

From Commission to Union Delegations: a legal-institutionalist analysis

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1. Introduction

The passing reference in the Lisbon Treaty that “Union delegations in third countries and at international organisations shall represent the Union”, does not do credit to the major break with past practice that it causes.¹ Previously, external representation only occurred through delegations of a single EU institution, the European Commission.² For the first time in the history of European integration, the EU now disposes of quasi-embassies that represent, implement and defend the entire range of EU competences. These delegations, that constitute the EU’s eyes, ears and face on the ground, hold great potential. The Union’s global role indeed depends on the acceptance of and relations with third countries and international organisations, which are to a great extent made and developed in-country. In the most ambitious of terms High Representative Ashton professed, in one of her first media appearances since she took up the post, that these delegations should form “a network that is the pride of Europe and the envy of the rest of the world ... It should offer our citizens added value to what their countries already do, and give our partners around the world a trusted and reliable ally on European issues”.³

In this manner the bar was set high and, given their great potential, a lot is at stake to make these bodies work. In spite of all this, the creation of EU Delegations passed rather unnoticed in scholarly and public debate. All efforts and eyes were first put on erecting the new European External Action Service (EEAS) in Brussels, of which the EU Delegations form an integral part. Only recently, now that the EEAS is up and running for over three years, attention has started to shift to the field. This is mirrored in the greater focus on the Delegations in the 2013 Review of the EEAS by the High Representative.⁴ In sharp contrast to the initial inter-institutional infighting and the fierce criticism on the nitty-gritty of the organisation and functioning of the EEAS, as well as its principal the High Representative, this gradually rising attention for the Delegations has not laid bare a similar jumble. Rather to the contrary, while it is generally agreed that a lot of work remains to be done, the EU Delegations are already being hailed as the “perhaps unintended”⁵ but “most conspicuous”⁶ success story of the new external action constellation.

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¹ Article 221 of the Treaty on the Functioning of the EU (hereafter: TFEU).

² In addition there were two ‘EU liaison offices’ of the Council Secretariat in Geneva and New York.

³ C. Ashton, ‘Quiet diplomacy will get our voice heard’, *The Times*, 17 December 2009.

⁴ High Representative, *EEAS Review*, Brussels, July 2013, 19p.

⁵ R. Balfour, ‘Revolution from the periphery’, *European Voice*, 25.07.2013.

⁶ J. Wouters and B. Van Vooren, ‘More clarity and cohesion required’, *ibid.*, 04.07.2013.

The aim of this paper is to shed light on why this seemingly drastic rupture with past practice has not caused proportionate problems, as well as to understand the potential and challenges of these new EU Delegations. The approach will be two-fold. First, in a concise historic overview of the emergence of Commission Delegations, we will contrast their evolving legal framework to the actual practice on the ground. The aim is to clarify what kind of offices were exactly in place on the eve of the Lisbon Treaty's ratification and how this came into being. This will help to understand whether the rupture was in actual fact as significant as a literal comparison of the Nice and Lisbon Treaties would suggest. Second, an analysis of EU legal documents, as well as a three month period of participatory observation in the EU Delegation to Ethiopia, have assisted in putting flesh to the bones of the Delegation's rather void primary law status. Setting out the nature, competences and composition of these bodies will not only clarify their potential, but also their challenges, limits and room for improvement. In particular, these Delegations have overnight acquired an inherently political role for which their skills and expertise are yet to be fully brought up to the mark.

2. The emergence of Commission Delegations: contrasting law and practice

2.1. From Rome to Maastricht and beyond: misleading legal frameworks

As many developments in the history of EU external relations, the emergence of Commission Delegations was not the result of forward-looking strategic thinking, but rather of a reactionary and pragmatic process driven by evolving needs. It was the European Coal and Steel Community (ECSC), the predecessor of the EEC, later EC and now EU, that opened a first foreign office in the very early days of European integration. In 1954, shortly after the inglorious demise of the European Defence Community (EDC), Jean Monnet decided to open an ECSC information office in Washington to convince the US government that Europe's post-war project had not lost traction.⁷ Due to the significant global attention for the European cooperation experiment and the close links with global trade, this was soon followed by an ECSC liaison office for Latin America in Santiago de Chile and the opening of its first full diplomatic mission in London in 1956.

The 1957 Rome Treaty had a mainly inward-looking focus and made no mention of any external representation. Yet, it included provisions on a common commercial policy and an association regime that set up trade preferences for and financial aid to a number of African colonial dependencies.⁸ For this latter purpose, the European Commission was tasked with the verification of aid projects, mainly targeted at large infrastructure works, financed by the European Development Fund (EDF). The highly technical nature of this assignment required on-the-spot presence of very specific expertise. Therefore, contract teams were set up in the associated states, led by a *contrôleur technique* that was generally recruited from a European engineering consultancy. After the whirlwind decolonization process of the early 1960s, that soon outdated the Rome Treaty's association regime, this system was continued under the 1965 Yaoundé Convention. The aid modalities largely stayed the same, but they now fell under an association agreement between the EEC and independent

⁷ European Commission, *Taking Europe to the World: 50 Years of the European Commission's External Service* (Office for Official Publications of the European Communities, Luxembourg, 2004) 11-12.

⁸ Article 3(5) and Part IV of the EEC Treaty.

African states. Consequently, the EDF technical experts were increasingly perceived by their host governments as diplomatic representatives of the EEC and assigned with tasks that fell outside their formal terms of reference. This deficiency was addressed by creating the European Agency for Cooperation (EAC), a semi-autonomous non-profit organisation funded by the Commission in order to recruit and administer technical staff to man the EDF offices. These were led by *controleurs délégués* with limited representational responsibilities. Whereas this was a substandard solution from a diplomatic point of view, this was precisely the preference of most Member States that were keen to preserve their foreign policy prerogatives.

The Commission's role in trade negotiations incited the opening of more offices and gave them more weight. By the end of the 1960s it disposed of a limited global network of around twenty-five delegations covering four continents. This network was however not based on any legal framework or blueprint. The pragmatic development of these roots of European diplomacy, per definition targeted at projecting a coherent picture externally, resulted in an internally heterogeneous design where the various offices did not even represent a single EU institution but three separate Commission Directorates-General (DGs): press and information offices of the former DG Press (then DG X, now DG Communication), diplomatic missions of DG External Relations (then DG I) and the EDF offices of DG Development (then DG VIII). The first two were staffed by Commission officials, the last by contract agents. These DGs "often treated 'their' delegations primarily as an extension of their particular service, rather than as representing the institution as a whole".⁹

The DG I Delegations had the broadest task description, including advice and support to traveling Community officials, acting as contact points and information hubs on EEC aims and objectives, assisting in the execution of Community policy and cooperation agreements and encouraging cooperation and coordination with and between Member States diplomatic missions.¹⁰ Carrying out such functions tended to put Commission officials on the same footing with national diplomats, requiring similar protection and privileges. Consequently, these delegations sought and obtained, throughout the 1970s, full diplomatic status from their host country authorities, based on the privileges and immunities defined in the 1961 Vienna Convention on Diplomatic Relations (VCDR). Although the latter limits membership explicitly to states,¹¹ its regime was extended in the widest possible manner to Commission Delegations through bilateral establishment agreements.¹² In legal terms, this could be seen as an act of piracy by the Commission, as the Council was never involved and Member States were presented a *fait accompli*.¹³ Yet it should also be noted that host countries were for the sake of clarity often requesting party for granting such a status, the more so since they had already diplomatically recognised the Community by accrediting their own ambassadors in Brussels.

Due to the greater involvement of Member States under the Yaoundé Convention and the more technical nature of DG VIII offices, their battle to obtain a better status went less smoothly. The most

⁹ Commission (2004) op.cit. note 7, 30.

¹⁰ These tasks were for the first time explicitly defined in a 1977 Commission review of its diplomatic network (quoted in *ibid.*, 24-25).

¹¹ Articles 48 and 50 Vienna Convention on Diplomatic Relations, signed in Vienna on 18 April 1961, United Nations Treaty Series (UNTS). vol. 500. p. 95. no. 310.

¹² See further: R. Ambast and V. Tyagi, 'Ambassadors of Europe: An Insight into the Evolution of the European Union and International Diplomatic Law' (2008) LXI(4) *Studia Diplomatica*, 173-189.

