

Jean Monnet Centre of Excellence in European Law and Governance

King's College London

Working Paper Series

Working Paper No. 2011-02

Paper presented at the JMCE Research Student Workshop, 'The European Union: Finding its Role in a Changing World', King's College London, 30 September 2011

The European External Action Service: An opportunity to reconcile development and security policies or a new battleground for inter-institutional turf wars?

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Paper prepared for presentation at the JMCE King's College London Research Student Workshop
"The European Union: Finding its Role in a Changing World"

30 September 2011

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Abstract

“There cannot be sustainable development without peace and security, and without development and poverty eradication there will be no sustainable peace”.¹ The commitment to intertwine development and security policies of both the European Union and the Member States has increasingly been put forward in policy documents since the early 2000s. While the security-development nexus seems at first sight obvious and rather unremarkable, it has nonetheless become one of the main trouble spots of inter-institutional coherence in EU external action. The fuzzy boundaries between both policy domains and their impact on the distribution of competences turned the implementation of the nexus into a particularly complex and tense exercise.

The rationale behind many of the Lisbon Treaty innovations is to address coherence issues by reducing the potential for conflict to a minimum. This paper focuses on the European External Action Service (EEAS) and analyses to what extent it could contribute to reconciling the distinct policies, strategies and institutional cultures of development cooperation and Common Foreign and Security Policy (CFSP). The new diplomatic service constitutes a functionally autonomous body with considerable policy discretion regarding both CFSP and development cooperation. Moreover, it assembles staff and resources from the Council, the Commission and the Member States that previously stood in sharp competition. Yet, the author argues that this integration has only been partial and without the necessary political will, the EEAS might become a new battleground for continued inter-institutional turf wars and thus undermine the EU’s international credibility.

¹ Council (2008) *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World*, S407/08, 8.

Introduction

In the early 2000s, the increased awareness of the destructive correlation between insecurity and underdevelopment convinced the European Union to jump onto the bandwagon of the rising international alliance between security and development policies, strategies and actors. In numerous policy documents and statements the EU started to approach development cooperation and Common Foreign and Security Policy (CFSP)/Common Security and Defence Policy (CSDP) as two sides of the same coin and parades its commitment to exploit synergies between them and enhance their mutual compatibility.

The political simplicity of many of these statements stands however in sharp contrast with the practical complexity of their implementation. This results from the legal distinction between development cooperation and CFSP, two policy domains that were long encapsulated in two separate pillars and continue to be governed by different policy regimes in the post-Lisbon “depillarised” constellation. This implicates different decision-making procedures and a variable distribution of power among the different policy actors. Whereas development cooperation is a shared competence on which the Member States, the Council, the Commission, the European Parliament and the EU Court of Justice all have an important say, security policy is closely linked with state sovereignty and its territory is painstakingly guarded by the Council and the Member States.

The EU’s answer to this dichotomy has long consisted of a repeated commitment to increase coherence of EU external action.² This has necessitated scrupulous cooperation between both sides of the *Rue de la Loi*, often resulting in duplication, time-consuming coordination and a blurring of policy responsibilities. Moreover, the nexus has on several occasions provided a fertile ground for turf wars and inter-institutional conflicts on competence delimitation.

For lack of formal coordinating mechanisms and structures the implementation of the security-development alliance hinges on rather informal and ad hoc arrangements between individual actors. Notwithstanding the fact that development cooperation and CFSP/CSDP often prove quite complementary in practice, an effective and sustainable implementation of the nexus cannot succeed without a joined-up institutional framework and a dedicated centre of policy entrepreneurship.

The European External Action Service (EEAS) - created by the Lisbon Treaty, officially launched on 1 December 2010 and fully operational since the first day of 2011 – assembles security and development-related staff and resources from the Commission, the Council General Secretariat³ and the Member States. Moreover, the EEAS is a functionally autonomous body with considerable responsibilities over EU crisis management capabilities, an important say on the political and strategic aspects of development cooperation instruments and a considerable presence abroad through the Union Delegations and the EU’s Special Representatives.

Through a thorough analysis of *Council Decision 2010/4217/EU Establishing the Organisation and Functioning of the European External Action Service* (further: “EEAS Decision”) this paper aims to

² English EU jargon uses the term consistency, while all the other official language versions refer to “coherence”. However, these words are not synonyms. Consistency is generally viewed as a more specific term referring to the absence of contradictions, while coherence is about building synergies and adding value. Except when citing EU legal sources (which only refer to consistency), the author will use the term coherence as defined above. For literature on coherence: TIETJE, C. (1997) “The Concept of Coherence in the Treaty on European Union and the Common Foreign and Security Policy”, *EFAR*, 2(2), 211-233; HILLION, C. (2008) “Tous pour un, un pour tous! Coherence in the External Relations of the European Union”, in CREMONA, M. (ed.) *Developments in EU External Relations Law*, Oxford, OUP, pp. 10-36.

³ In this paper the term “Council General Secretariat” will be used to cover the Council’s Secretary-General, his private office, the legal service as well as the different directorates-general. “Council”, on the other hand, refers to the different configurations of the Council of Ministers (for the purpose of this paper particularly the Foreign Affairs Council) as well as its substructures (including the various committees and working groups) in which the Member States are represented.

analyse whether the EEAS has the means in hand, after more than a decade of mainly rhetorical commitments, to finally bridge the security-development schism of EU external relations.⁴ The main question is therefore whether the new tools, mechanisms and structures offered by the creation of the EEAS are sufficient to genuinely intertwine security and development policies. Or, will this centralisation of staff, resources and responsibilities rather internalise old tensions as well as challenges of delimitation and turn the EEAS into a new battle ground for inter-institutional turf wars?⁵

1. No security without development, no development without security

1.1. The EU's commitment to the security-development nexus: about words and deeds

Underdevelopment and insecurity are part of a destructive vicious circle wherein poor socio-economic conditions can fuel state erosion, instability, rebellion and civil war, which in their turn form the breeding ground for further socio-economic deterioration. This chain reaction contains the ingredients for the mushrooming of transnational terrorism and organised crime as well as the proliferation of weapons of mass destruction and small arms and light weapons. In the early 2000s the increasing awareness of this dangerous correlation led policy-makers in the European Union to realise that contamination between security and development policies, strategies and actors is not only inevitable but also necessary. This resulted in the EU's commitment to the so-called security-development nexus that aims to fine-tune and integrate development and security policies of both the EU and its Member States. The first explicit expression hereof can be found in the 2001 EU Programme for the Prevention of Violent Conflicts and has ever since reappeared in numerous policy documents and speeches.⁶

Whereas the complementarity between development cooperation and security policy may seem natural and rather unremarkable from a political point of view, the legal distinction between both policy domains has tended to jeopardise a unified approach. Development and security are part of very different policy regimes that involve variable decision-making procedures and a distinct distribution of power among the EU institutions and with the Member States. With regard to development issues the ordinary legislative procedure applies, implying a formal proposal of the European Commission and co-decision by the European Parliament and the Council. In the context of CFSP, which includes the Common Security and Defence Policy (CSDP), the European Council and the Council generally take decisions by unanimity, the Commission and the Parliament have virtually no role to play and the EU Court of Justice (ECJ) has only limited competences.⁷

⁴ Council Decision(2010/4217/EU) *Establishing the Organisation and Functioning of the European External Action Service* [2010] O.J. L20134, 3.8.2010.

⁵ LEFEBVRE, M. and HILLION, C. (2010) "The European External Action Service: Towards a Common Diplomacy?", *European Policy Analysis* 6/2010, Stockholm, Swedish Institute for European Policy Studies, 7-8.

⁶ European Council (2001) *EU Programme on the Prevention of Violent Conflicts*, 3-4; Some key examples are the European Security Strategy (Council (2003) *A secure Europe in a better world: European Security Strategy*); the European Consensus on Development (Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission (2006/C 46/01) *Joint Statement on European Union Development Policy: The European Consensus*, O.J. C46/1); the Cotonou Agreement (Partnership agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part (2000/483/EC) signed in Cotonou on 23 June 2000, O.J. L317/3, 15.12.2000); and the Africa-EU Strategy (Council (2007) *The Africa-EU Strategic Partnership: A Joint Africa-EU Strategy*, 16344/07).

⁷ The Court of Justice has no jurisdiction over CFSP provisions in general, with the exception of ruling on the legality of restrictive measures against natural or legal persons (Article 24(1) TEU), the boundary with other EU policies (Article 40 TEU) and the duty of consistency of EU external action (Article 21(3) TEU).

The fact that this division of power and competences varies along the different policies spanning the nexus means that the actors involved have an interest in framing its aspects as either development or security-focussed. The divergence of views between the Commission, the Council and the Member States moreover reflects the tensions between the rapid and short-term approach of the CFSP and the more extensive procedures and long-term outlook of the former Community external policies, which includes development cooperation.

Primary law defines the notions of development and security in broad and remarkably vague terms.⁸ Interlinking their objectives is a question of prioritising and therefore bears the risk of subordinating certain objectives and means over others. This arises clearly when comparing the direction of causality expressed in key documents such as the European Security Strategy (“Security is a precondition of development”), the European Consensus on Development (“Security and development are important and complementary aspects of EU relations with third countries”), the 2010 revised Cotonou Agreement (“The interdependence between security and development shall inform the activities in the field of peace building, conflict prevention and resolution”) and the Joint Africa-EU Strategy (“Africa and Europe understand the importance of peace and security as preconditions for political, economic and social development”).⁹ This lack of consensus opens the door for various interpretations of the nexus that allow policy actors to expand their competences, intrude into new fields of activity and make their claims to finite resources.

The legal distinction between development cooperation and CFSP/CSDP combined with the elusive interpretation of their interrelationship obviously brings along significant obstacles. Nevertheless, none of the many references to security and development as mutually-enhancing policy objectives contains clear guidelines or instructions on how this alliance should be articulated in practise. Instead, the EU remains stuck in a rather rhetorical commitment to enhance coherence, coordination and cooperation in the field of EU external action, forcing the Commission, the Council General Secretariat and the Member States into a kind of “rival partnership”.¹⁰ This approach has not seldom had the adverse effect of diffusing policy responsibility, increasing duplication and has on several occasions promoted inter-institutional frictions and tensions. Such public disputes among policy actors unfortunately make a mockery of the EU’s grotesque commitments and divert time and energy away from debates on the substance of how to put the nexus effectively and sustainably into practise.

