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**The New External Action Service of the EU:  
A European Diplomatic Entity in the making?**

**Natividad Fernández Sola**



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## **The New External Action Service of the EU: A European Diplomatic Entity in the making?**

**Natividad Fernández Sola<sup>1</sup>**

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### **1. INTRODUCTION: THE ROOTS OF THE CURRENT SITUATION FOR THE EU INTERNATIONAL REPRESENTATION**

The Treaty of the European Union, when entering into force the Lisbon reform, will include a new article 27.3 according to which

“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 organization and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission”

This article shows the will to improve the unitarian and coherent international action of the European Union from the situation at present.

As it is well known, the current EU international representation could be triple: by the Commission, by the Council (Mr. CFSP and the Presidency) and by Member States; situation that reflects the institutional complexity and the partial integration of the EU. According to the original Treaties, the Commission had the monopole for international representation. The most visible result of this representation were the Commission offices and delegations in 123 countries and 5 international organizations (OCDE in Paris, OSCE in Vienna, UN in Geneva –including

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WTO-, New York, Paris, Vienna, Rome –FAO- and Nairobi). The Commission has its own RELEX service. The role of these delegations (Art. 20 TEU), jointly with diplomatic missions of Member States, is to cooperate in order to assure the respect and application of the common positions and common actions adopted by the Council.

But the development of the EPC since 1970 implied a parallel and *de facto* international representation by the rotating Presidency of the Council, which leads to the establishment of a permanent Secretariat at the Council outside the communitarian institutional structure. Immediately it was clear the lack of continuity due to the rotation of the Presidency and then an informal *troika* was established, but it didn't cope with the lack of political weight in international negotiations.

The Maastricht Treaty integrated into the Treaties the new CFSP, with an apparent institutional unity. The Treaty as modified by the Amsterdam treaty, sets up the High Representative for Common Foreign and Security Policy (art.18.3) who assist to the Council in CFSP issues, in particular by its contribution to the preparation and implementations of political decisions and eventually, on behalf of the Council, addressing political dialogue with third countries (art.26).

These innovations had as consequence the institutionalization of common foreign policy and more visibility of the EU international representation in political issues, even the reformulation by some Member States of their foreign policies (phenomenon of the *Europeanization* of foreign policies) and the harmonization of divergent interests and positions of these member states. The HR has its own cabinet and counts on the Polity Unit as well as the Civilian Planning and Conduct Capability. EU Military Staff is under the authority of the HR as well.

Under these conditions, the HR represents the continuity of the CFSP even if it is considered to have a low political representation as its legitimacy flows from the Council. There are in practice some examples of lack of coherence between external action from European Commission acting under the first pillar and the Council acting under the second one. Situations often solved by the good will and personal understanding between Mr. CFSP and RELEX Commission.

It is a polyedric international representation due the presence of two gravity centers in foreign policy. In total, specific human resources for external relations amount at 3000 people in headquarters and in external delegations<sup>2</sup>, plus about 2000 people in Development issues and ACP relationship; about 150 in Humanitarian Assistance, 480 in Trade issues and 780 in Enlargement issues.

Moreover, to the aforementioned difficulties derived from the current organization, the EU has others because the lack of unitary presence in international forum and organizations, given the legal impossibility to become member or the lack of coordination of member states there represented. Even if the EU has tried hardly to impose an obligation to previous concerted efforts for an agreement (art.19 and 20 TEU) this is not a reality at present.

An example to take into account is the recent EU delegation before the African Union; first EU delegation under the responsibility of both, the Commission and the Council given the important role played by the EU (second pillar) in the Darfur mission<sup>3</sup>.

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<sup>2</sup> See working document 6, Working Group VII on EU institutions human capabilities for external action.

<sup>3</sup> Since the *EU support to AMIS* in 2005 supporting AU (Council common action 2005/557, 20/VII/2005). Currently, the EU maintain in the area the civilian operation EUPOL RD Congo (Council common action 2007/405/CFSP, 12/VI/2007 on EU Police mission on the field of RSS and its connection with justice in DRC, modified by common action 2008/485/CFSP, 23/VIII), and the military one EUSEC RD Congo (Council common action 2008/491/CFSP, 26/VI/2008 modifying common action 2007/406/CFSP on the assistance and support EU mission on SSR in DRC). Also, in the FYROM, the EU has a joint representation, because the Commission office opened in March 2000, has hosted the Council, due to the double condition of Ambassador Erwan Fouéré as EU special representative and Head of the European Commission Delegation.

