Beyond conferral: the role of the European External Action Service in decision-shaping

Steven Blockmans

The ambition to build a strong EU foreign policy received a major boost with the launch of the European External Action Service – the EEAS – on the 1st of January this year. The service will act as a single platform to project European values and interests around the world. And it will act as a one-stop shop for our partners. The aim of all this is to forge a better, more coherent policy, developing European answers to complex global problems, working with our partners around the world. It’s something I know countries have long asked for - and that we can now deliver.

Catherine Ashton, on the occasion of Europe Day 2011

1. Introduction

European leaders in Member State capitals and at EU headquarters were caught completely by surprise by the unfolding of history in Tunisia, Egypt and Libya in early 2011. In its first-ever evaluation of Europe’s performance in pursuing its interests and promoting its values in the world, the European Council on Foreign Relations (ECFR) found that, while 2010 was not a great year for European foreign policy, the performance of EU institutions and Member States was ‘not uniformly mediocre’. Among the most united EU responses in 2010, the ECFR counted stabilisation and state building in Iraq, relations with the US on climate change, relations with the Eastern neighbourhood on trade and energy, relations with China on Iran and proliferation, European policy in the World Trade Organization, and relations with the US on terrorism, information sharing and data protection. Unfortunately for the EU, the list of its most divisive issues in 2010 is both longer and more pertinent. The list includes European policy on the rule of law and human rights in China, bilateral relations with Turkey, relations with the US on NATO and NATO reform, relations with the

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1 J. Vaisse and H. Kundnani (eds.), European Foreign Policy Scorecard 2010 (London, ECFR 2011). The assessment is of the collective performance of all EU actors rather than the action of any particular institution or country – either the High Representative, the European Council, the European Commission, a group of states like the EU3 (France, Germany and the UK), or an individual Member State.
US on global economic and financial reform, European policy in the G20 and G8, and the diversification of gas supply routes to Europe. If anything, these lists show how plentiful and wide apart the foreign policy issues are that the EU has to deal with. To a certain extent, these challenges and opportunities have been outlined in the European Security Strategy of 2003, which was reviewed in 2008. But in a rapidly changing world, the success of the Union’s institutions in effectively addressing challenges and seizing opportunities is helped by the constant revision of EU strategies, as well as the focused support of and provision of resources by the Member States to make a difference. Arguably, when these elements are absent, EU external action flounders.

The EU’s slow and timid response to the dramatic events of the Arab Spring of 2011 – as indeed the Union’s mixed performance in external action more widely – illustrate the importance of the Lisbon Treaty, which was intended to create tools for the EU to develop a more coherent, effective and visible foreign policy. One of the institutional innovations provided for in the Lisbon Treaty to meet those ambitions is the creation of a European External Action Service (EEAS). This contribution deals with the question which role the new European External Action Service is likely to play in shaping the EU’s decisions in the field of external action. In order to answer this question, the paper will examine both the raison d’être (section 2) and the mandate of the EEAS (section 3), in particular the potential role of the EEAS in strategic policy-planning (section 4) and programming (section 5). In essence, this paper seeks to answer the question whether the EEAS is likely to enhance coherence in EU external action. This contribution will therefore not deal with the other two overriding aims for the creation of the EEAS – effectiveness and visibility.

Before embarking on the analysis, it is worth offering one further conceptual clarification. Rather confusingly, the Treaty on European Union speaks of the need to enhance

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2 Ibid., at 11-12.
4 Compare, e.g., Statement by EU High Representative Catherine Ashton and European Commissioner for Enlargement Štefan Füle on the situation in Tunisia, Press release A 010/11, Brussels, 10 January 2011; ‘EEAS’ senior officials mission to Tunisia’, Press Release A 029/11, 26 January 2011; and Statement by the EU High Representative Catherine Ashton on Tunisia, Press Release A 034/11, Brussels, 28 January 2011. See also T. Garton Ash, ‘If this is young Arabs’ 1989, Europe must be ready with a bold response’, The Guardian, 2 February 2011: ‘What happens across the Mediterranean matters more to the EU than the US. Yet so far its voice has been inaudible’.
6 Article 27(3) TEU.
consistency in EU external action. Whereas legal scholarship is more or less united in drawing a distinction between the principles of coherence and consistency, the drafters of the Treaties seem to have mistaken the one principle for the other. In the functional approach to the topics at hand, the notion of consistency in primary law is understood here to mean the assurance that the different EU policies do not legally contradict each other. Moreover, synergies are sought in the implementation of these policies. The multi-layered concept of coherence is wider and relates to the construction of a united whole. For ease of distinction, the focus here will only be on the level of synergy between norms, actors and instruments, a synergy which the EU system (in Articles 21(3), 4(3) and 13(2) TEU) aspires to promote through principles of cooperation and complementarity. For the purpose of this essay, and in spite of the Treaty language, the term coherence is here used to gauge the potential impact of the EEAS on the level of coordination and cooperation in the formulation of EU external relations policy.