The primary example in this regard is the dispute that arose in the course of 2004 between the Commission and the Council on the appropriateness of a measure providing support to the Economic Community of West-African States (ECOWAS) to deal with the calamitous spread of small arms and light weapons (SALW). While this concerned an essentially political disagreement, it soon turned into a tumultuous legal dispute before the European Court of Justice (ECJ) on the delimitation of competences between development cooperation and CFSP.¹¹ Based on the “hierarchical delimitation

⁸ Article 24(1) of the Treaty on European Union (TEU) un-enlighteningly states that “common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security”. Article 208 of the Treaty on the Functioning of the European Union (TFEU), on the other hand, notes that “Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty”. Moreover, the EU lacks a definition of the concept of ‘developing country’. In case C-155/07 (Parliament v. Council) the Court took notice of this hiatus but stopped short at noting that this concept “must be given an autonomous Community interpretation”.

⁹ Council (2003) supra note 6, 2; Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission (2006/C 46/01) supra note 6, 7; Agreement amending for the second time the Partnership Agreement between the Members of the African, Caribbean and Pacific group of States, of the one part, and the European Community and its Member States, of the other part (2010/648/EU) signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005, O.J. L287/14, 4.11.2010; Council (2007) supra note 6, 5.

¹⁰ “Partenaire rival” in BUCHET DE NEUILLY, Y. (2005) *L’Europe de la politique étrangère*, Paris, Economica, 64.

¹¹ Case C-91/05, Commission v. Council (ECOWAS or *Small Arms and Light Weapons*), [2008] ECR I-3651.

rule” of pre-Lisbon Article 47 TEU¹² the Court ruled that measures pursuing both a development and security aim, without one being incidental to the other, should be adopted following the Community legal basis.¹³

The fact that the EU’s efforts with regard to the nexus did not deliver the desired results was publicly exposed in 2007 when the peer review by the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) expressed its concern about the limited coherence between “[ESDP] and the Commission’s longer-term development programming”.¹⁴ In recent years, with the creation of the Instrument for Stability (Ifs), the funding of the African Peace Facility (APF) through the European Development Fund (EDF) and the increasingly long-term approach to conflict prevention of civilian CSDP-missions, some efforts were made on both sides of the nexus. These attempts, that have not been without controversies, remain however unifying rather than unified and continuously collide with the division of competences.

In practice, relevant expertise on security and development issues only rarely crosses the institutional divide.¹⁵ As a consequence, any progress in reaping the benefits of the security-development alliance depends on rather informal – and therefore unstable – arrangements conditional upon the creativity and preferences of the individual actors involved. In order to live up to its ten-years-old commitment the EU thus urgently needs of a joined-up framework and a centre of policy entrepreneurship that would allow the EU to rationalise the allocation of resources and maximise the impact of its policies by exploiting synergies between them and avoiding unnecessary duplication.

1.2. The Lisbon Treaty: new hopes for the nexus?

The Lisbon Treaty, that entered into force on 1 December 2009, drastically rearranges the EU foreign policy-making architecture and attempts to heal many of its sore spots. Resulting from the conviction among the Heads of State and Government that the EU has “a leading role to play in a new world order” the Treaties have created mechanisms and structures to strengthen EU external action by enhancing its coherence, flexibility and effectiveness.¹⁶ This has generated new hopes and expectations for better aligning development cooperation and CFSP/CSDP. Before going deeper into the opportunities and challenges that arise from the creation of the EEAS, this chapter aims to sketch the other main Lisbon Treaty innovations that could affect the implementation of the nexus. An in-depth analysis of these changes falls however outside the scope of this paper.

A first important innovation is the abolition of the pillar structure and the dissolution of the European Community into the European Union. This has opened opportunities for a *rapprochement* between the previously distinct policy regimes of development cooperation and CFSP. While this is a considerable improvement, its impact should however not be overestimated. The Common Foreign

¹² Former Article 47 TEU stated: “nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.”

¹³ For a thorough discussion of this controversial judgement see: HILLION, C. and WESSEL, R. (2009) “Competence Distribution in EU External Relations after *ECOWAS*: Clarification or Continued Fuzziness?”, *CML Rev*, 46, 551-586 and; DASHWOOD, A. (2008) “Article 47 TEU and the relationship between first and second pillar competences”, in DASHWOOD, A. and MARESCAU, M. (eds.) *Law and Practice of EU External Relations. Salient Features of a Changing Landscape*, Cambridge, CUP, 70-103.

¹⁴ Development Assistance Committee (2007) *Peer Review: European Community*, Paris, Organisation for Economic Cooperation and Development, 66-71.

¹⁵ YOUNGS, R. (2009) “Fusing Security and Development: Just another Euro-Platitude?”, in CARBONE, M. (ed) *Policy Coherence and EU Development Policy*, London, Routledge, 98-103.

¹⁶ European Council (2001) Laeken Declaration on the Future of the European Union annexed to the Presidency Conclusions of the European Council summit, SN 300/1/01 REV 1, p. 20.

and Security Policy remains “subject to specific rules and procedures” characterised by unanimous decision-making in the Council and a limited role for the Commission, the Parliament and the ECJ.¹⁷ Moreover, while the general provisions of the Union’s external action are brought together under a single Title V of the TEU, the specific provisions on CFSP (in Title V TEU) are explicitly separated from all the other aspects of the Union’s external action (grouped in title V of the Treaty on the Functioning of the EU (TFEU)). For these reasons, the Lisbon Treaty can be seen as hiding rather than abolishing the pillar structure and the delimitation between CFSP and non-CFSP external competences perseveres.¹⁸ Another indication of this distinct nature of CFSP is the message contained in two (largely overlapping) declarations annexed to the final act of the Treaty of Lisbon stressing that the new CFSP rules and procedures “do not affect the responsibilities of the Member States” and “do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament”.¹⁹

A second important innovation is the grouping of all external action principles and objectives in a single Article 21 TEU. This renders the objectives to, on the one hand, “preserve peace, prevent conflicts and strengthen international security” and on the other hand “foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradication poverty” part of an indissoluble whole.²⁰ Yet, in the light of the EU’s oft-repeated commitment to the nexus a definition of their causal relationship, or at least an explicit link between them, could have provided considerably more clarity.

With Article 21 TEU the Lisbon Treaty also elevates the objectives of development cooperation to the highest level of EU external action. Moreover, Article 208 TFEU establishes “the reduction and, in the long term, the eradication of poverty” as its primary aim.²¹ While the changes in the field of CFSP are mainly of an institutional and procedural nature, the scope of CSDP is widened through an extension of the Petersberg tasks, that now also include joint disarmament, military advice and assistance tasks, conflict prevention and post-conflict stabilisation.²² The downside of these changes as well as of the grouping of objectives in Article 21 TEU is that they increase the potential for overlapping competences and elevate the risk of politicisation by providing an argument to both development and security actors to take on new responsibilities in each other’s field of competence.

Also important is Article 40 TEU that replaces the “hierarchical delimitation rule” of former Article 47 TEU. The new “mutual non-affectation” clause accords CFSP an equal level of protection compared to the other TFEU external competences.²³ Combined with the expansion of the Court’s jurisdiction to the rephrased duty of consistency formulated in Article 21(3) TEU, this could allow for a

¹⁷ Article 24(1) TEU; the Lisbon Treaty does however introduce some minor exceptions to these general rules, for a discussion of these changes: WOUTERS, J., COPPENS, D. and DE MEESTER, B. (2008) “The European Union’s External Relations after the Lisbon Treaty”, in GRILLER, S. and ZILLER J. (eds.) *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty*, Vienna, Springer, 160-167 and 194-196.

¹⁸ VAN ELSUWEGE, P. (2010) “EU External Action after the Collapse of the Pillar Structure: in search of a new balance between delimitation and consistency”, *CML Rev*, 47, 992-993.

¹⁹ Respectively Declaration No. 13 and 14 concerning the common foreign and security policy annexed to the final act of the Intergovernmental Conference which adopted the Treaty of Lisbon.

²⁰ Article 21(2) (c) and (d) TEU.

²¹ For an analysis of the development cooperation provisions in the Lisbon Treaty: SCHRIJVER, N. (2009) “When Will the New Emperor Wear his Clothes? The Efforts of the European Union Towards a Common Development Cooperation Policy”, in BULTERMAN, M. et al. (eds.) *Views of European Law from the Mountain: Liber Amicorum Piet Jan Slot*, Austi, Wolters Kluwer Law & Business, 383-387.

²² Article 43(1) TEU as compared with Article 17(2) TEU; for an extensive analysis of the Lisbon Treaty changes to CFSP/CSDP: PIRIS, J.-C. (2010) *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge, CUP, 256-265 and 273-279.

²³ Article 40 TEU states: “The implementation of [CFSP] shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the [TFEU]. Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.”

rebalancing of competences on the security-development axis.²⁴ Moreover these changes provide new possibilities to overcome the fragmentation of EU external action that came to the surface in the ECOWAS-judgement and stemmed from the old Treaties' preference for competence delimitation above coherence.²⁵

The creation of the function of High Representative for Foreign Affairs and Security Policy is a final key novelty. Whereas the Constitution's ambitious job title of European Foreign Minister did not survive the tense inter-governmental negotiations that led to the adoption of the Lisbon Treaty, the job description remains the same. The High Representative, a position held by Baroness Catherine Ashton, combines the three hats of "[conducting] the Union's common foreign and security policy", "[presiding] over the Foreign Affairs Council" and as "one of the Vice-Presidents of the Commission" she is "responsible within the Commission for the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action".²⁶

These responsibilities as well as her duty to "ensure the consistency of the Union's external action" arguably make her the central political figure capable of ensuring the effective intertwining of security and development policies.²⁷ However, the High Representative's long list of functions, tasks and duties brings along a tremendous workload and her ability to successfully manage the security-development nexus will to very large extent depend on the effective functioning of her assisting and supporting machinery, the European External Action Service (EEAS).

2. Setting up the EEAS: vague mandate, tough negotiations

The best prospects for exploiting synergies between security and development are offered by the creation of the High Representative's diplomatic corps, the European External Action Service. Despite the fact that the Lisbon Treaty created one of the largest diplomatic bodies in the world, with the potential to completely overhaul the ins and outs of EU external action, it describes the EEAS in a particularly skeletal form:

"In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act

²⁴ Article 21(3) TEU reads as follows: "The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect."

²⁵ On the old Treaties' bias: HILLION, C. and WESSEL, R. (2009) *supra* note 13, 581; on the Court's jurisdiction over the new duty of consistency: VAN ELSUWEGE, P. (2010) *supra* note 18, 1012-1017; KRONENBERGER, V. (2008) "Coherence and consistency of the EU's action in international crisis management: the role of the European Court of Justice", in BLOCKMANS, S. (ed.) *The European Union and Crisis Management: Policy and Legal Aspects*, The Hague, T.M.C. Asser Press, 210-211 and; for a discussion of the ECOWAS-judgement in the light of the Lisbon Treaty innovations: VAN VOOREN, B. (2009) "The Small Arms Judgment in an Age of Constitutional Turmoil", *EFAR*, 14(2), 231-248.