Another example of joint presence took place during the war in Georgia (August-September 2008) with a joint visit to Moscow by the President of the European Council, the President of the Commission and the HR. The delegation obtained the agreement of Russian Presidency on a Peace agreement and the consent for an EU observer mission. Probably the success of a unique representation has to be found in a hard and strong Presidency like the French one.

This is the complex current situation and the European Convention, as well as IGC for the Constitutional Treaty and for the Lisbon Treaty, outlined the need for an external action effective and coherent and so the legal and institutional tools for it. The treaty of Lisbon is clearly oriented to this aim. Even if a new HR like the one foreseen at the treaty is not an automatic solution for the lack of coherence of EU external action and the will of the member states is also needed, it is a first step in this direction. The will of the States would generate easier by a close association with the HR and with an External Action Service that counts on national diplomats and reports some positive effect for them.

## **2. PROPOSALS MADE BY THE CONSTITUTIONAL EUROPEAN CONVENTION: A PATH FORWARD**

Here we can find the proposals made by the Convention, mainly by the working group “external relations” but also by the WG on international personality and defense, and collected at the Treaty establishing a Constitution for Europe, as well as the content of the Joint Report by the HR and the President of the Commission. One of these proposals was the creation of a semi-permanent Presidency for the European Council. Some representative considered that it doesn’t count on parliamentary control and would add another actor for EU external representation and increase bureaucratic rivalries among all of them<sup>4</sup>.

### **2.1. A European Foreign Affairs Ministry**

It is the main innovation (High Representative of the Union for Foreign Affairs and Security Policy, in ToL, art.18 TEU) and result from the unsatisfactory situation because the lack of coherence between the external action of RELEX Commissioner and the HR. To arrive to this result four options were available:

- To keep the current situation but increasing the cooperation between RELEX Commissioner and the HR, both with separate functions
- The merger of both under the aegis of the Commission; in fact it would consist on the integration of the HR into the organizational structure of the Commission
- The merger of both in one person (*double hat*) gathering the functions of both but keeping separate procedures for first or second pillar actions (personal union)
- Creation of an EU Foreign Affairs Ministry, under the authority of the semi-permanent European Council President, merging both roles. For the Service supporting the new Ministry, there were two possibilities: to create a joint Service with officers from the Commission DG RELEX and from the Council Secretariat supported by national diplomatic services members, or to maintain two different and separate administrative bodies and a joint private office for the Foreign Affairs Ministry to guarantee the coordination between both.

The choice for the third formula will imply that only one person assume the responsibilities till now in the hands of the HR and of the RELEX Commissioner, even by the President of the

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<sup>4</sup> E. Brok, Working Group VII, working document 26, 4781, “The External Representation of the European Union”, y Brok, van der Linden, Cushnahan y Lamassoure, working document 46, 5331. For these EP Representatives –exception of Van der Linden from Dutch Parliament– the HR has to merge with RELEX Commissioner into the Framework of the Commission and the resulting one has to preside the External Relations Council.

External Relations Council, even if the Foreign Affairs Ministry wouldn't have a right to vote in the Council<sup>5</sup>.

If in the framework of the WG there were different approaches on these four possibilities, there were also a considerable consensus in favor of the creation of a joint service with officers from the Commission DG RELEX and the Council Secretariat supported by national diplomatic services members, for a European Diplomatic School and for a EU diplomatic service working alongside with national Embassies. The main opposition came from the German Government Representative, who argued that if the competences of both services are separate, the respective administrative apparatus must be kept separate too, and proposed on the side of the Council, the settlement of a European Unit for Foreign Policy regrouping the current UPPAR, the Centre of Situation, the Council DG External Relations and officers from member states and from the Commission (sic)<sup>6</sup>. The Constitutional Treaty and the ToL propose the creation of an EEAS for the support of the EU High Representative for Foreign Affairs and Security Policy.

