Who controls the European External Action Service? Agent autonomy in EU external relations

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Abstract

When the European External Action Service (EEAS) became operational on 1 January 2011 it was still not clear exactly what position it occupies in the pluralistic EU external policymaking system, where member states and supranational actors already operate with varying degrees of influence and autonomy. One way of clarifying this issue is to discuss the degree of autonomy the EEAS may have and to whom it is accountable. This paper uses a principal-agent (PA) framework of analysis to discuss the EEAS' institutional design and policy mandates. Can the EEAS act autonomously? Are there policy areas in which the EEAS has greater decision-making autonomy than others? Such questions are central to discussions of the post-Lisbon Treaty EU's role as an international actor.

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1. Introduction

The European External Action Service (EEAS) is the European Union's latest bureaucratic actor, created specifically for making and implementing external policy and representing the EU abroad.[1] The 2009 Lisbon Treaty's creation of a 'double hatted' office of High Representative for Common Foreign and Security Policy/Commission Vice President (HR/VP) supported by the EEAS is an attempt to boost the EU's gravitas in dealings with third countries, regions and international organisations. It is also intended as a means for overcoming the 'functional indivisibility' of Common Foreign and Security Policy (CFSP) and external relations decision-making, the mandates for which were previously split between the EU Council Secretariat and the European Commission (Stetter 2004). However the Treaty did not specify how the new institutional setting would work in practice when it came into force on 1 December 2009. When the EEAS became operational on 1 January 2011 it was still not clear exactly what position it occupies in the pluralistic EU external policymaking system, where member states and supranational actors already operate with varying degrees of autonomy and influence. One way of clarifying this issue is to discuss the degree of autonomy the HR/VP and the EEAS may have, their role in relation to existing actors, and to whom they are accountable.

The EEAS initiative caused consternation in some member state capitals as it became a reality. Member governments and foreign ministries treated the negotiations that led to the July 2010 Council Decision 'establishing the organisation and functioning of the European External Action Service' as a trade-off between seeking the maximise the advantages of pooling resources and trying to retaining control over foreign policy strategy, tactics and visibility. The Commission fought hard to retain its accumulated external policy responsibilities while some officials privately lamented the decision to create a new organisation rather than empowering DG Relex with a greater role. Questions were also asked about the EEAS' potential independence from other Community institutions, especially the Commission and the Parliament. The European Parliament (EP) EEAS *rapporteur* Elmar Brok worried that the EU was about to create a new bureaucracy 'located in the middle

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

between the Council and the Commission which in the long term would… lead a life of its own to become an independent kingdom outside our control.'[2]

This paper uses a principal-agent (PA) framework of analysis as a basis for discussing the EEAS' institutional design and policy mandates.[3] The central task for the EEAS' architects is to produce a coherent institutional framework that will help improve the EU's global presence and its effectiveness in pursuing common international objectives. This is a considerable challenge: the EEAS needs to be able to take decisions in the policy areas under its mandate that other actors will adhere to, even if these are sometimes costly. It also needs to remain accountable to its many principals, and thus a legitimate representative of their values and interests. Will the EEAS be able to act autonomously, in the sense that it is able to take decisions that may restrict the freedom of other actors in the system to pursue their own interests, and which they might therefore oppose? Are there policy areas in which the EEAS has greater decision-making autonomy than others? Such questions are central to discussions of the post-Lisbon Treaty EU's role as an international actor.

The rest of this paper is arranged as follows. The next section outlines the principal-agent framework and the ways in which it has been used to highlight various aspects of the EU integration and external policy processes. The literature suggests two hypothetical claims that purport to answer the questions posed above. First, the likelihood that the an agent can carve out an autonomous position for itself is greater when there are several principals, as there is a good chance that it will be able to exploit conflicting preferences among them. Paradoxically, the EEAS' autonomy will be limited because EU member states and the Commission have taken steps to guard against this possibility, at least in the short term. Second, the literature suggests that the nature and credibility of controls influence the degree of agent autonomy, and that this may vary across policy areas. Although the EEAS' independence overall will be limited, it will have opportunities to carve out its own niche, and this may lead – through linked processes of accumulation and socialisation – to greater autonomy in the medium to long term. The third section discusses the positions of the EEAS' principals and the ex-ante and ex-post mechanisms they have agreed upon that define the EEAS' policy mandates and autonomy. EU member states and the Commission have not fully delegated responsibility to the EEAS but have retained important roles for themselves in all of the Service's main areas

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[2] *Euractiv*, http://www.euractiv.com/en/future-eu/eus-new-diplomatic-service-linksdossier, accessed 23 December 2010.

of operation. The EEAS will also be closely monitored. Section 4 discusses the implications for policymaking in three key areas of the EEAS' mandate: diplomacy and diplomatic representation, Common Foreign and Security Policy/ Common Security and Defence Policy (CFSP/CSDP), and development policy. A final section concludes with implications for the EU's international 'actorness' and issues for further research.

2.   The principal-agent framework

The principal-agent model is a microeconomics concept drawn from the theory of the firm that has been used extensively by political scientists as a framework for explaining actor relationships. Despite certain limitations, principal-agent theory has produced valuable hypotheses purporting to explain why, how and under what circumstances political actors delegate policymaking and implementation to other actors, and what the 'agent' does with the responsibilities it is granted (Bauer 2002). The core assumption of principal-agent theory is that when one party (the principal) contracts another (the agent) to do something on their behalf, the agent has an incentive to act independently of the principal, potentially in ways that run counter to the principal's preferences (Fama 1980). This can lead to a form of moral hazard, as the agent can exploit information asymmetry about the available options for action and take steps that harm the interests of the principal with minimal costs to itself (Bauer 2002, p. 382). The principal, aware that there is potential for Pareto-sub-optimal outcomes, attempts to incentivise agent behaviour that is also in line with the principal's preferences.