²⁶ Article 18 (2), (3) and (4) TEU.

²⁷ Article 18(4) TEU. However, the Lisbon Treaty is rather dubious on the responsibility to ensure consistency as Article 21(3) TEU EU reads: "The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect." However, given that the creation of the position of High Representative is *in se* aimed at bridging the gap between the external competences of the Council and the Commission, the former will presumably be the principal watchdog with regard to consistency.

on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.”²⁸

This short paragraph, focussing on procedure and organisational aspects rather than its role and competences, is inevitably vague and imprecise. Article 27(3) TEU indicates that the EEAS shall assist the High Representative but does not touch upon its tasks and functions. It is moreover unclear from the Treaty how and through which channels the service “shall work in cooperation with the diplomatic services of the Member States” and which departments and proportions of staff shall be incorporated from the relevant departments of Council’s General Secretariat, the Commission and the national diplomatic services.

According to Declaration No. 15 annexed to the Treaties the Secretary-General of the Council, the High Representative, the Commission and the Member States should begin preparatory work on the EEAS “as soon as the Treaty of Lisbon is signed”.²⁹ Given that an identical declaration was annexed to the Constitutional Treaty, preparations on the EEAS began already in October 2004.³⁰ These discussions were however repeatedly interrupted due to the negative referenda on both the Constitution and the Lisbon Treaty and remained necessarily discrete and low-level in order not to endanger the sensitive ratification process of the latter.

In the seven months between the entry into force of the Lisbon Treaty on 1 December 2009 and the adoption of the Council Decision establishing the organisation and functioning of the EEAS on 26 July 2010, tense inter-institutional negotiations took place on the nitty-gritty of the new foreign service’s institutional location, composition and staff.³¹ On 25 March 2010 High Representative Ashton submitted her proposal for a Council Decision to the General Affairs Council (GAC).³² Yet, already that same day the European Parliament rejected the proposal for a lack of accountability and political legitimacy as well as the “artificial separation of part of the development competences between [EEAS] services and Commission services”.³³ On 26 April the GAC reached an agreement³⁴ on a political orientation for the EEAS Decision that, in its turn, provided the basis for opening consultations with the Parliament in the context of the so-called “quadrilogue”.³⁵ These difficult negotiations, wherein all actors fiercely sought to ensure a certain degree of control over the future functioning of the EU’s diplomatic corps, ended in Madrid on 21 June with a political agreement containing a number of amendments to the draft EEAS proposal and two Declarations by the High

²⁸ Article 27(3) TEU.

²⁹ Declaration No. 15 on Article 27 of the Treaty on European Union annexed to the final act of the Intergovernmental Conference which adopted the Treaty of Lisbon.

³⁰ Declaration No. 24 on Article III-296 annexed to the Final Act of the Treaty Establishing a Constitution for Europe. The March 2005 “Issues Paper on the European External Action Service” submitted by Javier Solana, then High Representative for CFSP, and Jose Manuel Barroso, President of the Commission, was used as a starting point for the negotiations after the Lisbon Treaty was signed.

³¹ For a discussion of the inter-institutional negotiations on the EEAS see: VAN VOOREN, B. (2011) “A Legal-Institutional Perspective on the European External Action Service”, *CML Rev*, 48(2), 475-502; MISSIROLI, A. (2010) “The new EU “Foreign Policy” System after Lisbon : A Work in Progress”, *EFAR*, 15(4), 434-43 and; FURNESS, M. (2010) “The European External Action Service: A New Institutional Framework for EU Development Cooperation”, *DIE Discussion Paper 15/2010*, Bonn, German Development Institute, 6-10.

³² Proposal for a Council Decision (2010) *Establishing the organisation and functioning of the European External Action Service*, 24.03.2010, <http://eeas.europa.eu/docs/eeas_draft_decision_250310_en.pdf>.

³³ Joint press Statement of Elmar Brok (EPP), Hannes Swoboda (S&D), Guy Verhofstadt (ALDE), Daniel Cohn-Bendit and Rebecca Harms (Greens/EFA Group), 25 March 2010. Even though the European Parliament only needs to be consulted on the decision establishing the EEAS, it saw the opportunity to flex its muscles by confirmedly stretching its powers in the ordinary legislative procedure on the required amendments to the Staff and Financial Regulations.

³⁴ Council (2010) 3010th General Affairs Council Meeting, Luxembourg, Press Release 8967/10 (Presse 89), 26.04.2010, 8.

³⁵ This group, chaired by Ashton, was composed of the Spanish Presidency, the Commission and an informal EP delegation consisting of MEPs from the three main political groups (EPP, S&D and ALDE).

Representative, one on political accountability and another on the basic structure of the central administration.³⁶

3. Intertwining security and development policies ...

The *Council Decision of 26 July 2010 Establishing the Organisation and Functioning of the European External Action Service* filled in the blank canvas provided by Article 27(3) of the Lisbon Treaty on European Union. In a speech to the European Parliament's Foreign Affairs Committee on 23 March 2010 (right before she submitted her proposal for an EEAS Decision) High Representative Ashton convincingly presented the EEAS as "a once-in a generation opportunity to build something that finally brings together all the instruments of our engagement - economic and political instruments, development and crisis management tools - in support of a single political strategy".³⁷ She added that the EU needs "a system that promotes comprehensive strategies and joined-up action – not where, as today, we try to work comprehensively despite our system".³⁸ In this chapter we will analyse this commitment and have a closer look at the opportunities offered by the EEAS Decision to genuinely and holistically merge security and development policies in a way that delivers tangible and mutually beneficial results on the implementation of the nexus.

3.1. The EEAS as a joined-up policy framework

The EEAS assembles a wide variety of staff and competences that cover the theoretical continuum between foreign, security and defence policies on the one hand and development cooperation on the other. In addition, the EEAS constitutes a central interlocutor that functions as a point of contact and channel of coordination between national and EU policy actors.

Multifarious composition

The composition of the External Action Service mirrors the three-hatted portfolio of its principal, the High Representative. Throughout the quadrilogue talks there was however some disagreement on what the Treaty provision on the composition of the EEAS meant for the actual proportions of future EEAS staff.³⁹ The final compromise reads as follows: "when the EEAS has reached its full capacity, staff from Member States [...] should represent at least one third of all EEAS staff at AD level. Likewise, permanent officials of the Union should represent at least 60 % of all EEAS staff at AD level".⁴⁰ The vague time frame ("when the EEAS has reached its full capacity") and the margin of roughly 7% between the two targets adds a certain degree of flexibility to the one-third-share rule of thumb. This should allow to smoothen the transition period and deal with initial imbalances resulting from the difference in scope of the three constituents parts.⁴¹

³⁶ Statement of the European Parliament, the High Representative, the Council and the Commission (2010) *On the European External Action Service*, IP/10/771, 21.06.2010; High Representative (12401/10) *Declaration on Political Accountability*, O.J. C210/1, 3.8.2010; High Representative (12401/10) *Statement given to the Plenary of the European Parliament on the Basic Organisation of the EEAS Central Organisation*, O.J. C210/1, 3.8.2010.

³⁷ High Representative Catherine Ashton (2010) Speech to the European Parliament's Foreign Affairs Committee, SPEECH/10/120, Brussels, 23.03.2010, 2.

³⁸ Ibid.

³⁹ Article 27(3) TEU stating that the EEAS "shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States".

⁴⁰ Article 6(9) EEAS Decision.

⁴¹ MISSIROLI, A. (2010) *supra* note 31, 442-443.

Even though exact numbers on current personnel proportions are hard to obtain, it is clear that the EEAS assembles a wide variety of staff.⁴² The staff “shall all have the same rights and obligations and be treated equally”.⁴³ If fine-tuned properly, the multifarious diplomatic and institutional backgrounds of EEAS officials originating from both development and security-related environments could feed into the quality of conducting EU external action and potentially lead to the emergence of a common EU diplomatic culture, globally spread through the Union delegations.

Security and development competences

Given the EEAS’ duty to assist the High Representative “in fulfilling his mandate” – which Article 18 (2-4) defines as threefold (conducting CFSP, chairing the FAC and being in charge of the Commission’s responsibilities in external relations) – the EEAS provision’s place in the CFSP chapter of the Lisbon TEU is not utterly fortunate.⁴⁴ The EEAS Decision does however not founder on this awkward treaty construction and entrusts the service with responsibilities in both CFSP/CSDP and development cooperation as well as a mandate to assist the High Representative in ensuring the coherence of the Union’s external action.

With regard to its role in the area of security and defence the Decision is clear: the EEAS will support the High Representative “in fulfilling his/her mandate to conduct the Common Foreign and Security Policy (‘CFSP’) of the European Union, including the Common Security and Defence Policy (‘CSDP’), to contribute by his/her proposals to the development of that policy, which he/she shall carry out as mandated by the Council”.⁴⁵

In the field of development cooperation the Council Decision establishes the High Representative’s responsibility to “ensure overall political coordination of the Union’s external action [...] through the following external assistance instruments: the Development Cooperation Instrument [(DCI)], the European Development Fund [(EDF)], the European Instrument for Democracy and Human Rights [(EIDHR)], the European Neighbourhood and Partnership Instrument [(ENPI)], the Instrument for Cooperation with Industrialised Countries [(ICI)], the Instrument for Nuclear Safety Cooperation [(NSCI)] and the Instrument for Stability [(IfS)] regarding the assistance provided for in Article 4 of Regulation (EC) No 1717/2006”.⁴⁶ The EEAS, for its part, “shall contribute to the programming and management cycle for [these] instruments” and have responsibility for preparing “the strategic, multiannual steps within the programming cycle”.⁴⁷ While the precise practical implications of the

⁴² From the 1643 officials that were transferred on 1 January 2011 to the Brussels headquarters, 1114 came from the Commission, only 411 from the Council General Secretariat and 118 were new posts (European External Action Service (2010) *A new step in the setting-up of the EEAS: Transfer of staff on 1 January 2011*, IP/10/1769, 21.12.2010). In addition, the EEAS includes over 2000 staff members at Delegation level that were largely transferred from the previous Commission delegations. Besides Commission staff outnumbering those transferred from the Council General Secretariat, this suggests an imbalance in favour of EU staff as opposed to Member States personnel. Yet, when the vast number of Member States’ staff already working in the EU institutions, particularly in crisis management structures or as seconded national experts (SNEs), are taken into account the one-third share is almost reached (LEFEBVRE, M. and HILLION, C. (2010) *supra* note 5, 6).