## 2.2. The Embassies of the EU

The unique international legal personality attributed to the EU by the ToL is essential to consolidate a unique international representation by the new HR assisted by a new unitary External Action Service. It appears clearly the nonsense to keep the current European Commission Delegations in third countries. So, the Convention recommended to the IGC to substitute them for EU delegations or embassies. The term "embassy" was immediately rejected and the ToL foresees EU Delegations (art.221 Treaty of Functioning of the UE) that have to work once the Treaty enters into force.

The idea of EU Embassies was more ambitious looking for a unitary image of the Union in third countries. Useful in third countries where member states were not represented or under-represented, the EU Embassies must allow to gather the existent national embassies and offer a place for cooperation and assistance to member states. So that, respecting the diplomatic autonomy of the member states, EU embassies would allow increasing the European presence and influence in third countries, as well as the preparation on joint diplomatic initiatives and so on.<sup>7</sup>

## 2.3. A European Diplomatic School?

Once accepted the establishment of an EEAS, a further step would be the coordination of the training programs for officers to belong to this Service as well as the settle of a European Diplomatic School.

In general, there is no doubt on the good training of national diplomats. However and with notable exceptions this is not the rule for officers from RELEX DG Commission or Council Secretariat given their mobility between different DG, and not specifically devoted to external

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<sup>5</sup> See Brian Cowe, *The European External Action Service: Roadmap for Success*, Chatham House Report, 2008, p. 13, the most common is to refer to the two first functions. Amendments made by Michel Barnier to the revised text proposed by the European Convention (working document 59, doc. 6090) set off the lack of the voting right in the Council, what stress its impartiality. The First Preliminary Draft Report (working document 21, doc.4726) didn't refer to the merger of the existing bodies.

<sup>6</sup> H. Martin Bury, Working Group VII, working document 53, doc.5584. In this vein opposed to the proposal, see the comments of P. Hain (working document 66, doc.6178) and B. Mc Donagh, (working document 16, doc.4450); G. Pleuger (working document 17, doc.4484) proponed the existente of two difftent support bodies, that was one of the proposals to be considered by the Project of revised final report (working document 21 REV1, doc.5573)

<sup>7</sup> "Towards the establishment of a common European diplomacy, paper by Mr. Iñigo Méndez de Vigo, member of the Convention", Working Group VII, working document 55, 3/XII/2002, p. 5. In the same vein, the written Declaration according to article 116 of the European Parliament internal rules, by E. Brok, N. Fontaine, B. Geremek, J. Leinen e I. Méndez de Vigo, about a Foreign Policy, Security and Defense Union. PE 0010/2007, 31/I/2007

action or international representation, with the result of the need for the officers involved in EU external action to have a specific training.

On the other side, members of national diplomatic services are not prepared for defending EU interests but national interests and sovereignty. So, another kind of specific training is needed too.

The proposal made by the working group was gradual, going from a network of European diplomatic Schools coordinating training programs –mainly on European issues-<sup>8</sup>, to a joint program under the responsibility of a European Diplomatic School, probably on the basis of the current experience and EDTI.

That proposal was not accepted by the Convention however it is not impossible that it becomes a reality given the spillover phenomenon if a new HR and its EEAS are created according to the ToL. Anyway, a very European diplomacy only can emerge from the organized convergence of the member states' interests<sup>9</sup>

### 3. THE TREATY OF LISBON AND ITS AMBIGUITY

According to the TEU, as reformed by the ToL, the EEAS will be composed by officers from the Commission and from the Council General Secretariat with the support of the national diplomatic services from member states (art. 27.3 TEU).

Preparatory works for the kick off of the EEAS started in 2004 but stopped after the failure of the Constitutional Treaty in 2005. After the signature of the ToL the work re-started counting on the cooperation of the Member States and the European Parliament with the Council and the Commission. The first (member states) preferred a Service with a balanced representation of EU officers and national diplomats avoiding to put apart national diplomatic services or duplicate them. The second (EP) wanted a Service incorporated into the organizational structure of the Commission.<sup>10</sup> After the negative referendum in Ireland and the impasse in the ratification process of the ToL, the preparatory works for an EEAS stopped again. We consider that it is legally possible and could be politically acceptable the creation or mise-à-jour of the HR even outside the constitutional or treaty framework. The same reasoning is applicable to the establishment of an EEAS for the HR assistance. The question is to choose an acceptable political moment, preferably medium-term if the Treaty of Lisbon is not immediately de-blocked.

