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## THE PROPOSED REFORM OF THE EUROPEAN EXTERNAL ACTIONS SERVICE AND ITS IMPLICATIONS FOR THE EUROPEAN UNION'S SECURITY POLICY

*The aim of this article is the analysis of the European External Actions Service's shortfalls, to determine whether these are structural or circumstantial, the assessment of the draft reform submitted by the European Union High Representative for Foreign Affairs and Security Policy and the proposal, where relevant, of reform guidelines to improve this policy, also under review, and in particular in accordance with the conclusions of the European Council in December 2013.*

*European External Actions Service Reform, EU Common Foreign and Security Policy, decision-making process, European security and defence policy institutions and bodies*

## THE PROPOSED REFORM OF THE EUROPEAN EXTERNAL ACTIONS SERVICE AND ITS IMPLICATIONS FOR THE EUROPEAN UNION'S SECURITY POLICY

### I: INTRODUCTION

One of the areas in which the Lisbon Treaty on the European Union, in effect since December 1st 2009, amended the Treaties of Rome of 1957 and the Treaty of the European Union of 1991 was in Foreign Policy and European Security. Among the new provisions, article 27.3 TUE provided for the establishment of a High Representative for Foreign Affairs and Security Policy and a European External Actions Service (EEAS).

This represented the culmination of a long process of institutional reform of European foreign policy, that had started out with the formalisation, in 1970, of European Political Cooperation, its later institutionalisation in the Single European Act of 1987 and its transformation into an EU intergovernmental cornerstone of Common Foreign and Security Policy with the Maastricht Treaty which came into force in 1993.

This new arrival in the institutional make-up of the EU aroused much expectation<sup>1</sup> in terms of the realism of the concept, in foreseeing its close cooperation with the diplomatic services of the Member States and with a composition of officials drawn from both the Council and the Commission as well as staff seconded from the Member States' diplomatic corps. The idea was to put an end to the multitude of centres where European external action had been formulated and put into action<sup>2</sup>. It was the fruit of a complex and fragmented constitutional structure; but one which at the same time allowed for significant participation from the Member States, which are generally

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1 \* FERNÁNDEZ SOLA, Natividad, "El Servicio de Acción Exterior de la Unión Europea", *DT R.I.Elcano* nº 46/2008, 10.II.2008. See also ALDECOA LUZÁRRAGA, Francisco (coord.), *La diplomacia común europea. El Servicio Europeo de Acción Exterior*, Madrid, Marcial Pons ed., 2011 and CORNAGO, Noé, GUINEA, Mercedes (coords.), *Revista Cuadernos Europeos of Deusto*, Monographic nº 44, 2011.

2 Up to 22 European bodies had an input of some kind in the foreign and common security policy, according to Howorth and Le Gloannec; a situation which leads them to recognise the institutional logic of the creation of the EEAS. HOWORTH, Jolyon and LE GLOANNEC, Anne-Marie, "The Institutional Logic behind the EEAS", in European Policy Center, "The EU Foreign service: How to build a More Effective Foreign Policy?", *EPC Working Paper* n.28, 2007, pp.28-34.

reticent in relinquishing competences in matters of foreign policy and security, a last stronghold of their sovereignty in the classic sense. Coherence, consistency and unity in European external action was the mantra that had been constantly repeated since the Treaty of Maastricht, with the Lisbon Treaty attempting to provide a definitive proposal. With the provision of an External Action Service, in the form of a pan-European diplomatic corps, it was devised to assist the new High Representative, who would sit as a member of the Commission and, and at the same time chair and coordinate the Council of Foreign Ministers.

After a lengthy gestation period, the Council adopted the decision of 26<sup>th</sup> July 2010 on its organization and functioning.<sup>3</sup>After the first appointments, the service commenced operations on 1<sup>st</sup> January 2011 with the transfer of the corresponding Council and Commission staff. The structure is made up of a central administration and Delegations of the European Union (EU) in countries and in international organisations around the world whose staff largely belonged to the EEAS. The central administration, managed by the executive Secretary-General is organised into Directorates-General over geographical, cross-disciplinary and multilateral areas. Development and neighbourhood policies, security and peace-building, human rights and the promotion of democracy are reflected in the structure. In concrete terms the majority of staff from the Commission's Directorate-General for External Relations were transferred, along with part of the staff from the Development Directorate-General (the remainder of which merged with the Directorate-General on External Cooperation into the Directorate-General for Development Cooperation). The management of development cooperation programmes remains under the auspices of the Commission<sup>4</sup>, along with expansion, trade, humanitarian assistance and civil protection. For its part, the Council Secretariat transferred to the EEAS the staff of the Directorate-General for External and Political-Military affairs, and therefore the structures of CSDP and crisis management.

This new European bureaucracy for the implementation of the EU's common foreign policy generated some confusion among community institutions and the Ministries of Foreign affairs of the EU member States. As M. E. Smith has pointed out, while many of the questions raised referred to the traditional supranational or intergovernmental controversy regarding the body governing external policy, others referred to the future that awaited EU policy under the management of this new institutional machinery<sup>5</sup>.

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<sup>3</sup> Council Decision, 26 July, 2010, establishing the organisation and functioning of the EEAS, *DO L 2010 201/30*.

<sup>4</sup> Without prejudice to the respective roles of the Commission and the EEAS in programming; Article 9, Council decision 26 July, 2010, *cit.*

<sup>5</sup> SMITH, Michael E. "The European External Action Service and the Security-Development Nexus: organizing for Effectiveness or Incoherence?", *Journal of European Public Policy*, 2013.

As the organisations of the Common Security and Defence Policy are included within the European External Actions Service, the deficiencies of the latter will also have their impact on the former. At the same time the weaknesses and inconsistencies in relation to the Common Security and Defence Policy, in an incomplete European Union, cannot be disguised by a “European Diplomatic Corps” at the service of an as yet imperfect policy.

Based on the premise that, as is frequently the case in international relations, internal norms and players are as important as the content<sup>6</sup>, the objective of this study is to analyse the deficiencies of the EEAS that affect the Common Security and Defence Policy (CSDP) and determine whether the deficiencies are structural or circumstantial, and to propose guidelines for reform that could deal with these and increase the efficiency of the EEAS and the High Representative as the managers of Foreign Policy, including the CSDP. Such an analysis is timely, given that the European External Actions Service<sup>7</sup> awaits reform to address the necessities observed during its three years of existence and in view of the European Council's forthcoming review of the CSDP in December 2013.

## **1. Objective of the Lisbon Treaty in relation to EU external action and the limitations of the European External Actions service in achieving this**

The objective of the last major reform of the constitutive treaties was to promote the EU's role as an actor on the world stage. Hence the focus of the Lisbon Treaty on the Union's external action<sup>8</sup>, apparently doing away with the former distinction between external relations and foreign and security policy, in other words, between trade and development policies, the traditional content of the first pillar of the community, and the foreign and common security and defence policies (CFSP and CSDP), until then constituting the second pillar of the EU. In pursuit of this new focus, Title V of the TEU resulting from Lisbon lays down a set of general principles that should guide

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6 RAMOPOULOS, Thomas, ODERMATT, Jed, “EU Diplomacy: Measuring Success in Light of the Post-Lisbon Institutional Framework”, in A. Boening, J. F. Kremer and A. van Loon (eds.), *Global Power Europe. Theoretical and Institutional Approaches to the EU's External Relations*, vol.1, Springer Verlag, 2013, p.19.

7 Council decision 2010/427/ EU, 26 July, which establishes the organisation and functioning of the European External Action Service forecasts in article 13.3 that the EU's High Representative for Foreign Affairs and Security Policy will undergo a review of same.