⁴³ Article 6(7) EEAS Decision; to ensure this equal footing of Union and Member States officials the latter are employed as “temporary agents” and not “detached national experts”. Staff from the Commission and the Council are “transferred” to the EEAS, because “detachment” would not completely free them from their obligations towards their parent institutions (PAUL, J. (2008) “EU Foreign Policy After Lisbon: Will the New High Representative and the External Action Service Make a Difference?”, *CAP Policy Analysis No. 2*, Munich, Centre for Applied Policy Research, 27).

⁴⁴ The position of the EEAS treaty provision was put forward as an argument by the international law firm White & Case that was asked by the development NGOs CAFOD and CIDSE to advise on possible legal objections to the inclusion of EU development cooperation activities in the EEAS portfolio. For a reasoning to the contrary see: DUKE, S. and BLOCKMANS, S. (2010) “The Lisbon Treaty Stipulations on Development Cooperation and the Council Decision of 25 March 2010 establishing the Organisation and Functioning of the European External Action Service”, *EIPA Working Paper 2010/W/01*, Maastricht, 13 p.

⁴⁵ Article 2(1) EEAS Decision, first indent.

⁴⁶ Article 9(2) EEAS Decision.

⁴⁷ Article 9(3) EEAS Decision.

rather complex provisions of Article 9 on external action instruments and programming are not entirely clear, it definitely places the EEAS in the centre of the programming and management of external assistance instruments (cfr. infra chapter 3.2.).

In addition to these separate responsibilities for CFSP and development policy, the EEAS has a more general duty to support the High Representative in ensuring “the consistency of the Union’s external action”.⁴⁸ In her statement on the basic organisation of the EEAS the High Representative emphasised her commitment to establish in the EEAS “the services and functions necessary to fulfil its objectives and to strengthen the EU’s capacity for consistent external action, while avoiding duplication”.⁴⁹ For this purpose it was decided to establish, among other things, a department assisting the High Representative in ensuring the coherence of EU external action through coordination with the Commission.⁵⁰ The EEAS’ support for this general duty of coherence naturally applies to the relationship between security and development policies. However, given the long list of official declarations parading the EU’s commitment to the nexus, and seen that this decision sets up a service that will for the first time in the EU’s history span its various dimensions, an explicit reference would not have been amiss.

The fourth recital of the EEAS Decision probably comes closest by stating that “the EEAS should seek to ensure that the [Union’s external cooperation] programmes fulfil the objectives for external action as set out in Article 21 TEU, in particular in paragraph (2)(d) thereof [(foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty)], and that they respect the objectives of the Union’s development policy in line with Article 208 [TFEU]”. The recital adds that the EEAS should in this context also promote the fulfilment of the objectives of the European Consensus on Development. However, the position in a recital rather than an article, the rather weak language (“should”) and the fact that it concerns only the EEAS contribution to external cooperation programmes (and not CFSP) considerably mar the impact of this provision.

Another important provision with regard to the nexus is Article 4(3)(a) third paragraph of the EEAS Decision stating that the central administration of the civilian and military crisis management structures shall assist the High Representative “in the task of conducting the Union’s CFSP in accordance with the provisions of the Treaty *while respecting, in accordance with Article 40 TEU, the other competences of the Union.*” The part in italics was added to the original proposal after the quadrilogue talks and emphasises the EEAS’ responsibility to take other policies – among others development cooperation – into account while conducting the CFSP.

An inter-institutional policy hub

The new foreign service shall not only support the High Representative in her three-hatted mandate, but shall moreover 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”.⁵¹ In addition, Article 3(1) of the EEAS decision requires the EEAS to “support, and work in cooperation with, the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission”. This support also goes in the other direction as “the High Representative and the EEAS shall be assisted where necessary by the General Secretariat of the Council and the relevant departments of the Commission”.⁵² These various provisions establish the

⁴⁸ Article 2(1) EEAS Decision, first indent.

⁴⁹ HIGH REPRESENTATIVE (12401/10) supra note 36, 2.

⁵⁰ Ibid.

⁵¹ Article 2(2) EEAS Decision.

⁵² Article 4(5) EEAS Decision.

EEAS as an inter-institutional policy hub, providing a point of contact and channel of coordination between all the main actors involved in EU external action.

After intense negotiations on what exactly constitute the “relevant departments of the General Secretariat of the Council and of the Commission” it was decided to include a wide variety of bodies from across the whole EU foreign policy spectrum.⁵³ From the Commission the EEAS integrates the entire Directorate-General for External Relations (DG RELEX)⁵⁴ - including all EU delegations abroad - and the ACP related geographic directorates of DG Development (DG DEV). Further, from the Council General Secretariat all key external action bodies are transferred to the EEAS: the Policy Unit (formally ‘Policy Planning and Early Warning Unit’), all CSDP and crisis management structures (Crisis Management and Planning Directorate (CMPD), Civilian Planning and Conduct Capability (CPCC), EU Military Staff (EUMS) and the EU Situation Centre (SITCEN)) and the entire Directorate-General E on External and Politico-Military Affairs.

The combination of this broad variety of bodies with a central position in inter-institutional relations provide the External Action Service with a significant potential to become a cross-fertilising policy hub, that enhances synergies and efficiency gains across the EU foreign policy machinery as well as between EU and Member States’ administrations. This offers opportunities to create a more unified foreign policy-making system that reconciles the sometimes competing logics of CFSP and development cooperation.

This allogamy of Union and national, communitarised and intergovernmental, development-focussed and security-oriented, staff, competences and instruments could become the glue holding EU external action together. By clarifying and concentrating responsibilities as well as pooling together scattered resources the EEAS allows to reduce duplication, eliminate areas of overlapping competences, avoid time-consuming coordination and diminish the risk of inter-institutional rivalry. However, it should also be noted that the search for internal compromise among this wide variety of players and policies might divert valuable energy and time from the EEAS’ more political and strategic tasks, or worse, intensify inter-institutional tensions and bureaucratic infighting.

3.2. The EEAS as a centre of policy entrepreneurship

The EEAS Decision establishes the EU foreign service as a functionally autonomous body with considerable institutional independence. Furthermore, the incorporation of key operational CFSP and CSDP bodies, the service’s role in the multi-annual planning cycle of EU development cooperation and the inclusion of the Union Delegations and Special Representatives bestow the EEAS with considerable policy discretion.

A functionally autonomous body

As the Lisbon Treaty remains entirely silent on the institutional location of the EEAS, this issue became one of the tender spots in the preparatory work on the Council decision setting up the External Action Service. The Commission and the European Parliament argued in favour of a service closely connected to the Commission in order to enable effective coordination between the different areas of the Union’s external action as well as the external aspects of internal policies. The Member

⁵³ Annex EEAS Decision “Departments and Functions to be Transferred to the EEAS”.

⁵⁴ Except for the staff responsible for the implementation of financial instruments. They are included in the newly created Service for Foreign Policy Instruments (FPI).

States and the Council argued to the contrary as they believed that the specific nature of CFSP – that is explicitly and firmly reassured in the Lisbon Treaty – prohibits close ties with the Commission. Therefore, several Member States plead in favour of a service tightly connected to the Council General Secretariat.

In an attempt to reconcile these discrepant views the 2009 Swedish Presidency Report on the EEAS – that reflected a broad consensus among Member States and formulated guidelines for the High Representative when preparing the draft Council decision – raked up the idea of the EEAS as “a service of a *sui generis* nature separate from the Commission and the Council Secretariat”.⁵⁵ This was put forward as an organisational status that reflects and supports “its unique role and functions in the EU system”.⁵⁶ While the notion of *sui generis* service was not retained in the final Council Decision, the idea endures and the EEAS is defined as “a functionally autonomous body of the European Union, separate from the General Secretariat of the Council and from the Commission with the legal capacity necessary to perform its tasks and attain its objectives”.⁵⁷

This functional autonomy is further reinforced by a number of provisions in the EEAS Decision. A first case in point is that “for matters relating to its staff, the EEAS should be treated as an institution within the meaning of the Staff Regulations and the CEOS [(Conditions of Employment of Other Servants)]”.⁵⁸ Secondly, “the EEAS may enter into service-level arrangements with relevant services of the General Secretariat of the Council, the Commission, or other offices or inter-institutional bodies of the Union.”⁵⁹ Further, the EEAS has its own budget (managed by the Executive Secretary-General under the authority of the High Representative),⁶⁰ has control over its own staff with the High Representative as appointing authority⁶¹ and disposes of “a legal department under the administrative authority of the Executive Secretary-General which shall work closely with the Legal Services of the Council and of the Commission”.⁶² Even though EEAS officials are guaranteed “the right to apply for posts in their institution of origin on the same terms as internal applicants”, it is moreover not unlikely that the link between EEAS staff and their “sending institutions” will gradually erode.⁶³ In this manner, EEAS officials, who “should” (not “shall”) “carry out their duties and conduct themselves solely with the interest of the Union in mind” could well contribute to reinforcing the institutional independence of the EEAS.⁶⁴

The linchpin of EU crisis management

With the Policy Unit, the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC), the EU Military Staff (EUMS), the EU Situation Centre (SitCen) and the Committee for Civilian Aspects of Crisis Management (CivCom) swelling the EEAS ranks, the European diplomatic service becomes the linchpin of EU civilian and military crisis management.⁶⁵ These operational bodies provide critical support through detailed planning, resource generation and policy

⁵⁵ Presidency Report to the European Council (14930/09) *On the External Action Service*, POLGEN 16, 23.10.2009, 6. This idea was first advanced by Barroso and Solana in their joint progress report on the EEAS that they presented on 9 June 2005 to the European Council.

⁵⁶ Ibid.

⁵⁷ Article 1(2) EEAS Decision.

⁵⁸ Eighth recital EEAS Decision.

⁵⁹ Article 3(3) EEAS Decision.

⁶⁰ Article 4(1) EEAS Decision; The operational expenditure remains however within the Commission section of the budget (Article 8(1) EEAS Decision).

⁶¹ Article 6(5) EEAS Decision; The selection is based on merit through a competitive process that ensures “a meaningful presence of nationals from all the Member States” (Article 6(6) EEAS Decision). The appointing authority has to ensure an adequate geographical and gender balance, but is not limited in his appointing freedom through a system of quotas.

⁶² Article 4(3)(b) EEAS Decision, second indent.

⁶³ Article 6(11) EEAS Decision, second paragraph.