The essential tension in the principal-agent relationship stems from the possibility of 'agency slippage' – that the agent can undertake actions on its own initiative, including behaviour that the principal may not welcome. Principals can try to restrict their agent, but this may be costly to implement and may limit the agent's ability to perform its tasks effectively (Kassim and Menon 2003). Information asymmetries are central to this tension. A bureaucratic agent is likely to know more about its own interests and the way that it functions than any principal, and it is likely to be difficult for principals to acquire this information (Pollack 1997, p. 108). Managing this tension is a challenge for institutional design, especially where the rules of delegation result from bargaining among principals with a range of preferences regarding the outcomes they want the agent to achieve.

An implication of the principal-agent relationship is the concept of bureaucratic autonomy: the Weberian idea that once created, bureaucracies are able to act independently of the legislative and executive authorities that gave them their original mandate (Beem 2009). The central assumption of this thesis is that left unchecked a bureaucracy will develop independently of legislative and even executive constraints. There are several implications that weigh upon considerations of institutional design: first, institutions are often assumed to be 'sticky' – established bureaucracies do not give up policymaking responsibilities easily (Alexander 2001). Third, while bureaucratic inertia is a well known (and sometimes convenient) whipping-boy for the inability to make policy changes, demonstrations of competence and effectiveness over a period of time, networks of contacts with organised interests, and a public reputation for even-handedness are all important sources of leverage that can induce voluntary cooperation with a bureaucracy's chosen path. Fourth, bureaucrats are sometimes able to act in accordance with the interests of their institution even when these are not the same as those of elected politicians who grant them their mandates (Carpenter 2001).

In the foreign policy sphere, mandates are not granted exclusively to foreign ministries but are shared by a number of public sector agents, posing complex challenges for coordination and control (Hill 2003). In the long run, bureaucracies acting in the international sphere can shape the strategies and even the preferences of domestic political actors (Beem 2009). International bureaucracies that deal with several issues may induce cooperation even when doing so goes against established preferences, because the opportunity costs of not taking part may be higher than the short term costs of engagement (Reinalda and Verbeek 1998).

There are two main types of control that principals use to limit agent autonomy: ex ante controls that are built into an agent's institutional design and policy mandate, and ex-post controls that try to ensure that the agent remains within these boundaries (Pollack 1997). Ex-ante and ex-post control mechanisms overlap to some extent. By defining the limits of the agent's mandate, the procedures that it must follow, and the oversight procedures that will be in place to monitor the agent ex post, the principals can try to reduce the possibilities of agency slippage (Pollack 1997, p. 108). While the design of ex-ante controls should be a direct trade-off between the costs to the principal and the costs to the agent's ability to perform its function, there is a possibility that risk-averse principals will over-restrict an agent's independence, especially as judging the future impact of restrictions is difficult. Ex-

post measures include monitoring and sanctions. Both measures are expensive: monitoring requires time, personnel and effort to maintain adequate information, while sanctions can also be costly for the principal. Over-zealous ex-post controls also risk limiting the agent's effectiveness.

The limitations of principal-agent theory lie in its essentially positivist conceptualisation of politics as an arena in which falsifiable hypotheses can be developed and tested empirically against competing theoretical claims (Bauer 2002). As such the approach cannot adequately capture the normative dimensions of European integration – the 'principle' as opposed to the 'principal' acting as a driving force in the process. As Pollack (1997, p. 107) points out, the principal-agent approach cannot explain why budgetary and legislative powers have been delegated to the European Parliament, and the successive empowering of the Parliament in the EU's Treaties. This is because the Parliament's role is determined more by concerns about democratic legitimacy than efficient delegation. A further limitation is the methodological concern noted by Hodson that 'the sheer applicability of this approach' can lead to 'over-determination of principal-agent relationships' (2009, p. 455). These limitations do not, however, detract from the usefulness of the PA approach as a tool for unravelling the complexities of the political processes leading to institutional design and delegation in the EU, so long as it is 'handled with care' (Maher, Billiet and Hodson 2009).

2.1 The principal-agent approach to EU integration and external relations

Principal-agent models and theories of delegation have been widely used to study the EU policymaking process and have revealed valuable insights about how the EU functions. In turn, the EU integration process has provided vast amounts of empirical material for testing PA theories, especially for scholars working in the liberal institutionalist tradition. As Billiet (2009, p. 451) put it, 'part of the genius of the PA approach as it is applied to the study of the EU is that the notion of 'delegation' accommodates, in a very simple way, much of the underlying institutional complexity of the European construction'. The starting point for these studies is that the EU reduces the transaction costs of multi-actor bargaining, facilitating member state agreement on broad issues. Once a broad agreement is reached, detailed implementation can be left to an agent, in most cases the European Commission (Pollack 1997).