2. *Reculer pour mieux sauter*: Lisbon Treaty changes

In order to develop a more coherent, effective and visible EU foreign policy, the Lisbon Treaty has introduced changes at two levels. Firstly, the objectives of the Union’s external policies, from security over development to trade and environment, were merged in Article 21 TEU. Secondly, the institutional architecture and procedural framework for EU external action were fundamentally amended. All these changes were introduced, however, without the simultaneous streamlining of the distribution of competences or decision-making procedures. As has been observed, the Lisbon Treaty has not ended the first/second pillar dichotomy of late. CFSP and CSDP remain located in the Treaty on European Union, separate from the Union’s other external relations policies in the Treaty on the Functioning of the EU (trade, development, cooperation with third countries, humanitarian aid, relations with international organisations). Arguably, it is therefore the institutional innovation which should spur the drive for more coherence, effectiveness and visibility.

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8 See Articles 18(4), 21(3) and 26(2) TEU.
10 The most notable exception, however, is Article 216 TFEU, which provides Treaty foundation for the power to make international agreements, which had hitherto been developed by the ECJ’s case law.
12 This tendency has been most vocally criticized by Kishore Mahbubani, in ‘Europe’s Errors’, *TIME Magazine*, 8 March 2010: ‘(...). Europe’s obsession with restructuring its internal arrangements is akin to rearranging the deck chairs of a sinking Titanic. The focus on internal challenges when the real threats are external is the first of three strategic errors Europe is making.’
In that context, one can point to the institutionalisation of the European Council,\textsuperscript{13} which has been tasked with the identification of the strategic interests and objectives of the Union,\textsuperscript{14} as well as the external representation of the Union at Presidential level in the area of the CFSP.\textsuperscript{15} Also, the European Parliament’s role in EU decision-making in foreign affairs has been greatly enhanced, most notably with respect to the development of the common commercial policy.\textsuperscript{16}

The most relevant institutional changes in the Lisbon Treaty, however, relate to the position of the High Representative of the Union for Foreign Affairs and Security Policy (HR),\textsuperscript{17} who ‘conducts’ the Union’s foreign, security and defence policies,\textsuperscript{18} contributes proposals to the development of those policies, and – together with the Council – ensures compliance by the Member States with their CFSP obligations.\textsuperscript{19} Primary authority for policy choice in these areas continues to reside with the European Council and the Council.\textsuperscript{20} The Commission remains responsible for policy initiation, implementation and external representation in the other domains of EU external action.

To enhance coordination, the HR has been tasked to take part in the work of the European Council,\textsuperscript{21} preside over the Foreign Affairs Council,\textsuperscript{22} and hold the post of Vice-President of the European Commission (VP).\textsuperscript{23} This new ‘triple-hatted’ person,\textsuperscript{24} is to take on the role of the big coordinator of the EU external policy: the HR/VP is to assist the Council and the Commission in ensuring consistency between the different areas of the Union’s external action and between these and the EU’s other policies.\textsuperscript{25} When properly carried out, the upgraded position of HR/VP ought to allow for a stronger and more independent development and implementation of the Union’s foreign, security and defence policy, which — potentially — would provide the EU with a more coherent and more effective role on the international scene.\textsuperscript{26} To assist the HR/VP in what seems like a mission impossible, the EU

\begin{itemize}
\item \textsuperscript{13} Article 13(1) TEU.
\item \textsuperscript{14} Article 22(1) TEU.
\item \textsuperscript{15} Article 15(6) TEU.
\item \textsuperscript{16} Article 207(2) TFEU.
\item \textsuperscript{17} The name change (compare the title of the pre-Lisbon position) reflects the fact that it has become clear that the HR indeed represents the Union and not the (collective) Member States. Even the President of the European Council (note: not the European Union) exercises that position’s external competences ‘without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy’ (Article 15, para 6(d) TEU).
\item \textsuperscript{18} Article 18(2) TEU.
\item \textsuperscript{19} Article 24(3) TEU.
\item \textsuperscript{20} Articles 22-26 TEU, resp. Articles 26(2) and 28 TEU.
\item \textsuperscript{21} Article 15(2) TEU.
\item \textsuperscript{22} Article 18(2) TEU.
\item \textsuperscript{23} Article 17(4) TEU.
\item \textsuperscript{24} See J.-C. Piris, \textit{The Lisbon Treaty: A Legal and Political Analysis} (Cambridge, CUP 2010), at 243.
\item \textsuperscript{25} See Articles 18(4), 21(3) and 26(2) TEU.
\item \textsuperscript{26} It has been argued that the triple hats worn by the HR could lead to institutional schizophrenia, with the incumbent being subject to conflicting loyalties. See Y. Devuyst, ‘The European Union’s Institutional Balance after the Treaty of Lisbon: “Community Method” and “Democratic Deficit” Reassessed’, 39 \textit{Georgetown JIL
Treaty foresees the creation of a brand new diplomatic service of the EU, the idea for which originated during the European Convention in the Working Group on External Action.27