¹³ V. Dimier and M. McGeever, 'Diplomats Without a Flag: The Institutionalization of the Delegations of the Commission in African, Caribbean and Pacific Countries' (2006) 44(3) *Journal of Common Market Studies*, 496.

important step forward was the formal recognition of their existence in the 1975 Lomé Convention – Yaoundé's successor – with the African, Caribbean and Pacific states (ACPs). This assigned the Commission Delegate (which was the new name for the head of mission) as the formal point of contact between the EEC and the respective ACP government, with considerable discretionary powers in approving and assessing technical cooperation contracts.¹⁴ The whole system was essentially anti-bureaucratic, based on personal relations and loyalty to a number of aid barons that set the course of EDF aid flows.¹⁵

The next major change for European diplomatic relations emerged outside the Community framework with the creation in 1970 of European Political Cooperation as a form of intergovernmental consultation and coordination between EEC Member States. This not only increased interaction between foreign ministries, but also between their diplomatic missions abroad. While initially established as entirely separate from the Community, the impossible separation of political and economic aspects of external relations soon drew in the European Commission. This maturing involvement was acknowledged and strengthened in the 1981 London Report on EPC that fully associated the latter, at all levels.¹⁶ In Brussels this chiefly implied a silent seat at the EPC table that allowed the Commission to inform and be informed on potential EPC-EEC interfaces. The involvement of its network abroad was however considerably more intensive, where Member States – particularly the smaller ones with limited diplomatic resources – happily relied on its significant expertise in EC policy, as well as its institutional memory as the only steady force in the debilitating rhythm of ever-changing presidencies.¹⁷

Consequently Commission Delegations became intimately involved with sensitive and confidential information in places where confidentiality and discretion was of the essence. Particularly with regard to DG VIII offices it became harder and harder for the Commission to justify the juridical anomaly of contracting staff to represent public authority through a private company registered under Belgian national law.¹⁸ Consequently, after a hard-won strife EAC staff was in 1987 elevated to the rank of Commission official.¹⁹ Moreover, the 1989 revision of the Lomé Convention provided that “the ACP States shall grant Commission Delegations privileges and immunities similar to those granted to diplomatic missions”.²⁰

The continued EU enlargement, whereby new Member States expanded the geographic interests of the whole, continuously prompted the opening of new Delegations. By the end of the 1980s the Commission, which was essentially the executive arm of a purely economically-oriented international organisation, disposed of 89 delegations around the globe, composed of 440 officials and 1440 local staff that have from the outset played a critical role.²¹ In the great majority of cases, Heads of

¹⁴ Articles 26 and 31 ACP-EEC Convention of Lomé, signed at Lomé, 28 February 1975.

¹⁵ V. Dimier, 'Construire une Administration Multinationale: du Rôle des Leaders dans l'Institutionnalisation de la DG DEV, 1958-1975' (2003) 34(3) *Etudes Internationales*, 401-428.

¹⁶ Report by the Foreign Ministers of the Member States on European Political Cooperation (London Report), London, 13 October 1981, para 12.

¹⁷ D. Spence, 'The Commission's External Service' in D. Spence (ed), *The European Commission* (John Harper, London, 2006) 404-405.

¹⁸ Dimier and McGeever (2006) op.cit. note 13, 494.

¹⁹ Council Regulation (3019/87/Euratom/ECSC/EEC) of 5 October 1987 laying down special and exceptional provisions applicable to officials of the European Communities serving in a third country, OJ L 286/3, Annex X.

²⁰ Fourth ACP-EEC Convention, signed in Lomé, 15 December 1989, Annex LXXIII: Joint declaration relating to Protocol 3 on Commission Delegations.

²¹ Commission (2004) op.cit. note 7, 34.

Delegation were moreover accredited at Head of State level, carrying the rank of ambassador, with their credentials signed by the President of the Commission.²² The Delegations got their next boost after the sudden demise of the Soviet empire, when a group of 24 Western states charged the Commission to coordinate their economic assistance to the central and eastern European countries (CEECs) under the major PHARE programme. This included the inherently political task of attaching and checking conditionality provisions.²³ Many of these countries subsequently applied for EU membership, charging the Delegations with the crucial task of assisting in and coordinating the application of the *acquis communautaire*.

This rising status was consolidated in the Treaty of Maastricht that accorded Commission Delegations their first formal primary law recognition. This Treaty moreover confirmed the political vocation of the European integration project by creating the Common Foreign and Security Policy (CFSP) – the successor to the EPC – as one of the three pillars of the newly created European Union.²⁴ The CFSP remained a largely intergovernmental preserve where the boundaries were set by unanimity among Member States represented in the Council and the European Council, and with limited roles for the European Parliament and the Court of Justice (JHA). The Commission, for its part, remained “fully associated”,²⁵ with the exact meaning of that phrase again left to the common discretion of Member States. Together with the latter, the Commission was also accorded the right to put forward policy initiatives.²⁶ However, it has been reticent to use this right, reflecting “both awareness of Member State sensitivities and resentment at its relative marginalization in the context of the CFSP”.²⁷ It is therefore surprising that the only Treaty article that mentioned the Delegations was included in the CFSP Chapter, and accorded these bodies important responsibilities. Article 20 TEU states that:

The diplomatic and consular missions of the Member States and the Commission delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.

As the CFSP is per definition largely put in practice abroad, the assignment to ensure, in cooperation with Member States, that its decisions are complied with and implemented, is potentially a very large and demanding one. Given that the Commission is only distantly involved in CFSP decision-making in Brussels, it is regrettable that the actual modalities of its role abroad are in no way defined. The legally awkward consequence of inserting this provision was moreover that the only Treaty-defined responsibilities of Delegations were in the largely intergovernmental preserve of the CFSP, while their wide-ranging EC responsibilities appeared to be neglected. The only exception is their role to cooperate with Member States in implementing the provisions of Article 20 TEC, stating that every EU citizen in the territory of a third country shall be entitled to protection by the diplomatic and consular authorities of any Member State, another area closely linked to state sovereignty.

²² Ibid., 36.

²³ S. Nuttall, *European Political Cooperation* (Oxford University Press, Oxford, 1992)

²⁴ The other pillars being the European Community (EC) and Justice and Home Affairs (JHA).

²⁵ Article 18(4) TEU (Nice numbering).

²⁶ Article 22(1) TEU.

²⁷ C. Bretherton and J. Vogler, *The European Union as a Global Actor* (Routledge, London, 2006) 176.

While the Commission Delegations thus showed ever more similarities to diplomatic missions, they disposed of nothing comparable to a career foreign service. As argued by Carta the service abroad of Commission officials was more similar to a *legion étrangère*: “they were cut off from career possibilities within the Commission, untrained for the job and suffered extreme difficulties in communication with Headquarters in Brussels”.²⁸ Already in 1982, a report to the Council on the external competences of the Community noted that “there is an inherent contradiction in the way in which ... outward postings are voluntary but come to a compulsory end without any guarantee of what will follow”.²⁹ The creation of the External Unified Service (EUS) in 1993 came some way in meeting this discontent by finally setting up a unified administration for foreign staff with improved career guidance and instructions for external representation. With these reforms the Delegation network necessarily gave in on its autonomy. As noted by a former German Commission Delegate: “in the delegations where we used to be for a long time the absolute masters (*des vrais patrons*) in all administrative matters, we lost all our power and became like other members of our delegations, slaves of a rigid, nitty-gritty administrative system, a bitter pill to swallow at the end of our career, but necessary perhaps”.³⁰

Two sobering events at the end of the millennium underlined the remaining deficiencies of the Commission’s bureaucracy: the resignation of the Santer Commission over allegations of fraud, nepotism and mismanagement of aid³¹ and the first ever official impact assessment of EU development assistance that marked down EU development policy for, among other, delayed and inefficient implementation with weak monitoring leading to a restricted and unsustainable impact on poverty alleviation.³² The new Prodi Commission, that took office in September 1999, consequently undertook a radical reform programme through a succession of communications that included multiple initiatives to professionalise and rationalise the network of Delegations. This process was set in motion through a June 1999 Communication on the External Service that included a mandatory system of staff rotation – improving the career possibilities of civil servants working in Delegations –, training arrangements and measures to second Member States diplomats to Delegations.³³

One of the most visible expressions of this new approach was a general deconcentration exercise,³⁴ transferring numerable posts from Brussels towards Delegations to shorten the lines of communication and improve the alignment of aid management with the local context.³⁵ As a sort of

²⁸ C. Carta, 'The Diplomatic System of a non-State Actor: the Commission’s Entry into the Diplomatic Scene' in D. Dialer, et al. (eds), *The EU's External Action Service: Potentials for a One Voice Foreign Policy* (Innsbruck University Press, Innsbruck, 2014) 37.

²⁹ Quoted in Commission (2004) op.cit. note 7, 29.

³⁰ Quoted in Dimier and McGeever (2006) op.cit. note 13, 499.

³¹ European Parliament Committee of Independent Experts, *First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission*, 15.03.1999.

³² ICEA/DPCC, *Development and humanitarian assistance of the EU: An evaluation of the instruments and programmes managed by the European Commission*, May 1999.

³³ Communication from the Commission (COM(1999) 180 final) *The Development of the External Service*, Brussels, 21.04.1999.

³⁴ Another important novelty was the creation in 2001 of the EuropeAid Cooperation Office (AIDCO). This was designed as a technical development agency that took over the project management posts from DG Development to improve the quality of aid disbursement and loosen the administrative burden on DG Development that was set to become a comprehensive pool of expertise on development policy and strategy.

³⁵ Communication from the Commission (COM(2000) 456 final) concerning the development of the External Service, Brussels, 18.07.2000. Between 2001 and 2005 the Commission assigned around 1 500 additional staff to delegations. This consisted of approximately 450 staff from EuropeAid and 1 000 newly recruited contract

internal EU subsidiarity the Commission explained that: “[a]nything that can be better managed and decided on the spot, close to what is happening on the ground, should not be managed or decided in Brussels”.³⁶ As noted by the European Convention deconcentration (or also “devolution) in practice “means that Delegations contribute with their opinion to the programming process, manage the operational cycle and have direct responsibility for identification of projects”.³⁷ Consequently, Heads of Delegation found themselves overnight in charge of a significantly larger staff with entirely new responsibilities in resource management.