Much of this literature focuses on the degree of independence of supranational actors – especially the Commission – and asks about the extent to which member states can control the actions of these actors (Tallberg 2002, p. 24). Other studies have included analyses of the independence and influence of the European Court of Justice, which through jurisprudence and accumulated legitimacy has evolved into a powerful actor in the EU system (Caporaso and Tarrow 2009). The independence of the European Central Bank has also been the subject of PA studies concerned with questions of efficiency, transparency and legitimacy (Tallberg 2005). Scholars have discussed the independence of EU agencies created to carry out various specific functions, including FRONTEX (Pollak and Slominski 2009). Principal-agent approaches have also been used to capture the dynamics of relationships between EU-level actors such as the European Council and the Commission. Both organisations receive delegated responsibilities from member states, but tensions have arisen from time to time in areas where the division of labour has not been clear (Bauer 2002, Dijkstra 2009). On a slightly different tack, a few studies have discussed the ability of EU-level institutions to act as principals vis-à-vis member states (Hodson 2009) and non-EU actors in its neighbourhood (Bodenstein and Furness 2009, Schimmelfennig and Scholz 2008). These studies focus not so much on delegation as on the EU's ability to induce desired behaviour from partner governments.

The PA approach has been used less often to explain the EU's external policymaking and implementation. Several studies have dealt with the Commission's agency in international trade negotiations, while other scholars have focussed on other aspects of external economic relations such as monetary policy, competition policy and development (da Conceição 2010, Dür and Elsig 2010, Billiet 2009). These studies show that there is a strong incentive for EU member states to create common external relations instruments and bureaucratic frameworks to act on their behalf. Once a common position on an external policy issue is reached, the details of policy and implementation cannot easily be worked out by national ministries because of informational, time and capacity constraints (K. Smith 2008). As Dür and Elsig point out, external policymaking in the EU is actually a string of principal-agent relationships between various constellations of actors and levels in the system: societal interests, lobbies and voters delegate to national and decision-makers, legislators delegate to executives, member states delegate to the EU institutions, the EU delegates to third countries and

international organisations (Dür and Elsig 2011, p. 2) At each level there are multiple principals and assessing autonomy and control is a complex task.

2.2 A principal-agent approach to the EEAS: two hypothetical explanations for delegation

Tallberg (2002, p. 24) proposed a four-stage, cyclical framework for accounting for delegation and its extent in the EU context: first, the expected consequences of delegation motivate the decision to delegate; second, the nature of the policy area influences the types of control mechanisms established; third, institutional design shapes the consequences of delegation by incentivising or discouraging independent action; and fourth, the consequences of previous rounds of delegation affect future decisions to delegate and future control mechanisms. This cycle provides a useful starting point for explaining the process of delegation during the EEAS' roll-out. The notion that EU member states created the EEAS because they wanted to pool resources but were wary of further empowering the Commission is in line with Tallberg's first supposition. Tallberg's third and second suppositions raise two hypothetical explanations purporting to account for the post-Lisbon treaty system of ex-ante and ex-post controls, the overlap of the EEAS' policy responsibilities with those of the Commission and member states, and the apparent variation of autonomy across policy areas.

First, the EEAS will build its autonomy by exploiting differences among its many principals.

This argument is supported by the observation that EU member states created the EEAS because they were reluctant to further empower the Commission's growing external policy capacities, and instead chose to create a new institutional actor. It is also supported by fears expressed by the European Parliament that the EEAS will be detached from other EU institutions. Just as the Commission has at times acted purposefully to pursue partisan objectives in several policy areas, the EEAS should not be expected to act as a neutral representative of member states in the international arena. It is likely that the EEAS will try to act in ways that increase its budget, widen its areas of responsibilities and increase its bureaucratic autonomy. As a means of pursuing this goal it may develop tendencies to de facto prioritise some of the policy objectives in its mandate over others. It may also act as an

entreneur and seek to build coalitions with some member states or even non-EU actors on given issues or with regard to certain partner countries. Member state and EU-level principals will act to limit the EEAS developing the capacity to take decisions they might disagree with.

Second, the EEAS' autonomy will vary across policy areas because checks and balances vary along with differing decision-making procedures.

As Pollack (1997, p. 101) argued, the efficacy and credibility of control mechanisms established by member state principals varies from institution to institution and across issue areas, leading to varying patterns of supranational autonomy. The EEAS has responsibilities in several policy areas with varying decision-making rules and procedures. The rules matter: the Commission has more leeway for influencing the outcome when it makes a proposal in policy areas using QMV as opposed to unanimity (Billiet 2009, p. 440). Mixed competence policy areas raise further possibilities. It is therefore likely that the EEAS will also enjoy greater autonomy in some areas than in others.

3. The 2010 EEAS negotiations over ex-ante and ex-post controls

The argument that simplifying the institutional setting for EU external policymaking would ease decision-making and help strengthen Europe's capacity for joint action has been debated in Europe for several years.[4] Proposals for an EU Constitutional Treaty that emerged from the Convention on the Future of Europe (2002 – 2003) recognised the necessity of institutional mechanisms for linking the EU's various external policies (Behr, Siitonen and Nykänen 2010). Nevertheless as some observers have pointed out, the new institutional setting reflects not only a desire to improve the efficiency of external policy decision-making, but is also indicative of a belief that intergovernmental diplomacy should be infused with aspects of the 'functionalist' EU integration process (Lefebvre and Hillion 2010). Whether the EEAS is able to exert an independent, driving influence on EU foreign policymaking – as functionalist theory contends the Commission has been able to do with regard to the former 'first pillar' in particular – will be among the more interesting (and contentious) aspects of the Service's first few years of operation.

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[4] See Joschka Fischer, 'From Confederacy to Federation: Thoughts on the Finality of European Integration,' speech at the Humboldt University, Berlin, 12 May 2000.