8 The European Union, which since the Lisbon Treaty has a sole legal international policy, instead of the previous ones corresponding to the European Community, EURATOM and the EU itself; see FERNÁNDEZ SOLA, N, “La subjetividad internacional de la Unión Europea”, *Rev. Derecho Comunitario Europeo*, vol.6-II, 2002, pp.85-112.

the Union's action on the international scene and its aims. It refers to the prevention of conflicts, streamlining trade and sustainable development, acting in accordance with the values of democracy, respect for human rights, and the rule of law. Nevertheless, the Lisbon Treaty maintains the specific norms and procedures pertaining to the CFSP and the CSDP<sup>9</sup>, which means that unanimity continues to be the rule for the adoption of decisions in this field. Even though the Treaty envisages formulas of flexibility such as enhanced cooperation, permanent structured cooperation and constructive abstention (article 31 TEU), these are theoretical possibilities in relation to which the EU and the Member States continue to demonstrate their reticence in practice.

Overall the most relevant change that the Lisbon Treaty introduces in terms of foreign policy is the creation of the EEAS as an independently functioning body charged with assisting the High Representative of the EU<sup>10</sup> who, subsequent to the Treaty, in addition to the competencies of his predecessor in previous versions of the treaties, takes on the majority of those corresponding to the Commissioner for Foreign Relations and the external functions of the country in the role of rotating presidency of the Council (article 18 TEU). The High Representative, originally designated in the draft of the constitutional Treaty as European Minister of Foreign Affairs<sup>11</sup>, is thus designated as the institutional link between the Council and the Commission in matters of European foreign policy.

The European External Actions Service constitutes, both in its composition and organisation, the best reflection of this search for coherence in EU foreign policy. It unifies the services of foreign relations and policy respectively –formerly separated into Commission and Council – and places them under the aegis of the new High Representative.

Undoubtedly, a positive internal aspect of the EU's external action is the staff members' identification with the service, despite their different origins. Juncos and Pomorska explain this attitude on the basis of material calculations and psychological

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9 In accordance with Title V, article 24, the limited role of the Commission and the European Parliament is maintained, as well as the traditional exclusion of the Court of Justice from practically all decisions adopted in the fields of CFSP and CSDP. See Antonio MISSIROLI, "The New EU Foreign Policy System after Lisbon: A Work in Progress", *European Foreign Affairs Review*, 15, 2010, pp.427-452; VAN ELSUWEGE Peter and Hans MERKET, "The Role of the Court of Justice in ensuring the Unity of the EU's External Representation" in S. Blockmans and R. A. Wessel (eds.), *Principles and practices of EU external representation: Selected legal aspects*, The Hague, CLEER Working Papers 2012/4.

10 Throughout this work we shall use the term "High Representative" in the masculine gender as a generic denomination of the institution, despite the fact that the incumbent HR is a woman.

11 BROK, Elmar. European Convention, Working Group VII, working document 26, 4781, "The External Representation of the European Union", and BROK, Elmar, VAN DER LINDEN, René, CUSHANAHAN, John, LAMASSOURE, Alain. working document 46, 5331.

factors, and while they demonstrate the negative prospects of short-term professional promotion for their members, they nevertheless value other indicators (prestige or work-satisfaction)<sup>12</sup>. The consequence of this personal implication of the EEAS staff members is positive for the construction of a more robust EU foreign policy.

Nevertheless, more than three years since its inception, the EEAS presents problems that go beyond those related to its own evolution and development as a newly formed body, or brought about by personality clashes between ex European officials in charge of external affairs<sup>13</sup>. Other problems have arisen that derive from its staffing structure, difficulties over issues of international law and the problems of EEAS agenda-setting<sup>14</sup>. One of the first problems detected in the new service was the presence of a substantial number of high-ranking officials that generated major intergovernmental negotiations concerning the definitive structure of the service and the selection of personnel. But it also gave rise to disputes within the Service and the Commission over issues such as their respective competences in foreign policy issues and available resources. At the present time the structure of the upper echelons of the service is generating more confusion over the implementation of a common foreign policy and this affects the functioning of the EEAS. As the report on the reform of the EEAS points out<sup>15</sup>, there is no need for an Executive Secretary General and Chief Operating Officer supported by two deputies. This institutional design, along with the high number of Director Generals, most of which are national diplomats, stems largely from politicking over staffing rather than a response to the demands of a functional rationality.<sup>16</sup> It is therefore a circumstantial problem of structure, which could be resolved without major difficulty.

On the other hand, the rigid division of the service into the geographic areas apportioned to these high-ranking officials could produce an unnecessary rigidity in their functioning and impede the development of cross-cutting functions between these and the structures responsible for missions and operations developed under the Common Security and Defence Policy. In this sense, the proposed reform of the EEAS presented by the High Representative contemplates the possibility of merging

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12 JUNCOS, Ana E., POMORSKA, Karolina, 'In the Face of Adversity': Explaining the Attitudes of EEAS Officials vis-à-vis the New service', *Journal of European Public Policy*, 2013

13 SMITH, Michael E., "The European External Action Service and the Security-Development Nexus...", *cit.*

14 VANHOONACKER, Sophie and POMORSKA, Karolina, "The European External Action service and Agenda setting in European Foreign Policy", *Journal of European Public Policy*, 2013, <http://dx.doi.org/10.1080/13501763.2012.758446>

15 European External Action Service, *EEAS Review*, July 2013, p.4. It also includes the proposal to reduce the number of posts for high-ranking officials and increase responsibilities at directorship level.

16 JUNCOS, Ana E., POMORSKA, Karolina, *op. cit.*

posts where different geographical areas are covered by the same policy instruments.<sup>17</sup>

In all, perhaps the most salient problem facing the High Representative, and indirectly the EEAS, is the unresolved confusion over the international representation of the EU and the assignment of powers on external action to the President of the European Council (articles 15.5 and 6 TUE)<sup>18</sup>, the High Representative<sup>19</sup> and the President of the Commission (article 17.6 TUE). These should all guarantee the coherence of external action with other European policies (article 26.2 TUE); but the High Representative's coordinating capacity is greater in the area of CFSP than in his role as Vice-President of the Commission in external community affairs, where his capacity is restricted by the competences of other Commissioners. In practical terms this could result in a certain lack of coordination between an initiative of foreign policy, security and defence, and a development cooperation initiative, for example. In addition, another scenario that generates confusion in the Treaty concerning the role of the High Representative in foreign policy is that an initiative has to be implemented by the High Representative and the Member States, thereby using both EU and national resources (article 26.3 TUE). This lack of clarification with regard to sharing responsibilities could lead one back to the situation prior to the Lisbon Treaty<sup>20</sup>, although in areas of security and defence the risk is less evident, as ambiguity seems to exist only in operations with civilian components or where funds are required that are managed by the Commission.

Although according to the terms of its constitutive Treaty, the European External Actions Service, in addition to assisting the work of the High Representative, also assists the President of the European Council, the President of the Commission and the Commission<sup>21</sup>, it also has its own personnel to draft and advise on its external competences.

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17 European External Action Service, *EEAS Review*, July 2013, p.4.

18 Various representatives at the Convention that drew up the European Constitution Treaty rejected the institutionalisation of the President of the European Council on the grounds that it would become a figure without parliamentary control and would add greater confusion to the external representation of the EU and bureaucratic rivalry between the different figures.

19 The High Representative holds the Presidency of the Foreign Affairs Council and the CFSP and the CSDP, and the Vice Presidency of the European Commission (articles 18 and 27 TUE), and may propose the appointment of special representatives (article 33 TUE) and is head of the EEAS (article 27.3 TUE).