The Lisbon Treaty provides for the creation of the diplomatic service in a short and rather open-ended manner. Article 27(3) TEU is the only Treaty basis for the establishment of the EEAS and stipulates:

In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service 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. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

A single general procedural rule was provided for the establishment of the EEAS, i.e. the adoption of a Council Decision, proposed by the HR, with the consent of the Commission after having heard the opinion of the European Parliament. In fact, most of the questions regarding the establishment of the EEAS where left open by the Treaty. It was up to the negotiators of the different parties involved to reach agreement on principles and technical issues.28

The High Representative’s initial proposal for a Council Decision on the set-up and functioning of the EEAS was drawn up in March 2010 and became subject to intense debates with Member States and, notably, the European Parliament. Much to her credit, the HR managed to navigate the high seas of inter-institutional politics and swiftly moved the legislative process towards adopting the constituent Council Decision on 26 July 2010 (hereinafter: EEAS Council Decision).29 This was followed by the adoption of three parallel legislative acts, which changed the EU’s financial and staff regulations and established a start-up budget for the EEAS.30 The completion of this complex process in barely six
months triggered one insider to call it a ‘Guinness record for speed’. The EEAS was launched on 1 December 2010 and became operational a month later, on 1 January 2011 when 1643 permanent officials were transferred from the Council and the Commission.

The key question now – the *internal* litmus test – is whether the EEAS will be able to provide the kind of assistance to its political master(s) that is needed to better coordinate external policies and thereby attain a higher level of coherence in EU external action. To answer this question, the mandate of the EEAS will first be analysed and then its organisational structure. The mandate of the EEAS writ large entails two dimensions: coordination of EU external action at the levels of strategic planning (decision-shaping) and implementation. Each will be discussed in turn, but the focus will first be on the tasks which can be distilled from a combined reading of the EEAS Council Decision and the TEU.

3. Mandate of the EEAS: to ‘assist’, ‘support’ and ‘cooperate’

The EEAS Council Decision establishes the Action Service as a functionally autonomous body, 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. The Service has not been endowed, however, with the power to adopt individual and binding decisions vis-à-vis third parties. It is placed under the authority of the HR, and assists him/her in fulfilling his/her mandates, as outlined, notably, in Articles 18 and 27 TEU:

— 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,
— in his/her capacity as President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council,
— 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.

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33 For the EU as a whole, the *external* litmus test is the extent to which international partners find the EU to be more effective and visible. This point, however, is beyond the scope of the current essay.
35 An exception could be provided by the inter-service ‘arrangements’ which the EEAS can conclude. See infra n. 56 and 57. These kinds of acts could potentially entail legal effects vis-à-vis third parties, within the meaning of Article 263 TFEU, and therefore could draw the EEAS into Court proceedings. See further B. Van Vooren, ‘A Legal-Institutional Perspective on the European External Action Service’, 48 *CML Rev* (2011), 475-502, at 493-496.
36 Article 1(3) EEAS Council Decision.
37 Article 2(1) EEAS Council Decision.
As it turns out, the HR does not have the EEAS all to him/herself. Article 2(2) of the EEAS Council Decision states that the ‘EEAS shall 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’. Thus, the EEAS is expected to serve multiple political masters.\(^{38}\) Considering that the EEAS was created as an inter-institutional body, it is indeed well placed to play a coordinating role and assist in efforts to ensure coherence between the different areas of the Union’s external action and between those areas and its other policies. How this coordination is expected to play out in practice becomes (more) clear from a close reading of Articles 3 (‘Cooperation’) and 4 (‘Central administration of the EEAS’) of the EEAS Council Decision.