As an agent, the EEAS acts on behalf of several principals. These include, *inter alia*, member states with strong foreign policy preferences such as Britain, France, Germany, Spain, Italy, the Netherlands, Sweden and Poland. Several institutional actors at the EU level also delegate to the EEAS, including the Commission, its President, and the permanent Council Presidency. Although the European Parliament does not explicitly delegate responsibilities to the EEAS the Service acts on its behalf in a broader sense, particularly through it delegations which represent the EU in its entirety in foreign countries and international organisations.

Member states, the Commission and the European Parliament were all aware of the importance of jockeying for influence in the period before the EEAS was launched. The EEAS negotiations of 2010 were quite acrimonious as several European actors (notably parts of the European Commission, its President José Manuel Barroso, parts of the Council Secretariat, the European Parliament and some member states) either seized on the Lisbon Treaty's vague reference to the EEAS as a chance to push for greater influence over external policy, or tried to prevent perceived power-grabs by other actors (Furness 2010, pp. 6 – 10). As one well-informed observer has remarked, 'the turf fighting that has accompanied the whole process should have surprised no one who has had any working experience of the Brussels decision-making machine' (Hannay 2010, p. 78). The first round of this bargaining process concluded with the 26 July 2010 Council Decision establishing the organisation and functioning of the European External Action Service (European Council 2010).

3.1 The principals

Member states

The Lisbon Treaty's creation of a new agent for external policy reveals awareness on the part of member states of the potential benefits of pooling their resources, but also a desire to control the outcome. Most obviously, the decision reveals reluctance on the part of EU member states to empower the European Commission as their representative in international affairs. Although an external policy bureaucracy already existed in the form of DG Relex, member states' desire to maintain intergovernmental decision-making on the CFSP necessitated the creation of a new Service, rather than strengthening the Commission's external policy competencies. The Commission, an established actor with a wide array of

resources and a tradition of pushing the boundaries of its mandate, would have been far more difficult to control than a service with responsibilities limited to external policy. EU member governments have thus tried to achieve a middle road arrangement which makes better use of pooled resources and common external policy positions, and yet remains closely tied to the European Council.

The central dilemma for the British, French and German governments was to balance their interests in a strong diplomatic role for the EU with their desire to maintain their own diplomatic networks and bilateral relationships. The EU's larger member states pushed for an arrangement that would empower the High Representative and the EEAS at the expense of the Commission, while at the same time limiting their independence by keeping them closely tied to the Council. HR Ashton made several trips to Berlin, Paris and London to conduct meetings at the highest level and the 'big three' moved to ensure representation in key positions of the EEAS hierarchy. In late February a difference of opinion appeared between France and Germany on one hand and the UK on the other. The French and German governments were uncomfortable with Ashton's reliance on British officials in her personal cabinet and EEAS working group, which they interpreted as a perfidious attempt to secure long-term influence over EU external policy for the UK. In a classic diplomatic 'shot across the bows', an internal German Foreign Ministry document was leaked to the *Guardian* in which German officials expressed dismay at British domination of the EEAS' roll-out.[5]

The Commission and its President

The Commission, acutely aware that the gathering Euro crisis was pressuring member state enthusiasm for integration, did not want to lose competencies accumulated over decades to the EEAS. Commission President Barroso moved early to secure a strong influence for the Commission in the EEAS through his insistence that the Commissioners for Development, Enlargement/ Neighbourhood and Humanitarian Affairs would work closely with the High Representative and the EEAS 'to ensure coherence in our external policy.'[6] The College of Commissioners has retained the responsibility for ensuring coherence across all common EU policies with external dimensions, including trade, humanitarian affairs, enlargement, climate action, energy and fisheries. Barroso also ensured a strong Commission say over policy areas

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[5] *Guardian* 28 Feb. 2010.
[6] President José Manuel Barroso, letters to Commissioners Piebalgs, Füle and Georgieva, Nov. 2009/Jan. 2010.

that were partially transferred to the EEAS, such as development, neighbourhood policy and conflict prevention/ peacebuilding policy (Lefebvre and Hillion 2010). He even managed to secure key positions in the EEAS hierarchy – such as head of Delegation in Washington – for his allies.

One of the main justifications for the Lisbon Treaty's creation of the two-hatted HR/VP and the EEAS was to ease the tension between the Commission and the Council by placing the EU's external policy bureaucracy under one chain of command. However, mandates continue to overlap and there is a high probability that inter-institutional rivalry over external policy competencies will continue under the Lisbon Treaty. This leaves great potential for turf war and deadlock, particularly as the Commission will control the EEAS' operational budget. The Commission is to retain the 'foreign policy instruments service' which will administer EU funds earmarked for external policy but which cannot be transferred to the EEAS. Significantly, this service will manage the Instrument for Stability, a key tool for bridging security and development policies and therefore a core area of operation for the EEAS.[7]

The European Parliament

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

MEPs were particularly forthright in raising concerns about the potential for EEAS autonomy during the negotiations leading to the July Council Decision. In a statement in response to HR Ashton's initial March 24 2010 proposal, MEPs argued that 'The proposed structure with an omnipotent secretary-general and deputy secretary-generals does not provide the politically legitimised deputies that the High Rep needs in order to do her job properly.'[8] MEP Elmar Brok referred to the post of EEAS Secretary-General as a 'French-style spider' running the

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[7] *European Voice* 28 October 2010.
[8] Elmar Brok 'EEAS proposal unacceptable to the European Parliament,' press release 25 March 2010, available at www.elmarbrok.de, accessed 20 December 2010.