⁶⁴ 9th recital EEAS Decision; LEFEBVRE, M. and HILLION, C. (2010) *supra* note 5, 6.

⁶⁵ Article 4(3)(a) EEAS Decision, third indent.

execution, while the main political and strategic decisions are taken at the level of the European Council, the Foreign Affairs Council, the Committee of Permanent Representatives (Coreper) and the Political and Security Committee (PSC).⁶⁶ The inclusion of these crisis management bodies did however not take place without striking a blow because many of them go to the heart of Member States' sovereignty. However, not including them would have hampered the EU's ability to respond quickly and effectively to situations of crisis.

While the EEAS' mandate is limited to assisting the High Representative in carrying out her mandate, and even though these CFSP/CSDP bodies have no policy-making role as such, their niche expertise and technical know-how accord considerable policy discretion to the EU's diplomatic corps. The Policy Unit is key to enhancing the proactivity of CFSP through strategic assessments and forward policy-planning. The in 2010 created CMPD merges former Directorates VIII (Defence Aspects) and IX (Civilian Crisis Management) of DG E and is thus ideally positioned to unify planning for the military and civilian aspects of CSDP missions at strategic level. The CPCC, for its part, brings the planning and conduct of civilian CSDP missions under a single chain of command and provides the High Representative as well as other relevant bodies with vital assistance and advice on a more political level. The EUMS assists the EU Military Committee and contributes significantly to planning and supervising the military aspects of EU crisis management operations. SitCen is the central platform for intelligence-coordination and the sharing of strategic analyses on external relations among EU Member States. Recently, on 15 July 2011, a new EU Situation Room was created as part of the EEAS Crisis Response Department. It brings together previously scattered resources and aims to "provide worldwide monitoring, current situation awareness, and front line service for EU Delegations and CSDP Missions/operations, 24 hours a day, 7 days a week, the year around".⁶⁷ A final critical body is CivCom, that constitutes the civilian counterpart to the Military Committee and feeds the PSC with real-time expertise and advice on the civilian aspects of crisis management.

Furthermore, the EEAS is home to the chairs of both the PSC and the EU Military Committee (EUMC). The former is composed of national representatives at ambassador's level and deals with the monitoring, preparation and day-to-day operation of CFSP/CSDP. The latter is the highest military body within the Council composed of the Member States' Chiefs of Defence providing advice to the PSC on all EU military matters.⁶⁸ The chairpersons of the PSC, all geographic and CSDP-related preparatory bodies of the Foreign Affairs Council (FAC) as well as part of the horizontal preparatory bodies are designated by the High Representative.⁶⁹ These chairs are EEAS officials and the EEAS organigramme provides direct links between them and the respective geographic and thematic directorates.⁷⁰

The EEAS moreover holds two directorates dealing specifically with security issues: a directorate for "Conflict prevention and Security Policy" and one for "Non-Proliferation and Disarmament". It can be regretted however that in this case the organigramme does not establish explicit links with the above-mentioned operational CFSP/CSDP bodies. Overall, it remains to be seen how this amalgam of institutional structures and bodies within the EEAS will cooperate (cfr. infra chapter 4.2).

⁶⁶ DUKE, S. (2008) "Peculiarities in the Institutionalisation of CFSP and ESDP", in BLOCKMANS, S. (ed.) *The European Union and Crisis Management: Policy and Legal Aspects*, The Hague, T.M.C. Asser Press, 77-79.

⁶⁷ High Representative (2011) Catherine Ashton visits the new EU Situation Room, Press Release A286/11, 17.7.2011.

⁶⁸ The PSC is chaired by Olof Skoog and the EUMC by Gen. Håkan SYRÉN (both are Swedes).

⁶⁹ Article 4(4) EEAS Decision; Council Decision (2009/908/EU) *Laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council* [2009] O.J. L322/28, 9.12.2009; the preparatory bodies in the area of trade and development as well as certain horizontal bodies continue to be chaired by the six-month rotating presidency (see Annex II Council Decision 2009/908/EU).

⁷⁰ See Annex for the EEAS organigramme see.

Considerable development policy discretion

The programming and management cycle of EU external assistance instruments constitute a multi-phased response strategy that allocates aid resources on the basis of an analysis of a country's or region's performance, priorities and needs. This process consists of five distinct stages: (1) strategically assessing the (political, economic, commercial, social and environmental) situation in a given country or region and identifying general response objectives in five to seven-year country or regional strategy papers (CSPs/RSPs); (2) deciding on the multiannual allocation of aid resources based on the country's/region's needs, absorption capacity and reform commitment; (3) defining fields of EU activity, priority sectors and the associated financial envelopes to attain the objectives set out in the CSPs/RSPs through national and regional indicative programmes (NIPs/RIPs); (4) setting out annual action programmes within the framework and boundaries set by the respective CSPs/RSPs and NIPs/RIPs; and finally (5) implementing the external assistance programmes by means of managing, contracting, monitoring and evaluating their various aspects.

Before the Lisbon Treaty created the External Action Service the first three stages fell under the responsibility of the Commission DGs where the respective geographical desks were located (i.e. DG DEV for the African, Caribbean and Pacific countries under the EDF and DG RELEX for the other developing countries that fell under the DCI and ENPI) and the last two steps were managed by EuropeAid Cooperation Office (DG AIDCO).⁷¹ Throughout the inter-institutional negotiations on the set-up of the EEAS considerable controversy arose regarding the division of responsibilities for each of these five phases. Unsurprisingly for EU decision-making the negotiating parties could only find unity within obscurity and the final compromise is a balanced but complex arrangement that leaves much to be cleared out through subsequent practice. The EEAS Decision accords responsibility to the foreign service "for preparing the [...] decisions of the Commission regarding the strategic, multiannual steps within the programming cycle", namely country allocations, CSPs/RSPs and NIPs/RIPs.⁷² Throughout the whole cycle of programming, planning and implementation "the High Representative and the EEAS shall work with the relevant members and services of the Commission" and, "all proposals for decisions will be prepared by following the Commission's procedures and will be submitted to the Commission for adoption".⁷³

Further, any proposals with regard to the EDF and the DCI, including those for changes to the basic regulations and the programming documents referred to above, "shall be prepared jointly by the relevant services in the EEAS and in the Commission under the responsibility of the Commissioner responsible for Development Policy and shall be submitted jointly with the High Representative for adoption by the Commission".⁷⁴ Thematic programmes, other than the EIDHR, NSCI and Article 4 of the IfS Regulation, remain in the hands of the Commission under the guidance of the Development Commissioner and shall be "presented to the College of Commissioners in agreement with the High Representative and the other relevant Commissioners".⁷⁵ The EEAS Decision thus puts in place a kind of "dual key" for development programming jointly managed by the High Representative and the Development Commissioner.⁷⁶

The rather shadowy provisions of Article 9 seem to implicate that the EEAS carries out the bulk of development programming without disposing of any independent decision-making powers. Yet, this does definitely not mean that the foreign service is not entrusted with tools to influence the programming cycle of external assistance instruments. In fact, through its central role in preparing

⁷¹ GAVAS, M. and KOEB, E. (2010) "Setting up the European External Action Service: Building a Comprehensive Approach", *ODI Background Note*, London, Overseas Development Institute, 2.

⁷² Article 9(3) EEAS Decision, first paragraph.

⁷³ Ibid, second paragraph.

⁷⁴ Article 9(4) EEAS Decision, first paragraph.

⁷⁵ Ibid, second paragraph.

⁷⁶ FURNESS, M. (2010) *supra* note 31, 18-19.

the key programming documents and the associated accumulation of political and technical expertise, the EEAS could get a firmer grip on the purse strings of EU development cooperation than might at first sight be expected. High-quality strategic assessments and effective identification of objectives and funding priorities, could allow the EEAS to have a major impact on the political and strategic aspects of developing programming. The Commission will in any case retain a substantial management and implementation role.⁷⁷

Of particular importance with regard to the interface between security and development policy is the EEAS' responsibility over actions undertaken under the Instrument for Stability. The IfS constitutes the former "Community's flagship-like instrument whose main purpose is to address the 'security-development nexus'".⁷⁸ It is the principal non-CFSP policy tool that enables the EU to rapidly and flexibly provide assistance (development cooperation as well as financial, economic and technical cooperation measures) to countries victim to or at risk of crises or natural disasters.⁷⁹ With a budget of around EUR 2,1 billion for 2007-2013 (as compared to an overall CFSP budget of only EUR 1,7 billion) the IfS has played a key role in the grey area of overlapping competences between development cooperation and CFSP/CSDP.

The long-term component of Article 4 IfS Regulation is aimed at providing stable conditions for cooperation. The responsibility for these more development-oriented assistance programmes is shared between the Commission services and the EEAS according to the procedure set out above.⁸⁰ Article 3 IfS Regulation contains the short-term technical and financial cooperation measures designed to provide assistance in response to situations of crisis or emerging crisis. This crisis response component is accountable for 73 % of the IfS budget and falls almost entirely under the responsibility of the EEAS.⁸¹ Only its financial implementation is accorded to a newly created Service for Foreign Policy Instruments (FPI). This is a fully-fledged service under the responsibility of the High Representative as Vice-President of the Commission that was established in order to guarantee the Commission's constitutional responsibility for budget execution. For the sake of operational coherence the FPI will be located in the same premises as the EEAS.⁸²

A firm foothold abroad

Contrary to the Lisbon Treaty's vagueness, the EEAS Decision sheds clearer light on the position of the Union Delegations and EU Special Representatives and unequivocally includes them in the service's machinery.⁸³ This provides the EEAS with a firm political presence and technical expertise abroad as well as first-hand information on new developments in all policy fields.

The Lisbon Treaty significantly extends the role and responsibilities of the former Commission Delegations, which now become Union Delegations. Besides cooperating with "diplomatic and

⁷⁷ With the External Action Service undertaking most of development programming and DG AIDCO responsible for the annual action programmes and implementation phase, the reduced DG DEV's policy-making role (limited to setting out the general direction of development policy and managing thematic programmes) risked becoming entirely detached from the programming stage. Therefore it was decided to merge DG DEV and DG AIDCO in the new DG EuropeAid Development and Cooperation (DG DEVCO). Alongside the considerable development responsibilities of the EEAS, this institutional restructuring is aimed at ensuring the continuation of a strong and unified Commission role in the field of development cooperation.

⁷⁸ GANZLE, S. (2009) "Coping with the 'Security-Development Nexus': The European Community's Instrument for Stability - Rationale and Potential", Bonn, German Development Institute, 12.

⁷⁹ Article 1 Regulation (1717/2006/EC) *Establishing an Instrument for Stability*, O.J. L327/1, 24.11.2006 (further "IfS Regulation")

⁸⁰ Article 9(2)-(3) EEAS Decision.