20 FERNÁNDEZ SOLA, Natividad, "The Stakes of the European External Action Service... ", *cit.* and RAMOPOULOS, Thomas and ODERMATT, Jed. "EU Diplomacy: Measuring Success...", *cit.*, p.20)

21 Article 2.2. of the Council Decision of 26 July, 2010, regarding the organisation and functioning of the European External Actions Service, refers to such assistance in the exercise of their respective functions in the area of the Union's external relations. (DO L 201 of 3.8.2010).



For these reasons, and despite the existence of progress reports pointing to the beneficial effects of the existence of the EEAS on the EU's external activities<sup>22</sup>, it has also been recognised that certain reforms introduced by the Lisbon Treaty in the area of EU external activity have not only not contributed to improving their management and efficacy, but to a certain extent have constituted a step backwards.<sup>23</sup> In the view of M. E. Smith, the negative effects of the rulings of the Lisbon Treaty are due to factors relating to the structure of the institutional apparatus which oversees European foreign policy. One of these would be the failure of the Lisbon Treaty to effectively reorganise the broad framework of the EU's foreign policy giving scope to the EEAS as a new body, but not an institution of the Union. One could say that the EEAS has had to find its own location, independent from other actors on the foreign policy stage, mainly from the Commission<sup>24</sup>. We believe that the situation of the European External Actions Service merely reflects the ambiguities that weigh upon the body it is serving, namely: the High Representative of the Union for foreign policy who, as we

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22 See annual reports of the European External Actions Service (EEAS, Report by the High Representative to the European Parliament, the Council and the Commission, 22.12.2011). A formal and positive review in Alberto PRIEGO MORENO, "Presente y futuro de la acción exterior of la EU", *Documento marco* 10/2013, IEEEE, Madrid

23 This is despite the existence of various provisions in the Lisbon Treaty that tend to buffer these possible risks by establishing common principles governing EU external activities or strategic interests. According to article 21.3, "The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies. 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.". Article 26, for its part, "1. The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions [...]

2. The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.  
3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

24 SMITH, Michael E., "The European External Action Service and the Security-Development Nexus...", *op. cit.*, HEMRA, Staffan, RAINES, Thomas, WHITMAN, Richard, *A Diplomatic Entrepreneur: making the most of the European External Action service. A Chatham House Report*, London, Chatham House, 2011. These authors affirm that, in search of a systematic determination of his role, the High Representative has not found a *modus operandi* that is satisfactory for all those involved in EU external activities, while at the same time providing coherence in an effective European foreign policy.

have already said, must also find his own space in EU foreign policy, breaking away from and identifying his scope and powers with respect to the figures of the President of the European Council, the President of the Commission and the rotating Presidency of the Council for sector policies, but with an external projection.

Moreover, in spite of the fact that the EU has evolved, reinforcing its role as a diplomatic player, its ambitions clash with the reality of international Law which regulates this arena; a legal arrangement traditionally centred on the sovereign state as the subject of diplomatic activity, where on occasion the presence of the Union depends on the good will of third countries in accepting it as a diplomatic player<sup>25</sup> or its own Member States in not placing obstacles in its way. It also true to say, as we shall see later, that the acceptance of the EU as a political and diplomatic player has been reinforced by the unifying or harmonising function of the EU Delegations with respect to the Member States.

## **2. Operational problems of the European External Actions service affecting the common security and defence policy; ideas for reform**

If we focus on the current problems facing the EEAS, which are reflected in security and defence policy, we could divide them into challenges of organisation and functioning, although these are intertwined and condition one another mutually. We must emphasise the ambiguous institutional position of the Special Representatives; the lack of definition of the role of the EU Delegations in third countries; the problem of coordination within the Commission in terms of its resources and competences in relation to the EU's external activities; the structural isolation of the organisations in charge of the Common Security and Defence Policy with respect to the rest of the apparatus and the lack of definition of the relationship between the Special Representatives, the CSDP missions and EU Delegations in territories where they overlap. The majority of these factors impact negatively on the common security and defence policy's necessary comprehensive approach, and on EU foreign policy .

We cannot disconnect ideas for the reform of the EEAS from those related to the proposal of a reconsideration of the Common Security and Defence Policy (CSDP), impatiently awaited by the Member States, to be dealt with at the December 2013 European Council<sup>26</sup>. The reality is that while focusing on bringing the structure of

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25 WESSEL, Ramses A., VAN VOOREN, Bart, "The EEAS's Diplomatic Dreams and the Reality of European and International Law", *Journal of European Public Policy*, 2013.

26 See EEAS, Deputy Secretary General, Note to the Attention of the HR/VP Catherine Ashton for Decision, European Council discussion on CSDP (2013), Brussels, 22 May 2013, EEAS/DSGI/BV/am (2013) 1371555 and *EEAS-Review 2013*, July 2013; and the Report of the High Representative

the EEAS into line with the needs of the different policies of the Union, determined efforts are also underway to give greater momentum to the security and defence policy making it effective and credible, and an instrument for the Member States, providing a strong and united representation of the EU in the world<sup>27</sup>.

### *2.1. The ambiguous position of the Special Representatives*

The present structure and composition of the EEAS leaves the Special Representatives in an ambiguous situation, as they currently have very little connection with the EU Delegations in the corresponding countries and with central services. This goes back to the time prior to the existence of the EEAS when the external representation of the EU was in the hands of the Commission, through its Delegations in third countries. Their appointment by the then High Representative was designed to fill a gap facilitating the presence of the EU in places where it was dealing with foreign policy issues, of non-community competence. According to the organisation chart of the service in 2011 and the current one for 2013, the Special Representatives report directly to the High Representative, although in the current organisation chart there is a link to the General Vice secretary that did not exist in the first organisation structure. But their total isolation from the civil and military bodies that plan and direct CSDP is maintained. On the other hand, this "isolation" makes the figure of the Special Representatives more acceptable to the Member States, who tend to identify them less with the central EU bodies and regard them as a solution that is "less institutional" or "closer" to their interests. This peculiar situation of the Special Representatives, which tends to be resolved functionally, could be a potential source of duplicities and inconsistencies in the EU's external actions in conflict areas and areas of strategic importance which, for this very reason, have been assigned a Special Representative. It is also true that their very existence depends on the High Representative who, following the establishment of the EEAS, was not even in favour of maintaining them; this is somewhat surprising given that the Special Representatives provide on the ground information and experience hugely useful for CFSP planning, execution and evaluation and for CSDP missions in particular. Notwithstanding, their task has not always been in harmony with CSDP missions, EU Delegations or national diplomatic representations.

EU presence in Afghanistan provides us with a clear example of this lack of coordination of external activity, despite the provision of training to 5000 Afghan police officers. From December 2001 onwards there were several successive Special

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*/Director of the European Spatial Agency on Common Security and Defence Policy, Preparing the December 2013 European Council on Security and Defence, of 15 October 2013.*

<sup>27</sup> European Commission, Communication "A New Deal for European Defence. Towards a more Competitive and Efficient Defence and Security Sector", July 2013, COM (2013) 542 final. The Commission Report centres on the defence industry and revindicates its competence for to regulate and manage it.