EEAS 'web' from the centre. Later in the year MEP Ingeborg Grässle, chair of the European Parliament's budgetary committee, tried to prevent the EP's approval of Ashton's proposal on the grounds that the Parliament was throwing away its ability to push for transparency in the EEAS' staffing and financial regulations. Grässle was able to delay the Parliament's final approval until October 2010 when an agreement was struck with HR Ashton and member states granting the Parliament greater oversight and auditing powers.[9]

3.2 The Agents

The office of the High Representative/Commission Vice President

Baroness Ashton is a unique kind of 'super-agent' in that her office forms the link between the various principals and the EEAS. As MEP Elmar Brok argues, 'the key to the EEAS' success lies in the post of EU High Representative and Commission Vice President' (Brok 2010, p. 79). The office of the High Representative has considerable agency embodied in the agenda-setting powers derived from Ashton's right to propose legislation on CFSP matters as HR, and on external relations matters as VP, and her cabinet therefore performs a crucial role in the EU system as conduit for delegation. Ashton, it is often mentioned, wears two hats: she is the EU's High Representative for Common Foreign and Security Policy and the Commissioner for External Relations, which carries the added responsibility of being Commission Vice President. In fact, she has several other 'hats' as well: she is chair of the European Council foreign affairs and defence configurations which also deal with security policy, development policy and trade policy; she is the UK's Commissioner, which implies a national advocacy role, and she is head of the EEAS, which means she is responsible for operations.[10] As there is no way for one person to perform all of these roles, Ashton must herself delegate certain responsibilities to deputies and parts of the EEAS.

Ashton has a special role in 'coordinating' the work of Development Commissioner Andris Piebalgs, Enlargement/ Neighbourhood Commissioner Štefan Füle, and Humanitarian Assistance Commissioner Kristalina Georgieva. This effectively makes her the second most

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[9] *European Voice* 28 October 2010.
[10] The author would like to thank 'Victor' for the reminder of Catherine Ashton's many roles: see http://polscieu.ideasoneurope.eu/2011/01/08/participation-in-eu-commission-meetings-a-measure-of-ashtons-lack-of-influence/, accessed 27 January 2011.

powerful member of the College of Commissioners after President Barroso. The demarcation of foreign affairs responsibility between Barroso and Ashton was not clarified by the July Council Decision, while the innovation of the External Relations Commissioner being 'first among equals' leaves potential for battles within the Commission. The lack of official guidelines leaves the resolution of these issues to the informal working relationships among the respective Commissioners and their staff. Such cooperation must stand the rigours of policymaking, but no rifts between Commissioners were visible during the 2010 EEAS negotiations.

The External Action Service

The Lisbon Treaty's unification of the posts of HR and VP necessitated combining the foreign policy units of the Council Secretariat with the parts of the Commission that deal with international affairs. As if to acknowledge that the EEAS will act on behalf of multiple principals, the July Council Decision gives the Service two 'tasks' – to support the High Representative in fulfilling the mandates outlined in Articles 18 and 27 TEU, and to 'assist the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations.' Further, the EEAS 'shall support, and work in cooperation with, the diplomatic services of the member states' (European Council 2010, p. 201/32).

According to its founding document the EEAS is 'a functionally autonomous body of the Union under the authority of the High Representative' (European Council 2010, p.201/30). Although EU officials are careful to refer to the EEAS as a 'service' and not an 'institution', it will be established as an 'institution' within the meaning of Article I of the EU's financial regulation. From the legal point of view, the EEAS is unique among EU bureaucratic actors. It is not an institution, because has no powers of its own conferred by the EU Treaties. Its legal status will not be the same as the 'European institutions' – the Commission, Council, Parliament, the European Court of Justice or the European Court of Auditors. Nevertheless, the EEAS will be more than just an agency with external policy responsibilities such as FRONTEX or the European Defence Agency. Unlike many agencies, the EEAS does not have the ability to take administrative decisions in a given area that are legally binding. It is likely that its legal 'personality' will be defined over a period of time, possibly with the assistance of future Council Conclusions and decisions by the European Courts of Justice and Auditors.

3.3 Ex-post control mechanisms

Pollack (1997, p. 101) identified four mechanisms by which member states can exercise ex-post control over supranational agents: comitology oversight by the Council of Ministers, the possibility of judicial review by the ECJ, periodic Council Decisions that affect the Commission's mandate, and the threat of amending the EU's treaties. Not all are relevant in the case of the EEAS – it is unlikely that, for example, a Treaty amendment on external policy requiring the agreement of all 27 member states would be seriously contemplated in the short-to medium term. To these may be added oversight by the European Parliament, which has been strengthened under the Lisbon Treaty.

Member state monitoring: **Comitology and COREUs**

Decisions about the detailed implementation EU legislation are taken at the Committee level, below the level of the Council of Ministers and the College of Commissioners. Several committees will oversee legislation and implementation in areas under the EEAS' mandate, including the political and security committee (PSC), the Foreign Affairs Committee (FAC) and the development committee (CoDev). These committees are overseen by the Committee of Permanent Representatives (COREPER), which is chaired by the member state holding the rotating Presidency. Member states have often used these committees to pressure Commission action in specific policy areas.

The Lisbon Treaty abolished the member state regulatory committees that scrutinised decisions prepared by the Commission and has given the European Parliament equal status to the Council in approving legislation. The Treaty distinguishes between 'delegated' acts (Article 290 TFEU) and 'implementing' acts (Article 291 TFEU), subject to different legal frameworks. Member states have reacted by trying to limit the instances in which it delegates decision-making to the Commission, and the Parliament has responded by arguing that such a step is contrary to the whole point of delegation, which is to speed up decision-making.[11] As most external policy areas concern implementing acts, the implications of the Lisbon Treaty's provisions on comitology are highly significant for the EEAS. A Regulation laying down the rules and general principles concerning mechanisms for control by Member States of the

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[11] *European Voice* 15 July 2010.

