

European Issue

n°194

14th february 2011

A Critical Analysis The Creation of the European External Action Service

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SUMMARY Thirteen months after taking office, the European Union's High Representative for the Common Foreign Affairs and Security Policy and after the entry into force of the Lisbon Treaty, the European External Action Service (EEAS) was finally able to start work at the beginning of 2011. However we can but wonder at the creation of this new institution of the European Union. Indeed several features are still not clear: what is expected of it, what are its responsibilities, how is it to cooperate with the other diplomatic services of the EU Member States, what is meant by "European foreign policy" and what added value does this service provide. To date there were 27 diplomatic services in Europe but the European Union has created a 28th – but out of fear of public opinion – the Member States do not call it "the Ministry for European Foreign Affairs" but the European External Action Service.

INTRODUCTION As the EEAS leads us to surmise the communitarisation of the foreign policy faces many obstacles. The first of these, i.e. the lack of EU competence in foreign policy and the primacy of the States in this area, is not however the most critical. Over time the European Union has always shown that it was more advanced de facto than de jure: the formal transfer of competences over to Brussels is the subsequent adjustment to an existing situation. However, far greater impediments are emerging, because for the first time in the European Union's history an institution has been assigned the establishment of a policy whose mission is not clear. A great deal of time will be needed internally to clarify and exchange views constantly over its goal. In key EEAS posts there are proponents and opponents of the Community, agents who are neutral and those who have been able to adapt but who all make their own positions quite clear. Future stumbling blocks are already visible. The High Representative will only be able to overcome this herself if she leaves her own mark on the Service and amongst her staff: that of a true European foreign policy.

DOUBLE-HATTING: COMPETENCE CONFLICTS WITH THE EUROPEAN COMMISSION

To date the EEAS team has succeeded in maintaining its unity because of a great number of ongoing "external" conflicts, with the European Commission leading

the way in this since most of those working in the EEAS once worked for the DG's External Relations (RELEX) and Development.

The real conflict in competence with the European Commission only came to light gradually to the backdrop of disputes over administrative issues: these involved both institutions with regard to External Aid. As the EEAS was being set up some areas of competence were deliberately imbricated. According to the treaty only the European Commission has the right to manage operational funds, i.e. not only does it have its own budget but it is also able to grant subsidies to third parties. This is why the European Commission is particularly bound to the European Parliament in terms of responsibility and the tendering of accounts. Until now it enjoyed a wide ranging power of decision in granting nearly 8 billion euro yearly as part of the community's development aid, neighbourhood and human rights programmes. European Parliament was only able to express itself with regard to these programmes from a general point of view. The EEAS changes all of this since it will now be able to decide alone – with the agreement of the competent commissioner – who will receive these funds from now on. The European Commission is still the manager of the funds but due to the EEAS's new political role it will now only be that, and so it will be reduced to being a kind of executive agency of

the new European service.

The Lisbon Treaty purposely provides the High Representative with a dual role: she is both a member of the European Commission and chair of the Council of European Union Foreign Ministers. She therefore wears a "double-hat". On the one hand she sets out the community's multiannual programmes which are drafted with the Parliament and she supervises the annual management of these. On the other hand she participates in purely governmental measures taken by the Council of Foreign Ministers over which the European Parliament has neither control nor influence. The Member States just provide 300 million € to conduct the European foreign policy, mainly used for security missions (police, military...). During the negotiations it was clear that this will be a point of conflict. From the beginning the foreign policy responsables in the Council and the European Parliament tried to extend their competences to the detriment of the others. The Commission's significant financial means (annual budget of 8 billion €) caused the cupidity of the Council and conversely, the power of the Council in terms of foreign policy decision-making was the source of cupidity on the part of foreign policy leaders in the European Parliament. In real terms this implied a trade-off between "the High Representative's political accountability" to the Parliament in exchange for greater influence on the part of the Council in the use of the Commission's external aid funds. In this area the Council relinquished its traditional competence over the High Representative's "political accountability", because it deemed it to be of little importance, however it granted access to 8 billion € in community funds. Under the guidance of its foreign policy leaders the entire Parliament gave up real rights in exchange for vague legal concepts.