Representatives in the conflict region, coinciding with the EU Police Mission (EUPOL-Afghanistan) since 2007<sup>28</sup>, with the European Gendarmerie Force (EUROGENDFOR-Afghanistan) operating since 2009 and with the diplomatic presence of Member States, some of them participants in the NATO military mission in the country (NATO-ISAF), clearly under the leadership and organisation according to the frequently erratic, strategic and operational criteria of the United States of America. In the interest of concentrated and coordinated efforts, the Special Representative in Kabul is, at the same time, Head of the EU Delegation in Afghanistan and traditionally played a political role, including that of coordinating the positions of the Member States on the ground. But their connection with the European police and gendarmerie missions was extremely limited. The very existence of the latter reveals the lack of coordination of European efforts in the Asian country.<sup>29</sup>

Improved links and interconnections between the Special Representatives and the other CSDP bodies and the geographic and cross-cutting departments should be reflected in a new organisation chart. Greater integration of the Special Representatives and their staff within the overall structure of the EEAS is a widely accepted idea; among other reasons, as a cost-saving measure.<sup>30</sup> It has been suggested that the Decision on the organisation and functioning of the EEAS should oblige EU Delegations to support, communicate and consult with the Special Representative and promote the figure of the Special Representative, who simultaneously carries out the functions the Head of the EU Delegation. As these proposals are all reasonable, perhaps now is the moment to review the figure of the Special Representatives given the change represented by the capacity for political representation assigned to the EU heads of Delegations. In these conditions, it would appear that their figure has a *raison d'être* in the management of regional matters surpassing the scope of any specific EU Delegation.

## 2.2. *Organic isolation of the CSDP*

In order to fully understand the problem, one has to situate the crisis management

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28 GROSS, Eva, "The EU in Afghanistan", in Gross and Juncos (eds.), *EU Conflict Prevention and Crisis Management. Roles, Institutions and Policies*, Oxon, Routledge, 2011.

29 The European Gendarmerie Force is primarily in the service of the European Union, but can also be placed at the service of other international organisations, such as the UN, NATO or the OSCE. In the case of Afghanistan, the EGF is taking part in the NATO training programme. See characteristics of the Gendarmerie Force in Afghanistan at: <http://www.eurogendfor.org/eurogendfor-missions/eurogendfor-afghanistan> and those of the EU police mission in Afghanistan at: [http://europa.eu/legislation\\_summaries/foreign\\_and\\_security\\_policy/cfsp\\_and\\_esdp\\_implementation/psooo6\\_en.htm](http://europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/psooo6_en.htm)

30 EEAS 2.0, Draft Recommendations..., *cit.*, p.13. A reference could be included under articles 5 and 6 of the Decision establishing the organisation and functioning of the EEAS. The Report on the Reform of the EEAS presented by the High Representative in July 2013 proposes the full inclusion of the Special Representatives within the EEAS along with the transfer of their personnel and budget.

bodies within the structure of the EEAS. In the initial corporative management organisation chart designed in February 2011 by the High Representative, reporting to the Head of Operations and the Executive Secretary General together with their respective delegates, were the Political and Security Committee and the Military Committee and, by extension, as structures in times of crisis, the Military Staff, the Crisis Management and Planning Directorate (CMPD) and the Civil Planning and Conduct Capability (CPCC); with the advice of the Committee for Civilian Aspects of Crisis Management (CIVCOM) and the Political Military Group (PMG). As consultative bodies there were the European Satellite Centre, the European Defence Agency and the EU Institute of Security Studies. Reporting directly to the High Representative, but separate from the former, were the Special Representatives and the Directorate of Crisis Response and Operational Coordination, together with the Situation Centre and the legal service. In the organisation chart of 2013, the situation is much more complex on account of the number of new Directorates; moreover the following changes have occurred: CIVCOM and PMG now report to the Political and Security Committee. The crisis management structures (EUMS, CMPD and CPCC) no longer report to the Military committee but directly to the High Representative. In the same block of crisis management structures a division of security policy and conflict prevention now exists that deals with issues such as conventional arms and arms of massive destruction, peacekeeping and peace-building, mediation and sanctions, and, with no hierarchical links, the Operation Centre recently activated as the EU's Operational Headquarters<sup>31</sup>. In addition to these consultative bodies is the European College of Security and Defence. Outside the formal crisis management structure, as had been the case until now, is the Crisis Response and Operational Coordination Department<sup>32</sup> and the recently renamed Intelligence Analysis Centre (IntCen)<sup>33</sup>.

As an operational scheme, one detects a certain organic isolation between the CSDP prevention and crisis management structures and the rest of the service's organisation chart<sup>34</sup>. This situation has a legal basis in that the Decision on the organisation and functioning of the EEAS states that the specificities of these structures, as well as the

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31 Strange arrangement on account of its lack of links with any other body and because the Centre of Operations remains a subdivision of the operations division of the EU Military Staff (EUMS).

32 This directorate extends into three subdivisions: strategic planning, Centre of Operations and consular crisis management.

33 In 2011 the Operations Centre was renamed as the Intelligence Analysis Centre (IntCen).

34 Article 4 of Council Decision establishing the EEAS, cit. *The travaux préparatoires* indicate proposals such as the Slovakian recommendation that ESDP and crisis management stay out of the EEAS. Finland, on the other hand, saw the inclusion of the crisis response and the crisis management tasks within the EEAS as a "major structural improvement; see "EEAS 2.0: A Legal Commentary on the Council Decision 2010/427/ EU establishing the organisation and functioning of the European External Action service", EU Foreign Policy, *CEPS Paperbacks*, 7/2/2013.

particularities of their functions, recruitment and the status of the staff be respected and the authority of the High Representative shall be respected<sup>35</sup>. This precept, enshrined in TEU article 40 and TFEU articles 3 to 6, underlines the nature of an EU still partially structured with pillars, despite their formal disappearance.

As all these bodies emanate from the Secretary General of the Council, the stated requirement in the Decision establishing the EEAS of assuring full coordination among all the subsidiary structures represents a challenge. The lack of any organic link –except via the High Representative – between these bodies and the other General directorates and sections that could be involved in a comprehensive response to any given crisis, raises doubts about whether the EEAS is functioning as well as it should<sup>36</sup>. To a certain extent, this relative position reflects the lack of real integration of the CSDP in the European External Actions Service; ultimately, the lack of integration of said policy into EU external action as a whole.

Dealing with this situation would require that the work of these bodies should remain within the structure of the geographical and cross-cultural departments of the EEAS, so that the CSDP could be truly part of the EU's foreign and security policy; and, as such, part of the Union's bilateral relations with third countries. Thus the comprehensive approach of the Union's foreign policy would be truly enhanced, given that each action in a given region would take account of the action developed by the current geographical directorates<sup>37</sup>, as well as the possible or incurred civilian or military CSDP operations, demanding and facilitating joint planning, common objectives, coordinated and complementary instruments, the direct implication of EU Delegations<sup>38</sup>, of Special Representatives, where they exist, and of national Embassies, in short, EU visibility not carved up into sectors, financial programmes, etc<sup>39</sup>.

There are clear examples of contemporary issues that require this coordination or comprehensive focus but that, due to structural inertia, are still dealt with in different

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35 Council Decision on the organisation and functioning of the EEAS, 2010, *cit.*, article 4.

36 Graphically, on the EEAS organisational chart, “the bubble on the upper right” is the term used to refer to the combined group of bodies under CSDP and how they fit into the Service. The chart clearly underlines the lack of integration with the rest of the EEAS components.

37 Although that would be their organic level, the geographical and thematic departments are called *Managerial Directions* and not General Directorates.

38 A review of the procedures of crisis management is following along these lines with the recommendation that the Head of the Mission must provide knowledge of the terrain for the planning phase of a CSDP action and be in close contact with activities related to such policy in the country.