Commission's exercise of implementing powers was approved by the European Parliament on 16 December 2010 and entered into force on 1 March 2011.

In addition to Committees, a further mechanism by which member states can monitor the EEAS' activities is the COREU (*Correspondance Europaenne*) system. Ostensibly a system for exchanging information to speed up decision-making, COREUs have reportedly also been used for the purposes of monitoring the implementation of CFSP initiatives (Bicchi and Carta 2010, p. 1). COREUs can be sent to all member states at the same time and can contain confidential details. Presumably they can also be requested by member states if and when they require clarification of specific details. The EEAS will take over the role of generating COREUs from the Council General Secretariat and will thus have the means for keeping member states informed.

A third member state monitoring mechanism is the inclusion of member state officials in the EEAS. This may improve the flow of information from the Service to member state capitals and ministries and vice versa. Officially, seconded member state officials will owe first loyalty to the EU rather than to their home countries and will have to report home via official channels. However, regular briefings between officials serving with the EEAS and the relevant divisions of national ministries are likely.

Parliamentary oversight

The European Parliament fought to include clauses in the EEAS' establishing documents that would enable it to exercise meaningful oversight of policy decisions and the activities of key officials. Their success in this endeavour was limited, and the July Council Decision only appears to give the EP a strong oversight role. The preamble states that 'the European Parliament will fully play a role in the external action of the Union, including its functions of political control as provided for in Article 14(1) TEU… In accordance with Article 36 TEU, the High Representative will regularly consult the European Parliament on the basic choices of the CFSP and will ensure that the views of the European Parliament are taken into consideration' (European Council 2010, p. 201/30). This clause only places the onus on the HR and the EEAS to 'consult' the Parliament 'on the main aspects and the basic choices of CFSP' but not on specific policy areas or programmes (European Council 2010, p. 201/30).

In practice, the EP will act as an informed public overseer, but does not have powers to stop a decision it does not agree with. Parliamentarians can try to get external policy actions annulled before the ECJ, but only if it believes that the Commission has exceeded its implementing powers. Presumably, this only applies for policies concerning external financial assistance instruments administered by the Commission and not CFSP/ CDSP actions. Furthermore, the EEAS' administrative Directorate-General will report to Ashton in her capacity as Vice-President of the Commission rather than as High Representative for CFSP. This requires the EEAS' budget to be subject to the same discharge procedure as that of the Commission, meaning that the Parliament will have annual right of approval. However the extent to which this right gives Parliamentarians policy leverage is unclear, as refusing approval for the EEAS' budget would be a 'nuclear option' that would shut down the service completely and is unlikely to be contemplated even in the most serious of crises.

4. Implications for EEAS autonomy and accountability

Many observers have argued that the fundamental problem undermining the EU's capacity as an international actor is the reluctance of member states to pool resources and empower the EU to act on their behalf. The Lisbon Treaty has not altered the reality that member states still exercise the right to act autonomously internationally. Rather, the establishment of the EEAS can be seen as an attempt to consolidate the responsibilities that the EU has already so that policies can be implemented more efficiently.

4.1 Diplomacy and diplomatic representation

The Lisbon Treaty was intended to strengthen the EU as a diplomatic actor, increase its potential to influence international events, and enable it to 'speak with one voice' on the international stage. The reality has been somewhat different since the Lisbon Treaty entered into force. Ashton cannot speak on behalf of Europe's member states on foreign policy issues unless there is a clear common position, and this is difficult to forge in fast-moving diplomatic situations where member governments must themselves tread carefully. Moreover, in diplomatic protocol terms, Ashton cannot take the limelight away member state foreign

ministers, prime ministers, presidents and chancellors. National political interests still take precedence over stated common positions.

The crisis surrounding the overthrow of the presidents of Tunisia and Egypt in early 2011 offers a useful illustration of a diplomatic process for which the EEAS' agent role is ambiguous. The institutional structures of the EU's major diplomatic initiative in the region – the Union for the Mediterranean – have not been of any use in handling the crisis or engaging with key actors. HR Ashton has been criticised for not speaking out early and clearly in support of the protest movements in Tunisia and Egypt.[12] However EU member states, many of whom have a long history of supporting the region's authoritarian governments, expressed varying views on the situation.[13] At the Munich security conference in February 2011, high profile speeches on Egypt were made by British Prime Minister David Cameron and German Chancellor Angela Merkel. Ashton was left to report on the more marginal outcomes of a meeting of the Middle East Quartet.[14]

Ashton was criticised nonetheless for inaction on the Middle East crisis, just as she was in the immediate aftermath of the Haiti earthquake in January 2010. While much of this criticism is part of the rough-and-tumble of everyday EU politics, it is also indicative of the High Representative's limited mandate in crisis situations. The EEAS' ability to act autonomously as a diplomatic actor is likely to be greater on issues where the service has had an opportunity to push for a consensus among member states. It is also likely to be able to take a stronger stand where a clear international norm has been broken, even when member state positions are not identical. For example, HR Ashton made a high-profile visit to Gaza in March 2010 and issued several strong statements following the Israeli military's assault on Turkish ships attempting to breach the blockade of the Gaza Strip in late May.