#### 3.1. Pros and cons of the formula adopted

As well as the new HR, the EEAS is a baroque exercise aiming to conciliate the external action of two different institutions in order to gain coherence. Obviously, it implies a high degree of complexity in its organization and the design of its functioning in the future.

Its composition tries to reflect an institutional balance and needs further details. The appointment of its members requires the consent of the three main institutions.

The acknowledgement of the EU Delegations requires an international representation according to the unique legal personality and with the aim to promote and improve the EU external action and its visibility. These external EU Delegations have to provide the EEAS an important added value if they have a good information system useful for the Commission, the Council and member states and if they have the economic resources for this. If Delegations count

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<sup>8</sup> Currently 17 national diplomatic schools and training diplomatic centers participate in European Diplomatic Training Initiative (EDTI), that offers its courses to national and European officers having in mind the perspective of a future EEAS. See *European Diplomatic Training Initiative*, <http://www.diplomacy.edu/edti/>.

<sup>9</sup> Amendements by P. Andreani to the revised final report project, Working Group VII, working document 72, doc. 6255.

<sup>10</sup> European Parliament Resolution on the institutional aspects of the European External Action Service, 26/V/2005, JO C 117E/233.

on members who doesn't belongs to the EEAS, i.e. those devoted to trade policy, the head of the Delegation will have to coordinate the activities of all its members.

### 3.2. Difficulties for its implementation

The main challenge for the EEAS will be the efficiency in developing an autonomous policy and in coordinating the EU external action. It has to show enough dynamism and initiative but also provide itself with legitimacy and credibility before the European citizens, the member states and the Union institutions<sup>11</sup>. As the ToL does not contain its specific organization, nor its working methods, it should be decided unanimously by the Council, previous HR proposal and the consent of the Commission.

Which are the main issues to be solved before the entry into function of the EEAS? It will concern its scope and size, its legal status, the system for rotation and promotion of the officers working in, its location, the training of its members and the organizational and budgetary dependence.

#### - Scope and size:

The size of the EEAS will be flexible in order to achieve efficiency according to the changing needs. As an starting point, there are two different theories concerning the right composition for the External Service, or relevant departments to be into it. The minimalist theory<sup>12</sup> considers mainly the HR task to coordinate external action, so the EEAS will be limited to officers for DG-E and Polity Unit from the Council and DG RELEX from the Commission, especially from Direction A and the platform for crisis. With this composition, the EEAS will assist the HR in foreign policy issues but not in trade or others into the exclusive or shared competence of the European Community. So, the EEAS will have as task the support on issues belonging to the second pillar. In my opinion this is as nonsense as giving the EEAS only the task to assist in first pillar issues as the new HR is created for avoiding this radical separation between pillars, its work and its officers with the consequence of a non-uniform external projection. According to a maximalist theory, the EEAS would include a wider representation of the Commission including DG Development, Neighborhood, Humanitarian Assistance, Financial management of external programs and Enlargement. The understanding of the task of the HR it involves would require an External Service including departments that are managing the CFSP and ESDP, as well as geographical and thematic offices<sup>13</sup>. Even the special representatives must be included. On the side of the Council Secretariat it would include, apart from DG E and Polity Unit, the Military Staff and the Situation Center. This is an enormous sensitive issue as it implies to share intelligence analysis, necessary for the Service to prevent crisis. If we accept as it is said in the Joint Report that duplicities have to be avoided, so the main part of the human resources of the Council Secretariat and the Commission involved in external action have to pass to EEAS. The choice for maximalist approach would pose the problem of the EEAS relationship with European Parliament that till now is covered by a personal representative of the HR for parliamentary issues and that would require a whole section responsible for the relationship with the Euro-parliament<sup>14</sup>.

#### - In close relation with the size of the EEAS and one of the more debated approaches is the requirement of some percents of participation for each institution, as it is well known the number

<sup>11</sup> External Action Service, Contribution by Council Secretariat Officials, 2008.