39 An integral approach to security, including the CSDP missions themselves, should be mindful of the other related areas partially or exclusively falling under the Commission's powers, crisis prevention; civil protection; post-conflict stabilisation; security sector reform, or those falling under other EEAS departments. See BLOCKMANS, Steven, CREMONA, Marise, CURTIN, Deirdre, DE BAERE, Geert, DUKE, Simon, ... “EEAS 2.0: A Legal Commentary on Council Decision ...”, *op. cit.*

bodies, not always in communication with one another. To this effect we shall merely mention the examples of Kosovo and transatlantic relations. In Kosovo, it has been recommended that the Atlantic Alliance operation (KFOR) be substituted by an EU operation that would highlight the Union's adoption of responsibilities in its neighbourhood. This recommendation, put forward by Germany, Italy, France and Poland, requires going beyond crisis management structures and involves taking into account relationships with NATO as well as contacts with the US Department of Defence and high-ranking US officials. Equally, one would have to consider the upcoming expiry date for the EU EULEX Kosovo mission's mandate in June 2014<sup>40</sup>. If we limit ourselves to mentioning the main bodies, such action would require joint planning and implementation on behalf of the Political and Security Committee (PCS), the Crisis Management and Planning Directorate (CMPD), the Military Staff (EUMS), as well as the Direction for Europe and Central Asia through its Direction of Western Balkan Countries and the Direction for America through its Direction for the United States and Canada and the service for Foreign Policy Instruments, all of the afore-mentioned in collaboration with the Special Representative for the Balkans and the Commission to ensure a global approach.

The need for a comprehensive approach, in this case including trade as well as security issues, can be appreciated in the newly formed Transatlantic Trade and Investments Partnership (TTIP). This is not only a commercial question regarding the competence of the services of the Commission, in which issues of lifting restrictions, free trade and relations with the World Trade Organisation and other trade partners come into play. Security and defence have the potential to play a role in this arena<sup>41</sup> where the style of links between the defence allies is determined. Without entering into the importance and complexity of the trade sanctions that arms embargos decree, given that the Commission is looking for markets for the EU's defence industries, while the European Defence Agency is promoting the strength of the industry, it would be difficult to deny a certain role for the EU Delegations in achieving this, in this particular instance in Washington. Thus a comprehensive approach with the participation of these European players should prevail.

The question of the CSDP structures, their direct relationship with the High Representative, their configuration and relationship with the rest of the EEAS needs further analysis within the reform of the EEAS. The result should be endorsed by the European Council. Part of the equation is the well-known problem of the establishment of a permanent capacity for the planning and implementation of EU civilian and

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40    9 July 2013 the North Atlantic Council declared the full operational capability of the Kosovo Security Force (KSF) whose mission is to conduct civil protection operations and to assist the civil authorities in responding to natural disasters and other emergencies. <http://www.aco.nato.int/kfor/news-room/press-releases/full-operational-capability-declared-for-kosovo-security-force.aspx>

41    See EEAS, Deputy Secretary General, Note to the Attention of the HR/VP... *cit.*

military operations, and the doubt concerning the continued activation of the Centre of Operations to that effect<sup>42</sup>, with its limited impact and physical and conceptual potential for expansion. But while all of this serves only to resolve the question of the very structure of the CSDP bodies themselves, and not their relationship with the rest of the EEAS; it is also true to say that, as they do not report to a national Operational Headquarters, the coordination of a European HQ with the rest of the service should be somewhat simpler.

The proposed reform of the EEAS does not comment on the topic, as it is more a matter for the reconsideration of the CSDP. But it echoes the call by the High Representative for the Situation Room, (organically included among the divisions of Military Staff) to be co-located with the Commission's Emergency Response Centre to create a single EU facility. This would allow for the joint and continued work of the EEAS and the bodies of the Commission in this field. It also speaks out in favour of mechanisms that would make the expertise of the Military Staff personnel available to all policy departments of the Service and increase synergies between the geographical experts of the Intelligence Centre with the Delegations and the policy departments of the Service<sup>43</sup>: practical formulas that would serve to palliate some of the current deficiencies.

### *2.3. On the ground coordination of CSDP missions, EU Delegations, embassies of member States and European Union partners.*

The theoretical separation -at institutional level- and even more so, the real separation, were it to occur, between the CSDP missions and the Delegations, the Special Representatives, the Embassies of the member States and the EU partners constitutes another obstacle to a comprehensive approach to crisis management on behalf of the Union. The role of representation assigned to EU Delegations in third countries and to international Organisations<sup>44</sup> is relevant to the promotion and enlargement of the

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42 We ought to bear in mind that the EU Centre of Operations was activated for the first time on 23 March 2012 by the Foreign Affairs Council to improve coordination and reinforce civilian and military synergies between the three actions of the CSDP in the Horn of Africa: the military EUNAVFOR ATALANTA, the EU training mission in Somalia (EUTM Somalia) and the civilian EU capacity (with a component of military personnel) NESTOR (EUCAP NESTOR), [http://www.eeas.europa.eu/csdp/structures-instruments-agencies/eu-operations-centre/index\\_en.htm](http://www.eeas.europa.eu/csdp/structures-instruments-agencies/eu-operations-centre/index_en.htm)

43 European External Action Service, *EEAS Review*, July 2013, pp.5-6. Includes the formula of short-term staff loans in both directions between the Military staff (EUMS) and other policy departments .

44 The EU Delegations to Third Countries and international Organisations, not being part of the EEAS, while not reflected in the organisation chart, but are included in the regulations of the Decision of the Council of 26 July 2010, which establishes the functioning and organisation of the EEAS, *DO L 201 of 3.8.2010*.



scope of EU external action and its visibility.

Although it has members that do not belong to the EEAS, such as those in charge of trade policy, the effectiveness of the representative work of the Union is guaranteed by the Delegation Head, who coordinates the activities of all its members and receives instructions from the High Representative and the EEAS or the Commission for the powers granted by Treaties, and is responsible of their execution in the host country.

With regard to what concerns us here, EU action in foreign and common security policy and humanitarian intervention can achieve greater visibility and credibility with the support of the head of the delegation<sup>45</sup> over the territory of the state in which an EU mission is engaging. Even if it lacks powers in the specific field of CSDP missions and operations being developed in the zone, and is involved in the command chain, it can serve as a local political guide to the head of the operation, who has the obligation to coordinate and consult his action insofar as it generates an impact in the political sphere. Besides the Delegations should constitute an important added value for the European External Action Service if they are equipped with a good information service equally useful to the Commission and the Member States<sup>46</sup>.

It has also been suggested that the European Delegations should assume responsibility for the protection of civilians and intervention in situations of crisis or humanitarian aid<sup>47</sup>, which contrasts with the Delegations' shortage of personnel and financial means for such tasks .

An agreement between the Member States recognising that the Head of the EU Delegation would preside over meetings of the national representatives in a third country would serve as a basis for the coordination of the activities of their embassies. And that is what happens in places where a mission from the European Union is deployed, or in conflictive areas like Nairobi, Kampala, Sana'a, Cairo, Tripoli... The Lisbon Treaty provides for the organisation of a combined effort for the evacuation of

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45 When the Treaty of Lisbon came into effect, the EU delegations assumed the responsibilities under CSDP and, consequently, broadened their agenda to embrace all issues which allowed for a global relationship with the host countries. It also gave strategic depth and stability to its coordination work.

46 The EU Delegations are far from alleged European embassies, whose presence would exercise greater influence on third countries and would permit the drafting of joint diplomatic initiatives. See "Towards the Establishment of a Common European Diplomacy, paper by Mr. Íñigo MÉNDEZ DE VIGO, member of the Convention", Working Group VII, working document 55, 3/XII/2002, p. 5. In a similar vein, the written Declaration of agreement with article 116 of the internal regulation of the European parliament of E. Brok, N. Fontaine, B. Geremek, J. Leinen e I. Méndez of Vigo, *Foreign Policy, Security and Defense Union*. PE 0010/2007, 31/1/2007.

47 BARNIER, Michel. "For a European Civil Protection Force: Europeaid", May, 2006. To date the only competence transferred to the EEAS is that relating to consular protection, but only on request by the Member States as established in article 5.10 of the 2010 Decision establishing the Service, *cit.*

European citizens in cases of natural disasters or political emergencies. Nevertheless, recent cases (Libya, Tunisia, Egypt and Yemen) highlight the fact that the Member States coordinate their efforts, but do not act jointly – as a European Union-.