A second area in which the Lisbon Treaty is expected to enable a higher diplomatic profile for the EU is the status of its delegations to third countries and international organisations. Delegations have gained more tools to become agents of the EU. The former Commission delegations now represent the EU as a whole, and are expected to have a stronger political

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[12] See, for example, *Economist* 3 February 2011, BBC news 2 February 2011.
[13] *Guardian* 4 February 2011. Shortly before the resignation of former Egyptian president Mubarak, a joint statement by the UK, France and Germany called for free and fair elections with a reference to the Egyptian 'regime.' Italian Prime Minister Silvio Berlusconi argued that Mubarak should remain in office while Egypt made the transition.
[14] *Neue Zürcher Zeitung* 7 February 2011, p. 3.

voice and to engage with host governments on political issues. A shift in mindset lead towards seeing the delegations as embassies is likely to add the political dimension to the job description they already have. In theory, heads of EU delegation have the right of demarche over EU member state ambassadors, although in practice this is unlikely to happen very often. Despite these changes some EU officials do not believe that delegations will not have as much flexibility and autonomy following the Lisbon Treaty as they have had in the past. Their role will be more political but at the same time more circumscribed. Delegation heads have greater rights of initiative under the Lisbon Treaty, but any political statements they make first need clearance from headquarters in Brussels.

4.2 CSDP/CFSP

Decisions about when and where to use force are highly contested among EU member states and are therefore taken on a case-by-case basis. In addition, concerns among traditionally neutral EU member states such as Ireland, Austria and Sweden about the appropriateness of the EU as a military actor add to the sensitivity of the issue. Nevertheless, the EU does have the capability to project force when necessary despite generally limited enthusiasm for this within Europe. ESDP/CSDP missions to Congo, Chad and the Gulf of Aden are evidence that the EU and its members can send in military assets if there is a clear interest at stake and no strong opposition from within Europe.

The EEAS does not have an agency role in this area but will instead coordinate missions once the decision has been taken to launch them. It also acts as a link between member states for organising preparedness. The part of the EEAS responsible will be the Service's crisis management structures, which include the EU military committee, the European Defence Agency and the Committee for Civilian aspects of Crisis Management (CIVCOM). Crisis management decisions are taken in the Political and Security Committee, which is chaired by HR Ashton.

It is possible that the EEAS' CFSP/ CSDP responsibilities will grow over the next few years. Significantly, defence cooperation between France and Britain deepened in November 2010 with the signing of agreements between French President Sarkozy and British Prime Minister Cameron in London. As was the case with the historic St. Malo *entente* of 1998 which led to

the European Security and Defence Policy (ESDP), closer ties between the EU's two biggest military powers could drive deeper cooperation on defence across the EU. This is not a given as defence remains a member state priority, and there are divisions between the big member states on how best to use the EU as a platform. France and Britain have taken steps towards pooling resources bilaterally, but thus far have not included Germany, Poland or Spain. Germany and France are far more enthusiastic about a CSDP coordinated in Brussels than is the UK.[15] The German, French and Polish foreign ministers have urged HR Ashton to take a leading role in facilitating discussion on boosting intra-EU military cooperation.[16] However the big member states are all acutely aware that as individual nations the significance of their 'hard power' is limited and cooperation on defence is essential. External pressure may concentrate minds – the United States, long suspicious of the rivalry deeper EU military cooperation may pose to NATO, has in recent years taken a firmer position favouring the pooling of military assets and cooperation on procurement among EU member states.[17]

International agreements that have included clauses that touched on CFSP competencies, such as on weapons of mass destruction or political reform, have sometimes been led by the rotating Presidency acting on behalf of member states. Such agreements will become less frequent under the Lisbon Treaty as the EEAS will negotiate Union agreements that include CFSP and Commission responsibilities. In cases where agreements need to contain clauses that touch on member state prerogatives outside the CFSP and non-CFSP chapters of the TFEU, member states may still decide to opt to be represented by the EU Presidency (Commission legal service 2009, pp. 2 – 3) This is likely to result in greater autonomy for the EEAS as there are likely to be few cases where the EU will need to be represented by member states – the EEAS will negotiate most agreements alone and the permanent presidency will take care of nearly all remaining cases. Remaining cases are likely to be agreements touching on member state's bilateral interests where there is a perception that the Union's exercising of its competence would prevent member states from exercising theirs.

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[15] David Cameron 'Britain will remain a global power of the first order,' *Süddeutsche Zeitung* 4 February 2011. See www.sueddeutsche.de (accessed 8 February 2011).
[16] *EU Observer* 13 December 2010.
[17] See James Blitz 'Defence accords give tantalising hint of an EU undivided,' *Financial Times* 'The World 2011,' 26 January 2011, p. 8.

4.3 Development Policy

EU development policy is a 'shared competence' between the European Commission and the member states. Policymaking and implementation is shared between member state bilateral activities, member state and Community contributions to multilateral organisations such as the United Nations and the World Bank, member state contributions to the EU-administered European Development Fund (EDF), and Community programmes funded by the EU budget, including the Development Cooperation Instrument (DCI) and the European Neighbourhood and Partnership Instrument (ENPI). Member states also engage in bilateral development relationships with partner countries which are considered a national prerogative, especially by the larger EU members.

The decision to bring development policy – and programming responsibilities for its € 10 billion per year budget – into the EEAS' mandate intensified the intra-EU negotiations leading to the July 2010 Council Decision. Member state diplomats reportedly accused the Commission of 'asset stripping', while President Barroso expressed disappointment at the 'direct affront to Commission competence' that the prospect of an EEAS role in development policymaking represented. Commission officials with long experience in EU development policy expressed private dismay at the shift towards intergovernmentalism and what they considered a member state power-grab over the EU's development budget (Furness 2010, p. 8).