<sup>12</sup> S. Duke, "The Lisbon Treaty and External Relations", *EIPASCOPE* 2008/1, p. 15. Only some member states prefer this formula, *Joint Progress Report* de 2005 jointly presented by Javier Solana and J.M. Durão Barroso on June, 9, 2005 to the European Council.

<sup>13</sup> The HR and the President of the Commission, in its Report, prefer to include services managing CFSP and geographical and thematic departments, such as human Rights, counter-terrorism, non-proliferation or relationship with the UN, *Joint Progress Report 2005, cit.*

<sup>14</sup> See S. Duke, *cit.*, p. 16 *Joint Progress Report* de 2005, *cit.*



of Commission officers is bigger than the number of officers at the Council. The problem could be slightly balanced by the participation of national diplomats whose role is not clearly defined already. How interpret this option for the EEAS composition? Different interpretations of it have been made. On the one side, it would imply almost to empty Commission for human resources and a risk of intergovernmentalism of some policies whose external relations till now are managed in a pure community way. On the other side, member states consider that it would lead to an unacceptable weight of the Commission<sup>15</sup>. The Commission supports a wide EEAS, but the Council considers that other more balanced formulas has to be studied even if they would accept the inclusion of all external services of the Commission except those in charge of Trade policy. A proposal to obtain the support of all member states could be an initial composition of 1000 Commission officers, 200 from the Council and 2000 from member states that could reach 6000. Whatever will be the size of the Service and the number of Commission officers it seems necessary the implication of all geographical offices or those with clear involvement in external action will be at the disposal of the External Service as a condition for the efficiency of the assistance given to the HR, and of its good results will depend the legitimacy of it<sup>16</sup>. In order to be realistic and pragmatic, the EEAS has to start its task with the current officers from both institutions and progressively fighting for a specific European professional profile. It would imply at the first time a big number of national diplomats and gradually a big attention to the own EU officers / belonging to the EU/ in a further step. A reciprocal confidence has to exist between both and it is only possible on the basis of a gradual harmonization of foreign policy positions favored by a “coordination reflex” and a common institutional culture generated by a continued joint practice. Most of the actors involved in the process do not consider appropriate the existence of institutional quotas, nor the national ones<sup>17</sup>.

- So the institutional tradition of geographical equitative presence is broken out in order to guarantee the equality of all member states and the independence of Commission officers from any national interest. If there are no quotas how to recruit the personnel for EEAS? It must be based on the origin in a service in charge with some aspect of external relations or foreign policy and in the professional skills. How and by whom assess professional skills? The aim will be the excellence in the Service. So a specific procedure for national diplomats can be imagined if all officers from the Council and the Commission go to the EEAS, or a general procedure otherwise with the goal to offer to the HR the best support for the all range of his/her competences under the current 1<sup>st</sup> or 2<sup>nd</sup> pillars and for the all geographic or thematic issues in which the EU has competence. A general competition would be a formula, hardly acceptable for national diplomats who usually have past a national one. For that reason, most of the member states prefer to leave the selection of EEAS human resources in the hands of the ministers. Another more flexible formula would be the proposal by the Council, by the Commission and by the member states of the suitable candidates and their evaluation by a reduced body close to the HR giving priority to his opinion. So that there will be a selection at the first level and a final selection only among the previously selected giving this way the HR the discretionary power to compose a Service on the joint basis of competence, skills and personal trust. This procedure will probably reduce the struggle between Council and Commission and also between member states. Whatever will be the

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<sup>15</sup> Brian Cowe, *cit.*, p. 15. Extremely jealous on this point is the British House of Lords who consider essential the determination of the respective weight of each institution in the new Service to avoid a bigger power from the States to the Union; House of Commons, *Foreign Policy Aspects of the Lisbon Treaty*, Third Report, 20/1/2008, Foreign Affairs Committee, <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmffaff.htm>, §179 y 182.