In conclusion, the Commission Delegations emerged in an EEC Treaty framework where external relations provisions were few and far between, and the need for such bodies was thus initially not felt. Arguably, it was precisely this legal void that facilitated the mushrooming of Commission offices around the globe. Combined with the geographical distance and informality of this process, this created a certain autonomy from the Brussels Headquarters that smoothed the gradual expansion of their tasks and responsibilities, in line with the Community’s growing competences.³⁸ The Treaty of Maastricht made an end to the legal void, yet strangely enough not by codifying previous practice, but by according the Delegations vague responsibilities under the CFSP, an area dominated by the Member States where the Commission is generally perceived as an outsider. It was only in the late 1990s and 2000s that the Commission started the genuine formalisation and professionalisation of its network, that simultaneously put a significant brake on the autonomy of its Delegations.

2.2. Commission Delegations and EU external relations: diplomacy by default

Arguably, the Commission did not intend to become a diplomatic actor. Rather, being the only permanent EU presence *in situ*, the Delegations evolved by default and on demand to fulfil specific needs. In this manner they were gradually charged with ever more responsibilities, turning them from centers of technical expertise into a “quasi-diplomatic service”.³⁹ Consequently, its inclusion in the global diplomatic community – based on the rules and rights of the VCDR – became a necessary condition for their effective functioning.⁴⁰ Yet, “[a]cting without a clear foreign policy, without a head of state, with limited resources and without professional diplomats, the external delegations of the

staff (European Court of Auditors, *Has the Devolution of the Commission’s Management of External Assistance from its Headquarters to its Delegations led to Improved Aid Delivery* (ECA Special Report No 1, Brussels, 2011, para. 40). Following a 2002 decision the management of the expanded Delegation staff was moreover entrusted to a dedicated External Service Directorate in DG Relex (Commission (C(2002)5370) Proposal for a Commission Decision on the administrative reform of the External Service, Brussels, 17.12.2002).

³⁶ Communication from the Commission (COM(2000) 814 final) on the reform of the Management of External Assistance, Brussels, 16.05.2000, 20.

³⁷ The European Convention (CONV 839/03) Contribution by Mr Barnier and Mr Vitorino, members of the Convention: “Joint External Action Service”, Brussels, 30 June 2003, Annex I.

³⁸ D. Dialer and F. Austermann, ‘Giving the EU One Voice Aroad: The European Union Delegations’ in D. Dialer, et al. (eds), *The EU’s External Action Service: Potentials for a One Voice Foreign Policy* (Innsbruck University Press, Innsbruck, 2014) 108.

³⁹ Spence (2006) op.cit. note 17, 396.

⁴⁰ J. Wouters and S. Duquet, ‘The EU and International Diplomatic Law: New Horizons?’ (2012) 7(1) *The Hague Journal of Diplomacy*, 47.

Commission [were] deprived of most of what traditionally unifies and consolidates foreign services".⁴¹

Moreover, in a traditionally inter-state diplomatic system, the emergence of this new actor gave rise to legally unorthodox situations with regard to the status of its staff as well as to who or what they exactly represented. As clarified by the Council in 2010, the Commission Delegations essentially "represented the positions and competences of the European Commission exclusively and were not delegations representing the European Community",⁴² let alone the European Union. Yet, the nitty-gritty of the EU's internal organization is not always clear to third countries. Through a survey of Mexican local media Bruter for instance found that in 73% of the cases the Commission Delegation was perceived as representing the EU or even Europe in general.⁴³

This was not just a matter of perception. Also in actual practice this legal delimitation started to fade. This is evidenced in the foreword of a 2004 Commission brochure from the hand of its President Prodi and the External Relations Commissioner Patten – i.e. the patrons of the External Service – stating that "[t]hese diplomatic representations are essential to the promotion of European Union interests and values around the world, and are in the front line in delivering EU external relations policy and action, from the common foreign and security policy through trade and development cooperation to scientific and technical relations".⁴⁴

Yet, Member States kept a close eye on this evolution. They activated a kind of 'diplomatic fire-alarm' to notify the Commission when Heads of Delegation trespassed their competences and reminded them discretely, albeit unmistakably, of the boundaries to their radius of action.⁴⁵ That the Commission was susceptible for such sensitivities is clearly illustrated by the following quote from a 1991 Commission note to its Delegates:

*May I remind you – and ask you to remind your staff – of the need to exercise the greatest tact and discretion ... above all in relation to diplomatic titles and diplomatic precedence. [You should not] seek to impose the title Ambassador. If interlocutor fails to use this courtesy title, Head of Delegation should not pursue matter. He should discourage his own staff from referring to him as 'the Ambassador'. ... In particular, the appellation 'Ambassador of the European Community' should be avoided. For time being, Commission delegations remain Commission delegations – not Community delegations – even though they may in practice represent the Community on questions falling within areas of exclusive competence. One cannot expect average diplomat in street [sic] to understand such subtleties.*⁴⁶

⁴¹ M. Bruter, 'Diplomacy without a State: the External Delegations of the European Commission' (1999) 6(2) *Journal of European Public Policy*, 192-193.

⁴² Council answer to Parliamentary Question (E-4208/2010) by Martin Ehrenhauser (NI) on EU delegations/embassies, Brussels, 16.06.2010.

⁴³ M. Bruter, *Les Délégations Extérieures de la Commission Européenne: Un Outil Moderne de Diplomatie Communautaire?* (Institut d'Etudes Politiques (Mémoire), Bordeaux, 1996) ; reproduced in Bruter (1999) op.cit. note 41, 186-187.

⁴⁴ Commission (2004) op.cit. note 7, 3-4.

⁴⁵ P. Duchâteau, 'La Chine et l'Europe' (2004) 474 *Revue du Marché Commun et de l'Union Européenne*, 11.

⁴⁶ H. G. Krenzler, *Note for the Attention of Heads of Delegation DG I: Use of the Title Ambassador*, Brussels, 27.05.1991; quoted in Bruter (1999) op.cit. note 41, 190.

This could not prevent the Commission network from being criticised, particularly in UK Eurosceptic press, as created by stealth or illegal.⁴⁷ Even the former UK Foreign Secretary Jack Straw disparaged these Delegations as “all sorts of odd-bods from the European Union running all sorts of odd offices around the world”.⁴⁸ On the other hand, many Member States’ diplomats valued the expertise of these Commission Delegations, particularly in trade negotiations, managing large scale aid programmes, as well as their impressive network of contacts with grassroots organisations that this brought along.⁴⁹ With regard to the exercise of the Presidency abroad this often caused a delicate “*pas de deux*” between the Commission Delegation and the respective national embassy.⁵⁰ Member States were stuck in the middle between the welcomed Commission assistance – with the latter often carrying out a sort of shadow-Presidency for smaller states⁵¹ – and the temptation of using the Presidency to push through their national agenda.

The fact that Commission Delegations became EU diplomatic actors by matter-of-fact default also meant that they were not always suited or sufficiently equipped for the tasks at hand. In particular staffing levels remained too low and while training was gradually scaled-up it was still rudimentary compared to that of traditional career foreign services. In essence, the management culture of Delegations always stayed one of project management rather than diplomacy.⁵²

This mismatch of competences and design was most striking with regard to their vaguely defined responsibilities under the CFSP. In a speech to the 2003 Conference of Heads of Delegation, Prodi left no doubt that the Treaty of Maastricht had made the latter “ – who put the EU’s common foreign and security policy into practise abroad — indispensable instruments in the EU’s expanding role on the international stage”.⁵³ The 2004 Commission brochure on its External Service provided limited further insights in what this task involved, namely “providing regular political analysis, conducting evaluations jointly with Member State embassies and contributing to the policy-making process”.⁵⁴ Further, Commission Delegations assisted in the preparation of visits by the High Representative and cooperated with EU Special Representatives (EUSR) that were appointed to the country or region in which they were present. Not seldom they were therefore seen in their host states as representing the policies that these CFSP actors represented and held accountable for their consequences. As a herald of the creation of a double-hatted High Representative/Commission Vice-President by the Lisbon Treaty, the functions of EUSR and Head of Commission Delegation were combined in the Former Yugoslav Republic of Macedonia and to the African Union. In other cases the division of labour between these two functions remained rather muddled. Moreover, given the very limited

⁴⁷ E. Hayes, 'EU Delegations: Europe’s Link to the World' in K.E. Jørgensen and K.V. Laatikainen (eds), *Routledge Handbook on the European Union and International Institutions* (Routledge, New York, 2013) 29. For instance: D. Hannan, 'EU's 'illegal' diplomatic corps is edging out our national embassies', *Daily Telegraph*, 20.03.2003; and 'Scandal of EU missions in paradise', *Sunday Express*, 14.01.1996.

⁴⁸ UK House of Commons, Select Committee on Foreign Affairs, Minutes of Evidence from Examination of Witnesses, 25.05.2004, Q59.