A possible innovation in the reform of the EEAS would be to introduce a body that would link up Delegations, working bi-directionally and coordinating with the general guidelines of the EU's foreign policy in the region and globally.

As regards the diplomatic missions of the Member States, their cooperation with the EEAS is provided for in the Treaty (articles 32 and 35 TUE and 221 TFUE). This relatively weak link could be described as circumstantial for various reasons. Firstly, in view of the efforts of the EU Delegations in involving the Mission Heads of the various national Embassies in the search for common positions and, to a certain extent in European decision-making concerning that particular country. Secondly, on account of the progressive adaptation of the Member States to the existence of a new representative body of the Union as a whole, the EEAS, and to certain EU Delegations in third countries and to international Organisations which, rather than carrying out the role of traditional national diplomacy, constitute an efficient complement to the diplomatic work of the Member States; this formula should provide for a slow transfer of all tasks that can be jointly managed <sup>48</sup>.

In spite of this, a clearer, more unshakeable definition of the respective tasks of the national and European diplomatic services is necessary and a greater coordination between the EEAS and the national diplomatic missions as well as with the Delegations of the EU.

#### *2.4. Intelligence capacity within the EEAS*

One of the key questions for the planning of an efficient foreign policy is to have at one's disposal the best information on international affairs. The question has been raised as to how the mere fact that a third of the staff in the Service comes from the Member States could contribute towards an increase of the Union's "political intelligence" given that the EEAS should be in the best place to provide political information, as a common service for all Member States and European institutions <sup>49</sup>. The EU delegations also have staff for the development of economic intelligence.

Within the central bodies, the EU Centre of Intelligence Analysis (IntCen),

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<sup>48</sup> Spain would transfer its Embassy in Yemen to the offices of the EU Delegation in Sana'a at the end of 2012. A few months previously, Luxembourg had transferred its embassy in Ethiopia to the EU Delegation in the country. Memorandum of Understanding 10 December 2012, Press A 568/12, Brussels, 10 December 2012.

<sup>49</sup> Enlargement provides the EU with language capacity, principally in Russian, which is very useful for sharing information.

formerly SitCen, acts as the nucleus of EEAS activity on intelligence issues. It generates benchmark-based analyses of intelligence, mainly strategic-political, emanating from all possible sources to provide high-quality information on public security (internal and external) to the Council. The Centre of Intelligence in cooperation with the EUMS Intelligence Division, provides a functional structure, the Single Intelligence Analysis Capacity –SIAC- where combined analyses from civilian and military sources are produced. Much of the EU intelligence comes from persons deployed on the ground : EU Special Representatives, European Delegations via political advisors, commanders of a military or civilian operation of the Union (operative military intelligence), but also from the Member States.

Given that almost invariably the services of civilian and military intelligence work together, in accordance with the procedure established by the collaboration agreement SIAC, there should be no requirement for a new body, thus following the philosophy of the EU Military Staff to achieve a coherent military arrangement that would cover all military fields and avoid cutting off the area of intelligence. A hypothetical unified intelligence and security service would be turned down by several Member States, on the grounds of it being in conflict with structures of national defence and for financial reasons, which would make it difficult to bring about in the short-term.

### *2.5. Experts in security and defence in the EU Delegations*

Another idea worth considering would be the integration of experts in security and defence in the Delegations of the EU (in some at least)<sup>50</sup>. This initiative would be the logical consequence of taking on competences in security and defence issues on behalf of the EU and the resulting inclusion in the EEAS of the political and military organisations of the policy, which should be reflected in the Delegations of third countries, as occurs with the presence of other experts in the various policies of the EU. The lack of qualified staff in the EU Delegations in this essential political arena means that any action in this sphere has to be organised from Brussels; without the inestimable on-site information and knowledge of the Delegations or generic information provided by the Head of the Delegation.

The incorporation of these experts could be considered desirable, at least in the Delegations where there are EU operations and in countries considered to be of strategic military importance for the Union. The supply of information for the decision-making process, the coordination of Member States on the ground and the application of CSDP decisions could be in the hands of this “councillor of security and defence” in the Delegations of the EU, always under the coordination of the

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<sup>50</sup> For the first time the suggestion of CSDP attachés is included among the formal academic recommendations for the review of the EEAS in VV.AA, EEAS 2.0, *Draft Recommendations for the 2013 EEAS Review*, SIEPS, EUI, CEPS, June 2013, p.13.

Head of the Mission. The EEAS review presented by the High Representative says as much when it proposes the extension of the pilot programme of detached security/military experts<sup>51</sup>.

Currently there only exists a kind of military attaché in the EU Delegation to the United Nations in New York and in the Delegation to the African Union in Addis Ababa (AU). It is easy to understand why, given that the EU Delegation in New York is in charge of the organisation of United Nations peacekeeping missions and of EU involvement as a global player in these missions. In the second case, the presence of an expert in dealing with security and defence with the AU is explained by the Union's responsibilities in the organisation's member states, principally involved in CSDP missions.

#### *2.6. A clash of competences between the EEAS and the European Commission; shared responsibilities*

The division of competences between the EEAS and the European Commission in determined areas of EU external action or the modalities of joint cooperation between them is a structural problem that derives from the Treaty, which the EEAS cannot resolve on its own. The two most contentious issues relate to the use of resources and the assignment of tasks<sup>52</sup>, in other words: the question of by whom and with what means external action is carried out and coordination between them. Two areas in particular related to CSDP have been the focus of review : development policy and the defence market. More specifically, to identify whether in a given crisis zone the financial and economic instruments of development cooperation controlled by the Commission are used, or the military instruments, the police and experts in governance and civil administration, specific to security and defence policy under the control of the High Representative and managed by the EEAS. The fact that the Commission maintains considerable competences in the area of development to a certain extent marginalises the High Representative in this area<sup>53</sup>. However, the Council Decision establishing the EEAS does not limit itself to “policy-making” functions, as with those concerning CFSP, but also identifies it as guarantor of the consistency of external action, developing proposals close to the work of the Commission; nevertheless, this latter has been somewhat relegated in practice<sup>54</sup>.

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51 European External Action Service, *EEAS Review*, July 2013, p.6.

52 The management of cooperation programmes is under the responsibility of the Commission without prejudice to the various roles of the Commission and the EEAS in its programming (Article 9, Decision of the Council, 26 July 2010, cit.).

53 Concerning coordination between development and security SMITH, Michael E., “The European External Action service and the Security-Development Nexus...”, *cit.*

54 See article 2.1, paragraphs 1 and 3 of the decision which mentions two tasks of the EEAS: sup-

The second area of controversy is that of the defence industry, where the European Defence Agency (EDA), included within the EEAS, plays an important role in its promotion. Its close coordination and collaboration with the Commission must be viewed as essential here. Nevertheless, the Commission tends to deal with this issue within the framework of its competences in regulating the internal market for defence. This is demonstrated in its proposal to promote a common security and defence policy<sup>55</sup>. The fact that the main European companies in the defence sector have moved towards dual-use technology could serve to increase the prominence of the institution as a player in matters of European defence. This in itself could be a non sequitur, as Simón suggests<sup>56</sup>, as it runs the risk of worsening one of Europe's most pressing problems: an aversion to the use of force and the perception of military power as a central component of foreign policy.

Naturally enough, the establishment of a bureaucratic organisation such as the EEAS is not going to resolve the political issue; it is evident at the same time that the EU Delegations in interested third countries and the EDA should be involved in any efforts to promote the industry<sup>57</sup>.