<sup>16</sup> External Action Service, Contribution by Council Secretariat Officials, 2008

<sup>17</sup> The Council Report (External Action Service, Contribution by Council Secretariat Officials, 2008) refers only to a “overall regional balance without quotas”. *Joint Progress Report de 2005, cit.*, chose the same formula, so it remains undetermined how to make compatible this balance with the HR decision-making for the election of people integrating the EEAS.

formula chosen the result would be very different if only applied to national diplomats or to everybody coming from the Council or the Commission external services. Also there will be differences between the procedure for the first appointment of the members of the Service and for the subsequent ones in order to cover specific vacancies; in this case an EEAS commission could do the job.

Another problem is that of the promotion of the officers working for the EEAS. The mobility is desirable for a job in a delegation in a third country but for also for the rest of the Service would be appreciable a certain continuity that guarantees an “institutional memory”. How to balance both principles? Rotation or mobility and continuity? The solution could be a rotation between EEAS, diplomatic national services and external EU delegations and even national embassies in third countries.

### EEAS Headquarters

A final solution to promote its autonomy and visibility would be an independent building in Brussels with antennas before the Secretariat Council and the Commission. Provisionally every officer could keep their current location and national diplomats being distributed between both. The most practical and less controversial solution is that the EEAS has the same location than the HR.

### Training

Even if the desideratum is a joint training by a European Diplomatic School, at present a minimum common training is needed. The success of the EEAS would be the result of a joint training, the knowledge of different national interests and different foreign policy traditions, it means, the result of a joint diplomatic culture essential for a feeling of “European public service” and for a “European attitude” tackling with EU international relations. According to the Council, the EEAS training requires joint programs of diplomatic issues, exchanges of European and national officers, accelerated training for specific vacancies in third countries delegations<sup>18</sup>.

There are currently two different programs at the EU that could be a useful basis and experience for the new EEAS: the Young Experts in Delegation (YED, started in 1984) and Seconded National Experts in Delegations (2002). The aim of both is the training of young experts and officers from member states, respectively, in the European Community External Service. Since the first moment that an EEAS was proposed, both programs have improved its functions with a training approach for the future new Service. Even, the YED is colloquially called the “non-existing European Diplomatic School”.

Before to be sent to their destination, people participating in both programs receive intensive course of one month in Brussels to continue the training in the Delegations. In the last 3-4 years, both programs have been re-oriented in order to be a source of recruitment for the EEAS. It is quite probably that both will have, together with EU officers and temporary/contractual agents, a fundamental role in the future Service because they belongs to national administrations and have an intensive 2-year training in European External Service.

In a long-term perspective, EEAS members have to contribute to the training of the new members. The main task of this training apart from linguistic, diplomatic, leadership, representation or protocol skills, would be to generate a clear European identity to be promoted and defended by the HR and his/her EEAS. The European Parliament as well as the Council would accept to a long-term period the establishment of a European Diplomatic School with high training standards for the excellence of European diplomats.<sup>19</sup>

- Organizational and budgetary dependence.

<sup>18</sup> External Action Service, Contribution by Council Secretariat Officials, 2008.

<sup>19</sup> External Action Service, Contribution by Council Secretariat Officials, 2008.

If European Parliament first considered appropriate its dependence from the Commission, the HR and the President of the Commission preferred its considerations as *sui generis* service as it is not a new institution but just a service for the support of the new HR<sup>20</sup>. The second option seems to be the more suitable as the dependence from the Commission would contradict the required independence of the members of this institution. Concerning national diplomats, the question would be if they have to be temporary agents or *détachés* from their own national Administration. From the text of the ToL one can conclude the preference for *détachés* officers “staff seconded from national diplomatic services of the member states”. But most of the member states seems to prefer the temporary agents formula, option that I consider too the best as so that all EEAS members will have the same status and labor conditions.

So, we propose that officers from external relations DG from the Council and from the Commission have organizational dependence from their institutions and national diplomats seconding the service would be *détachés*, or even temporary agents if this would be the decision of national administrations. It would imply the same economic rules but perhaps different engagement/selection procedures of, in the case of national diplomats, different salaries that would harmonize gradually. The final EEAS composition, its acceptance and collaboration with member states will depend on the number and level of national diplomats present in it. After a first period, the EEAS would become an autonomous service from the Commission and the Council, a Service for the HR and depending on him/her. It is not already clear its budgetary dependence, however I consider it would be the same than the HR and come from Community budget because an agreement to share expenditure between member states would damage its impartiality. This way would allow European Parliament to have an indirect but important instrument to control the EEAS.