⁴⁹ G. Edwards and D. Rijks, 'Boundary Problems in EU External Representation' in L. Aggestam, et al. (eds), *Institutional Competences in the EU External Action: Actors and Boundaries in CFSP and ESDP* (Swedish Institute for European Policy Studies, Stockholm, 2008) 59.

⁵⁰ Hayes (2013) op.cit. note 47, 29.

⁵¹ F. Austermann, 'Towards Embassies for Europe? EU Delegations in the Union's Diplomatic System' (2012) *The Diplomatic System of the European Union Policy Paper 8*, 5.

⁵² Spence (2006) op.cit. note 17, 414.

⁵³ Quoted in Commission (2004) op.cit. note 7, 58.

⁵⁴ Commission (2004) op.cit. note 7, 9.

number of staff with a political profile (most Delegations did not have a political section), the lack of secure lines of communications and the restrained access to intelligence networks, the Delegations were poorly equipped for the culture of confidentiality that reigned foreign and security matters.⁵⁵

This was even more worrisome in the context of European Security and Defence Police (ESDP) missions, the success of which entirely depends on the confidence of host states. The ESDP, that was declared operational at the 2001 Laeken European Council,⁵⁶ provided a new extension to the Delegations' portfolio. While the nature of this task was nowhere defined, it was evident that in countries where an ESDP mission or operation was deployed, it could not act in isolation from the Commission Delegation. Consequently, Joint Actions setting up the latter required "close coordination" between the Commission Delegation and the Head of such a mission "without prejudice to the chain of command".⁵⁷ The implementation of this vague duty was however left to the discretion of the personalities that held these posts. Whilst there was no form of hierarchy in this undertaking, each Head of a civilian mission was – in a typical case of EU intricacy - obliged to "report fully to, and be supervised by, the Commission", that manages the budget of such missions, "regarding the activities undertaken in the framework of his contract".⁵⁸ The difficulty of coordination was in fact part of a broader problem that complicated the implementation of EU policies. EU institutions increasingly developed broad frameworks and strategies to enhance the coherence and exploit synergies between various external policies, for instance in the field of the security-development nexus,⁵⁹ but the lack of strong decentralised actors severely hampered the translation of these complex processes to the field.

3. Union Delegations: a new actor on the scene?

3.1. Entangling the nature, composition and competences of EU Delegations

The idea of creating a genuine diplomatic system is not new and particularly the European Parliament had been an active proponent of this cause.⁶⁰ The "large consensus" to establish EU delegations/embassies, as well as an EU diplomatic academy (that eventually did not see the light of day) and an EU diplomatic service, was first expressed by the Working Group on External Action of the European Convention.⁶¹ The conviction that the "Commission's delegations would become EU delegations" did finally not make it in the Lisbon Treaty, with Article 221 TFEU merely stating that:

1. Union delegations in third countries and at international organisations shall represent the Union.

⁵⁵ Spence (2006) op.cit. note 17, 415.

⁵⁶ Presidency Conclusions, European Council, Laeken, 14-15 December 2001, para. 6

⁵⁷ For instance: Council Joint Action (2005/355/CFSP) of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC), OJ L 112/20, 03.05.2005, Article 10(3).

⁵⁸ Ibid., Article 9(2)(b).

⁵⁹ For an elaborate analysis: H. Merket, 'The EU and the Security-Development Nexus: Bridging the Legal Divide' (2013²) 18(Special Issue) *European Foreign Affairs Review*, 83-102.

⁶⁰ For instance: European Parliament Resolution (2000/2006(INI)) on a common Community diplomacy, A5-0210/2000, 24.07.2000.

⁶¹ European Convention (CONV 459/02 WG VII 17) Final Report of Working Group VII on External Action, 16.12.2002, para. 7.

2. Union delegations shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy. They shall act in close cooperation with Member States' diplomatic and consular missions.

Yet, given that the Commission itself found that its network was “ideally placed to ensure the success of this ambitious and far-reaching proposal”, the logical decision to build further on what was already in place was quickly taken.⁶² With the insertion of this one Article the Lisbon Treaty finally gave Delegations the legal recognition they had been missing the last half century. No longer could these offices be dismissed as illegal or “expected to be models of seclusion and self-effacement”.⁶³ As a logical extension of the dissolution of the Community into the Union, and the accordance of a single legal personality to the EU,⁶⁴ the Delegations now represented the Union as a whole, including its entire range of competences. This was an important step forward, but in the absence of any further Treaty guidance, it raised more questions than it answered. Besides the responsibility to represent the Union and act in close cooperation with Member States, Article 221 TFEU clarifies nothing in terms of the Delegations' general nature, role and composition. If the EEAS provisions of Article 27(3) had already been criticised as particularly meagre,⁶⁵ these at least provided for a Council decision to establish its organisation and functioning. Despite the importance of creating Union Delegations, that would more than ever insert the EU in the global diplomatic community and thus constituted one of the most visible Lisbon innovations for outside actors, their functioning was entirely left in the open.

Similarly to the previous Treaty framework, it was again the CFSP Chapter that provided some more information on the role of these Delegations. In addition to the old tasks of cooperating with Member States' missions to ensure that CFSP positions and actions, as well as the provisions on consular protection, are complied with and implemented, two new specifications were made.⁶⁶ The first is mainly textual but signals a stronger recognition of their role. The obligation on Member States' missions and Union Delegations to “step up cooperation by exchanging information and carrying out joint assessments” is no longer attached to the provisions on consular protection, but inserted as a separate paragraph, signalling a broader scope. Second, the Lisbon Treaty expands the duty of Member States to “inform and consult one another within the Council on any matter of foreign and security policy of general interest”, that was set out in *ex* Article 16 TEU, with an obligation to “determine a common approach”.⁶⁷ Member States' diplomatic missions and Union delegations are subsequently tasked to cooperate and contribute to formulating and implementing this common approach. This is a potentially heavy assignment, but one should not forget that the CFSP remains a largely intergovernmental area that evolves on the pace of unanimous decisions in the Council and the European Council. As the Parliament, Commission and Court are only accorded very limited roles, the responsibility for compliance and enforcement is left to the Member States.

⁶² Commission (2004) *op.cit.* note 7, 10.

⁶³ M. McGeever, *From Foreign Legion to Foreign Service – Evolution of the Status and Role of European Commission External Delegations 1976–1988*, Paper presented at the The EU as an External Actor: The Role of the Delegations of the European Commission, 1954–2004 (European University Institute, Florence, 13–14 November 2004) 26.

⁶⁴ Articles 1 and 47 TEU.

⁶⁵ For instance: S. Vanhoonaeker and N. Reslow, 'The European External Action Service: Living Forwards by Understanding Backwards' (2010) 15(1) *European Foreign Affairs Review*, 1.

⁶⁶ Article 35 TEU.

⁶⁷ Article 32 TEU.

The Lisbon Treaty entered into force on 1 December 2009, overnight transforming the old Commission Delegations into Union Delegations. One month later, a number of these Delegations already held the “responsibility of representation and coordination on behalf of the EU”, with transitory arrangements applicable in other places.⁶⁸ It took however another seven months before a first attempt was made to lift some of the shroud on their nature, role and composition. In the absence of any Treaty guidance on this process, this was done through a separate Article 5 on Union Delegations in the Council Decision on the organisation and functioning of the EEAS.⁶⁹

A first issue that this elucidated was the undefined nature of EU Delegations in the Union’s institutional architecture. Article 1(4) establishes them as an integral part of the EEAS. This seemingly logical decision was however not self-evident and moreover not fully in line with the letter of the Treaty. In strict legal terms, the latter establishes the EEAS as a CFSP body, set out under the dedicated TEU Chapter, while the Delegations represent the Union as a whole. Consequently, other institutional designs were conceivable. Spence indicates that a possible set-up could have divided these bodies into a political/CFSP section headed by an ambassador representing the EU, and a technical project management service under the leadership of a deputy ambassador responsible for former first pillar external policies (now set out in the TFEU).⁷⁰ Compared to such a fragmented design, its unitary construction and inclusion in the EEAS is certainly organisationally logical and in line with the Treaty’s objective of enhancing the coherence and effectiveness of EU external action.⁷¹ Yet, it may “have resolved one set of institutional ‘boundary’ issues at the expense of creating another”.⁷² The fact that the Union Delegations have a broader range of competences than their mother institution, the EEAS, leads to complex and potentially conflicting situations with regard to the composition of staff, the chains of command and the financial circuits.

First, EEAS staff occupies all posts of Head and Deputy Head of Delegation, and support staff directly attached to them, as well as all staff of political, information, public diplomacy and administration sections.⁷³ Additionally, the Delegations comprise of Commission officials “where appropriate for the implementation of the Union budget and Union policies other than those under the remit of the EEAS”.⁷⁴ This staff continues to figure on the establishment plan of their home DGs. Given that the EEAS has only limited responsibilities in development cooperation and neighbourhood policy, and no competence over trade and enlargement, Commission officials largely outnumber those from the EEAS in many places. In July 2013 there were about 5460 staff working in Delegations, with 3500 being Commission officials and 1960 EEAS personnel.⁷⁵ Of the latter group only 365 are officials (administrators or AD-level), with the remainder mainly local agents, but also contractual agents,

⁶⁸ Council Note (17770/1/09) *EU diplomatic representation in third countries: First half of 2010*, Brussels, 19.01.2010, para. 3.