⁸¹ Article 9(6) EEAS Decision.

⁸² The FPI is also responsible for the operational and financial management of the budget for CFSP, Industrialised Countries Instrument (ICI), Election Observation Missions (EOMs) and press and public diplomacy (PPD).

⁸³ Article 1(4) and Annex EEAS Decision.

consular missions of the Member States” to ensure “that decisions defining Union positions and actions [...] are complied with and implemented”, they shall now also “represent the Union” (instead of only the Commission in the pre-Lisbon era) for all EU competences.⁸⁴ In addition, EU delegations play a central role in Article 32 TEU that constitutes a key Lisbon Treaty novelty making it incumbent on Member States “to consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach”. The Union Delegations are tasked to contribute to formulating and implementing this common EU approach with their expertise on and understanding of the situation on the ground.⁸⁵

The Head of Delegation (HoD) “shall be accountable to the High Representative [...] for ensuring the coordination of all actions of the Union”. He/She has the “power to represent the Union in the country where the delegation is accredited, in particular for the conclusion of contracts, and as a party to legal proceedings”.⁸⁶ This all implicates that the Union Delegations take over the coordinating role abroad from the respective representation of the rotating presidency. In this manner and by means of their monitoring, reporting and analytical capacity they will have a principal voice in developing and implementing EU policies towards third countries and international organisations and thus provide the EEAS with a firm foothold abroad.

The EU Special Representatives (EUSRs) have a mandate to “promote the EU's policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law”.⁸⁷ “Under the authority of the High Representative” they provide the EU with diplomatic presence abroad, contribute to negotiations and provide continuous monitoring and analysis of the situation on the ground.⁸⁸ However, the enhanced role of EU Delegations entails significant overlaps between the task description of the HoDs and EUSRs. Therefore the system of EUSRs is currently under review and is likely to be shaken up significantly.⁸⁹

In sum, the European External Action Service is a functionally autonomous body with a significant level of institutional independence. Notwithstanding the fact that it is not a formal EU institution in the meaning of Article 13 TEU, the EEAS disposes of quasi-institutional prerogatives in the areas of crisis management and development cooperation, combined with a strong voice and presence abroad. In this manner, the EEAS constitutes the High Representative’s “walking stick” and “satellite navigator” that enables her to avoid contradictions and build complementary interfaces between security and development activities of the Union and its Member States.⁹⁰

It is however important to put the scope and potential role of the EEAS into the right perspective. The EU diplomatic corps has a total staff of around 3 700 (in Brussels and abroad) and an administrative budget (for staff, administration and infrastructure) of € 476 million for 2011. Compared to the diplomatic services of the 27 EU Member States with a total staff of nearly 94 000 and a budgetary cost of € 7 529 million the EEAS definitely is a small player in the total EU foreign policy landscape.⁹¹

⁸⁴ Respectively Article 35 TEU and Article 221 TFEU.

⁸⁵ Article 32 TEU, third paragraph.

⁸⁶ Article 5(8) EEAS Decision.

⁸⁷ Council (s.d.) “EU Special Representatives”, <http://www.consilium.europa.eu/policies/foreign-policy/eu-special-representatives.aspx?lang=en>.

⁸⁸ Article 33 TEU.

⁸⁹ RETTMAN, A., “Ashton keen to axe Congo conflict envoy”, *EUObserver.com*, 17 May 2011.

⁹⁰ MISSIROLI, A. (2007) “Introduction: A Tale of Two Pillars – and an Arch”, in AVERY, G., et al., *The EU Foreign Service: How to Build a More Effective Common Policy*, EPC Working Paper N°28, Brussels, European Policy Centre, 21.

⁹¹ EMERSON, M. et al. (2011) *Upgrading the EU's Role as Global Actor*, Brussels, Centre for European Policy Studies, 12 and Annexes N-O.

4. ... Or internalising old tensions?

There are reasons to be sceptic about the above-sketched window of opportunity for living up to the EU's commitment regarding the security-development nexus. The launch of the EEAS has been preceded by months of fierce bureaucratic infighting as a result of largely conflicting views and demands on its actual institutional location, composition and competences. Rather than striving towards the most efficient and effective design of this new body, the thread of these negotiations has often been the protection of the negotiating parties' own prerogatives. This has resulted in an EEAS Decision that in several regards presents an incomplete, vague and above all complex contract leaving many process-related aspects to be sorted out over time.

The new Lisbon Treaty architecture will, by all odds, not make this exercise very easy. By triple-hatting the High-Representative for CFSP/Vice-President of the Commission and creating the EEAS, the new Treaties have turned the EU's foreign policy-making architecture upside down. From a procedural point of view, however, the Treaty of Lisbon is a rather conservative document that tends to cling to old institutional arrangements. This makes the EEAS a kind of exotic organism abruptly introduced in a decades-old ecosystem. In order to effectively fulfil its assigned role in this new habitat the foreign service will have to deal with a number of obstacles resulting from a largely unaltered division of labour and distribution of competences characterising the two dimensions of the security-development nexus. Failing to do so might mean that instead of overcoming, or at least toning down, the long-lasting tensions of EU external action, it could end up internalising them.

4.1. A new foreign service, old challenges of compartmentalisation

The EEAS is assigned to support the High Representative in fulfilling her threefold mandate, namely as High Representative conducting the CFSP, as President of the Foreign Affairs Council and in her capacity as Vice-President of the Commission.⁹² In the latter two cases this EEAS' support is "without prejudice to" respectively "the normal tasks of the General Secretariat of the Council" and "the normal tasks of the services of the Commission". It remains however unclear what is to be understood by these so-called "normal tasks", what it means for the EEAS to support the High Representative "without prejudice" to them and which "non-normal" tasks are left for the EEAS to fulfil. Moreover, the reference to normalcy seems particularly inappropriate in this context because the Lisbon Treaty, and particularly the creation of the EEAS, has led to a dramatic shift in the meaning of this concept in EU external relations.⁹³ Given the vague language in this provision it is not far-fetched to expect heavily diverging interpretations in this regard by the legal services of the Commission, the Council, the EEAS and the Member States.

Earlier-mentioned Declarations 13 and 14 annexed to the Lisbon Treaty contain a remarkably similar, yet considerably more defensive, statement on the part of the Member States. They underline that the TEU provisions on CFSP, including "the establishment of an External Action Service do not affect the responsibilities of the Member States, as they currently exist" and "will not affect the existing legal basis, responsibilities and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations".⁹⁴ These declarations cannot be blamed for a lack of

⁹² Article 2(1) EEAS Decision.

⁹³ DUKE, S. (2010) "The European External Action Service", *DSEU Policy Paper 2 July 2010*, 2.

⁹⁴ Supra note 19.

clarity and unequivocally circumscribe any possible spill-over effect resulting from the creation of the EU foreign service that would intrude into Member State competences.

Squeezed between the “normal tasks” of the Council General Secretariat and the Commission services as well as the Member States foreign policy powers “as they currently exist”, the EEAS is faced with a serious challenge: while created to unify and centralise EU external action, it seems to be pushed back in and obstructed by the pre-Lisbon compartmentalised system of division of labour. Therefore, the extent to which the EEAS will succeed in effectively reconciling security and development strategies, activities and actors will depend on its continuous and constructive cooperation with the “traditional” EU foreign policy players.⁹⁵ Article 3 EEAS Decision is the main provision in this regard and its first paragraph reads:

The EEAS shall support, and work in cooperation with, the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission, in order to ensure consistency between the different areas of the Union’s external action and between those areas and its other policies.

Strikingly, rather than setting out the modalities of cooperation between the EEAS and the EU’s institutions, Article 3(1) is formulated as a one-way duty incumbent on the EU diplomatic body. This is all the more regrettable since reciprocity is indispensable for achieving coherence across the various policies of EU external action. Ashton’s proposal of 25 March 2010, while also using the one-dimensional language stating that “the EEAS shall work in cooperation with” had no provision on supporting these institutions. This rephrasing constitutes a first indication of how the negotiating parties – and particularly those mentioned in this provision – anxiously aimed at and succeeded in curtailing the independence of the EEAS.

However, even if the text of the provision seems to suggest otherwise this article arguably expresses a reciprocal duty.⁹⁶ First and foremost because non-reciprocal cooperation would be a *contradictio in terminis*. Moreover, Article 3 EEAS Decision can be seen as a specific application of the general duty of sincere cooperation enshrined in the Treaties. With regard to the relationship between the EEAS and the Member States this is laid down in Article 4(3) TEU, and more specifically for the CFSP in Article 24(3) TEU. According to the Court this obligation to cooperate is per definition reciprocal and “of general application”.⁹⁷ Article 13(2) TEU further expresses a duty of mutual sincere cooperation between the EU institutions. In principle, it could be called into question whether this duty applies equally to the EEAS, since it is not a formal EU institution in the sense of that article. However, it would be contrary to the rationale of the EEAS as a facilitator of coherence and cooperation in EU external action if it were excluded from this mutual duty to cooperate.

The EEAS and the Commission services

The EEAS is to support the High Representative in her capacity as Vice-President of the Commission “for fulfilling within the Commission the responsibilities incumbent on it in external relations, and in coordinating other aspects of the Union’s external action”.⁹⁸ All this has to be “without prejudice to the normal tasks of the services of the Commission”.⁹⁹ Depending on the interpretation of the concept of normalcy more or less room of manoeuvre will be left for the EEAS to support the Vice-

⁹⁵ The EEAS’ cooperation with the European Parliament falls beyond the scope of this paper.

⁹⁶ VAN VOOREN, B. (2011) *supra* note 31, 496-499.

⁹⁷ On reciprocity: Case C-339/00, Ireland v. Commission, [2003] ECR I-11757, paragraph 71; on its general application: Case C-266/03, Commission v. Luxembourg, [2005] ECR I-4805, paragraph 58; Further: CREMONA, M. (2008) “Defending the Community Interest: the Duties of Cooperation and Compliance”, in CREMONA, M. and DE WITTE, B. (eds.) *EU Foreign Relations Law: Constitutional Fundamentals*, Oxford, Hart Publishing 125-169.

⁹⁸ Article 2(1) EEAS Decision, third indent.

⁹⁹ *Ibid.*

President in this rather broad mandate while not interfering with the normal task description of her very institution.