The July Council Decision transferred developing country desks into the EEAS and gave them co-programming responsibilities for the first three stages of the programming cycle for the EU's development financing instruments, namely country allocation, country strategy papers and national indicative programming (European Council 2010, p. 201/36). Annual action programmes and implementation were left under the responsibility of the Commission's new DG DevCo, formed from the policy units of DG Development and the EuropeAid agency. Development Commissioner Piebalgs retained overall responsibility for EU development policy, although HR Ashton is to ensure overall consistency of EU external action. This arrangement caused consternation among the development policy community largely because it was not clear how the relationship between the EEAS, DG DevCo and the relevant commissioners would work in practice (Duke and Blockmans 2010).

The prospect for agency slippage is likely to be higher in development policy than in CFSP or CDSP because the Commission acts as a principal in this policy area. Development cooperation agreements have traditionally been considered 'mixed agreements' which the Commission has negotiated and concluded even though some clauses may not have fallen within exclusive Commission competence. Member states have been able to exercise some control through the EDF committee, but in general they have been prepared to let the Commission lead the process because it has full competence over the DCI and ENPI (Commission Legal Service 2009). The EEAS will include a Development Cooperation Coordination section responsible for liaising between DG DevCo and the EEAS' regional and country desks. The Service may even be able to become a kind of 'double agent,' especially where common ground with the Commission's new DG DevCo can be found.

5. Conclusions

Since the dawn of European Political Cooperation in the early 1970s, there has been progressive institutionalisation of external cooperation in policy areas where member states recognise that collective action can bring greater benefits. Since the 1992 Maastricht Treaty major steps have been taken in coordinating the foreign policies of the EU's member states, creating common mechanisms for pursuing shared interests, and defining those objectives in broad terms (K Smith 2008, pp. 3 – 9). The long-term trend towards external policy integration is real: multi-level decision-making has been institutionalised in the EU, while national sovereignty has been maintained. Balance and flexibility are managed through a complex web of institutional actors whose responsibilities are defined by formal and informal sets of rules. While progressive enlargements have increased the complexity of negotiations they have not prevented the emergence of a set of EU foreign policy institutions empowered to implement policy decisions reflecting much more than a 'lowest common denominator' of member state interests (M.E. Smith 2004 b).

The principal-agent framework does not necessarily presuppose a zero-sum game between delegation and control. Just because member states have an interest in trying to control processes and influence outcomes does not mean they do not have an interest in delegating responsibilities and pooling resources. Nor does it imply that member states – even acting in concert – will be able to dictate policy choices and predetermine courses of action in all

cases. The EEAS and the officials who work there will seek opportunities for independent action where they can, and will sometimes succeed in wriggling free from member state, Commission and Parliamentary control. But member states, the Council Secretariat, the Commission, the Parliament and the ECJ do not usually actively oppose each other, but mostly work together towards common objectives. It is likely that the EEAS will complement this system.

The July Council decision has many of the features of an 'incomplete contract' in that it provides a broad framework but leaves all important process-related details to be bedded in over the next few years (Kassim and Menon 2003). The new system will take time to bed in, for its imperfections to be recognised (and corrected where possible) and for the many actors it engages to work out strategies for making it work for them. Like any major bureaucratic organisation, the EEAS will never be perfect and formal and informal adjustments to various aspects of its operation and organisation will constantly be proposed, although not all will be implemented. It is to be expected that teething troubles will arise during its first few years in particular as internal glitches become apparent. Socialisation will play a big part in the process of achieving a new equilibrium, as institutional actors and officials settle on workable arrangements – both formal and informal – to organise policymaking responsibilities and exchange of information.

Several potential equilibria are possible, from a best-case scenario where the EEAS sits at the centre of a whole-of-EU external policymaking system with clearly defined objectives and efficient division-of-labour arrangements for policymaking and implementation. At the other extreme, the new arrangements may fail to integrate important EU external policy actors, overlapping responsibilities may result in damaging turf wars, and actors may look for opportunities to pursue their own objectives at the expense of the system as a whole. A third – and more likely – scenario is that the system will function better in some policy areas than in others because certain decision-making procedures and means of delegation are more amenable to the new system than others.

The EU's various actors are unlikely to give the EEAS sufficient autonomy to represent them on the world stage while there is little agreement on the concrete strategic objectives the Service should pursue. The EU remains divided over what kind of international actor it should be – whether it should limit itself to economic power, whether it should pursue a broadly

normative agenda and lead by example, whether it should develop its ability to coerce and punish other actors. In the short- to medium-term, policy overlaps are likely to limit the EEAS' efficiency – incoherence is literally built into the system because actors do not feel that they can trust each other enough to risk ironing them out. In the longer term, the lack of an agreed strategy could present the EEAS with a potentially serious problem. If the EU cannot reach a common position with regard to other international actors, such as China, Russia and Iran, then these actors will not take the Service (and the EU) seriously.

This paper has attempted to show that the principal-agent framework can help clarify some of the issues raised by the EU's efforts to build an external policy bureaucracy following the Lisbon Treaty. The intention is to provide a base upon which to build a study that may prove or disprove the explanations posed above: that the EEAS can exploit differences among its many principals to build its autonomy, and that autonomy is likely to vary across policy areas. In particular, indicators for measuring autonomy applicable to the EEAS context need to be specified. Once the EEAS has been in operation for a few years, comparative 'before and after' studies based on hard data will enhance academic and policy discussion on these issues.

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