⁶⁹ Council Decision (2010/427/EU) of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ L201/30 (hereafter: EEAS Decision).

⁷⁰ Spence (2006) op.cit. note 17, 422.

⁷¹ Article 21 TEU.

⁷² Hayes (2013) op.cit. note 47, 30.

⁷³ Annex to EEAS Decision.

⁷⁴ Article 5(2) EEAS Decision. It is noteworthy that the EEAS in itself also consists of 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 (Article 27(3) TEU). This implies that there are two categories of staff with a Commission background working side by side: those temporarily transferred to the EEAS and those directly sent by the Commission to the Delegations.

⁷⁵ High Representative (2013) op.cit. note 4, 14.

assistants and seconded national experts (SNE's).⁷⁶ Authority over all staff “whatever their status, and for all its activities” is entrusted to the Head of Delegation.⁷⁷ The latter shall receive instructions from the High Representative – to whom the she/he is accountable – and the EEAS, and shall be responsible for their execution.⁷⁸

Also the Commission may, in areas where it exercises the powers conferred on it by the Treaties, issue instructions to Delegations “which shall be executed under the overall responsibility of the Head of Delegation”.⁷⁹ These provisions left open a number of delicate questions that were further addressed in separate documents. The Working Arrangements between the Commission and the EEAS specify that these instructions must be issued through the Heads of Delegation, copying the EEAS, who shall then call on the relevant staff to carry them through.⁸⁰ A Service Level Agreement (SLA) further prescribes that Commission staff shall receive the necessary services from the EEAS – subject to at least the same standards of quality that it accords to its own staff – in order to allow them to carry out their responsibilities.⁸¹ In a provision that tends more towards an expression of mistrust than mutual agreement, “[t]he Commission can, on its own initiative, and after due notice, undertake on the spot visits to Delegations in order to satisfy itself that the present agreement is correctly implemented”.⁸²

Whereas the Delegations thus finally form part of a single EU external service, their central administration is still split. As expressed by the Court “the legal status of the Union Delegations is characterized by a two-fold organic and functional dependence with respect to the EEAS and the Commission”.⁸³ The Head of Delegation may have authority over all staff, the ultimate supervisors of Commission staff in Delegations are located in their respective services in Brussels. Whereas this situation is not so dissimilar from national embassies that include personnel from various line ministries, the proportion of this staff category is exceptional. Moreover, the Heads of Delegation have limited authority over Commission staff in their service, and as recognized by the EEAS' Executive Secretary-General Pierre Vimont “struggled to control [this] group of people”,⁸⁴ putting a strain on their general leverage.

Strangely enough the idea of parallel universes within the EU Delegations was strengthened by High Representative Ashton, who justified the limitations of the Delegations in North Africa as follows: “[r]emember that in most delegations the staff who are [EEAS] may be only one. The rest are

⁷⁶ In answering a parliamentary question the High Representative provided a detailed break-down of EEAS staff numbers in Delegations in June 2011: Council answer to parliamentary question (E-004218/2011) by Franziska Katharina Brantner (Verts/ALE) on VP/HR — Staffing of Union Delegations, 2.05.2011.

⁷⁷ Article 2(2) EEAS Decision.

⁷⁸ Article 5 (2)-(3) EEAS Decision.

⁷⁹ Article 5(3) EEAS Decision.

⁸⁰ Commission (SEC(2012)48) Working Arrangements between Commission Services and the European External Action Service (EEAS) in Relation to External Relations Issues, 13.01.2012, 3.

⁸¹ Service Level Agreement between Commission services with staff in EU Delegations and the EEAS, Brussels, 20.12.2010 (hereafter: Commission-EEAS SLA), Article 2. Annex I sets out which of these services shall be provided free of charge by the EEAS and which shall be charged to the Commission.

⁸² *Ibid.*, Article 9.

⁸³ Case T-395/11, *Elti v Delegation of the European Union to Montenegro* [2012] OJ C 227/21, para. 46.

⁸⁴ UK House of Lords EU Committee, *The EU's External Action Service*, 11th Report of Session 2012-13, 19.03.2013, para 51.

Commission development people doing fantastic work, but they are not mine”.⁸⁵ Not only is this statement remarkable because the High Representative stands directly above the Head of Delegation who has authority over all its staff, it moreover seems to neglect her double-hat as Commission Vice-President. The not unlikely possibility of disputes in managing these complex staff relations is acknowledged in the SLA and is set to be addressed at the level of Director-Generals “with a view to finding an amicable solution”.⁸⁶

Less details are provided on how the Heads of Delegations are to manage their split loyalty that arises from this two-fold organic and functional dependence. As the only figure within an EU Delegation, its Head wears a dual Commission-EEAS hat. Arguably, this resulted more from practical necessity than actual design. Being EEAS officials, Heads of Delegation could otherwise not sign off the EU’s aid instruments, that continue to be managed by the Commission.⁸⁷ Consequently, the latter was authorised to sub-delegate its responsibility for budget appropriations and implementation to the Heads of Delegation.⁸⁸ When acting as sub-delegated authorising officer for such operational expenditure, the Head “must apply the Commission rules and be subject to the same duties, obligations and accountability as any other sub-delegated authorising officer of the Commission”.⁸⁹

Adding to the complexity, the Delegations’ administrative budget constitutes an entirely separate financial circuit for which the Head is accountable to the EEAS. The Working Arrangements acknowledge the potential for a “conflict of priorities”, but provide no solution besides the vague prescription that the Head of Delegation will inform the Commission and the EEAS, who “will take appropriate step to remedy the situation”.⁹⁰ This intricacy, of both the line management and the budget handling risks to complicate the daily operation of EU Delegations. Yet, arguably, this was the price to pay for their comprehensive design and scope that transcends the competence limitations existing at headquarters level.

The Union Delegations do not only stand at the service of the EEAS and the Commission, they “shall have the capacity to respond to the needs of other institutions of the Union, in particular the European Parliament”.⁹¹ Adding to this function as EU ‘administrative assistants’ – that led some within the Delegations to complain that they had been turned into “travel agents”,⁹² they “shall work

⁸⁵ UK House of Lords Select Committee on European Union, *Evidence Session With Baroness Ashton of Upholland, High Representative for Foreign Affairs And Security Policy, Vice-President of the European Commission*, 14.06.2011, 6.

⁸⁶ Commission-EEAS SLA, op.cit. note 81, Article 9. If dispute still persists it shall ultimately be addressed according to the mediation and arbitration proceedings set out in Article 6 of the Framework SLA between the Commission and the EEAS.

⁸⁷ The latter is by virtue of Articles 317-319 TFEU entrusted with the responsibility of implementing the budget.

⁸⁸ Regulation (1081/2010/EU/EURATOM) of 24 November 2010 amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service, OJ L 311/9, 26.11.2010, Article 51. An initial design error prevented Heads of Delegation from processing the European Development Fund (EDF), that is not part of the EU budget and thus not covered by the above Regulation. During the first months of operation – before the EDF Regulation was finally amended – this was rather slovenly solved by passing this responsibility to the most senior Commission official in charge of development cooperation (T. Vogel, 'Heads of delegation to get authority for EDF money', *European Voice*, 10 March 2011).

⁸⁹ Commission (SEC(2012)48) op.cit. note 80, 5.

⁹⁰ Ibid., 7.

⁹¹ Article 5(7) EEAS Decision.

⁹² Balfour (2013) op.cit. note 5.

in close cooperation and share information with the diplomatic services of the Member States”.⁹³ Given that this element of sharing information is established as a unilateral duty upon the Delegations,⁹⁴ it is not entirely surprising that Member States’ missions have often stayed passive receptors.⁹⁵ Gradually, the tide is turning and Member States are jumping on the bandwagon of EU information exchange. On the one hand, this has a very practical cause, namely the unfolding of a security transmission system, called ACID. The absence hereof severely complicated the interchange of intelligence. This is evidenced by the fact that most Delegation staff agree that the oral exchange of information has occurred with much greater regularity.⁹⁶ On the other hand, reciprocity in such a sensitive exercise requires trust, something that is gradually being built up, as the quality of the Delegations’ reporting is improving.⁹⁷ The wide access to EU-made information and intelligence is one of the clearest added values that the Union Delegations can provide, particularly to smaller Member States with a limited global presence.⁹⁸ However, no unified reporting model is in place and great disparity exists in the way reports are being drafted and shared.⁹⁹

The single most important extension of the Delegations’ range of duties results from the Treaty-defined task to represent to Union. This has been interpreted as encompassing not only the demanding task of in-country coordination, but also the important representative functions taken over from the rotating Presidency.¹⁰⁰ As a consequence, the whole range of EU coordination meetings, including the typically monthly gatherings of Heads of Mission (HoMs), Deputy HoMs, Economic Counsellors, Development Counsellors, etc. are now chaired by the EU Delegations and generally held at its premises. Even though this holds the risk of losing the dynamism inserted by the alternating presidencies, it is undoubtedly beneficial for the continuity of the EU’s approach. It moreover provides its partners with a clear EU face and interlocutor on the ground. Disregarding some early teething problems,¹⁰¹ the High Representative assesses this transfer of responsibilities as

⁹³ Article 5(9) EEAS Decision.

