the Commission;
- The specific coordination between the HR/VP Cabinet and some Commission DGs can serve as an example for other specific relations between the EEAS and Commission DGs, and should complement, but not substitute the overall coordination between all Commissioners dealing with EU external action;
- The position of the Foreign Policy Instruments Service, being a Commission service in the EEAS, needs to be reviewed;
- With regard to instructions to Union Delegations, there should be closer cooperation between the Commission and the EEAS in order to avoid sending conflicting or inconsistent instructions to Union Delegations.

8.2.7 Relationship Between the EEAS and the European Parliament

- The current dearth of accountability mechanisms of the EEAS affects its legitimacy as a policy initiator and hence its impact, including but not limited to its role in the FAC, which is as a rule composed of Member State ministers backed by a national parliamentary majority. Further ways to enhance the accountability of the EEAS to the European Parliament should be sought beyond the existing arrangements;
- A permanent deputy to represent the HR/VP in parliamentary settings if and when such representation is appropriate should be considered;
- Hearings with senior staff of the EEAS could take place more often. In particular, the Declaration on Political Accountability could be used to 'hear' EUSRs before they take up their positions abroad. It could also be used to facilitate exchanges throughout the official's time in office;
- The formalities involved for the EP or individual MEPs in gaining access to documents should be reviewed by the HR/VP, including in the domain of the CFSP.

8.2.8 Union Delegations

- The EEAS Headquarters should give more political and strategic guidance to Union Delegations;
- The burden of administrative tasks for the Heads of Delegation should be eased in order for them to focus more on their political and representational functions;
- The limit of 20% of the working time that can be allocated by a Commission official to CFSP duties must be abandoned in favour of a more flexible approach;
- The existing level of expertise in Union Delegations must be increased, if necessary through additional budgetary allocations; expertise in strategic and political issues must be enhanced whereas linguistic skills and country-specific knowledge should be improved;
- The strategy concerning the opening of new Union Delegations and Offices should not divert necessary budgetary allocations from the effort to increase the level of expertise in current Union Delegations;

- The EEAS should draw up rules and uniform procedures with regard to reporting, applicable to all Union Delegations in order to avoid discrepancies and to foster a genuine culture of reporting;
- The number and length of coordination meetings, especially at multilateral organisations, need to be kept at a minimum while focusing on the substance of the issues rather than questions of representation;
- The relationship between Union Delegations and Member States diplomatic missions needs to be clarified;
- Union Delegations and Member States diplomatic missions should pool resources with regard to reporting and media communication;
- In order to create synergies, co-location of national embassies with Union Delegations could be envisaged using existing co-location arrangements as a blueprint to address outstanding legal issues;
- A greater role for Union Delegations in the coordination and cooperation on consular matters should be encouraged since it will give further concrete and tangible substance to Union citizenship while increasing the visibility of the Union in third states.

8.2.9 Information Sharing and Technical Issues

- There is a clear need to establish a fully functioning secure electronic information-sharing system, allowing for information to be shared in an accessible and traceable manner between the EEAS on the one hand, and the institutions and Member States on the other hand;
- There is a need to put in place a coordination system between the EEAS Headquarters and the Delegations according to which the Delegations' input is automatically processed;
- With regard to feedback from the Headquarters to the Delegations, a standardised system should be established in order to provide Delegations with the necessary information and guidance so as to deliver coherent and effective messages abroad.

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