Given that the Lisbon Treaty does not offer any guidelines on the demarcation of powers in areas of shared responsibility, it must fall upon the Court of Justice, on the basis of TEU article 40, to clarify the boundary between the CFSP and the rest of the EU's external action, as it did with the "ECOWAS" judgement in 2008. In it, the Court clarifies the scope of Community development cooperation policy and specifies when CFSP action is possible, and consequently, annulled the Council decision of 2004, adopted on the basis of joint action 2002/589/CFSP, with a view to a European Union contribution to the ECOWAS, in the framework of the Moratorium on Small Arms and Light Weapons<sup>58</sup>.

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port for the High Representative in directing and formulating policy proposals in the field of CFSP/ CSDP and support for the High Representative in ensuring the consistency of the EU external actions as a whole.

55 European Commission, Communication "A New Deal for European Defence. Towards a more Competitive and Efficient Defence and Security Sector", July 2013, *cit.*

56 SIMÓN, Luis. "Setting the Tone, The 2013 French White Paper and the Future of European Defence", *RUSI Journal*, vol. 155, n.4, 2013, p.6.

57 Cooperation between the EEAS and the services of the Commission also at the level of the EU Delegations is contemplated in article 5 of the decision that establishes the organization and functioning of the EEAS in the joint decision of the Commission and the High Representative on the mechanisms of cooperation for the management of the EU Delegations, March 2012.

58 Judgment of the Court of Justice (Grand Chamber) 20 May 2008. Commission of the European Communities versus Council of the European Union. Action for Annulment Article 47 EU - Common foreign and security policy – Decision 2004/833/CFSP. Application of Common Action 2002/589/CFSP Combating the proliferation of small arms and light weapons Community com-

Difficult as it is to draw a dividing line between competences, it is equally difficult to determine the ways and means of implementing them in cases where coordinated action of the Commission and the High Representative via the Council is required. Currently, the modalities for cooperation in affecting decision-making are set out in the agreements on inter-service cooperation between the services of the Commission and the EEAS<sup>59</sup>. According to these, the proposals for CFSP action are the subject for discussion in the relevant Council working groups (thematic, geographic or the Committee for Civilian Aspects of Crisis Management -CIVCOM-)<sup>60</sup>. In its role as Commission representative in the working groups, the service of the Foreign Policy Instrument -FPI- is consulted by the EEAS from the first stage of the implementation of CFSP measures, (with the exclusion of military operations), and fully implicated in discussions on possible alternatives. Once an agreement has been reached by the Political and Security Committee -PSC- to launch a CFSP initiative<sup>61</sup>, the FPI draws up a declaration of budgetary impact for each one of them, in consultation with the relevant services of the Commission and the EEAS. The working group of external relations advisors (RELEX) approves the budget and once the Council adopts the CFSP initiative in accordance with article 28 TEU, this permits the FPI to prepare the Financial Decision in consultation with the Commission following an accelerated procedure. The High Representative, as Vice President of the Commission, is empowered to adopt these financial decisions; a power that can be delegated to the Director of the FPI. This organisation implements the financial decisions adopted. The civilian CSDP missions deployed on the ground, as well as the CPCC, may be required to facilitate technical advice and mentoring as part of a whole spectrum of programmes that fall within its remit and expertise.

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petence. Development cooperation policy. Case C-91/05., *Rec.* 2008 I-0365I, DO C 171 of 5.7.2008. Cited: Decision 2004/833, whereby Common Action 2002/589/CFSP is applied with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons, on account of both their aim and their content, two components, neither one of which is incidental to the other, one falling within Community development cooperation policy and the other within the CFSP...In effect, in view of article 47, the EU Court of Justice is opposed to the fact that the Union, basing itself on the EU Treaty, should adopt a measure that could have been adopted validly, on the basis of the EC; the Union cannot resort to a legal basis corresponding to the area of CFSP to dictate provisions that correspond to a competence attributed to the Community by the EC Treaty.

59 For specifics on the inter-service cooperation, see the “Working Arrangements”, *SEC(2012) 48*.

60 The EEAS review report, *EEAS Review* (p.6) calls on the Council to reconsider the rotating presidency of some of the Council’s working groups, such as that of counter-terrorism, the Athena special committee, or that of Africa, the Caribbean and the Pacific subject to the discretion of the High Representative for the sake of greater political coherence.

61 This mechanism is exclusive to civilian operations thanks to its financing mechanism managed by the Foreign Policy Instrument (FPI). In the case of military operations, these are financed by the Member States via their contribution to Athena.

If a CFSP initiative is designed to impose sanctions, the Commission's sanction team as well as that of the EEAS are involved in the decision-making process. Following the creation of the EEAS an integration of the two teams would be desirable, although legally problematic<sup>62</sup>.

### 2.7. *The EEAS and a comprehensive approach to EU foreign policy*

Today, the Common Security and Defence Policy is the sum of many vectors; many of them working in opposite directions of varying force and intensity. They represent not only the interests of the member States, but also the orientation of the various institutions of the EU. The decision resulting from this tension of forces reveals which of them is dominant, but reduces their content depending on the opposing or completely different vectors; in other words, the result is not always the fruit of a comprehensive approach with a common European strategic interest as its axis.

The deficiencies we have referred to in terms of structure and functioning of the EEAS impact negatively on the necessary comprehensive approach to foreign policy and, in particular, of the EU's Common Security and Defence Policy. A comprehensive approach that requires coordination between crisis management and the other directorates of the service, between the directorate and the Commission, coordination with the Member States in Brussels and on the ground and the agile use of all available instruments at the Union's disposal. These deficiencies were evident, for example, in the Commission's opposition to the existence of a thematic Directorate in the EEAS on energy security<sup>63</sup>, despite consensus on the existence of this type of structure alongside the geographic departments.

A comprehensive approach on security and defence policy can be translated operationally into procedures for crisis management, which have been the subject of a limited review which was not directly reflected in the EEAS's organisation chart, but in the *modus operandi* in these cases. A review of existing crisis management procedures is explained by the establishment of the CPCC, the CMPD, the implementation of the Lisbon Treaty and the creation of the EEAS, along with the expertise and practice accumulated over a period of over ten years; all of which did not exist when the original procedures were drawn up in 2003. The ultimate goal is

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62    PORTELA, Clara, "Sanctions and the Balance of Competences", Review of Balance of Competences, United Kingdom Government, February 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224432/evidence-clara-portela.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224432/evidence-clara-portela.pdf)

63    Energy security is the subject of foreign policy debate, and not just energy policies, given their political and economic conditioning factors. The relevant services of the Commission (energy and neighbourhood) and of the EEAS, in particular the Middle East Directorates I and II, Russia and the South Mediterranean should combine efforts in this area. Prior to that, Member States with stances on the issue should establish a common strategy with the main energy providers of the Union: Russia, Central Asia, Mediterranean countries and the Middle East.

to bring about a comprehensive approach and better integration of the civilian and military aspects of crisis management, and in particular better coordination between the EEAS and the Commission<sup>64</sup>

The importance of successfully achieving a comprehensive approach to crisis management relates to the visibility of the CSDP missions. One of the current subjects for discussion relating to the CSDP focuses on increasing the effectiveness, visibility and impact of said policy. There is no doubt about the major visibility of CSDP missions if we compare their very low cost to the humanitarian aid or development initiatives carried out by the Commission at a cost of almost ten times the amount allocated to a CSDP initiative. Let us put forward just one example, that of European cooperation in Mali. The country received €660 million from the 10<sup>th</sup> European Development Fund (EDF) plus €167 million in the context of European Strategy for the Sahel; but with the current crisis in the region, the EU has provided extra funding since January 2013 to the tune of €250 million in humanitarian aid, from, among others, the Instrument for Stability<sup>65</sup>. The recent EU training mission (EUTM) in Mali is estimated to cost €12.3 million for the mandate initially planned to last for 15 months<sup>66</sup> and its visibility as an EU initiative—although not necessarily its impact—has to be greater than all the quoted economic aid. However, the dominant stance of some Member States and dissent over policy does not bode well for the EU as a global player.