⁹⁴ This is all the more remarkable given that an earlier draft of the EEAS Decision, drawn up by High Representative Ashton, mentioned that this was to be “on a reciprocal basis” (Proposal for a Council Decision of (date) establishing the organisation and functioning of the EEAS, 25.10.2010, Article 5 (9)).

⁹⁵ Some among the EEAS staff in Delegations even proposed to make the reporting towards Member States conditional upon their participation in information exchange. Pierre Vimont was however quick to point out that the EEAS was established by the Member States as a ‘service’ and should not try to act differently (Interview with EEAS official at the EU Delegation to Ethiopia, 4.06.2013).

⁹⁶ EEAS, *Report of survey of EU Delegations Implementation of the Guidelines on Local Co-operation in third countries*, Brussels, 13.05.2013, para. 2.22 (document on file with the author).

⁹⁷ D. Helly, et al., ‘A closer look into EU’s external action frontline: Framing the challenges ahead for EU Delegations’ in, *ECDPM Briefing Note No. 62* (European Centre for Development Policy Management, Maastricht, 2014) 8-9.

⁹⁸ There are for instance about 53 countries where an EU Delegation is present and only one in four Member States have a diplomatic representation (K. Raik, ‘Serving the Citizens? Consular Role of the EEAS Grows in Small Steps’, *EPC Policy Brief* (European Policy Centre, Brussels, 2013) 45).

⁹⁹ F. Bicchi, ‘The European External Action Service: A Pivotal Actor in EU Foreign Policy Communications’ (2012) 7(1) *The Hague Journal of Diplomacy*, 90. Bicchi’s observations date back to Autumn 2011, yet the author’s observations and interviews with Member States’ diplomats in Addis Ababa and Brussels indicate that this problem persists.

¹⁰⁰ Articles 5 (2) and (8) EEAS Decision.

¹⁰¹ For instance in Washington, it was reported that certain Member States did not show up for months in EU coordination meetings. In other places “EU Teams” were established, with the Head of Delegation working alongside the Presidency (P.M. Kaczynski, ‘Swimming in Murky Waters: Challenges in Developing the EU’s External Representation’, *FIIA Briefing Paper 88* (Finnish Institute of International Affairs, Helsinki, 2011) 9-10).

“remarkably smoothly in bilateral delegations and ... welcomed by third countries”.¹⁰² Moreover, 76,5 % of staff in Delegations judge local coordination as excellent to very good.¹⁰³ Observers generally share this analysis, yet point to considerable variations between locations, partly dependent on interpersonal relations, the (geo)strategic importance of the respective country or topic (with the ease of coordination inversely proportional to the strategic importance due to increasing Member States’ sensitivities), as well as the background, experience and level of initiative of the Heads of Delegations.¹⁰⁴

These changes required new working methods and, after consultations with Member States, Guidelines for EU co-operation in third countries and Guidelines on EU Political Demarches were circulated in November 2011.¹⁰⁵ These documents put forward the Union Delegations as undisputable leaders in representing EU positions and stress that any role accorded to Member States should be exceptional. Yet, in actual fact, Member States still participate in about one third of EU demarches, undermining the clarity of EU external representation which the Lisbon Treaty aimed to improve.¹⁰⁶ In this same reasoning it is confusing and contrary to the spirit of the Treaty, that the Working Arrangements prescribe that “[in] meetings at official level, the non-CFSP EU position can be presented either by the EU Delegation *or by Commission officials*”.¹⁰⁷

Gradually, EU Delegations’ relations with Member States missions are moving beyond informing, coordinating and representing, towards genuine cooperation. Contrary to the past situation where budget limitations led Member States to pursue individual rather than cooperative solutions,¹⁰⁸ the awareness is rising about the advantages of enhancing cooperation at EU level. There are a number of different ways in which this occurs. First, there is the practice of co-location, meaning that Member States’ so-called ‘laptop diplomats’, that have no representation in a certain country, are placed within the premises of an EU Delegation. Since the creation of the EEAS such projects have been set up with eleven Member States in seven third countries.¹⁰⁹ A second form of cooperation is that of sharing embassy premises. The Luxemburg embassy to Ethiopia is for instance established on the compound of the EU Delegation.¹¹⁰ Third, sub-contracting opens economies of scale by sharing

¹⁰² EEAS, *Report by the High Representative to the European Parliament, the Council and the Commission*, 22.12.2011, para. 16. In multilateral Delegations the situation is said to be more challenging “given the greater complexity of legal and competence issues” (ibid., para 17). Precisely due to this specific complexity, the study of this last group of Delegations falls beyond the scope of this paper.

¹⁰³ EEAS (2013) op.cit. note 96, para. 2.20.

¹⁰⁴ Balfour and Raik (2013) op.cit. note 98, 44; see also: Helly et al. (2014) op.cit. note 97, 9-10.

¹⁰⁵ EEAS, *Guidelines for EU co-operation in third countries*, Brussels, 7.11.2011; EEAS, *Guidelines on EU Political Demarches*, Brussels, 7.11.2011.

¹⁰⁶ EEAS (2013) op.cit. note 96, para. 3.4. Whereas Member States evidently remain free to express their national position, this may according to the principle of loyal cooperation not negatively affect “a concerted Union strategy” (Case C-266/03, *Commission v Luxembourg* [2005] ECR I-4805, para. 60; Case C-433/03, *Commission v Germany* [2005] ECRI-6985, para. 66. See further: P. Van Elsuwege and H. Merket, ‘The Role of the Court of Justice in Ensuring the Unity of the EU’s External Representation’ in S. Blockmans and R.A. Wessel (eds), *Principles and Practices of EU External Representation*, CLEER Working Papers 2012/5 (Centre for the Law of EU External Relations, The Hague, 2012) 37-57).

¹⁰⁷ Commission (SEC(2012)48) op.cit. note 80, 4 (emphasis added).

¹⁰⁸ D. Rijks and R. Whitman, ‘European Diplomatic Representation in Third Countries: Trends and Options’ in G. Avery, et al. (eds), *The EU Foreign Service: How to Build a More Effective Common Policy*, EPC Working Paper N°28 (European Policy Centre, Brussels, 2007) 36-41.

¹⁰⁹ EEAS, *2013 Annual Activity Report*, Brussels, 09.04.2014, 9.

¹¹⁰ Another example that predates the Lisbon Treaty is the shared building for the EU, the UK, the Netherlands and Germany in Tanzania.

certain services. The idea has for instance been advanced to set up joint contracts for the provision of security services abroad. Finally, by virtue of the EEAS Decision, the EU Delegations shall, upon request by Member States, support the latter States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries “on a resource-neutral basis”. Recently, this was rather successfully put in practice in Syria, where the EU Delegation was deliberately kept open to continue such services while Member States were closing their representations in reacting to severe human rights violations by the Syrian government and the rising insecurity.¹¹¹ Yet, given that this has to occur on a resource neutral basis, EEAS staff is cautioning that they lack the resources for expanding such activity.¹¹² This points to a general problem for the EU Delegations, that as integral part of the EEAS, should “be guided by the principle of cost-efficiency aiming towards budget neutrality”.¹¹³ The High Representative therefore argues in the 2013 EEAS review that “savings in national budgets should be a factor in setting the level of resources for the EEAS”.¹¹⁴ Whereas all the above forms of cooperation are mechanisms of practical and pragmatic interaction, they provide important steps towards genuine diplomatic, and thereby foreign policy integration.

3.2. EU Delegations as quasi-embassies: are they up to the task?

With their broad design EU Delegations constitute quasi-embassies that compared to their national counterparts only lack military, consular and cultural sections.¹¹⁵ They are moreover considered as embassies for all practical diplomatic purposes, with the only voids in the almost complete applicability of the VCDR to EU-third state relations¹¹⁶ being the lack of EU diplomatic passports and the difficulties with granting diplomatic asylum to persons in need.¹¹⁷ This also implies that the Head of Delegation is required to act – and increasingly perceived – as a quasi-ambassador. Similar to standard diplomatic practice the third state to which the Delegation is accredited is requested in an accreditation letter, signed by the Presidents of the European Council and the Commission, to “give entire credence to all that he will communicate ... in accordance with the instructions of the European Union”.¹¹⁸ Even the taboo on using the term ‘ambassador’ in reference to Heads of

¹¹¹ N. Helwig, P. Ivan and H. Kostanyan, *The New EU Foreign Policy Architecture: Reviewing the First Two Years of the EEAS* (Centre for European Policy Studies (CEPS), Brussels, 2013) 65.

¹¹² Interviews at the EU Delegation to Ethiopia and at the EEAS in Brussels, June and September 2013.

¹¹³ Preamble, para. 15 EEAS Decision.

¹¹⁴ High Representative (2013) op.cit. note 4, 11.

¹¹⁵ M. Comelli and R. Matarazzo, 'Rehashed Commission Delegations or Real Embassies? EU Delegations Post-Lisbon', *IAI Working Papers 11/23* (Istituto Affari Internazionali, Rome, 2011) 4.