Article 3(1) of the EEAS Council Decision specifically prescribes that the EEAS ‘shall support, and work in cooperation with, the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission’. To start with the former: the success of the EEAS partly depends on national ownership, on Member States ‘buying in’ to the system. In this respect, a crucial but still uncertain factor is the willingness of the Member States to play an enabling role in the early functioning of the new Service, in terms of input (contributions by seconded national experts (SNEs)) and output (implementation), both in the capitals (foreign affairs and their line ministries) and the delegations abroad.\(^{39}\) Through their membership of international decision-making organs, such as the UN Security Council, the G8 and G20, and their differentiated participation in several contact groups (e.g. France, Germany and the UK in the E3 group on Iran), individual Member States will continue to play a key role in EU foreign policy making. A good interaction between the EEAS and the Member States’ capitals – either through Brussels structures (COREPER, PSC and working groups) or key figures in the EEAS or in political cabinets – will therefore remain essential.\(^{40}\) However, such coordination will not be sufficient to tame national ambitions, nor was it ever intended to.\(^{41}\)

As far as concerns cooperation between the EEAS and the General Secretariat of the Council (GSC), on the one hand, and between the Action Service and the Commission, on the other, one key phrase mentioned twice in Article 2(1) of the EEAS Council Decision: the EEAS shall assist the HR/VP in fulfilling his/her mandates ‘without prejudice to the normal tasks’ of the GSC and those of the services of the Commission. In the absence of an exhaustive Kompetenz Katalog of the EU and with the very idea of normality in EU external action

\(^{38}\) In fact, as one observer mentioned, ‘the EEAS’ assisting hands are tied to fields that have been transferred to its political masters’. While the fields of activity of the EEAS are wider than national diplomatic services (diplomacy + defence + parts of development cooperation), ‘finding a common approach between the voices of different actors is a task far more perplexing than one would encounter at a national foreign ministry’. See Drieskens and van Schaik, op. cit., at 16.


\(^{41}\) A. Rettman, 'UK champions own diplomacy over EU 'action service'', EUObserver, 5 May 2011. Compare also Declarations Nos. 13 and 14 attached to the Lisbon Treaty. These disclaimers show that, indeed, there is still room for national diplomacy after Lisbon.
having shifted dramatically with the entry into force of the Lisbon Treaty, it is not unlikely that the neutral phrase ‘normal tasks’ will be interpreted differently by persons with different institutional affiliations. As indicated by Lefebvre and Hillion:

\[42\] According to one member of the Council Legal Service, the phrase should be interpreted in line with existing practice under Article 23(1) of the Council’s Rules of Procedure: ‘The Council shall be assisted by a General Secretariat…’ Gilles Marhic at the DSEU Conference ‘The Diplomatic System after Lisbon – Institutions Matter’, 18–19 November 2010, Maastricht University.

\[43\] Lefebvre and Hillion, loc. cit.


\[45\] See Article 17(6)(b) TEU, which states that the President of the Commission shall ‘decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body’. On 22 April 2010, Barroso issued an Information Note from the President, ‘Commissioners groups’, SEC(2010) 475 final, in which the VP is tasked to chair the group of Commissioners responsible for ‘External relations’, a group further composed of Olli Rehn (economic and monetary affairs), Karel De Gucht (trade) and the three aforementioned Commissioners. The Note also says that ‘the President can decide to attend any meeting, which he will then chair’.

Indeed, the functioning of the Service will probably remain determined by an invisible yet genuine distinction between two cultures: a Communitarian-like culture inherited from DG Relex (which will be numerically dominant in the EEAS, and which will most likely have the greatest influence on the geographic and thematic DGs, and on delegations); and a political culture inherited from the Council policy unit and crisis management structures, deemed to retain a certain autonomy within the Service. In this respect, the Council Decision suggests that the EEAS might well internalise past bureaucratic conflicts, rather than do away with them.\[43\]

The risk of classic turf wars rearing their ugly heads is also the consequence of the pre-Lisbon manoeuvring by then Commission President designate Jose Manuel Barroso, who in November 2009 unveiled his new team of Commissioners. By way of a simple asterisk behind the names of three designated Commissioners, Barroso indicated that the Commissioners responsible for ‘International Cooperation, Humanitarian Aid and Crisis response’, ‘Development’ and ‘Enlargement and European Neighbourhood Policy’ would exercise their functions ‘in close cooperation with the High Representative/Vice-President in accordance with the Treaties’.\[44\] The requirement of close cooperation with the HR/VP and the condition to work closely with the EEAS (as provided in the Mission Letters) was later structured, under his ultimate leadership, by the President of the Commission so as to ensure the coherence of external policies.\[45\] It may be clear that this line of action curtails the HR/VP’s responsibilities as entrusted to him/her by the Treaty. This is further enhanced by removing responsibility for the ENP from the portfolio External Relations to that of Enlargement. This (re-)reshuffling was not motivated by Barroso (II). Finally, the Trade Commissioner does not cooperate directly with the HR/VP or with the EEAS, notwithstanding the genuine international character of his portfolio. One could say that the High Representative’s VP hat represents fewer portfolios and less coordinating powers.
then under Barroso (I). The ‘normal tasks’ of the Commission are therefore more expansive than a post-Lisbon coherence-driven process in EU external action would have tolerated. One former ‘normal task’ of the GSC now entrusted to the EEAS is assisting the HR with exercising his/her responsibilities under the acts founding the European Defence Agency, the European Union Satellite Centre, the European Union Institute for Security Studies and the European Security and Defence College. Other examples of such ‘normal tasks’ include the administrative tasks of preparing and holding Council meetings.