Moreover it was agreed that the "double-hat" granted only to the High Representative in the treaty would also apply to the European Union's 136 ambassadors. Hence not only will the Union's representatives be responsible for foreign policy issues, like other diplomatic services but also for the management of the European Commission's funds in each country. The European Union's head of delegation (its "ambassador") is now personally responsible for the Commission's funds and may also personally have to pay fines, just like the civil servants working for the Commission, up to the equi-

valent of one year in salary in case of gross negligence is made in the use of funds which in some countries total hundreds of millions €. The fact that the EEAS has access to a great deal of money, in comparison with other diplomatic services, makes it an extraordinary and attractive entity to the Member States, which via the EU, might see an opportunity to increase their influence in their former colonies and because spontaneous funding decisions, intended either as a reward or a sanction, are now possible. With the creation of the EEAS and better access to 8 billion € that go with it the Council did indeed make a good deal.

Conflicts in competence, turf war and mutual mistrust typify daily life in Brussels under this "double-hat". It is debatable if it is helpful to give the EU ambassadors, who for all that do have a real political mission, a "double hat" and the management of these projects. Anyone who takes his work to heart will be heavily burdened: the head of the Commission's delegation will have to devote up to 40% of his time to the management of funds. Knowledge of the complexities of European budgetary law cannot be seen as prerequisite, notably amongst national diplomats but also amongst all Council and Commission employees who have never been involved in fund management. This necessarily implies the need for training concerning the financial regulations applicable to the community budget and also permission to manage Commission funds to be granted to staff who belongs to another institution. It does not require a great deal of discernment to see that this is a weakness or a risk even though the EEAS has not been aware of it as such to date. The person recently appointed to the EEAS to take care of these matters certainly has a great deal of experience but none in terms of project management and auditing. Avoidable mistakes may result "throwing a spanner in the works" and these will disrupt the smooth running of affairs. The EEAS has not succeeded therefore in making the legal changes to the EU's purely intergovernmental development aid instrument, the European Development Fund (EDF). Ironically the EU's ambassadors manage Community funds on site but not the Member States' intergovernmental funds, which are far greater and remain the responsibility of the Commission's employees in the EU's embassies. To this we might add that the EU's ambassador does not always have a deputy employed by the same institution and therefore no one can sign any documents in his absence.

On site the European Commission still plays a decisive role as the project manager: the DG DEVCO i.e. the result of the merger of EuropeAid (AIDCO) and the DG Development (DEV), comprises several hundred staff in Brussels and 3,700 others in the EU's embassies which is far more staff than the EEAS has. Like the EEAS the DG DEVCO also comprises services for the Mediterranean, the Near East, Latin America, Asia, the ACP countries and takes care of the same areas. Within the European Commission there were often disputes between DG EuropeAid, and the DG Development but the institutionalisation of the European External Action Service will make this conflict even more apparent.

Until now a number of other European Commission services undertook many aspects of the DG RELEX's work ranging from the budget, budgetary negotiations over buildings and the settlement of staff related issues. From now on however the EEAS has to assume all of this and requires staff, who in their careers to date as diplomats or foreign policy specialists within the European Commission, have not necessarily needed, at least in this detail, to address this type of issue. There are other sensitive areas extending from the EEAS having its own building to the access of the Commission's buildings – in which EEAS workers now only enjoy visitor status.

THE LACK OF BUDGETARY NEUTRALITY

The EEAS started off with an operational budget of 464 million €, of which about 180 million are to be attributed to central services. It comprises 3,270 full time posts [1].

It is indicated in article 27 of the Lisbon Treaty that the EEAS must employ civil servants from the competent services of the secretariat of the Council and the Commission as well as those who are seconded national diplomats. In the beginning it was agreed that 411 posts would be filled by the Council and 1,114 by the Commission; 118 new posts would be taken by diplomats from the Member States. Civil servants alone therefore comprise 1,643 of this staff (of which 1,099 are in Brussels and 544 in the EU's embassies). To this we must add 2,077 national experts, contract workers and locally employed staff. By 2013 the EEAS is to create 160 additional civil servants' posts for Member States' diplomats. Ordinarily the EEAS was to be governed according to the principle of a neutral budget;