¹¹⁶ Article 5(6) EEAS Decision prescribes that the “High Representative shall take the necessary measures to ensure that host States grant the Union delegations, their staff and their property, privileges and immunities equivalent to those referred to in the [VCDR]”. For an example of how this is ensured see the template of an Establishment Agreement in P.J. Kuijper, et al., *The Law of EU External Relations: Cases, Materials, and Commentary on the EU as an International Actor* (Oxford University Press, Oxford, 2013) 51-52.

¹¹⁷ Wouters and Duquet (2012) op.cit. note 40, 38-48. The former is being solved through EU Laisser-Passer documents that are being upgraded to meet modern diplomatic standards (interview EEAS official, September 2013), the latter is perhaps legally shaky, but Wouters and Duquet argue that the difficulties are not unsurmountable.

¹¹⁸ For a template of such a letter see: Kuijper et al. (2013) op.cit. note 116, 56.

Delegation is gradually breaking and is ever more frequently used in diplomatic correspondence.¹¹⁹ This reflects a growing recognition of the standing of these Delegations in the diplomatic community.

The ability of the Heads of Delegation to deal with these increased responsibilities and expectations depends as much on their personality as on their background. Seconded national experts (SNEs) generally have more affiliation with diplomatic sensitivities than those with a Commission background, but may struggle with the Delegations' traditionally more administrative tasks and technical projects. As a matter of fact, this last element is claiming a disproportionately large share in their already dense schedules. Since the transformation from Commission to EU Delegations, their Heads can no longer delegate the daily management of assistance programmes to their deputies or senior Commission staff, meaning that they can only themselves sign off on even the smallest transactions. This problem is acknowledged as one of "paramount importance" to be solved "in the shortest possible timescale" in the EEAS Review, but the High Representative – who again seems to forget her second hat – passes the buck to the Commission, because the EEAS cannot make proposals of a legislative nature.¹²⁰

In her/his leadership the Head of Delegation appears to be challenged from within by the EU Special Representatives. Whilst the Treaty only prescribes, in the vaguest of terms, that these shall have "a mandate in relation to particular policy issues",¹²¹ they have in practice nearly all been appointed to coordinate EU policies towards a certain country or region.¹²² Particularly this last category seems to be on the rise, given that the EU is increasingly taking a regional approach to foreign policy, as evidenced for instance by the strategies for the Sahel and the Horn of Africa.¹²³ Seen that the mechanisms for cooperation and information-sharing between Delegations in the same region are fairly limited, the Special Representatives can fill an important void. In this regard, and in the light of the Lisbon Treaty's call for a more unified external voice, it is striking that their role is completely absent in the EEAS Decision. The division of tasks and responsibilities is nowhere addressed, leading "to parallel lines of reporting and confusion about who was in charge".¹²⁴

The EEAS Review acknowledges that the Special Representatives, "being housed in a separate building with a relationship primarily to the Member States through the [Peace and Security Committee]", have only limited contacts with the Delegations.¹²⁵ It purports to solve this legal anomaly by integrating them more closely in the EEAS structures. It has in this light been suggested to built upon the existing practice of double-hatting Heads of Delegations and Special Representatives, as it is currently done in Kosovo, Afghanistan, Bosnia and Herzegovina and the African Union.¹²⁶ There is however a strong paradox here: whereas this double-hatting can only work where the geographic focus of both functions overlap, one may wonder which added value the Special Representative can offer in that case to a Head of Delegation that represents and coordinates all EU action.

¹¹⁹ Observations and Interviews at the EU Delegation to Ethiopia, April-July 2014.

¹²⁰ High Representative (2013) op.cit. note 4, 12.

¹²¹ Article 33 TEU.

¹²² See: < http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm>.

¹²³ Council Note (10113/07) EEAS, 'Strategy for Security and Development in the Sahel', 26.9.2011; Council, A Strategic Framework for the Horn of Africa' (3124th Foreign Affairs Council meeting), 24.11.2011.

¹²⁴ UK House of Lords (2013) op.cit. note 84, para. 75.

¹²⁵ High Representative (2013) op.cit. note 4, 5.

¹²⁶ B. Angelet and I. Vrailas, 'European Defence in the Wake of the Lisbon Treaty', *Egmont Paper 21* (Egmont Royal Institute for International Relations, Brussels, 2008) 28.

As noted by an EEAS official in Delegation, since the Lisbon Treaty “politics is no longer a hobby, that could be performed with relatively limited oversight from Brussels, but has become part and parcel of every aspect of the Delegations’ daily business, couched in a formal straightjacket under strict supervision from both headquarters and Member States”.¹²⁷ The fact that Delegations increasingly act, and are perceived, as embassies does not leave a simple aspect of their work unaffected. Even though politics had evidently never been far away in policy negotiations with partner governments, the new situation requires all staff to execute their responsibilities in a more politically sensitive manner. Moreover, the Arab Spring and the more recent turmoil in Ukraine, confronted the EU with the sobering fact that its policies must take the political situation in which they operate much more into account.

A key question is to which extent the Union Delegations are up to this task. In essence, the increased expectations on what they should deliver, particularly with regard to the CFSP, were not accompanied by a commensurate expansion of their capacity. Indeed, “[m]any delegations have managed the transition without any additional resources”, thirteen Delegations, for instance, “have no political section, with the Head of Delegation the only AD official from the EEAS”.¹²⁸ However, as long as the target of budget neutrality is not replaced “with a more realistic focus on budgetary efficiency”,¹²⁹ the EEAS’ hands remain largely tied. A small but significant solution is the High Representative’s commitment to continue the transfer of posts from headquarters to Delegations to cope with their heavy workload.¹³⁰ Further, the Delegations must make do with what they have. Regrettably, this often consists of understaffed and resourced political sections,¹³¹ which moreover partly consist of Commission staff that were – as prescribed in the Treaty and the EEAS Decision – rehatted to the latter, yet often without appropriate training.¹³²

As a positive sign of team spirit, a joint letter from the Commission Secretary-General and the EEAS Chief Operating Officer¹³³ allow to cushion these shortfalls by a flexible use of staff, through which Commission personnel can contribute to political work. Yet, also the latter’s capacities are in many cases overstretched, which moreover prevents them from properly absorbing the relevant guidance and training required to exercise such tasks.¹³⁴ Nonetheless, these arrangements are widely applied, with considerable variations as their use is at the discretion of the Head of Delegation. A major contribution to the diplomatic skills within EU Delegations is moreover delivered by the SNEs, that

¹²⁷ Interview EEAS official at the EU Delegation to Ethiopia, June 2013.

¹²⁸ High Representative (2013) op.cit. note 4, 10.

¹²⁹ Wouters and Van Vooren (2013) op.cit. note 6.

¹³⁰ High Representative (2013) op.cit. note 4, 4.

¹³¹ Helly et al. (2014) op.cit. note 97, 6.

¹³² UK House of Lords (2013) op.cit. note 84, para.67.

¹³³ This letter is referenced in the Commission-EEAS Working Arrangements (Commission (SEC(2012)48) op.cit. note 80, 5).

¹³⁴ A. Herrero and N. Keijzer, 'EU Support to Governance at a Critical Juncture: Will the New EU External Action Architecture Deliver Smarter Support to Governance in Partner Countries', *ECDPM Briefing Note No. 26* (European Centre for Development Policy Management, Maastricht, 2011) footnote 10. It is in this sense notable that 49% of Heads of Delegation already find the standard skills of their operational, finance, monitoring and auditing staff insufficient to carry out their tasks (European Parliament (A7-0199/2014) Report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2012, Section X – European External Action Service, 20.03.2014, para. 31).

constitute 46.2 % of their staff at AD level, including 44% of the Heads of Delegation.¹³⁵ Further reinforcing this win-win situation for exchanging knowledge, information and contacts, there are concrete plans to relaunch the in 2007 created Diplomatic Exchange and Secondment Programme (DESP) that allows to second EU officials to national foreign ministries.¹³⁶ Finally, Article 6(10) of the EEAS Decision makes staff rotation between Brussels and the field “in principle” an obligation for all EEAS staff, providing the basis for a genuine career foreign service.

It is clear from the above that staff in Delegations is extremely diverse. Besides the internally diversified EEAS staff and Commission officials, there are various personnel categories ranging from administrators over assistants, temporary agents, contract agents to local staff. The chains of command, career paths and training opportunities are very different from one status to another. Despite the clear risk to magnify the widely reported hurdles to create a common *esprit de corps* in the EEAS headquarters,¹³⁷ an ECDPM study reports that after a first phase of transition staff relations are now generally productive and constructive.¹³⁸ Moreover, staff in Delegations generally value the “biodiversity” of their new working environment.¹³⁹ However, not everything in the garden is rosy and as noted in the EEAS Review there remains considerable room for improvement in resource management.¹⁴⁰ Substantial tension arises over the fact that the Commission has duplicated the working group “EUDEL”, that manages contacts between the EEAS and the Commission on staff in Delegations, with its own “COMDEL” to coordinate between the various Commission services with staff abroad. This remaining fragmentation is further illustrated by the fact that the Commission is pushing to have its own officials, rather than those of the EEAS, on the posts of deputy Heads of Delegation.¹⁴¹

In general, efforts are clearly being made to fill the gaps in the design of EU Delegations, but political expertise remains an area of concern. This is even more so with regard to specific security expertise, particularly relating to CSDP activity. While coordination with CSDP missions and operations had always been a requirement, it is new that the Head of Delegation is now expected to take the lead. The mandates of EUTM Mali and EUCAP Nestor for instance state that “[t]he Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the Head of Union Delegation”.¹⁴² This suggests, at least on the level of politics, some form of hierarchical relationship between EU Delegations and CSDP missions. Such guidance can however not be effective without significant knowledge and understanding of the CSDP specificities, as well as the security climate in a certain country or region.