Scope of its competences: assistance to HR or also to the new European Council President?

According to the ToL, the EEAS only serves as support of the HR. However there are relevant elements allowing us to think that it can also assist to the European Council President.<sup>21</sup> This would provide with more relevance to the EEAS and favors the coordination of the new President with the new HR; otherwise the risk of duplicity in representation and services, and by consequence of incoherence, is present again. Even it has been suggested the support from the EEAS to the Commission President and other members of the Commission in their international activities<sup>22</sup>. But this would print an intergovernmental tendency against the suitable balance with the Commission.

Future of the ToL and possibilities to create the HR and EEAS outside the constitutional framework.

A paradigmatic case is the ESDP developed outside the framework of the Treaties by the political agreement of the member states. After starting at the very beginning of 1999 only the Treaty of Nice at the end of 2000 contains some references to the ESDP. Some bodies foreseen at the European Constitution became real without Constitution, like the EDA, the implementation of the solidarity clause or the generation of military capabilities<sup>23</sup>.

<sup>20</sup> See, European Parliament Resolution on the EEAS 2005, *cit.*, and *Joint Progress Report de 2005*, *cit.*, respectively.

<sup>21</sup> External Action Service, Contribution by Council Secretariat Officials, 2008, and B. Cowe, *cit.*, p. 19.

<sup>22</sup> External Action Service, Contribution by Council Secretariat Officials, 2008, and *Joint Progress Report de 2005*, *cit.*

<sup>23</sup> Common action 551, 12/VII/2004, *DO*, n° L 245, 17/VII/2004, creates the European Defense Agency. Implementation of the solidarity clause by Declaration in the European Council Conclusions, March 25 and 26, 2004, (POLGEN 20, concl.1, 9048/04, de 19/V/2004) –*Declaration on combating terrorism*– after terrorists attacks in Madrid.

This para-constitutional way is theoretically open to develop the most urgent tools to build a EU as an international global actor. However, politically it seems difficult given three negative referenda

### 3.3. Relationship with national diplomatic services,

Two declarations included into the final act of the IGC of the ToL show the defensive member state attitude towards an increasing EU international representation. It state that the new HR and its EEAS will not affect the current competences of member states concerning the management of their foreign policy or their international representation, included their membership in international organizations, eventually SC of the UN membership. There are however two reasons for close cooperation between EEAS and national diplomatic services: the first is the requirement made by the ToL that national diplomats second the EEAS; the second is the provision of close cooperation and coordination between EU delegations under the HR and member states diplomatic and consular missions<sup>24</sup>.

So, a clear definition of the respective task of national and European “diplomatic services” is needed. The philosophy of the Treaty is that the embryo of a European diplomacy will not damage to national diplomatic bodies. On the contrary, their experience and large setting out will be the main asset of the future Service. If national diplomats are included into the EEAS and national diplomatic services are necessary for the external representation, the fears and critics to the Service as a centralized one that will imply a transfer of power from member states to the EU institutions are nonsense<sup>25</sup>.

It has been suggested that the new EU delegations have to assume as competence diplomatic and consular protection, civil protection, intervention in crisis situations and humanitarian assistance<sup>26</sup>. The division of competences in these fields ought to be clear. The first explanation is that diplomatic protection is an exclusive state competence and consular protection could be offered, as is the current situation, by consular offices from other member states, even by the EU delegations if they count on national diplomats to do so. The EU delegations may assume the issuing of the visas, as it is a national competence but governed by communitarian rules. The only thing that member states would fear would be to loose the discretionary power they have currently to give or refuse to issue a visa. Member states have expressed their will to transfer to EEAS competences on visa and consular protection.

An agreement between member states to recognize that the head of the EU delegation preside the meetings of the national representatives in a third country would serve as a basis for the coordination of the activities of member state embassies<sup>27</sup>.