### 3. Conclusions

The hybrid nature -neither supranational nor inter-governmental- of the EEAS

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64 The procedures of crisis management should be revised following the EEAS Review, the publication of the Common Communication on Comprehensive approach and in view of the conclusions of the Member States on the enhancement of the CSDP. This comprehensive approach should also preside over the CSDP civilian missions and the structures they depend from (proposal by Germany, official document “Improving Civilian CSDP Management”, May 2013). It is not surprising that one of the suggestions made to the High Representative was the development of a combination of EU security assistance tools to include the reform of the security sector, training and equipment; so as to combine with the resources, structures and instruments of capacity creation both from a military and a civilian perspective; it would also address the Union’s lack of finance when supplying equipment to third parties as part of a training mission (EEAS, Deputy Secretary General, Note to the Attention of the HR/VP... cit.). The EEAS review report accepts a later review of the CSDP operations management procedures (*EEAS Review*, cit., p.6).

65 See EEAS, EU Training Mission in Mali, factsheet updated February 2013, [http://consilium.europa.eu/media/1892457/factsheet\\_eutm\\_mali\\_en\\_.pdf](http://consilium.europa.eu/media/1892457/factsheet_eutm_mali_en_.pdf)

66 Council of the European Union, EU Training Mission in Mali launched Brussels, 18 February 2013, 6340/13.



explains the difficulty of generating a foreign policy that combines the interests of the Member States, the Commission and the European Parliament, each one of these institutions with its own agenda and interests. The establishment of the EEAS during the worst financial crisis Europe has faced since 1929, has not been conducive to its success<sup>67</sup>. Similarly a lack of leadership in the service has not helped.

In the years that have passed since the establishment and commencement of operations of the European External Actions Service, it has shown itself to be suffering from the same ailments as the CSDP, although it has the same potential to present an integrating and regenerating policy for a declining Europe in international affairs which otherwise appears unstoppable.

The review currently outlined contains short- and long-term recommendations for organisation, staffing and functioning, perhaps without addressing major internal and legal changes that would be required for certain essential strategic questions; but putting forward proposals that at least allow for improvements in relation to the main deficiencies in foreign policy management and in particular in relation to the issue of CSDP. We should bear in mind the forthcoming discussion on the action plan for its enhancement at the December 2013 European Council meeting, and the institutional transition due to take place in 2014, which advises against transcendental change at this time. The proposals outlined and others such as an acceleration of the process making funds available and an increase in financial resources for the preparation of foreign policy initiatives, the creation of a centre of logistics and administrative services shared between CSDP missions and Special Representatives as well as the strengthening of the political planning capacity of the EEAS give a clear idea of the awareness of these problems and the willingness to deal with them.

Regarding the changes that could bring about an improvement in common security and defence policy, some require not very extensive restructuring of the European External Actions Service organisation chart. Others permit the present design to be maintained, by changing operational procedures to facilitate the participation of all the players who should be taken into account and who could bring positive elements to the table in terms of security and defence policy decision-making.

A more complex task is that of providing the EU with a permanent capacity for planning and implementation of civilian and military operations within the organic structure of the EEAS which, undoubtedly, would simplify the structures and procedure of the CSDP. One option might be for it to be constituted on the basis of enhanced cooperation or as a permanent structured cooperation, although these formulas of flexibility have not been used up to now.

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67 LARIVÉ, Maxime H. A., "Reflections on the EEAS Review", *Foreign Policy Association*, 22 August 2013, <http://foreignpolicyblogs.com/2013/08/22/reflections-on-the-eeas-review/>

As previously stated, reforms taking place in EU external representation tend to create a new code of governance of the EU's external action. The European External Actions Service, as well as the High Representative for Foreign Affairs and Security Policy, are baroque exercises aimed at coherently reconciling the traditional foreign activity of two institutions. This demands unity, expertise and the professionalisation of the service, far-reaching sensitivities and ability in identifying common interests while avoiding political differences and an overload of input from the Member States through their national diplomatic services, but involving them at the same time<sup>68</sup>. All of this inevitably results in an elevated degree of complexity in the organisation and functioning of the EEAS.

Nevertheless, the best organisation chart and institutional framework cannot compensate for the necessary political will to move forward. And that, in our view, is the situation with regard to the organisations involved in the common security and defence policy. Undoubtedly improvements could be made concerning the location of the Special Representatives; procedural norms could be modified to enhance the figure of EU Delegation leaders in third countries and in international organizations, to permeate the geographical and cross-cutting structure of the EEAS with the work of the organisations of security and defence, to define and delimit the competences of the Commission in this terrain, etc. But none of these measures can combat a lack of political entente, the *impasse* generated by Member States such as the United Kingdom, which refuses any possible advance in CSDP and opposes greater integration, despite the benefits to be gained for all at a time of dangerous cut-backs in defence budgets<sup>69</sup>.

If the institutional framework is a pre-requisite for cohesion and the effectiveness of EU external action, it is not the only one –or it is not sufficient-; there must also be a consciousness of the need to act “as Europe” and the political will to do so. With the same conviction with which the Member States decide to launch and participate in CSDP military or civil missions, where they would have difficulty in acting individually, they should now proceed towards a rationalisation of European diplomacy by progressively cutting back on national corps and providing a greater role for the EEAS where, of course, national diplomats can and should be included. But not just diplomats. International relations are increasingly multi-sector and interdisciplinary which should lead to the EEAS combining the best high-ranking officials in all the

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68 FERNÁNDEZ SOLA, Natividad, “The Stakes of the European External Action service ... », *cit.*, p.65.

69 The CSDP approach of the so-called Weimar quintet (France, Germany, Spain, Italy and Poland) in favour of greater integration in matters of the defence and military industry, and the creation of a European Operational Headquarters to direct EU military operations, vis-à-vis the stance of the UK, which opposes initiatives furthering such a policy, reflects the duality of philosophies surrounding the issue and the difficulties in the path of its development.

areas in which the EU is involved internationally. For a common security and defence policy, the EEAS should include the best members of the Armed Forces of the Member States, the best strategists, the best officials and the best private sector professionals for the development of civilian missions, the best specialists in the market place and in the fields of defence, development, energy security, the environment, etc. A conservatism that rejects the necessary restructuring of European diplomacy is indefensible, bearing in mind the global nature of international affairs. The only result can be that of a European diplomacy that is irrelevant, out of date and obsolete.

The risks are lower in the EEAS than at national level, on account of the heterogeneous composition of the service with its multiple specialities and nationalities and diverse institutional interests. Functional logic led to a Common Security and Defence Policy in which national interests are included in the overall European interest, without the disappearance of a national defence policy for risks not shared with European partners. Now is the moment to develop in a coherent manner all the instruments and players that take part in this policy, beyond those which are exclusively military. It is worth reminding ourselves that we are entering into a dynamic of replacing military intervention with silent military missions: knowledge and anticipation, military diplomacy, prevention and dissuasion<sup>70</sup>.

The Armed Forces of the member States are equipped to deal with such endeavours, but perhaps not as their main mission. Besides, all of them require the support of civilian players and their corresponding coordination. In this transition the simultaneous adaptation of the EEAS and of national, military and diplomatic services could be of great benefit and generate complementarities where there are existing clashes of competences.

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70 On the concept of silent security, see BLACKHAM, Jeremy and PRINS, Gwyn. "Why Things Don't Happen: Silent Principles of National Security", *RUSI Journal*, vol.155, n.4, 2010, pp.14-22.

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