With respect to the coordination and cooperation between the EEAS and the services of the Commission, the EEAS Council Decision specifically obliges the parties to consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters of CSDP. This far-reaching obligation stems, inter alia, from the quasi-blanket competence attributed to the Commission in Article 17(1), sixth sentence TEU to represent the Union externally ‘with the exception of the common foreign and security policy, and other cases provided for in the Treaties’. As the Heads of the EU Delegations receive direct instructions from the HR, the EEAS and the Commission are effectively and legally bound to cooperate in the external representation of the Union. On matters covered by the CSDP, simple coordination between the EEAS and the Commission will not do. In view of the competence distribution in the Lisbon Treaty, the EEAS is explicitly positioned to take part in the preparatory work and procedures relating to acts to be prepared by the Commission in the area of the CSDP. In other words, the Commission relies on the HR and the EEAS in fielding proposals under Article 42(4) TEU.

At the same time, the EEAS is mandated to provide support for the HR/VP in his/her capacity as the Vice-President of the European Commission. In that capacity, the VP is responsible for the external relations of the EU and for coordinating other aspects of the Union’s external action so as to ensure consistency in implementation. The EEAS could be expected to operate in many ways like a service of the Commission, but this will require good will and cooperation on both sides. So far, however, the picture that has emerged from practice is rather mixed.

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46 See the seventh recital of the Preamble of the EEAS Council Decision.
47 See Council Rules of Procedure, Articles 3(2 & 5), 5(3-4), 7(3), 27(3-5).
48 Article 3(2) EEAS Council Decision. This paragraph shall be implemented in accordance with Chapter 1 of Title V of the TEU, and with Article 205 TFEU.
49 Article 5(3) EEAS Council Decision.
50 Article 3(2) EEAS Council Decision.
51 Article 18(4) TEU.
52 European Commission President Barroso has been reported to take an uncooperative stance towards the difficulties which VP Ashton often faces to attend the Wednesday meetings of the College. Barroso has barred Ashton from participating via video conference or being deputised when abroad. See B. Waterfield, ‘Is absent Ashton a part-timer?’, EUObserver, 10 January 2011. On the other hand, cooperation between Ashton and individual Commissioners (Piebals, Füle, Georgieva) has been constructive, e.g. in monitoring the situation in the Arab World. To this end, and in an effort to keep his VP in check, Barroso published an Information Note from the President, Commissioners Groups, SEC (2010) 475 final, Brussels, 22 April 2010. For further analysis on this the latter, see Erkelens and Blockmans, loc. cit. See, more generally, E. Brok, ‘Préjugés, défis et
Although not central to the equation, the European Parliament, European Council, Court of Justice and Court of Auditors are not left out. The EEAS shall extend ‘appropriate support and cooperation to the other institutions and bodies of the Union, in particular to the European Parliament’. What constitutes such ‘appropriate’ support remains unclear, but going by previous practice, it is not expected to amount to much more than sharing information, most notably with the Foreign Affairs (AFET) Committee of the Parliament.

In return for all this assistance, the EEAS, too, may benefit from the support and cooperation of the above-mentioned actors, albeit not with the same generosity with which the Service itself is expected to deliver. The High Representative and the EEAS shall be assisted ‘where necessary’ by the GSC and the relevant departments of the Commission, and ‘as appropriate’ by the European Parliament, other institutions and bodies, including agencies. Arguably, the words ‘where necessary’ and ‘as appropriate’ leave a margin of discretion to the GSC and the Commission that even the service-level arrangements, which may be drawn up to that end by the said parties, or between the EEAS and other offices or inter-institutional bodies of the Union, could – in all likelihood – not close. The relationship between the EEAS, on the one hand, and the Commission services and GSC, on the other, is inherently asymmetrical with the EEAS performing the role of an assistant to multiple political masters and their services.