The establishment of the EEAS doesn't imply automatically a reduction of the national diplomatic services (the number of its members) but could help in this vein, except if the states use EEAS only to promote their national leadership inside the EU. As long as multilateral relations between member states are more important in a wide range of issues, traditional bilateral relations are less relevant. If it could be said that the controversy between bilateral diplomacy or diplomacy into the European framework is not a zero-sum game, whereas the political integration was not totally accomplished, the national Embassies will keep and even increase its role<sup>28</sup>. The positive consequence of the EEAS institution has to be a better and more coordinated external representation of the Union, a more strength international actor and more visibility as such.

<sup>24</sup> Articles 32 and 35 TEU, and 211 del Treaty on the Functioning of the EU.

<sup>25</sup> House of Commons, *Foreign Policy Aspects of the Lisbon Treaty*, Third Report, 20/1/2008, Foreign Affairs Committee, <http://www.parliament.the-stationery-office.co.uk/pa/cm/cm/aff.htm>, §179.

<sup>26</sup> M. Barnier, “For a European civil protection force: Europeaid”, May, 2006.

<sup>27</sup> *Joint Progress Report 2005*, cit.

<sup>28</sup> Ø. Bratberg, “Bilateral Embassies in an Integrated Europe: a case of Institutional Robustness?”, *European Integration*, vol. 30, n° 2, 2008, pp.235-253.

#### 4. Conclusions

Most of the positive progress in external action, foreseen at the ToL, need a detailed development for which only member states and UE institutions have the responsibility. It is the case for the HR role with regard to the rest of the actors that play in the EU external relations, the EEAS design to assist the HR as well as that of the EU external delegations, or the way in which national diplomatic services can complement the EU action and vice versa.

The foreseen reforms on the EU external representation are in the way of producing a new governance code in the EU external action by the new European Council President, the new HR and the re-shape of the current semester Council presidency; changes that will demand for a new Service able to support all this framing. A new Service that will require:

- unity
- expertise and professionalization
- multiple sensibility and ability to determine common interests avoiding political views and a excessive weight of states and their diplomatic services but counting on them

The new EEAS will imply that the traditional institutional logic of the representation of member states interests, citizens' interests or of supranational interest would be substituted by a functional logic because the new Service has to take into account the EU interests inside of which national interests are included. If for a constructivist view, institutions can shape the agenda, identity and even transform the nature of the States (as a process of polity-building), in this case of the new EEAS, will mostly be the States which transform the very nature of formerly supranational institutions (Commission whose RELEX task is assumed by the new HR) creating a new style bodies, not "beyond the state" but "with the States", by i.e. taking part in the EEAS.

More than a new policy beyond the State, the new EEAS as supporting the new HR represents a new kind of code for European Foreign Affairs Governance, in close cooperation with member states but avoiding traditional intergovernmentalism

Beyond this reasoning, would the EEAS creation have any impact on the nature of the EU as normative international power?<sup>29</sup> In this vein, two elements has to be taken into account. On the one side, having a unique international representation supported by a unique EEAS has to promote the EU normative power, its objectives, its resources and its results<sup>30</sup> as long as the external European action is founded on these common values. However, the presence of national diplomats in EEAS could imply to put apart these common values for the defense of individual national interests. This risk could be removed if one considers that national officers in the EEAS have to act not as such but to the service of the HR and for the EU interests. This behavior will be reinforced by a process of joint training and socialization at central EEAS headquarters in Brussels as well as at EU delegations in third countries.

So, the new EEAS will not produce *per se* a direct effect on the political integration process but will allow that any new development in this direction had an appropriate body to shape the EU external position and image.

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<sup>29</sup> T. Díez e I. Manners, "Reflecting in Normative Power Europe", in F. Berenskoetter y M.J. Williams (eds.), *Power in World Politics*, Routledge, London, 2007, pp. 173-188.

<sup>30</sup> N. Tocci, "Profiling Normative Foreign Policy: The European Union and its Global Partners", in *Who is a Normative Foreign Policy Actor? The European Union and its Global Partners*, Centre for European Policy Studies, Brussels, 2008, pp. 1-23.

The quality of its results and its added value for European citizens and member states will be the tool to measure its legitimacy; it means its ability to improve the EU role in the international landscape, and a foreign policy more coherent and efficient<sup>31</sup>.

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<sup>31</sup> EAS, Contribution by Council Secretariat Officials