In the context of development programming one might wonder what the practical implications are of a foreign service that has to work “throughout the whole cycle of programming, planning and implementation [...] with the relevant members and services of the Commission” while remaining at the same time without prejudice to their normal tasks.¹⁰⁰ As mentioned above, the EEAS provisions on development programming have established a muddled chain of command with an alternating and dubious division of responsibilities between the EEAS and Commission services, managed by a dual key in the hands of the High Representative and the Development Commissioner. These delicate arrangements have not been accompanied by any mechanisms or guidelines to smoothen the functioning of this process and it remains unclear how this process will work in practice. Particularly, when disagreement would arise the EEAS Decisions does not give any clues on who will have the last word. It is not unlikely that the High Representative’s dual hat will cause obscurity rather than reconciliation in case of conflicting interests between “her” EEAS and the services of which she is Vice-President.

Nevertheless, with a specific paragraph attributed to this relation the mutual obligations between the Commission and the EEAS are considerably more solid compared to the EEAS’ relations with the Council General Secretariat and the Member States’ diplomatic services (cfr. *infra*):

The EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the CSDP. The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area.¹⁰¹

This paragraph explicitly establishes a reciprocal duty of consultation on all external action matters. However, this is immediately followed by two non-negligible limitations that were added by the negotiating parties to the initial proposal for a Council Decision. Firstly, this duty is only applicable to the EEAS and the Commission services “in the exercise of their respective functions”. In the light of the Lisbon Treaty’s reinforced pledge for coherence in EU external action the continuous exchange of information between EU bodies is essential and a more inclusive duty would have been more apt. Secondly, this obligation to consult excludes the whole area of Common Security and Defence Policy. While this provision is understandable given Member States’ sensitivities and the importance of secrecy inherent to CSDP, it stands out oddly in the light of the EEAS’ potential to undo the long-cursed EU security-development rift. The absence of any obligation to inform on CSDP matters will obviously complicate the exploitation of synergies between development and security, the more so in areas of overlapping competences where the need for cooperation is paramount, such as security sector reform, disarmament and non-proliferation.

A reciprocal duty of cooperation would obviously have benefited the effectiveness of EU external action more than this mere obligation to exchange information. A positive overture in this respect is the provision that the EEAS shall take part in the preparatory work and procedures undertaken by the Commission in the external action field.¹⁰² Further, the EEAS may enter into service-level arrangements with the Commission and Article 4(3)(a) first indent adds that the “directorates-general comprising geographic desks [...] shall coordinate as necessary [...] with the relevant services of the Commission.” Yet, the wording “as necessary” doesn’t add much to the clarity and strength of this provision and also here the cooperation is formulated as a one-way responsibility on the part of the EEAS.

¹⁰⁰ Article 9(3) EEAS Decision, second paragraph.

¹⁰¹ Article 3(2) EEAS Decision.

¹⁰² *Ibid.*

The last sentence of Article 3(2) EEAS Decision adds that “this paragraph shall be implemented in accordance with Chapter 1 of Title V of the TEU, and with Article 205 TFEU”. This refers to the principles and objectives that must be respected in all areas of the Union’s external action, both TEU and TFEU. While this constitutes a reinforcement of the coherence requirement in EU external action, it might be regretted that it only appears in this specific paragraph on EEAS-Commission relations and not in the general provisions on cooperation of Article 3(1) EEAS Decision.

The EEAS and the General Secretariat of the Council

The EEAS Council Decision is strikingly less elaborate regarding the relationship between the External Action Service and the Council General Secretariat. By analogy with EEAS-Commission relations there is a provision to support and work in cooperation with the General Secretariat and assist the High Representative in her capacity of President of the FAC without prejudice to its normal tasks.¹⁰³ However, other than the marginal specifications stating that the EEAS’ geographic DGs shall coordinate “as necessary” with the General Secretariat of the Council and that the EEAS and the Council may enter into service-level arrangements, the relations with the Council General Secretariat remain a great void.¹⁰⁴

This minimalist elucidation on EEAS cooperation with the Council General Secretariat may be explained by the limited role of the latter in EU external action since the creation of the diplomatic corps. Given that the entire DG E on External and Politico-Military Affairs was transferred to the latter, the General Secretariat’s external mandate seems to be limited to the external dimensions of internal EU policies. This finding raises however further questions regarding the interpretation of the awkward reference to the “normal tasks” of the Council General Secretariat in the field of EU external action.

The EEAS and the diplomatic services of the Member States

Article 3 of the EEAS Decision is as parsimonious with specifications regarding the relationship between the EEAS and the Member States’ diplomatic services as it is with respect to the Council General Secretariat. While in the latter case this could be justified by the limited interaction between both bodies in the field of external action, this is obviously not the case for the relations between the EEAS and the Member States’ external powers “as they currently exist”. If the EU is to assert its role on the international stage – a goal that has more self-assuredly than ever been put forward in the Lisbon Treaty – a continuous and intensive flow of consultation and cooperation between the EEAS and the 27 foreign ministries of the Member States is not only desirable, but most surely inevitable.

Arguably, such a flux of interactions between EU and national foreign policy practitioners is provided through the diverse Council preparatory bodies. These bodies consist of a broad range of committees and specialised working groups made up of national officials that act as a kind of filter preparing political as well as technical decisions of the Council and the European Council. Because EEAS officials chair all geographic and CSDP-related preparatory bodies, as well as certain horizontal ones (the other horizontal bodies and those in the field of trade and development continue to be chaired by the six-monthly rotating presidency) these structures could enhance mutual cooperation between the Member States and the EU foreign service.¹⁰⁵ Further, a two-way channel of information exchange and *ad hoc* coordination could arise from the personal contacts between EEAS officials and their former colleagues in national diplomatic services.

¹⁰³ Respectively Article 3(1) EEAS Decision and Article 2(1) EEAS Decision, second indent.

¹⁰⁴ Article 4(3)(a) EEAS Decision, first indent and Article 3(3) EEAS Decision.

¹⁰⁵ Supra note 69.

Contrary to the silence regarding EEAS-Member States cooperation on headquarters level, the Decision does expound on the relations between Union delegations and the diplomatic services of the Member States. Yet, also in this case the wording was watered down considerably throughout the inter-institutional negotiations. Member States' concerns over losing their foreign policy stature turned the original "The Union delegations shall work in close cooperation with the diplomatic services of the Member States. They shall, on a reciprocal basis, provide all relevant information" into "The Union delegations shall work in close cooperation and share information with the diplomatic services of the Member States".¹⁰⁶

Last May, Austria and the Benelux countries plead in two separate papers for a closer cooperation between the national diplomatic services and the EEAS based on an improved information exchange and a better distribution of sensitive documents.¹⁰⁷ It is however not new that the smaller Member States are eager to strengthen the C in CFSP, while the bigger ones are more cautious to retain control. It remains to be seen whether the loose connections set out above will prove sufficient to make all Member States toe the EU line on the global stage. The more so since the Lisbon Treaty does not noticeably alter the specific stature of CFSP which enables ambitious Member States to remain in the driving seat.

The old compartmentalisation of EU external action seems to have entered the EEAS' set-up on tiptoes, as demonstrated by the watering down of provisions in the final Council Decision on the EEAS. Consequently, the effectiveness of the EU foreign service's role in interconnecting the various dots of the security-development nexus is made dependent on its capacity to clear a path that balances between the "normal tasks" of the Commission and the Council as well as the Member States foreign policy responsibilities "as they currently exist". The breadth of this path will in its turn hinge on the willingness of these actors to cooperate and the room of manoeuvre they decide to leave for the new diplomatic corps.

4.2. A new foreign service, old challenges of delimitation

Even though the EEAS to a certain extent unites the various policies spanning the nexus, many of the old challenges of delimitation between development cooperation on the one hand and CFSP/CSDP on the other remain. As mentioned above, the practical implications of the depillarisation undertaken by the Treaty of Lisbon are largely undone by keeping the CFSP subject to "specific rules and procedures".¹⁰⁸ This can considerably complicate the smooth functioning of the EU diplomatic service, particularly in the first period after its set-up when EU actors will still be sorting out the practical modalities of its misty legal provisions.

Firstly, the EEAS' dual functions in the development and security domain entail a split of accountability and loyalty that may prove particularly demanding in practise. As a general rule the EEAS operates "under the authority of the High Representative".¹⁰⁹ According to Article 18(2) TEU the latter conducts the CFSP and shall "contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council". This means that, for its activity in the area of CFSP, the EEAS is indirectly part of a vertical chain of command that runs through the High Representative to the 27 Member States represented in the Council.

¹⁰⁶ Article 5(9) EEAS Decision and Article 5(9) proposal for an EEAS Decision, *supra* note 32.

¹⁰⁷ WILLIS, A., "Ashton to face tough questions from EU ministers", *EUObserver.com*, 20 May 2011.

¹⁰⁸ *Supra* note 18.

¹⁰⁹ Article 1(3) EEAS Decision.

In the field of development cooperation the different ways for the EEAS to be involved are all tied to the Commission. For one thing, its responsibility to assist the High Representative in her capacity as Vice-President of the Commission may involve the preparation and presentation of development-related proposals for adoption by the college. In this case Article 18(4) TEU, stating that the High Representative shall in this capacity “be bound by Commission procedures”, can be applied by extension to the EEAS. Further, the amended Staff Regulation determines that an EEAS official working in a Union Delegation “who has to carry out a task for the Commission as part of his duties shall take instructions from the Commission with regard to those tasks”.¹¹⁰ Concerning development programming the EEAS Decision is clear and explicitly states that “all proposals for decisions will be prepared by following the Commission’s procedures and will be submitted to the Commission for adoption”.¹¹¹

These arrangements implicate that depending on whether EEAS staff is dealing with security or development-related issues they are answerable to different principals and have to abide by their respective rules. Consequently, even where the EEAS offers the opportunity to conduct development and security in a single institutional setting, the old complexities of determining the often fuzzy boundaries between them remain. This is in any case not beneficial for a coherent implementation of the nexus and might even drag the EEAS to the core of future ECOWAS-like legal disputes on competence delimitation between the Commission, the Council and the Member States.