In short, the EEAS has been endowed with the task to support the Council and the Commission (directly) and the HR (in his/her task to assist the two institutions) in fulfilling their Treaty obligation to ensure coherence between the different areas of the Union’s external action and between those areas and the EU’s other policies. Moreover, the EEAS has been tasked to serve the President of the European Council and the President of the European Commission in the exercise of their respective functions in the area of external relations. The European Parliament and other institutions and bodies are supported whenever appropriate. The fact that – conversely – the EEAS and its political headmaster, the HR may receive the support from the GSC and the relevant departments of the Commission should provide further ground for enhancing coherence in all fields of EU external action. Yet, as Avery has pointed out, there is a grave risk of friction and rivalry between EEAS and the services of the Commission. The threat is significant because much of the EU’s action in international affairs is related to common policies, such as

53 Article 3(4) EEAS Council Decision.
54 Article 4(5) EEAS Council Decision.
55 Article 3(4) EEAS Council Decision.
56 Article 4(5) EEAS Council Decision.
57 Article 3(3) EEAS Council Decision. The terms ‘offices’ and ‘inter-institutional bodies’ leave room for coordination and cooperation between the EEAS and the office (cabinet) of the President of the European Council, the Publications Office, the European Personnel Selection Office, the European Administrative School and others.
environment, energy, trade and agriculture. The analysis will now turn to a review of the Action Service’s responsibilities with respect to strategic policy planning and programming.

4. Strategic planning

It is a self-proclaimed objective of the European Union to increase its strategic approach to tackling global challenges.\(^{59}\) In fact, there is no shortage of strategic aims that guide the Union’s external action. The problem is that they are scattered over so many policy documents and ‘strategic partnerships’ that the EU begins to look rather rudderless.\(^{60}\) The European Security Strategy,\(^{61}\) the European Consensus for Development,\(^{62}\) the EU Strategy for Sustainable Development,\(^{63}\) and ‘Trade, Growth and World Affairs’\(^{64}\) are just a few examples. Their contents are often closely connected, as the challenges posed by the security-development nexus have taught us.\(^{65}\) Tackling the coordination issue therefore calls not only for better institutional coordination (see the previous section), but also for more strategic decision-making.\(^{66}\)

Since the entry of the Lisbon Treaty, the onus has been on the European Council, which, according to Article 22(1) TEU, ‘shall identify the strategic interests and objectives of the Union’ that relate to the CFSP and to other areas of EU external action. ‘Such decisions may concern the relations with a specific country or region or may be thematic in approach.’ The President of the European Council, Herman van Rompuy has started off the long-overdue and necessary debate on the EU’s strategic priorities. Unfortunately, the first European Council Summit to that effect was not a great success.\(^{67}\) The analyses prepared by HR Ashton’s team at the time (September 2010) have been described as ‘rather disappointing’.\(^{68}\) It is here that a fully-fledged European External Action Service could

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64 DG TRADE’s ‘Trade Policy as a Core Component of the EU’s 2020 Strategy’, available at <http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf>. The strategy aims to enhance the position of EU economy by getting new opportunities for trade and investment, deepening the existing trade and investment links, helping EU businesses access global markets, gaining foreign investment, implementing enforcement measures, and enhancing the ‘spirit of multilateralism and partnership’ in trade. These aims, no doubt, entail political consequences.


66 As recognised in the ESS 2008, at 8-9.


68 See infra, note 73.
prove instrumental in supporting the HR and the President of the European Council with a well-thought-out medium and long-term analytical approach for the Union’s foreign and security policy.

Under the terms of Article 22(2) TEU, the HR – for the area of CFSP – and the Commission – for other areas of external action – may submit joint proposals to the Council. A recent example has been provided by the Commission with its report ‘Towards a new Energy Strategy for Europe 2011-2020’, adopted by the Council in 2010.69 Elements thereof made it on to the European Council strategic agenda and were then bounced back to both Commission and the HR:

There is a need for better coordination of EU and Member States’ activities with a view to ensuring consistency and coherence in the EU’s external relations with key producer, transit, and consumer countries. The Commission is invited to submit by June 2011 a communication on security of supply and international cooperation aimed at further improving the consistency and coherence of the EU’s external action in the field of energy. The Member States are invited to inform from 1 January 2012 the Commission on all their new and existing bilateral energy agreements with third countries; the Commission will make this information available to all other Member states in an appropriate form, having regard to the need for protection of commercially sensitive information. The High Representative is invited to take fully account of the energy security dimension in her work. Energy security should also be fully reflected in the EU’s neighbourhood policy.70