¹³⁵ High Representative (2013) op.cit. note 4, 14. In headquarters SNEs represent only 23.8% of administrators. This imbalance results from the fact that the majority of new posts provided for the EEAS is used to reinforce Delegations.

¹³⁶ Interview EEAS official in Brussels, September 2013.

¹³⁷ For instance: M. Lefebvre and C. Hillion, 'The European External Action Service: Towards a Common Diplomacy', *SIEPS European Policy Analysis 6/2010* (Swedish Institute for European Policy Studies, Stockholm, 2010) 7.

¹³⁸ Helly et al. (2014) op.cit. note 97, 6-7.

¹³⁹ Ibid.

¹⁴⁰ High Representative (2013) op.cit. note 4, 11.

¹⁴¹ Interview with DEVCO official, September 2013.

¹⁴² Article 7(2) Council Decision (2013/34/CFSP) of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali); Article 6(7) Council Decision (2012/389/CFSP) of 16 July 2012 on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR).

The CSDP is however the single most sensitive area of EU cooperation, under strict surveillance by the Member States. This is evidenced by the fact that Defence Attachés meetings are the only EU gathering abroad that continues to be chaired by the Member States, with the Delegations' political officers only occasionally invited. On the other hand, when a CSDP mission is present in a given country the Head of Mission or Force Commander typically attends HoMs meetings at the EU Delegation.¹⁴³ Consequently, relevant expertise is only to a very limited extent available in Delegations and the EEAS Review pleads to improve the availability of security and military personnel.¹⁴⁴ For this purpose it commits to expand an initialled pilot programme of detaching security and military experts to Delegations, as well as to improve synergies between geographical experts in the EEAS Intelligence Centre and the relevant Delegations.

Growing pains are inevitable for these new quasi-EU embassies. Yet, there appears to be a clear commitment within the EU to make them work effectively. With the proper staffing and resources these Delegations offer unique opportunities to translate the EU's widely-portrayed coherence rationale into needs-oriented and inclusionary action on the ground. Particularly in developing countries they have a wide network of contacts through implementing the EU's various aid programmes, that allow them to act as antennae to monitor the local context "beyond the usual government-to-government diplomacy".¹⁴⁵ For instance, during the Mali crisis the Union Delegation was better informed than any Member States due to its wide contacts with grassroots organisations.¹⁴⁶ In order to fully reap the benefits of these comprehensive Delegations, they need to be able to feed into both EU decision-making and its implementation.

Rather to the contrary staff in Delegations complain about top-down decisions that fail to take into account their input and advice, for instance with regard to the choice of priority sectors in aid programming.¹⁴⁷ Not only does this undermine their relations with and the trust of authorities, businesses and civil society, it is also fails to fully exploit the potential for aligning EU initiatives with local needs and requirements. Focussing on fragile states, the European Parliament therefore proposes to further devolve decision-making to Delegations and enable a more flexible use of resources.¹⁴⁸ The EDF for instance provides a budget for unforeseen needs, but it can only be allocated after the government or any other relevant organisation of the country concerned submits a request, that will be assessed by the Delegation, subsequently forwarded to the EEAS for further examination, transmitted to DG DEVCO to check the availability of funds and the eligibility of the intervention, who then finally prepares an Implementing Decision in consultation with the EEAS.¹⁴⁹ The Parliament therefore adds that more deconcentration and flexibility may "require a change in the culture of the Commission from instructing and controlling Delegations to providing timely resources and support to do their work".¹⁵⁰ In this respect it is regrettable that budgetary cuts are

¹⁴³ EEAS (2013) op.cit. note 96, para. 2.11.

¹⁴⁴ High Representative (2013) op.cit. note 4, 6. See also: Commission and High Representative (JOIN(2013) 30 final) *Joint Communication on the EU's comprehensive approach to external conflict and crises*, Brussels, 11.12.2013, 11; European Parliament (A7-0138/2014) Report on the EU comprehensive approach and its implications for the coherence of EU external action, 21.2.2014, para. 41.

¹⁴⁵ Balfour (2013) op.cit. note 5.

¹⁴⁶ UK House of Lords (2013) op.cit. note 84, para. 90.

¹⁴⁷ Helly et al. (2014) op.cit. note 97, 8.

¹⁴⁸ European Parliament, *EU Development Cooperation in Fragile States: Challenges and Opportunities* (Directorate-General for External Policies, Brussels, 2012) 7.

¹⁴⁹ Commission (SEC(2012)48) op.cit. note 80, 22.

¹⁵⁰ European Parliament (2012) op.cit. note 148, 35.

limiting the number of travels from Brussels-based officials to Delegations, as this may further widen the gap between decision-making and the local context.¹⁵¹

4. Conclusion

The EU Delegations have come a long way from technical information and project management offices to full-scale representations of the EU. While they were formally merely Commission offices before the entry into force of the Lisbon Treaty, in actual fact they became EU diplomatic actors by default in reply to specific and evolving needs. Consequently, not a single area of EU competence was entirely foreign to them, not even the traditionally sensitive areas of the CFSP and the CSDP. Their evolving scope and reach had however always been dominated by managerial rather than political aspects,¹⁵² and it is precisely this element that changed with the Lisbon Treaty.

By charging the Delegations with the task to represent the Union abroad, politics pervade every aspect of their daily functioning. By taking over the coordinating and representing responsibilities from the rotating Presidency, the Delegations hold great potential to unify and amplify the EU's voice and provide partners with a single interlocutor abroad. While the Commission Delegations were better prepared for this transformation than a literal interpretation of their status would suggest, this nonetheless implied that this was much more than a nameplate operation. Whereas politics had always played a role in the work of these initially more technical Delegations, the Commission had never unfolded anything similar to a career diplomatic services, with the associated trainings, requirements and standards for its staff. Today, they are however expected to run quasi-embassies with hardly any additional resources. This obviously limits their capacity for political reporting, monitoring the security situation and practicing full and broad diplomatic tact and strategy, which are among the clearest areas of value added the Delegations can deliver.

While many challenges thus remain, the first signs are considerably more positive than the annihilating criticisms that characterised the early days of the EEAS. This is all the more remarkable given that the broader competences, more diverse staff and complex lines of authority and reporting would seem to offer even more potential for tensions. Yet, rather to the contrary turf sensitivities appear less present as exemplified by the inter-institutional agreement that lets Commission officials contribute to the political tasks of the overburdened EEAS staff. This illustrates the particularly clear awareness of the existing shortcomings in the Delegations and the determined commitment to fix them. Whereas this constitutes an interesting area for further research – particularly from a political scientists perspective – we can already pinpoint a number of elements that might explain this difference.

First, while the political direction over EU external action is in Brussels divided between the two bureaucracies of the Commission and the EEAS, with the High Representative lacking the necessary clout to bridge them, the Head of Delegation provides more unified leadership on the ground. As noted above, this leadership is complicated by her/his divided loyalty to these two bureaucracies and to a certain extent challenged where an EU Special Representative is present. Second, the fact that these changes within the EU Delegations occurred out of spotlight – partly due to the geographical distance from Brussels – allowed them to gradually mature without every mishap or quarrel being

¹⁵¹ Herrero and Keijzer (2011) op.cit. note 134, 7.

¹⁵² Spence (2006) op.cit. note 17, 414.

magnified under the public microscope. Third, the clarity and simplification that results from centralising EU coordination and representation in the Delegations is welcomed by third parties that appreciate the cost and time-savings this brings along.¹⁵³ This appreciation results in a greater reliance upon the EU as interlocutor for the whole of its Member States, feeding back to the role and status of the Delegations. Fourth, also with regard to Member States the Delegations are increasingly seen as an added value rather than a threat to their foreign policy prerogatives. Member States have a clear interest in ensuring that EU reporting from all distant corners of the world is up to standard and can benefit from practical cooperation modalities such as co-location and sub-contracting. It is consequently not surprising that SNEs have provided the single most important contribution to the much-needed diplomatic expertise within EU Delegations. This has however not (yet) reached the point that Member States are prepared to invest more resources in the Delegations, to compensate for the cost savings at national level. Finally, there is a strong feeling among staff in Delegations that they have to make this work in order to improve their standing vis-à-vis, and influence on decision-making in, Brussels headquarters.

This last element is one of the main sticking points for Delegations. With their all-encompassing focus and competences they form the key to translating all the talk about the EU's comprehensive approach into needs-oriented and context-specific policies. For this purpose the EU needs to set up a much more bottom-up process of policy design, wherein the Delegations can have an important role in both the starting and end point of decision-making in order to fine-tune policies with the ever-changing local circumstances and requirements.

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¹⁵³ This does of course not mean that certain countries no longer like to try and play different EU Member States off against each other.

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