A second challenge arises from the diverging working cultures out of which the three categories of EEAS staff originate. Because these officials are familiar with very different professional mentalities and working methods significant efforts will have to be made to develop a common institutional *esprit de corps*. However, four main obstacles may considerably complicate this process. Firstly, the External Action Service became fully operational from one day to the next and consequently its staff had to be amalgamated in an extremely short time span. Secondly, the distinctiveness of the personnel working in the EEAS’ crisis management bodies (CMPD, CPCC, EUMS and SitCen) is legally rooted in the Council Decision stating that the “specificities of these structures, as well as the particularities of their functions, recruitment and the status of the staff shall be respected”.¹¹² Thirdly, many of the former Commission’s units and directorates as well as the constituent part of the former Council’s Secretariat DG E were transferred en bloc to the EEAS. This has helped the foreign service to become operational immediately, but goes against the logic of an integrated policy framework. Development-inspired staff from the Commission dominates the geographic and thematic DGs, whereas security-experienced officials from the Council and the Member States play the first fiddle in the strategic as well as civilian and military crisis management bodies. The result is a rather opaque organigramme that does not provide much clarity on who is responsible for which areas. For instance, the division of tasks and responsibilities between the EUMS, CMPD and CPCC on the one hand and the Directorate for Conflict Prevention and Security Policy on the other is not at all clear. While these entities appear to deal with rather similar issues the organigramme imposes an organisational separation without any direct links between them.¹¹³ It seems therefore as if this construction does not serve a concrete purpose but is solely based on the fact that the first category of entities is composed of Council and national staff and the latter of Commission officials. Finally, even though the EEAS became operational on 1 January 2011 no physical transfer of staff has yet taken place. EEAS officials are not expected to move to their new headquarters – the Capital building on the Schuman roundabout – before March 2012.

¹¹⁰ Article 96, second paragraph Regulation (EU, EURATOM) 1080/2010 *amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities* [2010] O.J. L311/1, 26.11.2010.

¹¹¹ Article 9(3) EEAS Decision, second paragraph.

¹¹² Article 4(3)(a) EEAS Decision.

¹¹³ See Annex for the EEAS organigramme.

All these factors considerably limit the possibilities of interaction between staff working on respectively development and security issues. As a consequence, the EEAS is still far removed from a common diplomatic culture that bridges the traditional divides among the institutions and with the Member States. If not decently managed the diplomatic corps might therefore internalise the old bureaucratic rivalries between development and security-focussed actors. On a positive note, in her Statement on the basic organisation of the EEAS – although not legally binding – the High Representative guarantees “full coordination between all the services of the EEAS, in particular between the CSDP structures and the other relevant services of the EEAS”, yet again while “respecting the specificities of these structures”.¹¹⁴

The old challenges of delimitation between CFSP and development policy have seeped through in the EEAS’ constellation. It will require considerable efforts and goodwill to overcome these internal divisions. However, while the delimitation of competences causes considerable hurdles, there are also risks attached to the increased integration of security and development competences. It is so that the development-related responsibilities of the EEAS have intensified the long-standing concern about the potential instrumentalisation of development cooperation. Because the arrangements in the EEAS Decision give significant aid programming responsibilities to a diplomatic actor with a largely political mandate, some fear that other foreign policy objectives might increasingly underwrite development spending. The EEAS’ exposure to short-term political and economic pressures could indeed lead aid flows to be driven more by geostrategic interests than by structural development objectives.¹¹⁵ This would downgrade development cooperation to a mere instrument in the EEAS’ foreign policy toolbox.

There are some safeguards against a far-reaching instrumentalisation of EU development cooperation. In the first place it cannot be neglected that the Lisbon Treaty has strengthened EU development policy and made poverty eradication its primary aim.¹¹⁶ Secondly, the EEAS organigramme includes a Division on Development Cooperation Coordination. Even though its precise role and competences are not entirely clear, it is a positive indication of the EEAS’ willingness to coordinate. Thirdly, the fourth recital of the EEAS Decision underscores that the EEAS should seek to ensure that external cooperation programmes respect the objectives of the Union’s development policy in line with Article 208 TFEU. Fourthly, the arrangements on development programming give the Development Commissioner a hand on the dual key throughout the whole process. Yet, it might be questioned whether the Commission – stripped off control over the geographic desks, its delegations abroad and a number of development responsibilities – constitutes a sufficiently strong counterpart to the EEAS with the capacity to perform a genuine development check over the Union’s aid allocations.

¹¹⁴ HIGH REPRESENTATIVE (12401/10) *supra* note 36, 3.

¹¹⁵ GAVAS, M. and KOEB, E. (2010) *supra* note 71, 2.

¹¹⁶ Article 208 TFEU.

5. The EEAS and the nexus: walking a tightrope

The growing complexity, scope and reach of EU external action has, as a matter of practise, led to an increasing number of links and interfaces between security and development activities of both the Union and its Member States. This natural encounter has subsequently intensified interactions between a wide variety of EU policy actors, leading sometimes to mutually-enhancing initiatives then again to inter-institutional squabbling, turf wars and even outright legal disputes. It has therefore become increasingly clear that conducting development and security policy in complete isolation from each other is not only impossible but even counterproductive. Strikingly, the EU's oft-repeated commitment to integrate its policies towards a genuine nexus of security and development policies is solely based upon a rhetorical pledge to increase coherence. Any progress in exploiting the synergies between CFSP/CSDP and development cooperation is therefore entirely dependent on informal arrangements between ad hoc "coalitions of the willing".

Through an analysis of *Council Decision 2010/4217/EU Establishing the Organisation and Functioning of the European External Action Service* this paper has aimed to analyse the role that the newly created EEAS can play in going beyond rhetorical commitments and putting in place an actual structure to bridge the security-development schism of EU external relations. In the first place, it was argued that by pooling together scattered staff, resources and responsibilities and interlinking a broad variety of EU external actors the EEAS has the potential to form a single institutional framework for the broad spectrum of policies that span the nexus. In this manner, the EU foreign service could constitute more than the sum of its parts and holds all the cards to reduce duplication and eliminate areas of overlapping competences. This would not only help it to avoid time-consuming coordination but also diminish the risk of inter-institutional rivalry. Moreover, the EEAS is a functionally autonomous body with a global presence through the Union Delegations and the EU Special Representatives. Combined with its quasi-institutional prerogatives in the areas of development cooperation and crisis management this could make the EEAS the kind of policy entrepreneur needed to steer the Union in the direction of its long-standing security-development pledge.

However, for the EEAS to fulfil these expectations it will have to overcome a number of considerable hurdles. Firstly, the Council Decision on the EEAS reflects a deep suspicion on the part of the "traditional" foreign policy players, in particular the Commission the Council and the Member States, regarding the potential powers of this new actor. Whereas the rationale behind the creation of the EEAS is the conviction that enhanced EU coordination and integration are quintessential to enhance the EU's role on the global stage, the negotiating parties to this Decision have all aimed to retain safeguards on their external prerogatives. This has resulted in a particularly complex Council decision. The vague language combined with weak mutual obligations make the effectiveness of the EEAS' role as a joined-up framework and policy entrepreneur to a large degree dependent on the willingness of the other external actors to cooperate.

Secondly, even if the EEAS to a certain extent bridges the gap between development cooperation and CFSP/CSDP, the gap itself has survived the Lisbon Treaty changes. This legal delimitation has seeped through in the internal organisation of the EEAS and could cause considerable obstacles for the day-to-day operation of the diplomatic corps. A good management of the service will therefore be indispensable to avoid an internal split or bureaucratic rivalries between development and security-oriented staff and policies.

A final difficulty arises from the split of the aid programming cycle between the Commission's DG DEVCO and the EEAS. While the foreign service's extensive role with regard to the EU's external assistance instruments can enhance the integration of development cooperation and CFSP/CSDP, the complex arrangements constitute a recipe for incoherence. Moreover, because poverty eradication is

only of the EEAS' many foreign policy objectives, there is an inherent risk that other (geostrategic, political, diplomatic, economic) purposes will come to underwrite aid allocations. Only intensive and constructive cooperation between the EU diplomatic corps and the Commission services can ensure a coherent and balanced approach towards development programming.

The new foreign service seems to have as much potential as it has challenges to cope with. However, while the EEAS may not be an institutional panacea for all the pre-Lisbon deficiencies, it definitely constitutes an important facilitator on the route towards a genuine intertwining of CFSP and development cooperation. This route contains many obstacles and requires considerable balancing skills from the External Action Service. Firstly, an equilibrium will have to be found between the EEAS' autonomy and its necessary reliance on the traditional EU foreign policy actors. Secondly, it will be key to carefully balance the lasting delimitation between security and development policies and actors with the need for a coherent approach. Thirdly, the benefits of a more development-oriented foreign policy will have to be weighed against a crowding out of development objectives. For all these reasons the EEAS will have to walk a tightrope when reconciling development and security policies and strategies. Whereas the risk to become a new battleground for inter-institutional turf wars is never far away, careful balancing skills can allow the EEAS to steadily become the EU's trailblazer for realising the commitment to the security-development nexus.

However, it wouldn't make much sense for the EEAS to undertake this task without a concrete idea of how the operationalisation of the nexus should be achieved. As a joined-up framework and an entrepreneurial policy hub, the EEAS is ideally positioned to develop a unifying and holistic strategic concept that genuinely merges security and development policies of the EU and its Member States. This concept should set out the modalities of policy coordination, harmonisation and integration in Brussels as well as the implementation and adaption of the nexus towards concrete situations in fragile and developing countries. The Strategic Policy Planning Department, included in the EEAS' central administration, is cut out for this task.¹¹⁷ This department should assist the High Representative in countering the chicken and egg about the causality of the nexus and start developing coherent policies and formulating consistent messages to be conveyed by all EU actors.

It is not unlikely that the precise implementation of the vague contract presented by the EEAS Decision will occupy the entire term of the different EU institutions and become a kind of indicator for the power relations between them. A first bad omen is cropping up with the row between Member States and with the High Representative over the scope of the EEAS' budget and staffing.¹¹⁸ These are on their way to become one of the main trouble spots in the already tense debate on the next multi-annual financial framework. However, the impact of such disputes should not be exaggerated. Changes in the area of EU external action have always been evolutionary rather than revolutionary and it would be wrong to expect a radical change in the conduct of security and development policies from day one.

In order to take on a central role in the reconciliation of development cooperation and CFSP, the EEAS will first have to win the hearts and minds of the other main EU players. For this purpose, it is of crucial importance that the EEAS gradually builds up confidence by intensively assisting the High Representative in pursuing a proactive approach, providing high-quality support to all other EU institutions, cooperating closely and constructively with the Member States' diplomatic services and demonstrating the added value of a European approach. A key test case will take place mid-2013 when "the High Representative shall provide a review of the organisation and functioning of the EEAS", if necessary "accompanied by appropriate proposals for the revision of this Decision".¹¹⁹ This

¹¹⁷ Article 4(3)(b) EEAS Decision.

¹¹⁸ VOGEL, T., "Split emerges over remit of the EU's diplomatic service", *European Voice*, 26 May 2011; STACEY, K. "Ashton fights back", *Financial Times*, 15 June 2011.

¹¹⁹ Article 13(3) EEAS Decision.

review by the High Representative and the support of the other institutions and Member States for the latter's proposals will be an important indicator for the acquired trust and esteem of the new foreign service.