The organisational chart of the EEAS includes ‘strategic planning’ and ‘training’, but – at the time of writing – adequate resources had not yet been allocated to these important functions. The High Representative is expected to take decisions by mid-2011 on training for EEAS personnel.71 As for strategic planning, one of the successes of Javier Solana’s team was the development of the European Security Strategy as an over-arching concept. One of the weaknesses of the Commission in external relations was its lack of overall planning capacity.72 This is where the hybrid HR/VP position, supported by the EEAS composed of Commission and Council staff, plus seconded national experts from the Member States, is expected to make a difference. However, we have still to see the first proposal coming from the HR in the field of CFSP.73 In the wake of the historical changes in parts of the Arab

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72 See Avery, loc. cit.
73 Ashton has been criticized – so far most vocally by the Belgian Minister of Foreign Affairs – for not proposing a well-thought-out medium and long-term analytical approach for the Union’s foreign and security policy. See L. Maroun, ‘Steven Vanackere dit ses quatre vérités à Cathy Ashton’, Le Soir, 4 May 2011, at 14 : ‘Bien sûr, pour beaucoup de pays, la politique extérieure est au cœur de la souveraineté nationale. Nous, nous avons toujours voulu que le Service d’action extérieure soit l’axe central autour duquel les États membres peuvent s’organiser. Mais en l’absence d’un axe central qui répond, fait des analyses et tire des conclusions rapidement, les Allemands aujourd’hui, les Français demain, ou les Anglais, prennent une partie de ce rôle d’axe central, et c’est alors autour d’eux que les autres doivent s’organiser ! Le résultat est centrifuge, pas
World, and against the wider background of the rise of the BRIC’s, both the ENP and the 2003 ESS are obvious candidates for a thorough revision.

A crucial task when establishing the function of the EEAS in achieving overall consistency in EU external action is to identify the policy areas where coordination is necessary. Virtually every EU policy has to it an external dimension that fits into the grander scheme of EU presence in the world and could therefore also fall within the ambit of the EEAS’ activities. These policy areas include those with a clear, chiefly external character – CFSP, CSDP, Common Commercial Policy (CCP), development cooperation, humanitarian aid, enlargement, and the European Neighbourhood Policy – as well as those usually classified as internal Union policies – the Area of Freedom Security and Justice, agriculture and fisheries, public health, environment, energy, tourism. The added value of the EEAS’ involvement in strategic planning certainly lies at the crossroads of EU external policies, as the nexus between development cooperation and security policy has shown. The overarching development goal in the Lisbon Treaty is the eradication of poverty. The coordination on the level of ensuring consistency of aims between the overall foreign and security policy goals in general and those of development policy in particular – a task specifically entrusted to the EEAS74 – entails a degree of strategic planning, in addition to the task of eventually coordinating the activities between the institutions implementing the cooperation programmes in the end.

5. Programming

In terms of programming, planning and implementation, the tasks of the EEAS are more or less clear. According to Article 9(2) of the EEAS Council Decision, the HR ‘shall ensure overall political coordination of the Union’s external action, ensuring the unity, consistency and effectiveness of the Union’s external action, in particular through [a number of thematic and geographic] external assistance instruments’. These instruments include the Development and Cooperation Initiative (DCI), European Development Fund (EDF), European Neighbourhood and Partnership Instrument (ENPI), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument for Cooperation with Industrialised Countries, the Instrument for Nuclear Safety Cooperation (INS) and part of the Instrument for Stability (IFS). The relevant article in the EEAS Council Decision states that

74 See the fourth recital of the preamble of the EEAS Council Decision; Article 21(2)d TEU and Article 208 TFEU.
‘(...) throughout the whole cycle of programming, planning and implementation of the instruments referred to in paragraph 2, the High Representative and the EEAS shall work with the relevant members and services of the Commission without prejudice to Article 1(3). All proposals for decision will be prepared by following the Commission’s procedures and will be submitted to the Commission for adoption’.75

Thus, the EEAS Council Decision entrusts the Action Service with co-responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle.76 More specifically, this covers the first three multi-annual steps within the programming cycle: country and regional allocations; country and regional strategic papers; and national and regional indicative programmes.77 The objection that the EDF and DCI, which in budget terms represent the largest portion of the overall external action budget, imply a different and essentially long-term approach to programming while much of the programming in other aspects of EU external action is annual or shorter-term appears to have been accommodated by the EEAS Council Decision. In both cases, any proposals ‘shall be prepared jointly by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Development Policy and shall be submitted jointly with the High Representative for adoption by the Commission’.78 Similar stipulations apply in the ENPI context with reference to the Commissioner for Enlargement and Neighbourhood Policy.79

In short, the EEAS Council Decision does not prima facie remove either the Commission’s ‘management functions’, its rights of initiative or those of implementation (Article 17(1) TEU). Article 210(2) of the TFEU, which permits the Commission ‘to take any useful initiative’ to promote coordination between the Union and the Member States on development cooperation is seen as further proof that the Commission should continue as the implementer of development policy. However, there is nothing in the travaux préparatoires of the EEAS Council Decision to suggest that any such transferral of implementation of development cooperation instruments to the EEAS has been seriously entertained.80

Based upon the EEAS Council Decision, substantial management and implementation tasks are retained by the Commission with the EEAS playing a role in the programming aspects.