by grouping together Council and Commission posts working on foreign policy savings were to be achieved -10% in terms of efficacy - which was the equivalent of 111 posts in the staffing schedule but this does not emerge in the way the EEAS has been organised. On the contrary there is no plan or numbers, nor is there any indication as to the size of the organisation or as to how relations between employees and hierarchy are to be organised although the Commission could have provided its expertise to the EEAS in these areas. The EEAS was nicknamed "a Mexican army" i.e. many generals and too few soldiers –before it had even started work. The provisional organisational chart presented in January 2011 supports this idea further: the multitude of levels in the hierarchy and the EEAS's small units make it a heavy, ineffectual institution. After more than a year of preparation the EEAS was only able to put forward a temporary organisational chart. It seems that the internal disputes between the EEAS, the Commission and the Member States were so great and the idea of the High Representative so vague that it was not possible to draw up a clear organisational structure.

If we compare the EEAS to the German Foreign Ministry the expression "Mexican army" is a perfect expression. The German Foreign Ministry has 13,600 employees led by 34 executives who fall within the second highest salary bands. On a European level this is equivalent to the General Directors. Within the EEAS there are to be 3,720 employees, of which 50 are executives. The EEAS totals one third of the German diplomatic staff alone but there are three times as many civil servants paid in the highest management levels. The German diplomats in these bands earn between 9, 410, 04 and 11, 507, 27 € (Department Directors / Secretaries of State B9 and B11); on a European level salaries vary between 14,953 and 18,370 € per month (General Directors AD15 and AD16).

The extremely advantageous rules governing holiday and working time, (which have to be reformed) mean that in third countries the EU's civil servants are absent from their work 40% of the time [2].

It is obvious that the taxpayer loses out twice because he still has to finance national services and at the same time finance a new, generously equipped European service. The inefficacy of the latter will last as long as national governments have not granted it any real function and together with the European Parliament have not forced it to

1. All figures are taken from the document Amending Letter N°1/2011

2. Figures taken from the European Commission, Inspection des délégations, 2008, p. 7..

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review the hierarchy - and also as long as this service and the Commission have not been obliged to improve their effectiveness and to avoid the overlapping of positions.

THE FIRST APPOINTMENTS

From the start the Member States saw it was their moment when it came to appointing people. Nothing else had really interested them until now. Those who know about and appreciate the European Union's relatively objective procedures i.e. the means of selecting the best via a "competition", increasingly find they have to face a system in which political influence alone prevails. Baroness Catherine Ashton has done little to facilitate the selection of the best. Externally the costly, tiered selection procedure still applies but its role from an internal point of view is declining. Member States were able to clinch the most attractive posts in the central services, likewise the European Union's embassies.

In 2010 the rotation and retirement of the heads of the European Commission's heads of delegation led to the availability of 29 posts in these embassies. The Member States were granted posts in the most politically important countries such as China, Japan and South Africa, likewise in third countries in which individual Member States traditionally entertained relations or had specific interests such as Albania or Argentina. The Member States dispatched 13 ambassadors. Civil servants from the European Commission were appointed to 16 posts but it is striking to note that they mainly occupy posts in rather unimportant ACP countries where generally traditional development aid has to be provided. Positions available in some countries were published on several occasions bearing witness to a lack of professionalism and of internal conflicts. Further problems are arising to which the EEAS can pro-

vide no answer. A new survey in Bulgaria showed that within the Bulgarian diplomatic service comprising 462 ambassadors, deputy ambassadors and consuls, 192 were unofficially working for the secret services [3].

Undoubtedly, if under these circumstances, anything like team spirit emerges from the EEAS, this would be contrary to all expectations. The only justification to create the EEAS was to enable the EU to speak with one voice, but this is exactly what our Member States do not want.

Will the EEAS muster the courage to act as a "European Foreign Service" and in its daily work really develop its own European line of action in which political and economic interests or human rights issues and the guarantee of peace play a major role?

Or will the EEAS be satisfied with what the Member States are prepared to give it - and entertain the secret hope of a European external service dominated by the British, French and Germans?

The way the present "common foreign policy" is considered gives us an idea of how the situation will develop.



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Translated by Helen Levy

3. *setimes.com*, 16.12.2010

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