75 Article 9(3) EEAS Council Decision.
76 To be sure, actions undertaken under: the CFSP budget; the Instrument for Stability (other than the part referred to in Article 9(2) EEAS Council Decision); the Instrument for Cooperation with Industrialised Countries; communication and public Diplomacy actions, and election observation missions, are under the responsibility of the HR/EEAS. The Commission is responsible for their financial implementation under the authority of the HR in his/her capacity as Vice-President of the Commission. The Commission department responsible for this implementation shall be co-located with the EEAS. See Article 9(6) EEAS Council Decision.
77 Article 9(3) EEAS Council Decision.
78 Article 9(4) EEAS Council Decision (emphasis added).
79 Article 9(5) EEAS Council Decision.
Programming can be conceived of as relating to the political level where strategic goals are connected with more specific policy-making towards a country or region (cf the competence of the European Council ex Article 22 TEU), while the actual management of projects (especially their financial aspects) and their execution will be tasks retained by the Commission.

It is only when the President of the European Council, who is backed by the HR/VP’s recommendations (prepared by the EEAS), presents the broad priorities of the EU on the international stage – who the key strategic partners are, and how the often difficult dialogue between values and interests should be conducted – that the Action Service’s general tasks will become much more clear. In the absence of any such strategy at macro level it is difficult to see how the EEAS will make critical decisions on programming priorities related to financial instruments.

It is important to, once more, make a distinction between the EEAS political role and its legal position. On the first point, the EEAS is potentially vested with significant influence on EU external relations policy-making but so far the Commission has gone solo on several issues with a significant external dimension, e.g. trade, energy security and climate change. As for its legal position, the EEAS has not been formally conferred with competences to adopt legally binding instruments.

6. Concluding remarks

Beyond the support for the exercise of the powers conferred by the Lisbon Treaty to its political masters, the main task of the EEAS is to create synergies between these ‘external action heroes’ and the instruments they employ. This essay has shown that in terms of coordination, strategic policy planning and programming, the role of the EEAS has been limited in at least three ways. First, the service’s scope for action is curtailed by the elasticity of the term ‘normal tasks’ of the General Secretariat of the Council and those of the relevant departments of the Commission. This term was introduced in the Council Decision setting up the EEAS. Practice has shown that the solidarity among the Union’s external action heroes is not boundless. The pre-emptive moves by European Commission President to carve out substantial chunks of EU foreign policy-making from the HR/VP’s mandate and to tie the latter down in forms of cooperation over which Barroso can preside, are illustrative in this respect. Second, the organisational structure does not foresee the bureaucratic linkages to allow for great inter-institutional coordination in the development of medium- and long-term strategies. The tension between external competence delimitation in two Treaties and the need to speak with one voice to the world seems to have been structurally engrained into the structures of the EEAS.81 And thirdly, the Action

81 While it is probably too early to draw firm conclusions on this particular issue in view of the fact that the organisational structure from 1 April 2011 is still being tweaked and thus liable to change, one has been able to observe that the former Second Pillar bodies have remained apart from the former First Pillar units in the whole series of organisational charts which have been floated since March 2010.
Service’s success is also dependent on the Member States’ willingness to cooperate by sharing relevant information and by seconding their ‘brightest minds’ to the Union’s diplomatic service. So far, the signals sent from several Member States’ ministries of foreign affairs have been rather sobering in this respect.

However important the structures and processes are, they are never an end in themselves, but merely instruments. The key question underlying our paper has been whether the new body is fit for its intended purpose. Does it provide essential support to the senior EU posts in external relations? And does it allow the EU to be a credible and coherent diplomatic actor exerting influence on the international scene?

The coordination tasks most likely include information sharing, the EEAS acting as a common source of expertise for any institution dealing with EU external activities, overview of the activities of the different institutions, as well as various representation duties to make the Union speak with a single voice in the direct sense. It remains to be seen though to what extent the EEAS can contribute to the formulation of shared principles guiding the foreign policy not only of the EU, but also of its Member States. In fact, its potential lies in becoming a ‘decision-shaping’ body. Perhaps a better term for the EEAS would therefore have been the ‘European External Policy Coordination Service’.